
WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
PUBLIC MEETING
MAY 28, 2014

A public meeting of the Washington State Energy Facility Site Evaluation Council (EFSEC) was held at the Clark County Public Service Center, 1300 Franklin Street, Hearing Room 680, Vancouver, Washington, on May 28, 2014, at 6:00 p.m., before Marcel Johnson, State of Washington Certified Court Reporter No. 0002947.

APPEARANCES

Administrative Law Judge: Adam Torem

STATE AGENCY MEMBERS:

Chair: Bill Lynch

Ecology: Cullen Stephenson

Fish and Wildlife: Joe Stohr

Natural Resources: Andrew Hayes

Utilities and Transportation Commission: Dennis Moss

LOCAL GOVERNMENT AND OPTIONAL STATE AGENCY

Department of Transportation: Christina Martinez

City of Vancouver: Bryan Snodgrass

Clark County: Jeff Swanson

Port of Vancouver: Larry Paulson

ASSISTANT ATTORNEY GENERAL

Assistant AG: Ann Essko

COUNCIL STAFF:

Stephen Posner

Sonia Bumpus

Kali Wrspir

Tammy Talburt

COUNSEL FOR APPLICANT:

Jay P. Derr, Van Ness Feldman, LLP

COUNSEL FOR CITY OF VANCOUVER

Jon Waggoner

E. Bronson Potter

CITIZENS WHO TESTIFIED

Todd Coleman

Nathan Baker, Staff Attorney for Friends of the
Columbia Gorge

Lauren Goldberg, Staff Attorney, Columbia Riverkeeper

Don Steinke, Citizen

Chris Connolly, Citizen

Matt Grady, Columbia Waterfront, LLC

Karen Axell, Rosemere Neighborhood Association

DenMark Wichar, Citizen

Marla Nelson, Northwest Environmental Defense Center

Cathryn Chudy, Citizen

Judy Hudson, League of Women Voters, Clark County

Tim Rajeff, Citizen

Noreen Hine, Citizen

Lisa Ross, Citizen

Marc Jander, Citizen

VANCOUVER, WASHINGTON; WEDNESDAY, MAY 28, 2014

6:00 p.m.

* * *

PROCEEDINGS

MR. TOREM: Good evening. My name is Adam Torem. I'm an administrative law judge, appointed by the Energy Facility Site Evaluation Council to facilitate proceedings in this matter. I'll be presiding over tonight's land use hearing, which is being held in accordance with Revised Code of Washington 80.50.090, and Washington Administrative Code Chapter 463.26.

Tonight's public hearing is being conducted in the Clark County Public Services Center in Vancouver. It's now a little after 6 o'clock p.m. on Wednesday, May 28, 2014.

Notice of tonight's hearing was published in the Vancouver Columbian. And EFSEC also mailed those directly to many of you who are already on our mailing list for this project.

Many of you will recall the Council's initial visit to Vancouver last fall. Tesoro/Salvage filed an application back in August of 2013, and EFSEC first came to Vancouver to conduct a public informational meeting about the proposal. That was on

1 Monday October 28.

2 The council then, the next night, on Tuesday
3 October 29th, held its State Environmental Policy Act,
4 or SEPA scoping meeting, and we held an additional
5 SEPA scoping meeting in Spokane Valley on
6 December 11th.

7 Last month on April 2nd, the Council
8 conducted a special meeting in this particular room to
9 discuss all the input received through the SEPA
10 scoping process.

11 Tonight the Council is back in Vancouver
12 regarding the same Tesoro/Salvage project, but for a
13 different and very specific reason. Tonight we're
14 evaluating land use consistency of the project site.

15 According to WAC, 463.26.050, I think a copy
16 of which is in the back of the room, the purpose of
17 tonight's land use hearing is to determine whether at
18 the time of the application, the proposed facility was
19 consistent and in compliance with land use plans and
20 zoning ordinances.

21 The administrative code rule goes on to
22 explain that a land use plan includes those that are
23 adopted under the Growth Management Act, and that
24 zoning ordinances include local government codes
25 regulating the use of land.

1 So our purpose tonight is to hear testimony
2 and presentations about a very specific question:
3 Whether the Tesoro/Salvage project is consistent and
4 in compliance with Vancouver's Comprehensive Plan and
5 in compliance with the Vancouver Municipal Code,
6 particularly Title 20, the zoning code.

