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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
Tuesday, July 15, 2014
1:32 p.m.

MONTHLY COUNCIL MEETING
Verbatim Transcript of Proceeding

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A P P E A R A N C E S

Council Members Present:

Bill Lynch, EFSEC Chair
Liz Green-Taylor, Department of Commerce
Cullen Stephenson, Department of Ecology
Andrew Hayes, Department of Natural Resources
Joe Stohr, Fish and Wildlife

Attorney General's Office:

Ann C. Essko, Assistant Attorney General

Local Government and Optional State Agency:

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

Staff in Attendance:

Stephen Posner
Sonia Bumpus
Jim LaSpina
Tammy Talburt
Kali Wraspir
Joan Aitken

Guests in Attendance:

Mark Miller, PacifiCorp Energy
Rich Downen, Grays Harbor Energy
Jennifer Diaz, Puget Sound Energy
Haley Edwards, Puget Sound Energy

Guests in Attendance Via Phone:

Shannon Khounnala, Energy Northwest
Eric Melbardis, Kittitas Valley Wind Power Project

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1 OLYMPIA, WASHINGTON, JULY 15, 2014

2 1:32 p.m.

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

5
6 CHAIR LYNCH: Good afternoon and
7 welcome. Today is July 15th, 2014, and it's the
8 regular Council meeting of the Energy Facility Site
9 Evaluation Council. Could we please have Staff call
10 the roll.

11 MS. TALBURT: Department of Commerce.

12 MS. GREEN-TAYLOR: Ms. Green-Taylor
13 here.

14 MS. TALBURT: Department of Ecology.

15 MR. STEPHENSON: Cullen Stephenson here.

16 MS. TALBURT: Fish & Wildlife.

17 MR. STOHR: Joe Stohr is here.

18 MS. TALBURT: Department of Natural
19 Resources.

20 MR. HAYES: Andy Hayes is here.

21 MS. TALBURT: Utilities and
22 Transportation Commission.

23 CHAIR LYNCH: Mr. Moss is excused.

24 MS. TALBURT: Local governments and
25 optional state agencies. Department of

1 Transportation.

2 MS. MARTINEZ: Christina Martinez here.

3 MS. TALBURT: City of Vancouver.

4 MR. SNODGRASS: Bryan Snodgrass here.

5 MS. TALBURT: Clark County.

6 MR. SWANSON: Jeff Swanson is here.

7 MS. TALBURT: And Port of Vancouver.

8 MR. PAULSON: Larry Paulson is here.

9 MS. TALBURT: Chair, there is a quorum.

10 CHAIR LYNCH: Thank you.

11 I would like to make one small change in the
12 order of the agenda that you have in front of you
13 today. The update on the Wild Horse Wind Power
14 Project will follow the update from the Grays Harbor
15 Energy Center.

16 Are there any other suggested changes or
17 additions to the agenda?

18 MR. STEPHENSON: No.

19 CHAIR LYNCH: Seeing none, we will just
20 go ahead and I would entertain a motion for approval
21 of minutes from the June 17th, 2014 Council hearing.

22 MR. STEPHENSON: I will move approval of
23 those minutes.

24 CHAIR LYNCH: Do we have a second?

25 MS. GREEN-TAYLOR: I'll second.

1 CHAIR LYNCH: It's been moved and
2 seconded that the Council approve the meeting minutes
3 form the June 17th, 2014 hearing. All those in favor
4 say aye.

5 MULTIPLE SPEAKERS: Aye.

6 CHAIR LYNCH: Opposed? Motion carries.

7 So let's go ahead and turn to the updates from
8 our various facilities. Mr. Melbardis, Kittitas
9 Valley Wind Project.

10 MR. MELBARDIS: Good afternoon, Chair
11 Lynch and EFSEC Council. This is Eric Melbardis with
12 EDP Renewables for the Kittitas Valley Wind Project.
13 We have nothing nonroutine to report for this month.

14 CHAIR LYNCH: Very good. Any questions
15 for Mr. Melbardis?

16 I am remiss. I wanted to do something before
17 we got to those updates. First of all, it's to
18 introduce a new Staff person, Joan Aiken.

19 Joan, do you want to raise your hand so that
20 the councilmembers know what you look like?

21 MS. AIKEN: (Complies.)

22 CHAIR LYNCH: Joan is an administrative
23 assistant in our office and she fills in very well for
24 Kali, who -- who knows where she went at the moment.
25 Anyway, Joan, we are pleased to have you on board and

1 welcome.

2 And also I wanted to let the councilmembers
3 know that Administrative Law Judge Adam Torem will be
4 leaving the UTC at the end of the month. So Adam has
5 provided a lot of good advice to the Council over the
6 years. And this is not the final good-bye at this
7 time, but we want to thank Adam for his good service
8 to the Council.

9 And I also forgot to ask, is there anybody on
10 the phone who chooses to identify themselves at this
11 time?

12 MR. BRICKLIN: Yes. This is Dave
13 Bricklin. I am representing Friends of the
14 Columbia Gorge.

15 MS. BOYLES: Kristen Boyles, Chairman
16 Lynch, with Earthjustice representing several
17 conservation groups.

18 MS. LARSON: This is Linda Larson
19 representing Columbia Waterfront, LLC.

20 MS. WILSON-McNERNY: Julie
21 Wilson-McNerny with Perkins Coie.

22 CHAIR LYNCH: Okay. Very good. And can
23 we now move forward and hear from Ms. Khounnala,
24 Columbia Generating Station and WNP 1 and 4.

25 MS. KHOUNNALA: Good afternoon, Chair

1 and EFSEC Council. For the record, this is Shannon
2 Khounnala from Energy Northwest, and I will begin with
3 the Columbia Generating Station operational update.
4 As you can see from your packet, there are no events
5 or safety incidents or regulatory issues to report.

6 I would like to mention to the Council,
7 however, that the end of June marks the end of
8 Columbia's fiscal year and this has been a
9 record-setting year for Columbia where we have
10 achieved a record 9.7 million megawatt hours of
11 generation this fiscal year. In addition, we are
12 currently in a record-setting pace of 385 days of
13 continuous online operations, and we have now achieved
14 four and a half years without an unplanned shutdown.

15 So those are a few of the ^{highlights} ~~headlights~~ amongst
16 many other records that we have achieved this fiscal
17 year that we are really proud of and happy to have
18 achieved, and we thought we had pass that information
19 along to the Council.

20 CHAIR LYNCH: Thank you, Ms. Khounnala.

21 Does anyone have any questions for
22 Ms. Khounnala regarding the Columbia Generating
23 Station?

24 Ms. Khounnala, just go ahead and proceed to
25 WNP 1 and 4, then.

1 MS. KHOUNNALA: Sure. In regards to the
2 WNP 1 and 4 water rights process, the public notice
3 for the water rights application, which is being
4 submitted on our behalf by the Department of Energy,
5 was posted for the first week on June 24th/25th time
6 frame. It was posted for a two-week period.
7 Following completion of that, the Department of Energy
8 will provide the Department of Ecology with notice of
9 the completion of that public notice, and our water
10 rights application process will continue. We believe
11 that there will be a site visit with the Department of
12 Energy, as well as the Department of Ecology, that
13 will happen later this summer as part of that
14 application process. So we continue with the process
15 as of now.

16 Any questions?

17 CHAIR LYNCH: Any questions for
18 Ms. Khounnala?

19 Very good. Thank you.

20 MS. KHOUNNALA: Thank you.

21 CHAIR LYNCH: Let's turn to Mr. Miller
22 at the Chehalis Generation facility. It's always good
23 to see you, Mr. Miller.

24 MR. MILLER: Yes, it is as well.

25 Good afternoon, Chair Lynch and EFSEC

1 councilmembers. My name is Mark Miller, I am the
2 plant manager at the PacifiCorp Energy Chehalis
3 Generating facility.

4 I have one nonroutine comment regarding the
5 update on the path forward to committing the balance
6 of the carbon offset mitigation funds. PacifiCorp
7 Environmental staff, policy staff, and I met with
8 Mr. Posner and Mr. LaSpina on the 24th of June. We
9 discussed options to complete in a timely fashion the
10 financial commitment for greenhouse gas mitigation as
11 per the EFSEC order 836. As noted in the last segment
12 of this report, we are moving forward on two fronts.
13 One is a proposed energy efficiency improvement that's
14 consistent with our greenhouse -- the greenhouse
15 offset strategy plan originally approved by EFSEC, and
16 also Initiative 937. And I provided to Mr. LaSpina a
17 report that was generated by a consultant issued last
18 May of 2013 on some of those projects that we could
19 implement that also would receive a secondary benefit
20 of carbon production.

21 The second is related to the farm power
22 project that has produced some more offsets than
23 previously had -- they had forecasted, so possibly
24 contracting for additional offsets. And as I stated
25 in the report, our commercial and trading folks are --

1 have entered into those conversations.

2 And that's all.

3 CHAIR LYNCH: Good. I'm pleased to hear
4 the progress that is being made to address the carbon
5 offset.

6 Mr. LaSpina, is there anything that you would
7 like to add?

8 MR. LASPINA: No, Chair Lynch.

9 CHAIR LYNCH: Thank you.

10 Does anyone have any questions for Mr. Miller?

11 Thank you, Mr. Miller.

12 MR. MILLER: Thanks.

13 CHAIR LYNCH: Mr. Downen, Grays Harbor
14 Energy Center. Now I feel compelled to say it's nice
15 to see you as well. I started down that road and I
16 have to say it for everybody.

17 MR. DOWNEN: Thank you, Chair Lynch,
18 EFSEC Council and Staff. My name is Rich Downen, I'm
19 the plant manager at Grays Harbor Energy. In our
20 monthly report for the month of June, the only out of
21 ordinary things were Item 5, site visits. We had an
22 Office of the State Fire Marshal visit, and an annual
23 inspection, and he had three deficiencies: A couple
24 of doors that didn't close, didn't latch, but we
25 repaired those while he was on site, and the annual

1 emergency lighting testing that we do, and the annual
2 fire protection sprinkler system testing wasn't done
3 at the time of this visit. It's scheduled for July.
4 He is going to come back in August and just see the
5 results of those.

6 And the only other out of normal item is that
7 we are fully staffed for the first time in a while, so
8 that's nice. That's all I have.

9 CHAIR LYNCH: Very good.

10 MR. DOWNEN: That is very good. That's
11 all I have.

12 CHAIR LYNCH: Are there any questions
13 for Mr. Downen?

14 Mr. Stephenson.

15 MR. STEPHENSON: This isn't specifically
16 for Mr. Downen. But if I am getting it right, and I'm
17 starting to keep a notebook on these things, this is
18 maybe the third time I've heard hatches as an issue.
19 Two of them got people on the finger. I'm just --
20 there was -- it's not you, but you and others, so I
21 just -- are we doing good hatch safety? If we want to
22 have safe operations around here, I just want to make
23 sure that we are doing that.

24 MR. DOWNEN: So hatch safety. I'm
25 not -- so this was -- these items that I mentioned

1 were like the door leaving this room in our office
2 building that just didn't latch.

3 MR. STEPHENSON: Okay.

4 MR. DOWNEN: So you had to adjust the
5 closing mechanism just so it would latch shut. I
6 think we are talking about some different things. I
7 think you are talking about a spring-closed door that
8 might have gotten somebody's finger in one of -- I
9 forget which report it was in the past few months, but
10 it wasn't from our facility.

11 MR. STEPHENSON: Okay.

12 MR. DOWNEN: I think we are talking
13 about two different things. But that is something
14 that we do have a policy for. Those are more of the
15 fire doors that are spring-shut. These were just
16 regular office doors that weren't fire-rated doors,
17 they are just normal, like a door to my office or
18 something like that.

19 MR. STEPHENSON: Okay. Thank you.

20 MR. DOWNEN: Does that answer your
21 question?

22 MR. STEPHENSON: Yes.

23 MR. DOWNEN: Okay.

24 CHAIR LYNCH: Any other questions?

25 Thank you, Mr. Downen.

1 MR. DOWNEN: Thank you.

2 CHAIR LYNCH: And we are pleased to have
3 Ms. Diaz here with Puget Sound Energy to put a face
4 with a voice now.

5 MS. DIAZ: All right. Thank you, Chair
6 Lynch and councilmembers. For the record, my name is
7 Jennifer Diaz, I'm the environmental manager for Puget
8 Sound Energy at the Wild Horse Wind facility. I'll be
9 providing the operational update today. To my right
10 is Haley Edwards, she's the senior resource scientist
11 for Puget Sound Energy and she will be providing
12 information regarding the avian incident that's listed
13 on the agenda.

14 I only have two nonroutine items to update you
15 on for the operational update under Safety and
16 Compliance and Environmental. Under Safety, no lost
17 time accidents or safety incidents to report in June.
18 Site staff participated in fall protection, rescue
19 training and annual first-aid/CPR refresher training.

20 And under Compliance/Environmental, invasive
21 weeds are being sprayed in accordance with the
22 postconstruction range land management and grazing
23 plan.

24 In addition, I would like to extend an
25 invitation to councilmembers to visit Wild Horse, for

1 those of you who have not been able to yet. So
2 anytime you are more than welcome.

3 And Haley will take it from here.

4 CHAIR LYNCH: Thank you.

5 MS. EDWARDS: So during the wind turbine
6 maintenance on June 18th, Vestas technicians
7 discovered the remains of a raptor near wind turbine
8 F2 and reported it to PSE's environmental manager on
9 site, Jennifer Diaz. In accordance with our wild life
10 incident reporting and handling system, the
11 environmental manager responded immediately to the
12 incident location and collected data, took photos and
13 retrieved the raptor. Our avian protection group,
14 which is myself and Mel Walters, we were contacted and
15 we conducted a site visit the next day, June 19th, to
16 confirm what type of bird it was. We determined it
17 was a juvenile golden eagle.

18 While investigating the area we also found a
19 second golden eagle about 50 yards away. And it
20 appeared that the two incidents happened at the same
21 time, and we took additional data and photos for that
22 second bird.

23 In accordance with our site certification
24 agreement and our fish and wildlife service special
25 utility permit, we immediately notified Fish &

1 Wildlife Service Office of Law Enforcement, who is
2 Corky Roberts, our agent, WDFW, Justin Allegro and
3 Mike Ritter, and Mike Ritter and Jim LaSpina. In
4 addition, we also submitted data to the U.S. Fish &
5 Wildlife Service Regional Migratory Bird Permitting
6 Office, as required by our special purpose utility
7 permit.

8 The following Monday, June 23rd, we met with
9 our enforcement agent on site to discuss the incident
10 and conduct a site visit at F2, and we transferred the
11 eagles directly to him at that time. We provided him
12 with the baseline incident wildlife report for both
13 Phase 1 and 2, which includes the preconstruction
14 raptor nest surveys. We also provided additional
15 documents to Agent Roberts. Both Phase 1 and Phase 2
16 postconstruction raptor nest and Lek surveys, our
17 monitoring reports, the WDFW comments to EFSEC
18 regarding expansion, and also on the SEIS for the
19 expansion area. We also provided copies of our bird
20 and bat conservation strategies documents and our
21 corporate avian protection plan.

22 I have a little bit of background information
23 regarding the preconstruction nest surveys and the
24 fixed-point avian use surveys, and WEST do those
25 surveys. WEST determined that the overall risk to

1 golden eagles is low at the site and predicted that a
2 few individuals would glide with the turbines during
3 the life of the project.

4 We have maps of our preconstruction golden
5 eagle flight paths. There have been no active golden
6 eagle nests identified within two miles of the
7 project. The WDFW confirmed that the nearby nest was
8 not active this year. And during those
9 preconstruction surveys, no golden eagles were
10 observed in flight in that area.

11 During postconstruction monitoring, F2 is
12 included in the monitoring plot with F3 in 2007.
13 There were no birds identified at that turbine during
14 those surveys. There were a few birds that were found
15 along the F-string turbines, including a kestrel, a
16 kinglet and some other small birds at F3 and F4, and
17 one unidentified small bird at F5 in 2010.

18 We also have many BMPs and avian protection
19 measures that we have implemented on site, including
20 avian safe power line design, a carcass removal
21 program to reduce the number of eagles that would be
22 attracted to the site.

23 For the next steps, we are working
24 cooperatively with the Fish & Wildlife Service law
25 enforcement to resolve this. We are planning to

1 develop an eagle conservation plan which we
2 communicated with the service back in February when we
3 met. We will continue to work on that.

4 Because the U.S. Fish & Wildlife Service law
5 enforcement is the lead agency responsible for
6 enforcing the Migratory Bird Treaty Act and Bald and
7 Golden Eagle Protection Act, this incident is under
8 federal jurisdiction of the Fish & Wildlife Service.
9 U.S. Fish & Wildlife Service Office of Law Enforcement
10 and the Department of Justice will ultimately
11 determine the outcome of this incident, including any
12 proposed mitigation.

13 They are currently reviewing preconstruction
14 surveys and protocol, our raptor nest surveys, prior
15 consultation and our postconstruction monitoring
16 results. The DOJ and U.S. Attorney are requesting a
17 meeting with PSE's attorneys to discuss options for
18 resolving this case and moving forward with an eagle
19 conservation plan and applying for an eagle take
20 permit under the Bald and Golden Eagle Protection Act.

21 We will be notifying the TAC of this incident
22 at our upcoming meeting this Thursday, July 17th. And
23 according to the SCA the purpose of TAC is to ensure
24 that monitoring data is considered in a forum in which
25 independent and informed parties can collaborate with

1 the certificate holder and make recommendations to
2 EFSEC if the TAC deems additional studies or
3 mitigation are warranted to address impacts that were
4 either not foreseen in the application or the
5 environmental impact statement, or exceeds impacts
6 that were projected.

7 This incident is within the predicted level of
8 take, and is under the authority of the U.S. Fish &
9 Wildlife Service. U.S. Fish & Wildlife Service will
10 determine what course of action is required to resolve
11 this case, including any proposed mitigation.

12 Although the TAC has no direct role in this
13 incident or enforcement authority over the Bald and
14 Golden Eagle Protection Act, PSE will provide ongoing
15 updates to the TAC as this case progresses.

16 As a condition of the SCA, EFSEC has the
17 authority over approving additional mitigation that is
18 recommended by the TAC in response to impacts that
19 were not foreseen or exceeded projected impacts.

20 However, EFSEC does not have the authority over the
21 enforcement of the Bald and Golden Eagle Protection
22 Act, which is under the jurisdiction of U.S. Fish &
23 Wildlife Service Office of Law Enforcement and DOJ.

24 PSE is committed to open communication with
25 EFSEC and will continue to coordinate with the Council

1 as this case progresses. EFSEC will be informed of
2 any proposed mitigation that is identified through
3 consultation with Fish & Wildlife Service.

4 CHAIR LYNCH: Thank you. I'm sure there
5 will be some questions for you and I will start off
6 with one. Can you please tell me what the nature of
7 an eagle conservation plan would look like?

8 MS. EDWARDS: Yes, the Fish & Wildlife
9 Service has developed an eagle conservation plan
10 guidance. It has kind of step-by-step instructions on
11 how to develop that eagle conservation plan. It
12 involves looking at your preconstruction survey
13 protocol and postconstruction monitoring and doing
14 some risk modeling to look at what the level of risk
15 of eagles on site would be. And then you develop
16 some, what they call advanced conservation practices,
17 so things that will provide additional benefit to
18 birds. And then if there is any additional take, then
19 you look at compensatory mitigation.

20 It's a new process and so it looks at what the
21 population can sustain in our region. It looks at the
22 larger population and -- and it will be done in
23 consultation with Fish & Wildlife Service.

24 CHAIR LYNCH: I know some facilities,
25 wind facilities have -- I'm not sure if I'm saying

1 this correctly, but perch inhibitors or something to
2 prevent perching particularly of raptors. Is this
3 something that's being done at your facility or is
4 that something that would make sense at your facility?

5 MS. EDWARDS: Well, our transmission
6 lines and our -- transmission lines don't pose much
7 electrocution risk to raptors because of the spacing
8 of the conductors, and not much collision risk because
9 of the size of the conductors, they are very visible.
10 Also our distribution line there, where there is
11 smaller spacing, we have wide enough crossarms where
12 there is sufficient spacing between conductors.

13 The perch discouragers work in limited
14 applications. Mel Walters and myself are members of
15 the Avian Power Line Interaction Committee, so we are
16 very familiar with the suggested practices for avian
17 safe power line design. We did consider that at the
18 site. We have also marked any guide wires on towers
19 that we have. But yeah, we have used avian safe
20 design.

21 CHAIR LYNCH: And the technical advisory
22 committee includes a representative of U.S. Fish &
23 Wildlife Service?

24 MS. EDWARDS: Correct.

25 MS. DIAZ: Gregg Kurz is his name.

1 CHAIR LYNCH: Okay.

2 MS. DIAZ: He's out of Wenatchee.

3 CHAIR LYNCH: And the TAC meets a couple
4 days from now?

5 MS. DIAZ: Thursday.

6 CHAIR LYNCH: I would expect that
7 following that meeting, you will be contacting
8 Mr. LaSpina of Staff and we can have another update
9 next month?

10 MS. DIAZ: Jim will be at the meeting in
11 person.

12 CHAIR LYNCH: Very good.

13 Are there any other questions from the
14 Council? Mr. Stohr.

15 MR. STOHR: Thank you, Haley. Would you
16 consider these kinds of impacts as being not foreseen
17 or exceed projected? I guess you dealt with the
18 projected, but...

19 MS. EDWARDS: Yes, this was not an
20 unforeseen impact. This is within the limits of what
21 was projected, yes.

22 MR. STOHR: So the TAC discussion around
23 mitigation will be to -- how does that go? How does
24 that work?

25 MS. DIAZ: Well, any mitigation in this

1 case will be in consultation with U.S. Fish & Wildlife
2 Service. Really, when we have the TAC meeting, we
3 will be informing them of the process and will be
4 providing them with ongoing updates as we work with
5 U.S. Fish & Wildlife Service to resolve the case.

6 MS. EDWARDS: It's the Office of Law
7 Enforcement.

8 MR. STOHR: So that discussion could go
9 on for some time?

10 MS. EDWARDS: It could.

11 So we -- we did have a prior incident at
12 another site and we were able to resolve the case, but
13 it took two years, from the time that it occurred
14 until it was resolved. To move forward with our eagle
15 conservation plan and apply for a take permit, we need
16 to resolve any previous take, which would include this
17 incident.