7 There are certainly many, many more topics
8 of interest regarding this proposed oil transfer
9 terminal, but those are not on tonight's agenda.
10 Tonight, by rule and by statute, we're focused solely
11 on land use issues.

12 At this time I'm going to ask Chairman Lynch
13 to introduce himself, and I'm going to ask each member
14 of the Council present tonight to do the same. And
15 then we'll get on, and I'll explain how we're going to
16 proceed.

17 CHAIRMAN LYNCH: Thank you, Mr. Torem. I'm
18 Bill Lynch. I'm the chair of EFSEC, and it's nice to
19 be back here in Vancouver again.

20 And you already have heard from Judge Torem
21 what the purpose of this hearing is tonight, so I'm
22 going to let the Council members introduce themselves
23 to you, starting at the far right. Mr. Stohr.

24 MR. STOHR: Good evening, everyone. My name
25 is Joe Stohr. I'm the deputy director for the

1 Washington Department of Fish and Wildlife, and a
2 council member.

3 MR. HAYES: Good evening. My name is Andy
4 Hayes. I'm with the Washington Department of Natural
5 Resources.

6 MR. SWANSON: Good evening. My name is Jeff
7 Swanson. I'm Clark County's director of economic
8 development.

9 MR. MOSS: My name is Dennis Moss. I'm an
10 administrative law judge with the Washington Utilities
11 and Transportation Commission.

12 ^{Mr. Stephenson}
~~MR. CULLEN:~~ Good evening. I'm Cullen
13 Stephenson, the Department of Ecology's council
14 member.

15 MS. MARTINEZ: Christina Martinez,
16 Washington State Department of Transportation.

17 MR. PAULSON: I'm Larry Paulson,
18 representing the Port of Vancouver.

19 MR. SNODGRASS: Bryan Snodgrass with the
20 City of Vancouver Community and Economic Development
21 Department.

22 MR. TOREM: All right. Thank you all.

23 We have a quorum of the Council tonight.
24 Even though I say we have a quorum, we're not planning
25 on taking any votes or deciding any issues tonight.

1 Again, tonight is to listen to the public testimony.

2 At the beginning of the meeting, we're
3 supposed to make a public announcement, according to
4 WAC 463.26.060, and I want to make a distinction.
5 This is not an opportunity for public comment. But
6 according to the rule, we're announcing an opportunity
7 for testimony by anyone who can speak relative to the
8 consistency and compliance with land use plans and
9 zoning ordinances.

10 So some of you may have signed up tonight
11 thinking that this was anything you want to talk about
12 with the oil terminal. If you've done that, that's
13 not the case. This is not an open public comment
14 meeting.

15 So if you still want to address the Council
16 tonight, please understand you'll be testifying. And
17 because it's testimony, I will place you under oath,
18 if you're coming as a member of the public, and be
19 subject to questions.

20 And your testimony must also focus on land
21 use issues, preferably referencing a particular
22 provision of the City's Comprehensive Plan or the
23 Vancouver Municipal Code.

24 Now, there are going to be other
25 opportunities for you to provide public comment. And

1 I think the next one is probably when the Council
2 publishes and holds a hearing on the Draft
3 Environmental Impact Statement.

4 Tonight what I want to do is proceed
5 according to WAC 463.26.090 or dash-100. I'm not sure
6 what is going to be presented by the Applicant. There
7 are two possible courses of action, and we'll hear
8 shortly which one we're going to follow.

9 In the first, Tesoro/Salvage, as the
10 Applicant in this project, might present a certificate
11 from the City of Vancouver attesting to the fact that
12 their proposal is consistent with applicable land use
13 plans and in compliance with all the zoning
14 ordinances.

15 There's another option where those
16 certificates are not available, and the Council will
17 simply hear from both the Applicants and any local
18 authorities from the City who are here tonight. And
19 they can address issues or concerns with compliance or
20 noncompliance. They can address consistency or
21 nonconsistency with those plans and ordinances.