18 MR. STOHR: Thank you.

19 CHAIR LYNCH: Any other questions?

20 MR. HAYES: Yes.

21 CHAIR LYNCH: Yes.

22 MR. HAYES: Thank you, Chair.

23 So the facility has been up and running for a
24 number of years. I'm wondering if you could give me
25 some insight into what determines sort of the time

1 frame for developing the eagle conservation plan. In
2 other words, it's been -- obviously you have had the
3 facility up and running for a number of years.

4 MS. EDWARDS: Yes.

5 MR. HAYES: What determines why it
6 wasn't in place before now or what's the process you
7 go through?

8 MS. EDWARDS: It's a brand-new mechanism
9 under the Bald and Golden Eagle Protection Act. There
10 was never an allowance for take under that act until
11 very recently. And so they have just developed the
12 eagle conservation plan guidance, and through the
13 Avian Power Line Interaction Committee, we have had a
14 lot of conversations with the service as they have
15 developed this process. It is, it's just very new.

16 With our level of risk at our site, we weren't
17 certain that it was the right choice for us. And more
18 recently the service has been recommending that wind
19 facilities in particular -- it's focused on wind at
20 this time, that wind facilities in particular start
21 moving in that direction and go through the process.

22 And so when we met with our agent in February,
23 we asked him if this would be a good choice, you know,
24 something for us to proceed with. His feeling was
25 that it is. They feel that they are at a stalemate

1 because no one else has really gone through this
2 process, at least in this area. They feel that it
3 would be helpful for both parties, for us to move
4 forward with it.

5 We just feel that it's -- it's the direction
6 that things are going, and we were kind of watching to
7 see if others were taking that first step. It's
8 just -- they are just getting it started, so that's
9 why.

10 MR. HAYES: Thank you. That's helpful.

11 CHAIR LYNCH: Thank you, Mr. Hayes.

12 My understanding is U.S. Fish & Wildlife
13 Service is just in the process of adopting a new rule
14 regarding eagle takes; is that right?

15 MS. EDWARDS: They are determining
16 whether the duration of the project should be five or
17 30 years. I think that's the next decision that they
18 are -- or that they -- there are questions about that,
19 whether it should be five years or 30 years. There is
20 a reevaluation after five.

21 CHAIR LYNCH: Thank you.

22 And I'm sorry, your last name again is --

23 MS. EDWARDS: Edwards.

24 CHAIR LYNCH: Edwards.

25 MS. EDWARDS: Yes.

1 CHAIR LYNCH: Thank you.

2 MS. GREEN-TAYLOR: Mr. Chair, I have a
3 question as well.

4 CHAIR LYNCH: Yes. Ms. Green-Taylor.

5 MS. GREEN-TAYLOR: Just out of
6 curiosity, how certain is it that the deaths were
7 caused by collision with the turbine blades?

8 MS. EDWARDS: Fairly certain.

9 MS. GREEN-TAYLOR: Okay.

10 MS. EDWARDS: One of the birds was about
11 20 yards from the base of the turbine and the other
12 was about 50 away. And we found bone fragments and
13 other things that indicated that it was a turbine
14 collision.

15 MS. GREEN-TAYLOR: Thank you.

16 CHAIR LYNCH: Thank you.

17 Any more questions for Ms. Edwards?

18 Thank you for -- both of you for being here
19 today.

20 MS. EDWARDS: Thank you.

21 MS. DIAZ: Thank you.

22 CHAIR LYNCH: And we will look forward
23 to your update next month.

24 MS. DIAZ: Sounds good.

25 MR. HAYES: Chair?

1 CHAIR LYNCH: Yes, Mr. Hayes?

2 MR. HAYES: I wonder if we might hear
3 from Staff briefly about sort of what the role of the
4 eagle conservation plans or this aspect of the SCA is,
5 sort of what EFSEC's role would be moving forward.

6 CHAIR LYNCH: Mr. LaSpina, are you able
7 to give us just a quick overview of what accompanied
8 the Wild Horse Wind facility approval in terms of the
9 avian monitoring plan and all of those other aspects?

10 MR. LaSPINA: Well, I can inform the
11 Council that the -- I believe PSE just finished their
12 routine avian monitoring efforts that were required by
13 SCA. As far as the eagle protection plan in this
14 incident, we -- as the PSE rep said, we don't have a
15 large role in this situation. I would say that after
16 U.S. Fish & Wildlife has finished its investigation
17 and negotiated with PSE for mitigation or whatever the
18 settlement is, we're not -- we don't really have a big
19 role in this situation.

20 CHAIR LYNCH: I can probably follow up a
21 little bit, Mr. Hayes. After this incident occurred,
22 I pulled the SCA and looked through a number of
23 documents for this facility and there was some
24 required monitoring for a certain time period, though
25 I think we might have reached the end of that routine

1 monitoring period.

2 The Technical Advisory Committee remains
3 ongoing so that -- and they are the entity that kind
4 of does the follow-up investigations for incidents
5 like that and report back to us. And we are, as the
6 licensing facility, licensing entity, we can require
7 more -- we can require what we think we need from this
8 facility if for some reason we think appropriate steps
9 aren't being taken.

10 MR. HAYES: So is that to say that once
11 the process is done with U.S. Fish & Wildlife Service,
12 the TAC will review that process, the outcomes, and
13 then will make an independent judgment about whether
14 they feel like any additional mitigation or work is
15 required?

16 CHAIR LYNCH: My understanding is they
17 will be making recommendations to us and then we would
18 have the final say.

19 MR. HAYES: Thank you.

20 CHAIR LYNCH: And, Ms. Diaz, if I said
21 anything wrong, Mr. LaSpina, please wave your hand.

22 MR. LaSPINA: I guess in terms of
23 context, just FYI to the Council, the wind farm
24 proponent does a lot of up-front work when the project
25 is being planned and constructed. For instance, the

1 turbines are sited in areas that are not likely to
2 impact avian life, those sorts of things. So I -- I
3 guess what I'm trying to say is a lot of up-front
4 planning went into the development of the wind farm
5 right up front.

6 I also reviewed sections of the EIS and the --
7 the EIS determined that the likelihood of harm to the
8 large raptors like the eagles was low, however, there
9 was some prediction that maybe over the life of the
10 project there may be some mortality. Actually, the
11 mortality at the Wild Horse Wind Farm is quite a bit
12 below what was predicted in the EIS.

13 That might give you a little bit of context to
14 this situation.

15 MR. HAYES: Thanks, I appreciate that,
16 Jim. I think my interest is in just, you know, when
17 we approve these sites, we look at the impacts as we
18 understand them at that time and those are based on
19 certain assumptions. I just want to make sure as we
20 move through the process that we are continuing to
21 reevaluate information as we have, the best
22 information that we do, and make adjustments as we
23 need to. I appreciate that feedback.

24 MR. LaSPINA: Yes. And the TAC has an
25 iterative function to -- to consider new developments

1 and that sort of thing, so...

2 CHAIR LYNCH: You both make good points.
3 Something just as simple as habitat improvement might
4 be more -- as these types of birds move into the area,
5 so the likelihood of incidents might increase. You
6 are right, it is an iterative process that we just
7 keep on top of.

8 So I believe it's time for our Tesoro update.
9 I believe Ms. Wraspir, are you going first or
10 Ms. Talburt?

11 MR. POSNER: Chair Lynch, Staff has a
12 number of updates. What I would recommend, we have --
13 first off we would like to start with an update on the
14 EFSEC website, and then Sonia can give an update on
15 the review of the application for site certification,
16 SEPA and environmental permits. And then I will give
17 an update on our efforts concerning tribal
18 consultation. And then lastly, we will talk about the
19 land use consistency.

20 CHAIR LYNCH: Ms. Wraspir, you can
21 proceed whenever you are ready, or Ms. Talburt.

22 MS. TALBURT: Good afternoon, Chair
23 Lynch, Councilmembers. Kali and I would like to share
24 with you today a resource that we hope will assist you
25 in your evaluation of the EFSEC projects.

1 CHAIR LYNCH: Excuse me, I'm going to
2 stop you just for a moment. Councilmembers, if you
3 feel a need to move your chair to be able to see these
4 screens at all -- oh, that's right, we have these
5 monitors here as well. Please feel free to do what
6 you need to do.

7 Please go ahead.

8 MS. TALBURT: We hope that the website
9 will help assist you in evaluation of EFSEC projects.
10 So it's at www.efsec.wa.gov. From the home page on
11 the right side there is a link for projects under
12 review. Right now there's Tesoro/Savage. And today
13 we're going to look at the Tesoro/Savage pages.

14 Before we go there, on the home page is the
15 Permitted. Below the Under Review section is a link
16 for permitted projects and that's where the existing
17 permitted projects are, and they have home pages like
18 we'll see under Tesoro/Savage.

19 This is the main Tesoro page. There's a brief
20 description of the project and applicant information,
21 and there's a site map linked here for your review.
22 And then back to the main Tesoro page. Under the main
23 page there is a space for records, and there are
24 several links there to individual pages with subjects
25 such as Application.

1 We're going to go to the application page.
2 This page is designed based upon the original
3 application ~~that~~^{that} was submitted in August of 2013.
4 That's on the far left. The green column is the
5 amended sections by section that was submitted in
6 January of 2014. And then the changes are in the
7 yellow column as incorporated. These changes were
8 initiated by the technical review of the August 13th
9 application.

10 The technical review was conducted by Cardno
11 ENTRIX, EFSEC's consultant, WDFW, Ecology and DAHP,
12 Department of Archaeology and Historical Preservation.

13 At the top of the original application and the
14 top of the yellow column, the incorporated changes
15 column, there are complete Volumes I and II versions.
16 And then lower in the page there are by individual
17 sections.

18 I believe that you also all have a CD of this
19 information electronically.

20 So any questions on that?

21 The main page, back to the records section.
22 This is the scoping comments page. The scoping
23 comments are grouped in 100s. Agency scoping comments
24 are all 22 in one group. Individual agency comments
25 are at the bottom of the page. There's an index of

1 commenters by last name, so you would open that up --
2 sorry, I got ahead of her.

3 At the top of the page.

4 If you are looking for a specific comment by a
5 specific individual, this is an index alphabetical by
6 last name. You would identify the comment number.

7 Go back to the other page.

8 Identify which group it would be in, so 17 --
9 1719. There. And then there are all -- there's 200
10 and some pages in this group, but there's 100 comments
11 here.

12 Back to the main page. And the next page is
13 public comments which is very similar to the scoping
14 comments page. This page doesn't have an index to
15 tell you who the comment belongs to, as the scoping
16 page does, and Staff will work on that if Council
17 believes that will be an asset. The land use link
18 goes to a land use page. Here there are links for the
19 transcripts, the notices, as well as scans of the
20 exhibits that were submitted in writing at the land
21 use hearing.

22 Back to the main Tesoro page, please.

23 And then we have Recent Activities below
24 Records. Staff updates this section with activities
25 on the project review. It's also a quick link to

1 notices, scoping comment page and notices as they are
2 processed. And then at the bottom of all EFSEC web
3 pages there is contact information.

4 And back to the home page. The home page has
5 other useful information on it. Midway down the
6 right-hand side there's a calendar. It lists upcoming
7 important dates and the calendar has agendas for the
8 meetings on it.

9 And then the Project Highlights section on the
10 home page, this is a snapshot of current and upcoming
11 milestones for all the projects. Staff posts notices
12 and links to comments and other items that may be of
13 particular interest to you.