22 Before we get to public testimony, I'm going
23 to give an opportunity to folks that we predict are
24 going to be intervening in the eventual adjudication.
25 And those people include, after the Applicant and the

1 City, the Port of Vancouver itself, the Columbia
2 Riverkeeper, the Friends of the Columbia Gorge.

3 And if there's an association here that is
4 going to intervene as a party in the adjudication when
5 that kicks off, I want to give equal time to all of
6 you. Many of you are here with counsel, and we don't
7 typically swear lawyers in to tell the truth. We let
8 them do that through witnesses. So for the rest of
9 the public, though, it's required that I have
10 testimony to address the Council.

11 What I want to do is -- I don't know how
12 many are on the sign-up list yet. The paper I've been
13 handed has a number of those parties I just listed,
14 and there's only a dozen. So typically, we've limited
15 people to three minutes. Tonight we may have a little
16 bit more time than that.

17 And I think the Applicant has indicated to
18 Mr. Posner that they have about a five-minute
19 presentation, and I want to give everybody at least
20 equal time with what the Applicant gets.

21 If any of you coming up need more than five
22 minutes to address land use issues, let me know and
23 we'll try to set the clock accordingly.

24 In these facilities, we do have a countdown
25 timer with a handy-dandy light on that I understand

1 shines for us, the same as it does at the podium. So
2 we'll figure out the right timing, based on how long
3 the Applicant goes and make sure everybody gets equal
4 time.

5 That's the plan for the night. Chairman
6 Lynch, anything further?

7 CHAIRMAN LYNCH: No, thank you.

8 MR. TOREM: All right. Let me call on and
9 see who is going to represent Tesoro/Salvage tonight
10 and make their presentation.

11 MR. DERR: Good evening. Thank you.

12 My name is Jay Derr. I'm with the law
13 office of Van Ness Feldman in Seattle, and I'll be
14 speaking on behalf of the Applicant tonight.

15 And I don't see the lights, but -- oh.
16 There it is over there. Somebody will tell me, I
17 guess, how we're doing.

18 What I'd like to do first, if I may, is hand
19 up a copy of a written submittal, which we also have a
20 CD of it electronically so that staff can take that.

21 MR. TOREM: Mr. Derr, I'm going to have you
22 give that to Mr. Posner, and he'll mark it as a land
23 use exhibit for tonight's hearing.

24 MR. DERR: There's that. And secondly, I
25 have just a list of exhibits that are attached in that

1 notebook that I thought would be helpful. So as I
2 kind of give you a road map of what's in the notebook
3 tonight, that if the Council members could have just a
4 copy of page 21.

5 MR. TOREM: If you have enough copies of
6 that, Mr. Posner can publish those to the Council now.

7 MR. DERR: Yes, we do. We have about 20 of
8 them there. And then I finally have a hard copy of --
9 I wasn't sure if you could see the map.

10 MR. TOREM: We've got it projected on the
11 screen --

12 MR. DERR: Okay.

13 MR. TOREM: -- in front of the court
14 reporter. So, again, this is a nice facility.

15 MR. DERR: Got it. So I have hard copies of
16 that, if you need it.

17 MR. TOREM: While that's being handed out,
18 if we have any additional extra copies of the
19 exhibits -- I know they'll be posted on EFSEC's
20 website soon. But if there's extra copies, I'm going
21 to have them headed back to the back table and those
22 of you who want to take a look at what Mr. Derr is
23 talking about tonight, can see that.

24 MR. DERR: Tell me when you're ready, and
25 I'll start. Unless my five minutes is already going,

1 I better start.

2 MR. TOREM: No. We'll let you get started,
3 once we get that paper handed out.

4 I'm going to ask Ms. Talburt to come up and
5 take this copy of exhibits and just put it at the back
6 table so people will know, either as they're speaking
7 or on their way out tonight, these 13 listed exhibits
8 that you might be addressing.

9 All right. Mr. Derr, go ahead.

10 MR. DERR: Great. Thank you. Again, what I
11 wanted to do first is, referring to the table of
12 exhibits, just kind of give you a road map of the
13 documents that we submitted in writing and be able to
14 review for your decision.

15 The first series of Exhibits, 1, 2, and then
16 Exhibits 7 and 8, reflect the discussions that the
17 Applicant has had and submittals to the City of
18 Vancouver.

19 So in answer to your question, we're in
20 scenario 2, not scenario 1, at least I think. We have
21 to wait to hear from the City to see what they submit,
22 but I think we're in scenario number 2.

23 And those exhibits really just take you
24 through a process that we started with the City, which
25 was to submit pre-app, to pay the fees for pre-app,

1 and take the City through what's called a type 2 land
2 use review, which is administrative review, compliance
3 of all city codes and regulations.

4 And that was not because the City issues a
5 type 2 permit for this process, but they didn't have
6 an EFSEC land use certification process in their code.
7 Most don't. So we opted for that process. Submitted
8 documents. We had a pre-app conference. There's a
9 pre-app report in there which talks about some of the
10 things that were identified and agreed to early in
11 that process.

12 There's actually also a draft staff decision
13 in what we've submitted to you from December, but that
14 decision was never issued by the City. So those are
15 the exhibits that relate to our attempts and our
16 discussions with the City about compliance.

17 Exhibit 9 is that draft assessment that I
18 mentioned that was never issued by the City.

19 Then Exhibits 3 through 6, which I want to
20 highlight in my remarks just quickly, really are
21 excerpts of the zoning and the Comprehensive Plan that
22 relate to the site land use designation and permitted
23 uses. So that's what I'm going to focus my remarks
24 on. And the bulk of our written document that we
25 submit addresses those issues in more detail.

1 Then Exhibits 10 and 11 is some historic
2 information. Examples of similar kinds of uses,
3 petroleum storage in the heavy industrial zoned
4 property that the City has permitted in the past,
5 which we think this is evidence of this use falls
6 within that definition and is therefore permitted in
7 that zone.

8 And then finally, Exhibit 12 is a matrix
9 that we prepared which really is designed to go
10 through all of the Comprehensive Plan policies and
11 identify those that we think are relevant and
12 consistent.

13 Now, however, to focus or explain
14 Exhibit 12, what actually we think the question before
15 EFSEC tonight is even narrower than the whole
16 Comprehensive Plan.

17 What the statute says and actually what the
18 Supreme Court has said in looking at this statute is
19 this particular step in the process is about
20 consistency with the zoning or the land use plan. And
21 the Supreme Court initially said that it's "or." If
22 you're consistent with the zoning, you don't
23 necessarily need to be consistent with the land use
24 plan.

25 Hence, the land use plan is not necessarily

1 the whole comp plan. So the comp plan contains lots
2 of other policies about housing and other things that
3 are not the inquiry at this stage in the process.

4 So really the focus tonight, we believe, is
5 consistency with the zoning, the zoning map. What is
6 the zoning, and is the use permitted in that zone?
7 The Comprehensive Plan land use designation, which is
8 industrial, is the use permitted in that land use
9 designation.

10 And then also, the land use element of the
11 Vancouver Comp Plan, which is called the community
12 development element, so it's the first chapter in the
13 land use plan. And again, our written submittal,
14 which contains information we presented to the City
15 back last fall, takes us through that process.

16 So the first question is, is this the
17 terminal used to have industrial use?

18 The pre-application report from the City
19 staff reflects, I think, agreement on that issue.
20 This particular use falls within the definition of
21 heavy industrial use.

22 And this particular first graphic we have up
23 just shows the location of the facility. And if you
24 could turn to the second slide for me.

25 The second slide shows the comprehensive

1 land use plan. You see the dark blue? That overlaps
2 where the site is located. That's the industrial
3 Comprehensive Plan map land use designation.

4 The next slide for me. This is two parts to
5 the zoning map which shows the HI, the heavy
6 industrial zoning, which, again, overlays where the
7 project is located. So we think, really, these maps,
8 the Comprehensive Plan map, the zoning map.

9 And then the final slide is a document that
10 we also included in our submittal to the City, which
11 also in the zoning ordinance looks at things like lot
12 size, lot coverage, height, what are the dimensional
13 requirements that a zoning ordinance addresses for
14 these uses. And this table identifies the code
15 requirement in the zone. And then the right-hand
16 column identifies how this particular project falls
17 within those, or they're not applicable because there
18 is no real limitation.

19 So again, what we think, quite simply, the
20 questions before you are addressed by those maps and
21 that table. The written document that we submitted to
22 you sort of lays out the analysis of the definition of
23 a zoning ordinance, what is a zoning ordinance, why
24 it's not the entire development code.