14 And then finally, the links on the left-hand
15 side of the web site for more useful information.

16 Thank you, Chair Lynch.

17 CHAIR LYNCH: Thank you. Any questions
18 for Ms. Talburt?

19 Thank you. That was helpful.

20 MR. POSNER: Chair Lynch, I would just
21 like to also add one other thing that we have done
22 over the last couple of weeks. Kali and Tammy worked
23 with me and we worked with the other appropriate state
24 agencies to develop a list serve for the mailing list.
25 That will help us to more efficiently provide

1 information for individuals who -- groups who are
2 interested in this project.

3 As you know, we have a -- we have quite a few
4 people who are interested in this project and we
5 believe this will be a more efficient way for us to
6 get information out on upcoming meetings and
7 activities associated with this project.

8 CHAIR LYNCH: In connection with that,
9 Mr. Posner, my understanding is there has been a
10 number of duplicates, in the hundreds or possibly even
11 thousands that have been identified and removed; is
12 that correct?

13 MR. POSNER: We have received quite a
14 few. I don't have the exact number, quite a few
15 returns, requesting that people be taken off of the
16 project mailing list.

17 CHAIR LYNCH: Thank you.

18 So are we ready for Ms. Bumpus's update? And
19 you have a number of things that you are intending to
20 cover.

21 MS. BUMPUS: Yes. Thank you. Good
22 afternoon, Chair Lynch and councilmembers. I do have
23 a few areas that I would like to cover in the update
24 today. I'm going to break this apart into three
25 areas. The first will be a status update on the

1 application for site certification review.

2 The second will be on the environmental
3 review, the SEPA environmental review that's being
4 done and what the status is and where we are on that.

5 The third will be over permits that we have
6 been working on for this project proposal.

7 To start off for ASC review update, the first
8 application, the first ASC EFSEC conducted, along with
9 our consultant and other agencies, some technical
10 review of the document and provided the comments to
11 the applicant. In January 2014, the revised
12 application was submitted to EFSEC, taking into
13 consideration our technical review comments on the
14 first submittal. And so we have picked that back up
15 and are now reviewing the January ASC that was
16 submitted. Cardno ENTRIX has just finished their
17 review, and we have a few other agencies that are also
18 helping EFSEC with performing a technical review of
19 that information for consistency with the comments.

20 So before I move on to the second, does anyone
21 have any questions about that update?

22 Okay. So for the SEPA environmental review
23 update, EFSEC has requested the preliminary draft EIS
24 from the applicant. We would like to begin a gap
25 analysis of the information that's in that document,

1 and the applicant has indicated that they will likely
2 submit at least part of that in about two weeks. So
3 we're looking at around the end of July, possibly
4 early August. And we are expecting to receive
5 chapters 1 through 4 right now. That's the plan right
6 now.

7 And then the second part of the document would
8 be handed over around two to three weeks following
9 receiving Chapters 1 through 4. And that would be
10 Chapters 5, 6 and 7, and then 8, which is a references
11 portion of the document.

12 CHAIR LYNCH: Excuse me, Ms. Bumpus. So
13 the request for this information was first made
14 roughly when?

15 MS. BUMPUS: We requested the
16 preliminary draft EIS from the applicant towards the
17 middle, end of June.

18 CHAIR LYNCH: Now it looks like, at
19 least at this point in time, the first chunk will be
20 at the end of this month and then the remaining
21 portion about the middle of August?

22 MS. BUMPUS: That's correct.

23 CHAIR LYNCH: Thank you.

24 MS. BUMPUS: And so I would like to go
25 over just sort of how we see that playing out. We

1 would receive Chapters 1 through 4, given that we do
2 receive those. We would do a gap analysis of the
3 information, determine if any additional analysis
4 needs to be done, update the Phase 2 technical scoping
5 document with the methodologies and polish that to
6 provide to the Council for review. This way we get
7 some feedback earlier rather than later. We would do
8 the same with the remaining chapters that we would
9 receive.

10 CHAIR LYNCH: And the remaining chapters
11 would more likely contain information about cumulative
12 impacts, things like that?

13 MS. BUMPUS: That's right, Chapters 5, 6
14 and 7 cover the vessel and rail analysis, the
15 alternatives analysis and the cumulative impacts
16 analysis.

17 So just moving on. For permits, currently
18 EFSEC is working and has been working with Ecology on
19 three permits. The wastewater permits are for an ^{NPDES} ~~NPDS~~
20 stormwater construction permit and for an ^{NPDES} ~~NPDS~~
21 stormwater industrial permit. Ecology reviewed the
22 applications for those permits that were enclosed in
23 the ASC and has provided comments on that requesting
24 additional information which we will be requesting
25 from the applicant shortly.

1 For the air permit, we received an
2 application, an NOC that Ecology has helped us with a
3 review on. And Ecology made an incompleteness
4 determination and the applicant responded to that and
5 provided some additional information. And then at
6 that point the applicant looked at some revisions to
7 the facility. And so essentially what we are waiting
8 on right now is those revisions, which would be in
9 Section 5, which are the air permits -- well, it's
10 actually all the permits, but it contains the air
11 permit application. We are waiting for those
12 revisions to be submitted so that an additional review
13 can be done.

14 That's I think basically all I have to cover
15 the permits. I can try to answer any questions you
16 may have on any of those.

17 CHAIR LYNCH: Any questions for
18 Ms. Bumpus on where we are in the process so far?

19 MS. GREEN-TAYLOR: Chair, I have a
20 couple.

21 CHAIR LYNCH: Yes, Ms. Green-Taylor.

22 MS. GREEN-TAYLOR: What does NOC stand
23 for, sorry?

24 MS. BUMPUS: Notice of construction.

25 CHAIR LYNCH: And do you just want to

1 describe quickly what that means?

2 MS. BUMPUS: So the notice of
3 construction is to address the state air quality
4 regulations, basically. So Ecology is -- that's the
5 reason why Ecology is helping do that review.

6 MS. GREEN-TAYLOR: And I guess I could
7 use a little bit of instruction on how that -- the
8 permit development process goes relative to our review
9 of the project. It sounds like those are working in
10 parallel.

11 MS. BUMPUS: For the air permit it's a
12 little less clear to me, but we do have a public
13 comment period for these permits. We will get to that
14 point, and there could be comments and interest on the
15 permit and we may have a hearing. But I think it's
16 more clear to me for the ^{NPDES}~~NPDS~~ side, but I would have
17 to get some clarification, some more information by
18 looking at the regulations for how we would handle
19 specifically the NOC, the air permit.

20 CHAIR LYNCH: Ms. Green-Taylor, so the
21 permits are envisioned to be not part of the
22 adjudication. There's a question about the air permit
23 at this time, but what -- so like any permit that's
24 adopted, say by Ecology, they -- you have a proposed
25 permit out there for comment, you have a ^{FACT} [REDACTED] sheet

1 that accompanies the permit. People are allowed to --
2 there are public comments on the proposed permit and
3 then the Council would review those comments and then
4 issue the permits.

5 But as it is envisioned in the EFSEC process,
6 that they are separate from the adjudication, but the
7 air permit itself is not as clear-cut. There might
8 be, depending -- it might make more sense to have that
9 part of the adjudication, we're not exactly sure at
10 this point, but I guess -- yeah, I don't think I can
11 really add much more to that.

12 MS. GREEN-TAYLOR: So I'm still feeling
13 like I'm a little confused about the relationship
14 between the permits that we are talking about and the
15 site certification.

16 CHAIR LYNCH: You have different
17 processes that the -- there's plenty of reason to be
18 confused, first of all. Anyone who looks at this
19 EFSEC process scratches their head a little bit
20 because you have a number of parallel processes that
21 all meet up together at the end. So you have the SEPA
22 process that's being developed, so the environmental
23 impact statement that comes together is generally not
24 considered part of the adjudication. You have the
25 permits that are developed separately. And then you

1 have the adjudication process. The adjudication
2 process is dealing with -- it's like a minitrial.
3 Well, it's like a -- it's adjudication, it's like a
4 trial in front of the councilmembers, where we sit and
5 make decisions on whether certain -- and decide a
6 number of issues that have been brought to the
7 Council.

8 All of those come together at the end, and
9 then the Council makes a recommendation to the
10 governor based upon all of this information. But
11 they -- it is -- so there are parallel processes and
12 Staff was just letting us know today where we are in
13 these various processes. It's not just all wrapped up
14 tidy in a bow as you might think it would be. It's
15 just something that all comes together in the end that
16 we consider.

17 MS. GREEN-TAYLOR: So the permits that
18 are being developed don't actually take effect until
19 after we make a recommendation to the governor and the
20 governor then acts on our recommendation?

21 CHAIR LYNCH: That's a very good
22 question. Yes, the permits are tied directly to the
23 project itself. So the site certification agreement
24 would have to be approved by the governor in order for
25 the permits to take effect.

1 MS. GREEN-TAYLOR: Okay. Thank you.

2 CHAIR LYNCH: Mr. Stephenson.

3 MR. STEPHENSON: Thank you, Mr. Chair.

4 Maybe just a more assertive statement would help
5 because I think Ms. Green-Taylor has a good question
6 here. So we've got multiple processes going on, and I
7 would just like to hear from the Staff. So we think
8 between the permit and the adjudication and the site
9 certification and the land use and the SEPA processes
10 that we are going to address the many significant
11 potential issues that we saw and have sometimes been
12 raised by councilmembers through the process; is that
13 right?

14 MS. BUMPUS: That's correct. And I did
15 just want to add, in the WAC that covers the ^{NPDES}~~NPDS~~ for
16 EFSEC, the process that's followed for getting to an
17 issuance of a permit is very similar to what Ecology
18 would do. There's a draft permit. Essentially
19 there's a tentative determination made by the Council
20 after a review has been done, which is where we are
21 right now. Right now Ecology is helping us do a
22 review of the permit application, and we're in that
23 phase where we are doing reviews, asking for more
24 information to get a complete application so that we
25 can move forward. And then at that point, Council

1 would make a tentative determination which essentially
2 gets you to a draft permit that you can then notice
3 for and go out to comment on. And if there is reason
4 to have a hearing, you could have a hearing at that
5 point.

6 So not to go too far down that road, but it's
7 very similar to how Ecology might handle the permit if
8 not for EFSEC.

9 MR. STEPHENSON: And I would just like
10 to add basically that the process is relatively clear.
11 We have a separate track for permits like Sonia was
12 describing, we have a separate track for the
13 adjudication, which the application is basically
14 center stage of, and then you have the SEPA process,
15 which is essentially a third track. They essentially
16 move along independently to a certain degree, and then
17 they come together at the end, which I think Sonia was
18 alluding to, and Chair Lynch as well.

19 Some of the uncertainty I believe is just as a
20 result of the timing, when things are going to happen.
21 You know, we are working closely with the applicant,
22 so as far as getting the information we need, and then
23 also in working with Ecology, mainly Ecology, our
24 contractor. So I think some of the lack of clarity is
25 a result of not having specific time frames on some of

1 these things, so I just wanted to add my 2 cents.

2 MS. GREEN-TAYLOR: And I assume that the
3 permits are subject to changes based on the final EIS
4 and some of the other things that we will be
5 reviewing; is that correct?

6 MS. BUMPUS: Yes.

7 MS. GREEN-TAYLOR: Thanks.

8 CHAIR LYNCH: Any other questions?

9 MR. STOHR: Yes.

10 CHAIR LYNCH: Mr. Stohr.

11 MR. STOHR: Ms. Bumpus, could you run
12 out the time line for the EIS? We will see a
13 preliminary draft, versions 1 and 2, between now and
14 middle of August, but what does it look like in terms
15 of getting a draft EIS out for the public and our
16 review?