25 The type 2 process we started with the City

1 really was going to look at all the codes. And I
2 think one of the issues already seen in correspondence
3 and again you may hear tonight, is there's a lot more
4 information that's needed to evaluate the project for
5 consistency with all the rules that apply. That's the
6 purpose in part of the EIS. That's the purpose of
7 your adjudication process where you'll take lots more
8 testimony on that, I suspect. And it's premature to
9 decide those issues tonight.

10 What your statute says is just look at this
11 use issue. Is the site in a zone where this use is
12 permitted? And we think the answer to that is clearly
13 yes. We think you could enter that determination at
14 this point, and we can then get on with the EIS.

15 We're anxious, probably as anxious as the
16 public, to get on with the EIS so we can really get
17 the facts of this project out and we can engage the
18 project on its issues, on its facts, on the scientific
19 analysis that gets done. And then you'll have the
20 information you need to evaluate the comments during
21 adjudication to make a decision.

22 And so with that, we ask you to enter what
23 we think is a simple finding; that, yes, this
24 proposal, this project at this location is consistent
25 with the City's zoning. It is also consistent with

1 the City's land use element of its Comprehensive Plan.

2 MR. TOREM: Thank you, Mr. Derr. So a
3 little over six minutes. Let me see if any of the
4 Council members have questions for you on the general
5 presentation. I know we haven't had the chance to
6 review those exhibits.

7 Council members, any questions for the
8 Applicant's representative? Not seeing any yet.

9 MR. DERR: Thank you.

10 MR. TOREM: Let me see. Who's here from the
11 City of Vancouver to speak to the project? Sir, if
12 you can step up and identify yourself.

13 MR. WAGGONER: I'm Jon Waggoner. I'm senior
14 planner with the City of Vancouver.

15 MR. DERR: Hang on, Mr. Waggoner. We're
16 going to make sure we get the microphone turned
17 around.

18 MR. WAGGONER: My name is Jon Waggoner. I'm
19 the senior planner with the City of Vancouver
20 Community and Economic Development Department.

21 To answer the question as to whether or not
22 this is a scenario 1 or scenario 2, it's a scenario 2.

23 MR. TOREM: All right. So there are no land
24 use consistency --

25 MR. WAGGONER: We do not have a land use

1 consistency certification.

2 What we have done is we have prepared a
3 report addressing the proposed Tesoro/Salvage
4 Vancouver Energy Distribution Terminal's consistency
5 with the City of Vancouver's Comprehensive Plan and
6 Land Use and Development Code.

7 MR. TOREM: It's still not projecting out.

8 MR. WAGGONER: I've never had this problem.

9 Our Land Use and Development Code includes
10 cross-references to provisions of the Vancouver
11 Municipal Code, including transportation, erosion
12 control, and stormwater control. And so we have
13 combined those into our review of the project.

14 Additionally, compliance with the provisions
15 of State Environmental Policy Act is incorporated in
16 our zoning code. So it makes it rather difficult in
17 that we're not doing SEPA until after the fact.

18 In reviewing the proposal for consistency
19 with the Comprehensive Plan, staff determined the
20 policies that applied and whether the proposal would
21 comply with each of the selected policies.

22 And we will be giving you documents and a
23 disk at the end of the presentation.

24 For review of the applicable Land Use and
25 Development Code provisions, our comments generally

1 fell into one of the following three -- four
2 categories.

3 One is the -- the first one would be -- and
4 these are in no particular order -- is that the
5 Applicant has shown that the project meets the
6 particular standard or criteria.

7 And an example of that would be, as Mr. Derr
8 pointed out, the zoning of the property as heavy
9 industrial. Heavy industrial allows for working
10 terminals. The use is allowed in that zone. Also,
11 the Applicant has shown that it would meet the setback
12 provisions.

13 On other provisions, fellow staff made about
14 findings or the comments that the Applicant has
15 provided preliminary information addressing the
16 standard. But public comments have not been held, and
17 the SEPA analysis had not been available. And since
18 we rely on public input and environmental analysis, it
19 makes it difficult for staff to make a determination
20 that the project actually meets our requirements.

21 Examples of these would relate to things
22 that the City relies on from other agencies with
23 expertise or jurisdiction or the public. For
24 instance, the code states the example that on
25 navigable waters or their riverbeds, the code states

1 that the development should be located and designed to
2 minimize interference with surface navigation, which
3 staff really doesn't have the ability to address.

4 Consider the impacts to public use, which I
5 don't think we have a problem -- we don't have an
6 issue with. And allow for safe, unobstructed passage
7 of fish and wildlife. We don't have any studies that
8 show exactly what this is going to do for the passage
9 of fish on the Columbia River.

10 For these types of standards, the City would
11 take into consideration comments from the public and
12 agencies with expertise or jurisdiction in making our
13 determination.

14 MR. TOREM: Mr. Waggoner, can you just slow
15 your speech a little bit?

16 MR. WAGGONER: I know. It's too fast.

17 MR. TOREM: Okay.

18 MR. WAGGONER: The Applicant -- the third
19 category would be that the Applicant has provided
20 sufficient information to grant preliminary approval.
21 However, further review and approval would be
22 required.

23 An example is that the Applicant has
24 prepared a stormwater report, preliminary, and
25 preliminary engineering. Prior to approving that

1 project, we would have to have final civil engineering
2 and the final report.

3 There is, I believe, one instance where the
4 Applicant did not provide an example of a -- excuse
5 me -- a geotech study was not provided. And so at
6 this point, although they did present a preliminary
7 memo, we wouldn't have the ability to find that they
8 met the code. And so what we will be submitting is
9 what we found on this particular project.

10 Now I'd like to turn this over to Bronson
11 Potter, our chief assistant city attorney.

12 MR. POTTER: Good evening. I'm Bronson
13 Potter. I'm the chief assistant city attorney.

14 And as Mr. Waggoner has indicated, there is
15 not a certificate of consistency being issued by the
16 City. Rather tonight we'll be filing three documents
17 on a disk. They're Mr. Waggoner's comments, reviewing
18 of the application to the Comprehensive Plan, and our
19 zoning ordinances.

20 There is a request by the City to defer your
21 determination of land use consistency until after the
22 Environmental Impact Study has been completed, and to
23 leave the record open and provide another opportunity
24 for public comment after the EIS is complete. And
25 then we have a series of exhibits.

1 So as I indicated, the City is asking you to
2 defer your determination until the EIS is complete,
3 and to schedule another hearing. You'll see that
4 Mr. Waggoner's comments go through the comp plan
5 policies and the zoning ordinances in detail, item by
6 item. The comments, they run over 50 pages.

7 It's the City's position that zoning
8 ordinances include more than just the zoning map
9 designation. And there's a port for that in the
10 statute, RCW 80.50.020, Subsection 22, which says that
11 zoning ordinances include all ordinances regulating
12 the use of land adopted under either the Planning
13 Enabling Act, the Growth Management Act, or the City's
14 plenary, broad, police power. So it's any ordinance
15 regulating the use of land, not just a map.

16 We're asking you to defer your land use
17 consistency determination so that SEPA may -- the SEPA
18 analysis may be conducted. And as our Supreme Court
19 has stated, the purpose of the SEPA environmental
20 review is to assist and inform the decision maker
21 before a decision is made. Not after.

22 We believe that it's simply not possible for
23 the City or EFSEC to make a determination on land use
24 consistency in compliance with the Comprehensive Plan
25 and zoning regulations without knowing the full extent

1 of the environmental impacts of the project and if, or
2 how, those impacts might be mitigated.

3 If the City were processing this
4 application, we would undertake the EIS, complete it
5 before issuing our decision. We believe that this is
6 necessary to make an informed decision and to comply
7 with the State Environmental Policy Act.

8 EFSEC, the Applicant, the City, and the
9 public will be best served if EFSEC would complete the
10 EIS, allow an opportunity for additional comment on
11 consistency after we've had an opportunity to review
12 the EIS and before making a land use consistency
13 determination. Thank you.

14 MR. TOREM: Thank you, Mr. Potter. Council
15 members, any questions for Mr. Waggoner or Mr. Potter
16 on behalf of the City?