17 MR. POSNER: I'll attempt to answer that
18 question. What I would say is that we don't have a
19 clear time frame at this point. Sonia mentioned
20 earlier that we are expecting to get information from
21 the applicant. They have been putting together
22 information which will serve as the basis for Chapters
23 1 through 4. Once we get that information, I think we
24 will have a better understanding of what condition
25 it's in, what gaps there are. And then I think that

1 will help us kind of be able to establish a clearer
2 time frame.

3 But I'd say at this point, we don't really --
4 we can't really say with a great deal of certainty in
5 terms of timing when the draft EIS may be out for
6 public comment.

7 MR. STOHR: The more gaps we see, the
8 more work that would have to be done, the more time it
9 would take.

10 MS. BUMPUS: Yes, exactly.

11 MR. STOHR: Thanks.

12 CHAIR LYNCH: And councilmembers might
13 remember it's the draft EIS which is kind of the
14 driver for the rest of the process, because we were
15 not planning on -- because once you have the draft EIS
16 out, then we are going to initiate the adjudicative
17 process, which means the identification of the
18 intervenors, the site visit, a number of those other
19 things get started after the draft EIS is ready. So
20 that's the -- the big driver for this process is the
21 draft EIS.

22 Any other -- Mr. Stephenson.

23 MR. STEPHENSON: Thank you, Mr. Chair.
24 That's a helpful summary, and I think what we are
25 trying to get to is to make progress somehow towards

1 our duty of making a decision and a recommendation.
2 And there's all of these processes that are going on,
3 I think it was said three but I count more. I'm
4 seeing land use and site certification, SEPA and
5 permitting and -- I'm missing something. But there's
6 all the processes moving forward, and what I just
7 heard from Staff is that those things are covering the
8 bases of what we have heard and what we have said in
9 Council, and that's what I want to hear so that we can
10 then start thinking about somehow to move forward.

11 CHAIR LYNCH: That's correct. And like
12 the adjudication, that will depend upon the issues
13 that the parties identify that they want to have as
14 issues in the case. So it's -- but I think Council is
15 familiar with probably what a lot of those issues will
16 be just upon what the comments have been to the
17 Council so far.

18 MS. BUMPUS: And just to address
19 Mr. Stephenson's comment. Stephen and I
20 are sharing -- Mr. Posner and I are sharing the
21 workload basically for this project. I am handling
22 the SEPA environmental review, the permits, the
23 applications, technical review. Those are all -- they
24 are connected but they are all very separate also in
25 their paths forward. And then Mr. Posner will be

1 providing an update on the land use piece and that's
2 something that he has continued to manage as we have
3 been moving forward.

4 So I think it -- you will continue probably to
5 have information coming in in these updates from both
6 of us on just these different pieces.

7 CHAIR LYNCH: Any other -- yes,
8 Ms. Green-Taylor.

9 MS. GREEN-TAYLOR: Yes, thank you. We
10 are coming up on the one-year anniversary of when we
11 first received the application. Could you describe
12 how and when we would go about deciding and
13 implementing additional time for the process?

14 MS. BUMPUS: We are actually at that
15 point now where we would work with the applicant for
16 additional time to continue processing the
17 application.

18 CHAIR LYNCH: In essence, the applicant
19 would make a request of the Council for an extension
20 of time. That's my understanding.

21 MS. BUMPUS: That is mine also.

22 CHAIR LYNCH: Any further questions?

23 Mr. Posner, you are going to update us on
24 tribal consultations.

25 MR. POSNER: Yes, Chair Lynch. I

1 thought -- and councilmembers. I thought it would be
2 helpful just to update Council on our efforts to
3 include tribes in the process.

4 There is what's referred to as a centennial
5 accord plan. The Washington Utilities and
6 Transportation Commission has such a plan, and I
7 believe most, if not all state agencies have a similar
8 plan. And one of the directives of that plan is for
9 agencies to establish a government-to-government
10 relationship with tribes and to consult with tribes on
11 projects or areas that the tribes may be interested
12 in.

13 And to that effort, we have, at the Staff
14 level, coordinated with a number of tribes. We
15 actually have 37 different tribes that are on the
16 project mailing list for this project. And of those,
17 six individual tribes provided SEPA scoping comments.
18 And I have personally spoken to representatives of
19 each one of those tribes and offered to answer any
20 questions they might have. And, you know, basically
21 gave them an opportunity to call me anytime if they
22 have questions about the process.

23 So we are very concerned about tribal input
24 and I just wanted to make sure the Council is aware of
25 that.

1 CHAIR LYNCH: Thank you. I appreciate
2 the proactive approach that Staff is taking with the
3 tribes, because we take our consultation
4 responsibility with them very seriously and appreciate
5 that you are out in front on this.

6 Are we ready to talk about land use
7 consistency at this point, then?

8 MR. POSNER: Yes, I believe so. And
9 just to give you sort of a quick overview of how we
10 intend to have this discussion. Ann Essko, our
11 assistant attorney general, is going to start off with
12 basically sort of a legal framework of what we are
13 doing here or what the Council's obligations are in
14 making a land use consistency determination.

15 I will go ahead and just briefly summarize
16 what we heard during the land use hearing, basically
17 the testimony that we received from the applicant and
18 from the City of Vancouver, and then we will make a
19 Staff recommendation and a request for Council action.

20 CHAIR LYNCH: Thank you.

21 Ms. Essko.

22 MS. ESSKO: Thank you. This afternoon
23 I'm going to present a suggested analysis that the
24 Council could consider as it makes a land use decision
25 following its May 28th land use public hearing.

1 The primary issue before the Council is
2 whether the Vancouver Energy Distribution Terminal
3 site is consistent and in compliance with the portions
4 of the City of Vancouver's land use plan and zoning
5 ordinances as those plans and ordinances meet the
6 statutory definitions of those terms under EFSEC
7 statutes.

8 Again the Council's analysis concerns only the
9 site of the project and not its operational and
10 construction conditions. The Council's analysis also
11 only concerns the portion of the land use plan and
12 zoning ordinances that fall within the statutory
13 definitions.

14 According to the Council's statutes and rules,
15 the Council held a public hearing at which the local
16 government had an opportunity to provide a certificate
17 as prima ^{facie} ~~fascia~~ proof that the proposed site is
18 consistent and in compliance with the plan and local
19 land use provisions.

20 As you know, the City did not do so, so the
21 burden of proof remains with the project applicant,
22 Tesoro/Savage, to prove that the site is consistent
23 with the land use plans. Again, the project's
24 construction and operational conditions are not at
25 issue at this time.

1 I want to talk briefly about why land use is
2 called out and treated separately from the operational
3 and construction conditions of the project. This has
4 to do with an artifact of the early creation of EFSEC.

5 Early in the 1970s, EFSEC did not have the
6 power to preempt local land use plans. In other
7 words, there would be a land use hearing to compare
8 the site with the local land use provisions. If they
9 were inconsistent, that was fatal to the project, the
10 project could not move forward. During the 1970s, the
11 legislature changed that provision so that EFSEC could
12 preempt local land use plans as they are narrowly
13 defined in the statute. And the land use hearing
14 remained as part of the EFSEC process.

15 So you can see that while the land use hearing
16 still remains a part of the process, it does not have
17 the overwhelming significance that it did early in
18 EFSEC's lifespan.

19 Today the significance of the land use hearing
20 is as a precursor to the Council's decision to preempt
21 a narrowly defined set of land use provisions. All of
22 the other comprehensive plan provisions and ordinances
23 have already been preempted by state law.

24 So now I want to talk briefly about what
25 portion of the City of Vancouver's land use provisions

1 are pertinent to the Council's comparison with the
2 site.

3 The statute defines land use plans as the
4 comprehensive plan or land use element thereof adopted
5 pursuant to one of the listed planning statutes. If
6 you want to look at the statutory citation, it's RCW
7 80.50.020(14).

8 EFSEC in the past has interpreted this statute
9 as referring to the portions of the comprehensive plan
10 that do two things and only two things. That outline
11 proposals for an area's development typically by
12 assigning general uses such as housing to land
13 segments and then specifying desired concentration and
14 design goals. In other words, again we are comparing
15 the site, not the operational construction, conditions
16 to a plan's proposals for an area development,
17 typically dealing with uses divided up among land
18 segments.

19 If something in a comprehensive plan falls
20 outside of this narrow definition, that is not part of
21 the land use consistency decision before EFSEC. Those
22 other provisions of the comprehensive plan are
23 important but they will be addressed later during the
24 EFSEC process, through SEPA, through the adjudication
25 and through the permitting process that Sonia has

1 already talked about.

2 The statute also defines the sort of zoning
3 ordinances that EFSEC is to be looking at in
4 evaluating land use consistency. The statute defines
5 land use ordinances as those regulating the use of
6 land. And again, not everything in the city zoning
7 ordinances meets this narrow definition.

8 EFSEC has also interpreted this statute and
9 said that it refers to those ordinances that regulate
10 land by creating districts and restricting uses in the
11 districts such as the number, size, location, type of
12 structures and lot size in order to promote compatible
13 uses. Ordinances that do not meet this definition are
14 important, but they do not fall within the narrow land
15 use consistency decision that EFSEC is faced with now.

16 So if the Council restricts its land use
17 analysis to the site and excludes from its
18 consideration the project's construction operational
19 conditions, will the Council nonetheless consider
20 those construction and operational conditions? As I
21 indicated earlier the answer to that question is yes.
22 EFSEC will consider those important operational and
23 construction conditions but it will not be through the
24 land use process.

25 A related question is if the Council restricts

1 its land use analysis by excluding consideration of
2 land use provisions that do not meet the statutory
3 definitions, will the Council nonetheless consider
4 those substantive areas. And the answer again is yes,
5 EFSEC will consider the substantive areas addressed in
6 the comp plan and zoning ordinances that are not part
7 of the land use consistency analysis through SEPA,
8 through the adjudication and through the permitting
9 processes.

10 The test that the Council applies to evaluate
11 whether the site is consistent with local land use
12 plans has been established by EFSEC ^{precedent} ~~president~~. Under
13 the test previously established by the Council, the
14 Council considers whether the pertinent provisions of
15 the city's comprehensive plan and zoning ordinances,
16 quote, prohibit, unquote, the site expressly or by
17 operation clearly, convincingly and unequivocally. If
18 the site is permitted either outright or
19 conditionally, the site is consistent and in
20 compliance.

21 So once the Council applies that test to the
22 pertinent portions of the land use provisions, the
23 Council makes a finding of land use consistency.

24 Following the Supreme Court's decision in the
25 Friends case, which is the recent Supreme Court

1 decision about the Whistling Ridge Wind Farm project,
2 the court held that the project need only be
3 consistent with either the land use plans or the
4 zoning ordinances. It does not need to be consistent
5 with both in order to be consistent and in compliance.

6 In other words, if the pertinent land use
7 provisions -- excuse me. If the pertinent land use
8 plan and zoning ordinances prohibit the site, the site
9 is inconsistent and not in compliance. In all other
10 circumstances, the site is consistent and in
11 compliance.

12 So if the site is consistent with both, the
13 comp plan and ordinances, the site is consistent. If
14 the site is consistent with either the comp plan or
15 the zoning ordinances, the site is consistent.

16 So that is the basic legal framework that I am
17 suggesting based on EFSEC statute and EFSEC precedent
18 and the Supreme Court's decision in Friends.