17 All right. Seeing none, what I'd like to do
18 now is, to make sure we're going to proceed, council
19 for the environment, Mr. Matt Curnutt, is here
20 tonight. I understand he just wanted to let those of
21 you that hadn't met him yet put a name and a face
22 together.

23 He is representing, by statute, the
24 interests of the people, the interests of the
25 environment. But he's not offering testimony on the

1 land use hearing tonight. But if you need to get in
2 touch with Mr. Curnutt, you've now got a name and a
3 face together, and he has his business cards with him.

4 On the sign-up list tonight, I saw Mr. Todd
5 Coleman from the Port of Vancouver had his name
6 listed. Is he here tonight? There he is.

7 So I'm going to call Mr. Coleman up first to
8 talk from the Port's perspective. Based on the
9 testimony you've had, I'm going to ask our timekeepers
10 to put six minutes on the clock. If you need more
11 than that, you can let me know. But that's how much
12 the Applicant and the City essentially took.

13 Also signed up are Columbia Riverkeeper,
14 Ms. Lauren Goldberg; Friends of the Columbia Gorge,
15 Mr. Nathan Baker; and also I believe the Columbia
16 Waterfront, LLC, Mr. Matt Grady.

17 I'll call you up in that order and give you
18 the same six minutes. If you think you need more time
19 to address it, just let me know. And I think we won't
20 be too pressed for time tonight.

21 There are a number of other members of the
22 public who I will call in order thereafter. I will
23 ask those of you -- right now I have Mr. Don Steinke,
24 Mr. Chris Connolly or Ms. Chris Connolly, Karen Axell
25 from the Rosemere Neighborhood Association, Denmark

1 Wichar, Marla or Maya Nelson -- I'm not sure -- from
2 the Northwest Environmental Defense Center, Cathryn
3 Chudy, and Judy Hudson from the League of Women
4 Voters, and Tim Rajeff.

5 If you're speaking on behalf of an
6 organization, I'll have you let me know that. And if
7 you're intending to intervene, I want to give you the
8 same courtesy that we are to the other, I think, known
9 intervenors coming up in the proceeding. And the
10 other citizens, then we'll take your testimony.

11 I'll put you all under oath at the same
12 time, so it's a one-time swearing in. If there are
13 additional members of the public who have requested to
14 sign up, I'll have EFSEC staff bring the sign-up sheet
15 forward.

16 So at this time, I'm going to ask Mr. Todd
17 Coleman, and we'll put the six minutes on the clock.
18 Mr. Coleman, go ahead.

19 MR. COLEMAN: Thank you, Your Honor. And
20 thank you, Chair and council members and staff. I
21 appreciate the opportunity to address you on this land
22 use hearing.

23 I also have written comments. May I give
24 those to Mr. Posner?

25 MR. TOREM: Please. And I'll have him mark

1 those as an exhibit from the Port.

2 MR. COLEMAN: And those will provide more
3 detail than I will share with you this evening. It
4 should not take six minutes. I had planned for three,
5 so I will make it fairly straightforward.

6 My name is Todd Coleman. I'm the chief
7 executive officer at the Port of Vancouver. I've been
8 at the Port for about 14 years, and in the current
9 role for about two.

10 I am here today to request that EFSEC make a
11 finding of land use consistency on the Vancouver
12 Energy Distribution Terminal. And I thought I'd
13 address that in three categories.

14 The first is relative to our Port Charter
15 and Strategic Plan. Washington state ports are
16 special purpose districts that benefit the public by
17 providing access to trade and transportation through
18 our ownership and our development of waterfronts,
19 airports, ports, and industrial areas.

20 Are you all able to hear me fine? Okay.

21 The Port of Vancouver's Charter and
22 Strategic Plan includes providing transportation
23 access to trade and economic development. We operate
24 our maritime facilities on property that is zoned
25 heavy industrial. And this zoning has allowed for

1 handling of a wide variety of cargoes, including
2 grain, scrap metal, autos, wind energy, mineral bulks,
3 liquid bulks, and now, for 29 years, petroleum
4 products.

5 The development of the Vancouver Energy
6 Distribution Terminal is consistent with the Port's
7 charter and our strategic plan.