19 Before I turn it over to Stephen for
20 application to this particular project, does the
21 Council have any questions?

22 MR. SNODGRASS: I do, Mr. Chair.

23 CHAIR LYNCH: Yes, Mr. Snodgrass.

24 MR. SNODGRASS: One quick question of
25 law that I believe you talked about in the executive

1 session in response to another question, but I just
2 want to go a little bit further on it to make sure I
3 understand the parameters, and this is in applying the
4 basic test here of consistency. Obviously one needs
5 to be cognizant of what is proposed on the site in
6 some manner. And so would it be fair to say that the
7 site consistency test is applied for an oil
8 terminal -- on this site for an oil terminal of this
9 general magnitude?

10 MS. ESSKO: The -- I believe the
11 consistency test is applied for an oil terminal in
12 general at sort of the 30,000 foot level. The
13 specifics of this particular oil terminal and its
14 potential pros and cons are evaluated during the more
15 detailed later analysis. Again, remember the land use
16 consistency forum is a single land use hearing at
17 which no one need provide an expert witness, there's
18 no discovery, nobody is cross-examined, there's no
19 prefilled testimony. It is a single public hearing.

20 In my personal opinion, that is not well
21 suited to evaluating complex technical and scientific
22 issues around this particular site. I believe that
23 the statute is set up so that the multidisciplinary
24 approach of SEPA, the adjudication where multiple
25 parties hire witnesses and lawyers and everybody takes

1 their best shot at everybody else's evidence, and the
2 rigorous permitting processes are the places where the
3 specifics of this project are best evaluated to
4 produce the most robust and defensible results.

5 CHAIR LYNCH: Any other questions of
6 Ms. Essko before we turn it over to Mr. Posner?

7 Mr. Stohr.

8 MR. STOHR: So if I'm understanding
9 this, Ms. Essko, this is -- this decision we make
10 about land consistency is one more around procedure
11 than it is around an endorsement or a rejection of the
12 project? This is a fairly high level review of the
13 site itself and whether the designation of this site
14 is industrial, allows for the consideration of an oil
15 transport facility at that location, and the pros and
16 cons, the positives and negatives of this proposal
17 will be dealt with vigorously but in other places?

18 MS. ESSKO: Yes, that's right.

19 CHAIR LYNCH: Mr. Stephenson, did you
20 have a question?

21 MR. STEPHENSON: No.

22 CHAIR LYNCH: Thank you.

23 Mr. Posner?

24 MR. POSNER: Thank you, Chair Lynch,
25 councilmembers. So leaving off of Ann's presentation,

1 just to summarize what we heard at the land use
2 hearing and what was provided in testimony provided by
3 the applicant and the City of Vancouver -- and by the
4 way, all of this information is on our website, it has
5 been on our website for a while now. The land use
6 hearing was on May 28th, so the exhibits that were
7 submitted, which I'm basically quoting from, are on
8 the website.

9 First of all, I would like to just describe
10 briefly what the applicant provided, just a quick
11 general summary of the testimony they provided and
12 their position on the proposed site.

13 They believe -- and this is in their
14 testimony -- that the site is consistent with the land
15 use plan, heavy industrial subtype designation. And
16 that subtype is intended to include industrial
17 manufacturing, service production for storage
18 involving heavy truck, rail or marine traffic.

19 They also provided testimony where they stated
20 that they believed the site was consistent with the
21 zoning ordinance, city municipal code, which is also
22 heavy industrial. And permitted uses under the zoning
23 code include storage and movement of large quantities
24 of materials or products associated with truck and/or
25 rail traffic.

1 Also in their testimony was information
2 concerning -- actually it was a -- not information,
3 but it was a report, it was a draft determination of
4 consistency and compliance which was prepared by Staff
5 from the City of Vancouver, which concluded that the
6 proposal was or could be conditioned and designed to
7 be consistent with all City requirements.

8 And then for the City, the City provided
9 testimony that said the proposed site of the oil
10 terminal is in an area designated as industrial by the
11 comprehensive plan. Further, they went on to say that
12 the development of the proposed oil terminal is
13 consistent with this designation. They also said the
14 site is zoned heavy industrial, and this particular
15 zone is intended for intensive uses associated with
16 shipping and storage.

17 The uses provided within this zone are allowed
18 outright. The applicant has shown that the proposal
19 meets the applicable standard. That was part of the
20 City's testimony. They also said that they believe
21 that the site may be inconsistent with a variety of
22 community development policies and believes more
23 information is needed before a decision should be
24 made.

25 Further, they said that the site may be

1 inconsistent with certain elements in the land use
2 plan, including economic development, housing and
3 environmental policies. And they requested that a
4 decision be deferred until additional information is
5 generated through the SEPA process.

6 So Staff's summary and recommendation. Staff
7 believes that the proposed site may be permitted
8 either outright or conditionally. Therefore, the site
9 is consistent and in compliance with the pertinent
10 provisions of the comprehensive plan and zoning
11 ordinances. And Staff recommends that the Council
12 direct Staff and our administrative law judge to
13 prepare a draft order of land use consistency for the
14 Council's consideration and approval.

15 CHAIR LYNCH: Any questions for
16 Mr. Posner?

17 I would like to open it up to discussion now
18 amongst councilmembers. I will lead off briefly. I
19 thought we would have a little bit of discussion
20 before we took up the issue of bringing up a motion or
21 not.

22 I would have to agree with our AG's analysis,
23 Ms. Essko, and our Staff, Mr. Posner's analysis of --
24 just the focus on the fact that this is a very narrow
25 decision that we are making today, a very narrow

1 decision. We are not looking at off-site impacts, we
2 are not looking at how to mitigate for those off-site
3 impacts. So things that were brought up by the City
4 of Vancouver, like concerns, that they noted they were
5 on sole source aquifer and they were concerned about
6 stormwater contamination.

7 We have a permit process with ^{NPDES}~~NPDS~~ permits.
8 There was concerns about service availability in case
9 of spills or fire. How are proposed neighborhoods and
10 existing neighborhoods going to be affected by the
11 scale and the potential impacts from such a project?

12 These, as Ms. Essko and Mr. Posner said, will
13 all be addressed in other parts of the -- of this
14 EFSEC process, either through adjudication or through
15 the permitting or through SEPA. And approval of this
16 land use consistency determination, the Council does
17 that today, that does not by any means translate into
18 an approval of the proposed project. It's just a
19 recognition that this project meets the very narrow
20 question of what the Council is looking at today.

21 And with that -- and I would also like to say
22 that I have done quite a bit of, along with our AG,
23 looking at the history of this particular statute, how
24 EFSEC has interpreted it, the legislative history.
25 And everything that I look at supports a very narrow

1 construction of this -- of this law. And so we are
2 actually talking about two things today, is whether --
3 whether we should approve this proposed order. And
4 then the other question is should we defer further
5 action until SEPA is -- there was a request by the
6 City of Vancouver and some of the NGOs about, well,
7 maybe we should just defer acting on this until SEPA
8 is done.

9 My concern with that is that that can
10 potentially muddy the waters once you get into an
11 adjudicatory proceeding and actually make it a little
12 confusing as to what the legal analysis ultimately is.
13 So my feeling is, is that we have enough information
14 now to act on approving this land use consistency
15 determination and still allow the issues that have
16 been raised by the various parties in their comments
17 to move forward at a later time in the process.

18 So I would just like to open that up to other
19 councilmembers.

20 Yes, Mr. Snodgrass.

21 MR. SNODGRASS: I have sort of a
22 question on that past history, either for Mr. Posner
23 or for you, Chair.

24 In looking briefly at the previous cases it
25 appeared that -- particularly in the more modern

1 cases, in this century, it appeared that there are
2 several under very different circumstances, for very
3 perhaps different reasons, where the land use issue
4 was not resolved until the final order. I wanted I
5 guess a sense of -- of what -- from either of you
6 having looked at that record, is that the case, how
7 many of those were there where it was not resolved
8 until the final order or close thereof?

9 CHAIR LYNCH: Ms. Essko, do you want to
10 address that?

11 MS. ESSKO: I could not tell from the
12 face of the orders themselves and I wasn't
13 representing EFSEC at the time, so I don't have any
14 information separate from -- from what's on the face
15 of the orders.

16 CHAIR LYNCH: Let me jump in a little
17 bit. Just the land use consistency determination
18 itself was at one time held the same day as the
19 general information hearing. You might remember at
20 the end of October when we -- this project was first
21 presented to the public down in Vancouver, the land
22 use consistency hearing was held the same day, so that
23 strongly suggests that this level of review is at a
24 very high level. The legislature later decoupled it
25 so that they didn't have to be held the same day.

1 Subsequent changes to the law, such as -- and
2 there has been a little bit of confusion on the part
3 of EFSEC at times, what should be considered or not
4 considered. The shoreline management provisions are a
5 good example of where the Council wasn't always
6 consistent in its determination.

7 But when you look at the -- when GMA got added
8 to the list of statutes that the Council looked at to
9 see consistency with local land use planning and
10 zoning -- well, GMA, as you know includes development
11 regulations and there is a lot under the concept of
12 development regulations including critical area
13 ordinances. That made us wonder, should Shoreline
14 provisions be looked at.

15 But if you look at the bill analyses that were
16 prepared by Staff to the legislature at that time,
17 there was no mention of an expanded scope of review at
18 that time. So it just -- in my mind it's a simple
19 recognition that some jurisdictions plan under GMA,
20 some still plan under the old 3670, so -- Chapter
21 3670. There was nothing that, in my mind, ever called
22 for an expanded review of ordinances.

23 Besides, if you had that situation come up, it
24 would -- you would have a -- the odd situation of a --
25 one jurisdiction that doesn't plan under GMA so the

1 Council would not be looking at their shoreline
2 provisions, you would have another jurisdiction that
3 did plan under GMA, and so if you pulled the
4 development -- all of their development regulations
5 you would look at their shoreline regulations. I
6 don't -- I don't think that sort of inconsistency was
7 ever contemplated for EFSEC review. I think it was
8 always meant to be at a very high level.

9 I hope that helps a little.

10 Any further discussion?

11 MR. SNODGRASS: Would it be helpful very
12 briefly to step through some of the Vancouver
13 standards that I think are at issue here? Not arguing
14 one way or the other, but I think like just briefly
15 share with the Council what are the Vancouver land use
16 ordinances and the comprehensive plan?

17 CHAIR LYNCH: Please. I don't know if
18 you need to mention all of them.

19 MR. SNODGRASS: What I guess I want to
20 convey is a sense of their scope.

21 CHAIR LYNCH: Yes.

22 MR. SNODGRASS: And I guess I am
23 concerned with an unqualified finding of land use
24 consistency because I believe all of the Vancouver
25 comprehensive plan and a good deal of the Vancouver

1 zoning ordinances meet the statutory test of -- were
2 adopted pursuant to the various ordinances that
3 Ms. Essko cited.

4 So the comprehensive plan briefly, it's about
5 150 pages, it has, as most comprehensive plans do,
6 several chapters running from the things you expect,
7 capital facilities, the environment, housing, economic
8 development, community development, essentially the
9 land use element. We even -- within the land use
10 element it has policies that go with that. For
11 instance, one policy addresses sustainability.
12 Another policy in the land use element addressing
13 public health.

14 All of the comprehensive plan was adopted
15 whole cloth in 2001. I believe all of it would be
16 arguably found consistent with the site if we issued
17 an unqualified finding land use consistency. The
18 zoning ordinance is several hundred pages. I can pull
19 it up here, it's three pages [sic] thick. It's
20 adopted over time in a more organic manner. It has a
21 purpose statement within it. I can provide you the
22 citation if you want. It says that it is intended to
23 be interpreted that to implement the comprehensive
24 plan and also lead to Growth Management Act.

25 I think arguably many portions of it, perhaps

1 that land use code includes the city's SEPA
2 provisions, the city's shoreline management
3 provisions, critical lands provisions, other
4 nonenvironmental provisions such as off site impacts.
5 I think arguably, most of those, perhaps with the
6 exception of SEPA, would be found -- a finding -- an
7 unqualified finding of site consistency could be
8 argued to be a finding that the site is consistent
9 with all of those.

10 And so where I am going with this is not a
11 concern of -- clearly there are aspects of this -- of
12 what's on the table here, that both the City and
13 applicant believe that the designation issues -- I'm
14 concerned about the scope of an unqualified finding of
15 land use consistency and what the implications of that
16 are.

17 CHAIR LYNCH: Thank you, Mr. Snodgrass.
18 I think what you have heard me say and Staff say so
19 far, that we intend -- we interpret this to be a very
20 narrow scope, and we would intend that the order --
21 any order that go out from this Council be very narrow
22 in scope.

23 Things that you are mentioning in terms of
24 what -- concerns by the City, just to go back to some
25 things that Ms. Essko mentioned. The nature of the

1 hearing itself I think guides a lot of interpretation
2 of what's supposed -- of what's intended by it. Much
3 of the concerns that the City has is how -- under what
4 conditions should this -- if this facility were to
5 operate, what are the appropriate conditions or what
6 are the off-site impacts, what are the things that can
7 happen as a result of this facility being cited here?
8 And those, as Ms. Essko said, are better left for a
9 full hearing, where you would have both sides being
10 able to bring the pros and cons for the Council to
11 weigh, as opposed to -- this is almost like a summary
12 judgment proceeding, where you are just looking at
13 some basic provisions of the law and the facts as --
14 applied to that law -- or the law applied to those
15 facts. It's just a very narrow decision that the
16 Council would be making today.

17 I hope that -- I certainly understand your
18 concerns and the City's concerns.

19 MR. SNODGRASS: I think the intent is
20 certainly appreciated. It's just having a finding
21 that reflects it in title and in verbiage, that
22 narrowness.

23 CHAIR LYNCH: All right. Very good.

24 Any other discussion by councilmembers?

25 MS. GREEN-TAYLOR: Yes.

1 CHAIR LYNCH: Yes, Ms. Green-Taylor.

2 MS. GREEN-TAYLOR: I just wanted to
3 agree with Mr. Snodgrass's wish to make sure that the
4 order conveys that narrowness of what we are agreeing
5 is consistent and just making sure that that verbiage
6 is in the order.

7 CHAIR LYNCH: Very good. Thank you,
8 Ms. Green-Taylor.

9 Anybody else have anything? I guess at this
10 point I would just see if there is a motion to direct
11 the Staff to prepare such an order.

12 Mr. Stephenson.

13 MR. STEPHENSON: I'll take a crack at
14 this.

15 And I think it's going to need to be in a
16 couple parts to capture what we have just heard. So
17 let me see if I can do this right.

18 I will move that the Council direct EFSEC
19 Staff to prepare an order -- is that right? Yes --
20 that says that this proposal for the Vancouver energy
21 distribution terminal is consistent and compliant with
22 the local land use plans and zoning ordinances.

23 That's the first part.

24 I think the second part needs to be that the
25 order really has to include a statement that this

1 order doesn't preclude the significant potential
2 complex issues from being raised during the -- I'm
3 getting this right -- adjudication or permit or SEPA
4 processes that are going on right now.

5 And then the third part I think should be in
6 there, which is -- we have heard a bunch of things and
7 I hope I get this list right. The order should
8 include a statement that potential issues of
9 significance have to include off-site impacts,
10 shorelines, management, stormwater, critical area
11 ordinances, service availability in the community in
12 case of fire or spill, impacts on other neighborhoods,
13 spill avoidance. And that shouldn't be a completely
14 inclusive list.

15 CHAIR LYNCH: Including but not limited
16 to.

17 MR. STEPHENSON: Thank you for your
18 friendly amendment.

19 CHAIR LYNCH: Thank you.

20 Without trying repeat all of that --

21 MR. STEPHENSON: Because I couldn't if
22 you wanted me to.

23 CHAIR LYNCH: -- do we have a second?

24 MR. HAYES: Yes, Chair, I will second
25 that motion.

1 CHAIR LYNCH: Mr. Hayes has seconded the
2 motion. All those in favor say aye.

3 MULTIPLE VOICES: Aye.

4 CHAIR LYNCH: Opposed.

5 MR. SNODGRASS: I will oppose.

6 CHAIR LYNCH: One opposed.

7 MR. PAULSON: Chair Lynch.

8 CHAIR LYNCH: Yes.

9 MR. PAULSON: I should say I do not have
10 a vote on this and thus did not vote.

11 CHAIR LYNCH: You're right. Thank you,
12 Mr. Paulson. The Port is a nonvoting member of the
13 Council on this. So having received a majority, the
14 Council has directed the Staff to prepare such an
15 order of consistency.

16 We still have on our agenda today, Mr. Posner,
17 do you want to just mention the first-quarter cost
18 allocation?

19 MR. POSNER: Yes, thank you. Chair
20 Lynch, councilmembers, as we do at the beginning of
21 every quarter, we recalculate our nondirect cost
22 allocation for our projects. Basically we look at
23 past work for the last quarter and then projected work
24 and then we come up with percentages that we believe
25 reflect the work that will be done in the upcoming

1 quarter. And then our -- EFSEC projects and
2 applicants get charged a certain percentage of the
3 overall nondirect costs, EFSEC nondirect costs.

4 So for the first quarter of fiscal year 2015,
5 which started July 1st, ends September 30th, the rates
6 are: Kittitas Valley Wind Power project 5 percent;
7 Wild Horse, 7 percent; Columbia Generating Station,
8 20 percent; the WNP 1 and 4 site, 3 percent; Whistling
9 Ridge Energy Project, 3 percent; the Satsop Combustion
10 Turbine project is 9 percent; Chehalis Generation is
11 9 percent, Desert Claim Wind Power Project is 2
12 percent; BP Cogeneration Project is 2 percent; Grays
13 Harbor Energy Project is 3 percent; Tesoro/Savage is
14 37 percent.

15 And that concludes my presentation.

16 CHAIR LYNCH: Thank you, Mr. Posner.
17 Before adjourning, I wanted to thank the
18 councilmembers and the Staff for their hard work on
19 this land use consistency determination. I know that
20 you all spent a lot of time looking at this, asking
21 questions, making us dig deep as to an understanding
22 of the law. So I appreciate all the hard work that
23 you all put into this.

24 And with that, no further business in front of
25 the Council, we are adjourned.

(Executive session adjourned 3:10 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF KING

I, Sherrilyn Smith, a Certified
Shorthand Reporter 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.

SHERRILYN SMITH

Kittitas Valley Wind Power Project

Monthly Project Update

July 15, 2014

Project Status Update

June Production Summary:

MWh 44,759 MWh

Wind 10.6 m/s or 23.7 mph

CF 61.7%

Safety:

No incidents

Compliance:

Project is in compliance as of July 14, 2014.

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

None

June, 2014

EFSEC Monthly Operational Report

1. Safety and Training:

- 1.1. There were no accidents or injuries to plant staff during the month of June.
- 1.2. Conducted monthly safety training.
- 1.3. Conducted monthly safety committee meeting.

2. Environmental:

- 2.1. Submitted the May Discharge Monitor Report (DMR) for Outfall 001 to the Energy Facilities Site Evaluation Council (EFSEC).
- 2.2. Scheduled opacity training for those maintaining certification to get recertified.
- 2.3. Submitted a revised Environmental Commitment Book to EFSEC meeting the requirements of Article VI of the Site Certification Agreement (SCA) for updating and submitting plans.

3. Operations & Maintenance:

- 3.1. Grays Harbor operated 2 days during the month of June.
- 3.2. The capacity factor (CF) was 4.3% in June, and 9.6% YTD.
- 3.3. The availability factor (AF) was 97.4% in June, and 91.5% YTD.

4. Noise and/or Odor:

- 4.1. There were no complaints received during the month of June.

5. Site Visits:

- 5.1. The Office of the State Fire Marshal conducted an annual inspection of the facility. The inspector noted three deficiencies which will require re-inspection in August.
 - 5.1.1. Two doors did not latch when closed, but were repaired before the inspection was completed.
 - 5.1.2. Emergency lighting annual testing had not been completed. This testing is scheduled for July.
 - 5.1.3. Fire protection sprinkler system annual testing had not been completed, and is scheduled for July.

6. Other:

- 6.1. Grays Harbor is fully staffed with 22 employees.

Chehalis Generation Facility----Monthly Plant Report to the Washington Energy Facility Site Evaluation Council – June 2014

1813 Bishop Road Chehalis, WA 98532
Phone (360) 748-1300, FAX (360) 740-1891

15 July 2014

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 4241 days without a Lost Time Accident.

Environment:

- Waste water monitoring results are in compliance with the permit limits for the month of June 2014.

Personnel:

- Authorized plant staffing level is currently 19 with 17 positions filled. The Operations Manager position and a Control Room Operator are open.

Operations and Maintenance Activities:

- The Plant generated 151,410 megawatt-hours at a capacity factor of 43.1% for the month of June and the year-to-date capacity factor is 50.5%.
- The Plant performed an annual maintenance outage working on several balance of plant systems as well as inspections of the combustion turbines. There were 80 contractors working on-site with no safety incidents.
- The Washington State Department of Labor and Industries conducted their annual inspection of the water and gas sides of heat recovery steam generators and related pressure vessels with no issues noted.

Regulatory/Compliance:

- There were no air emissions deviations, waste-water or stormwater deviations or spills during the month of June 2014.
 - Sound monitoring: There were no noise complaints to report.
-

Carbon Offset:

PacifiCorp environmental policy staff and plant management met with EFSEC staff on June 24, 2014 to discuss Greenhouse Gas offset options to finalize the financial commitment of the balance of dollars as required by Order 836.

The discussions identified a two pronged approach to meeting the requirement in a timely fashion while also realizing the best benefit alternative to the PacifiCorp rate payers. The first approach will evaluate potential energy efficiency projects at Chehalis that will reduce GHG emissions. Consistent with the Chehalis's GHG mitigation plan and Washington State policy, specifically Initiative 937, PacifiCorp has researched possible application of increased energy efficiency of certain plant auxiliary equipment energy consumption. These operating systems were identified during an engineering analysis evaluation of plant-wide energy conservation measures. The report was finalized in May 2013 and specifically identified two systems that would save 2,041 megawatt-hours per year in energy consumption. There is also a corresponding carbon dioxide emissions reduction of 404 tons per year as an additional benefit.

PacifiCorp will be submitting to EFSEC staff during July the specifics of the I-937 projects for consideration including a proposed implementation schedule.

In the second approach, the PacifiCorp Energy Commercial and Trading is also beginning discussions with the The Climate Trust to evaluate the availability and conditions of purchasing additional offsets from the Farm Lynden project since the project is outperforming initial projections. This would extend the existing contract to cover the remaining balance of committed funds for additional offsets.

Respectfully,

Mark A. Miller
Manager, Gas Plant
PacifiCorp-Chehalis Power
1813 Bishop Road
Chehalis, WA 98532
360-827-6462

Below is the monthly operational/compliance update for Wild Horse. Also attached is a report regarding the golden eagle incident. Please let me know if you have any questions.

Wind Production: June generation totaled 70,618 MWh for an average capacity factor of 35.98%.

Solar Production: The Solar Demonstration Project generated 92 MWh in June.

Safety: No lost-time accidents or safety incidents to report in June. Site staff participated in fall protection/rescue training and annual first aid/CPR training.

Compliance/Environmental: Invasive weeds are being sprayed in accordance with the Post-Construction Rangeland Management and Grazing Plan.

**Energy Northwest
EFSEC Council Meeting
July 15, 2014
(Shannon Khounnala)**

I. Columbia Generating Station Operational Status

Columbia is currently operating at 100% power, generating 1115 megawatts, and has been online for 385 days. This is a power generation record for continues days online for the station.

There are no other events, safety incidents, or regulatory issues to report.

II. WNP 1/4 Water Rights

The Department of Energy Water Right application for the WNP 1/4 property entered a public notice period on June 24th. The notice was posted for two consecutive weeks. Energy Northwest expects to be notified by the Department of Energy and Department of Ecology for the coordination of a site visit later this summer.



Wild Horse Wind Facility Avian Incident Report

During wind turbine maintenance on June 18, Vestas technicians discovered the remains of a raptor near wind turbine F2 and reported the find to PSE's Environmental Manager on site (Jennifer Diaz).

In accordance with the Wildlife Incident Reporting and Handling System, the Environmental Manager responded immediately to the incident location where she collected data, took photos, and retrieved the raptor. PSE's Avian Protection group (Haley Edwards and Mel Walters) was contacted to confirm the species.

On June 19th Avian Protection conducted a site visit and confirmed that the bird was a juvenile golden eagle. While investigating the area of the incident, a second juvenile golden eagle was discovered approximately 50 yards from where the first golden eagle was found. It appeared that the two incidents occurred at the same time. Additional data was collected and photos were taken.

Notifications:

In accordance with the EFSEC Site Certification Agreement and the USFWS Special Purpose Utility Permit, PSE immediately notified USFWS Office of Law Enforcement (Corky Roberts), WDFW (Justin Allegro/Mike Ritter), and EFSEC (Jim LaSpina). In addition, PSE submitted data to USFWS Regional Migratory Bird Permit Office (Jennifer Miller) within 48 hours as required by the Special Purpose Utility Permit.

Meeting with USFWS Enforcement Officer:

On June 23rd, PSE met with USFWS Special Agent Corky Roberts to discuss the incident, conduct a site visit at F2, and transferred the eagles. PSE provided Agent Roberts with the Baseline Wildlife Report for Wild Horse Phase I and II, which includes pre-construction raptor nest surveys.

Additionally, PSE provided the following documents to Agent Roberts:

- Phase I Post-construction Raptor Nest and Lek Surveys
- Phase II Post-construction Raptor Nest and Lek Surveys
- First Annual Monitoring Report (2008)
- Second Annual Monitoring Report (2011)
- Expansion Area Fatality Final Report (2013)
- WDFW Comments to EFSEC regarding the Expansion
- WDFW Comments to EFSEC on the SEIS for the Expansion Area
- Bird and Bat Conservation Strategies for PSE's Wind Facilities
- PSE's Corporate Avian Protection Plan



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Background Information:

According to pre-construction raptor nest surveys and diurnal fixed-point avian use surveys, WEST determined that overall risk to golden eagles is low and predicted that only a few individuals would collide with the turbines during the life of the project (Wild Horse Baseline Study Report 2003).

- Pre-construction surveys (Flight paths of eagles, nest locations, predicted mortalities)
 - No active golden eagle nests were identified within the project area or one-mile buffer during baseline surveys (2008). There are no known golden eagle nests within 2 miles of the project.
 - The nearby Quilomene nest was confirmed to be inactive in the 2014 nesting season. (WDFW personal comm.)
 - No golden eagles were observed in flight near the F turbine string during pre-construction fixed-point surveys. Overall, the site has very low raptor nest density.
- Post-construction monitoring
 - F2 was included in a monitoring plot with F3 during 2007 monitoring.
 - No other birds have been identified at F2 incidentally or during post-construction monitoring.
 - Other birds found near F-string turbines include 1 American kestrel and 1 golden-crowned kinglet at F3 in 2007; 1 Townsend's warbler, 1 gray partridge, and 1 white-throated swift at F4 in 2010; and 1 unidentified small bird at F5 in 2010.
- BMPs and Avian protection measures
 - Distribution line built avian safe with sufficient spacing between conductors to reduce electrocution risk. Built transmission underground where possible.
 - Carcass removal program to reduce potential for attracting eagles.
 - Minimal site disturbance during construction and restoration of habitat and spring areas after construction.
 - Grazing management to prevent overgrazing and habitat degradation.
 - Conservation easement with WDFW.
 - Provide funding to raptor rehabilitation facilities.
 - Hunter outreach and education.
 - General public outreach and education regarding shrub-steppe wildlife and habitat.

Next Steps:

PSE is working cooperatively with USFWS to resolve this incident, and will continue with the development of an Eagle Conservation Plan in consultation with USFWS.

The Role of USFWS

Because the USFWS is the lead agency responsible for enforcing the Migratory Bird Treaty Act and Bald and Golden Eagle Act, this incident is under federal jurisdiction of USFWS. USFWS Office of Law Enforcement (OLE) and the Department of Justice (DOJ) will ultimately determine the outcome of this incident, including any proposed mitigation.



USFWS OLE is currently reviewing pre-construction surveys and protocol, raptor nest surveys, prior consultation, and post-construction monitoring results. The DOJ and U.S. Attorney are requesting a meeting with PSE's attorneys to discuss options for resolving the case and moving forward with an Eagle Conservation Plan and applying for an Eagle Take Permit under the Bald and Golden Eagle Protection Act.

The Role of the Technical Advisory Committee

PSE will inform the TAC of the incident at the upcoming TAC meeting on July 17, 2014. According to Article IV.F.4. of the SCA, the purpose of the TAC is to ensure that monitoring data is considered in a forum in which independent and informed parties can collaborate with the Certificate Holder, and make recommendations to EFSEC if the TAC deems additional studies or mitigation are warranted to address impacts that were either not foreseen in the Application or the Environmental Impact Statement, or exceed impacts that were projected.

This incident is within the predicted level of take, and is under the authority of the USFWS. As the lead agency for this case, USFWS will determine what course of action is required to resolve this case, including any proposed mitigation. Although the TAC has no direct role in this incident or enforcement authority over the Bald and Golden Eagle Protection Act, PSE will provide ongoing updates to the TAC as this case progresses with USFWS.

The Role of EFSEC

As a condition of the SCA, EFSEC has authority over approving additional mitigation that is recommended by the TAC in response to impacts that were not foreseen or exceed projected impacts. However, EFSEC has no authority over the enforcement of the Bald and Golden Eagle Protection Act, which is under the jurisdiction of USFWS OLE and DOJ.

PSE is committed to open communication with EFSEC and will continue to coordinate with the Council as this case progresses. EFSEC will be informed of any proposed mitigation that is identified through consultation with USFWS.

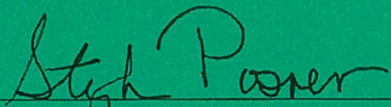
Energy Facility Site Evaluation Council

Non Direct Cost Allocation for 1st Quarter FY 2015 July 1, 2014 – September 30, 2014

The EFSEC Cost Allocation Plan (Plan) was approved by the Energy Facility Site Evaluation Council in September 2004. The Plan directed review of the past quarter's percentage of EFSEC technical staff's average FTE's, charged to EFSEC projects. This information is used as the basis for determining the non-direct cost percentage charge, for each EFSEC project. In addition, the Plan allows for adjustment due to anticipated work load and the addition of new projects.

Based on the levels of work during the 4th quarter of FY 2014, using the procedures for developing cost allocation, and allowance for new projects, the following percentages shall be used to allocate EFSEC's non direct costs for the 1st quarter of FY 2015:

Kittitas Valley Wind Power Project	5%
Wild Horse Wind Power Project	7%
Columbia Generating Station	20%
WNP-1	3%
Whistling Ridge Energy Project	3%
Satsop CT	9%
Chehalis Generation Project	9%
Desert Claim Wind Power Project	2%
BP Cogeneration Project	2%
Grays Harbor Energy	3%
Tesoro Savage	37%



Stephen Posner, EFSEC Manager

Date: _____

7/2/14

Summary of FY 2015 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	5%				5.0%
Desert Claim	2%				2.0%
Whistling Ridge	3%				3.0%
Columbia GS	20%				20.0%
WNP1	3%				3.0%
G.H. 1&2	9%				9.0%
Chehalis	9%				9.0%
Wild Horse	7%				7.0%
BP	2%				2.0%
G.H. 3&4	3%				3.0%
Tesoro Savage	37%				37.0%

Summary of FY 2014 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	10%	7%	6%	5%	7.0%
Desert Claim	3%	2%	2%	2%	2.3%
Whistling Ridge	9%	4%	3%	3%	4.8%
Columbia GS	33%	22%	23%	21%	24.8%
WNP1	4%	3%	3%	3%	3.3%
Satsop	12%	9%	10%	11%	10.5%
Chehalis	10%	9%	9%	10%	9.5%
Wild Horse	10%	7%	6%	5%	7.0%
BP	3%	2%	2%	2%	2.3%
G.H. Energy	6%	4%	3%	3%	4.0%
Tesoro Savage		31%	33%	35%	33.0%

Summary of FY 2013 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	13%	13%	11%	10%	11.7%
Desert Claim	3%	3%	3%	3%	3%
Whistling Ridge	9%	10%	15%	15%	12.3%
Columbia GS	23%	25%	25%	26%	24.8%
WNP1	4%	4%	4%	4%	4%
Satsop	12%	11%	11%	10%	11.0%
Chehalis	10%	10%	10%	10%	10%
Wild Horse	10%	10%	10%	10%	10%
BP	2%	2%	2%	2%	2%
G.H. Energy	14%	12%	9%	10%	11.3%

Summary of FY 2012 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	11%	13%	12%	13%	12.3%
Desert Claim	2%	2%	3%	3%	2.5%
Whistling Ridge	27%	20%	18%	11%	19.0%
Columbia GS	16%	18%	19%	21%	18.5%
WNP1	2%	3%	3%	4%	3.0%
Satsop	12%	15%	15%	16%	14.5%
Chehalis	10%	8%	10%	9%	9.3%
Wild Horse	9%	10%	9%	8%	9.0%
BP	4%	2%	2%	2%	2.5%
G.H. Energy	7%	9%	9%	13%	9.5%

Summary of FY 2011 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	22%	18%	13%	12%	16.3%
Desert Claim	5%	8%	9%	4%	6.5%
Whistling Ridge	21%	28%	25%	28%	25.5%
Columbia GS	9%	12%	18%	18%	14.3%
WNP1	2%	3%	2%	2%	2.3%
Satsop	12%	7%	14%	13%	11.5%
Chehalis	4%	6%	6%	7%	5.8%
Wild Horse	7%	8%	7%	10%	8.0%
BP	1%	1%	1%	1%	1.0%
G.H. Energy	17%	9%	5%	5%	9.0%