8 The second is as it relates to the
9 collaboration and concurrence with the City of
10 Vancouver. The Port has worked collaboratively with
11 the City to develop its Comprehensive Plan for the
12 waterfront located adjacent to our property, with the
13 understanding that these rail line improvements would
14 include the ability for the Port to grow its rail
15 services and its rail serve business.

16 The Port relocated tracks and facilitated
17 the construction of gated, separated entrances to the
18 new waterfront through our West Vancouver Freight
19 Access Rail Project. And we have supported the City
20 by building \$16 million worth of new overcrossings and
21 removing the rail line that bisects the property, and
22 allowing the sale of this property to the Gramor
23 Development.

24 We've exchanged land on the waterfront, and
25 we are working to make even more improvements to the

1 roadway infrastructure by providing \$750,000 in
2 funding to bring Transportation Investment Board
3 grants for the Columbia Way to be constructed in its
4 final alignment.

5 Next, specific to our zoning, the Port's
6 land use is consistent with more than 100 years of
7 rail-served terminals in Vancouver. The Port operates
8 within the city limits with the culmination of service
9 from class 1 rail lines, the interstate system, and a
10 deep-draft channel to make the Port attractive to
11 trade and economic development.

12 We're served by both the nation's class 1
13 rail lines, and this includes the Great Northern
14 corridor and the West Coast service, which currently
15 handles the exact same crude oil product that's
16 proposed by the Vancouver Energy Distribution
17 Terminal.

18 We've invested \$275 million in the West
19 Vancouver Freight Access Project to remain competitive
20 and to grow that cargo, a project that's been in the
21 making since 2005 and has been supported by the City.

22 The proposed Vancouver Energy Distribution
23 Terminal is consistent with the City's heavy
24 industrial zoning at the site, which has historically
25 included operations of petroleum as well as a wide

1 variety of other cargoes.

2 The Vancouver Energy Distribution Terminal
3 complies with all development standards for heavy
4 industrial zoning and fully supports the City's
5 Comprehensive Plan goals of economic development,
6 redevelopment, job growth, and enhancing public
7 revenue.

8 Both the energy terminal and the Port's rail
9 project are consistent with the economic development
10 policies of the City of Vancouver's Comprehensive
11 Plan, including policies EC2 through EC7.

12 Specifically, the proposed Vancouver Energy
13 Terminal supports policy EC2 for family-wage
14 employment by promoting the formation and growth of a
15 business that provides family-wage employment
16 opportunities well above average wages in the county.

17 The proposed project supports policy EC3,
18 public revenue enhancement, by generating public
19 revenues for the Port of Vancouver. It will be
20 reinvested in our maritime and local economic
21 development projects to further boost our local
22 economy. And this is a wide variety of projects,
23 including industrial developments within the
24 community.

25 Finally, the proposed project supports

1 policy EC4, industrial and business park sanctuaries;
2 policy EC5, no net loss of employment and capacity;
3 policy EC6, efficient use of employment land; and
4 policy EC7, regional focus by redeveloping this unique
5 site in a marine -- industrial sanctuary for a marine
6 industrial use that will leverage opportunities of
7 regional importance and provide family-wage jobs while
8 generating revenue for the Port and economic
9 development within the region.

10 So in conclusion, the Port is urging that
11 EFSEC approve land use consistency and move on to
12 address the many other issues contained in the permit
13 review process. And we really appreciate your
14 consideration in this very important matter.

15 MR. TOREM: Thank you, Mr. Coleman. We'll
16 hear next from Ms. Lauren Goldberg, Columbia
17 Riverkeeper.

18 And if you've already handed your exhibits
19 to Mr. Posner, we'll have it marked.

20 MR. BAKER: Your Honor, we were wondering if
21 we could switch the order. I'm Nathan Baker with
22 Friends of the Columbia Gorge.

23 MR. TOREM: All right. Mr. Baker, if you
24 want to go first. I see you're handing over an
25 exhibit as well, if you can describe that for the

1 record, we'll have it marked for another land use
2 exhibit tonight.

3 MR. BAKER: Thank you, Your Honor,
4 Mr. Chair, and members of the council.

5 My name is Nathan Baker. I'm the staff
6 attorney with Friends of the Columbia Gorge. And I
7 have just handed Mr. Posner a CD containing our
8 comments. We have submitted a 40-page comment letter
9 and 40 supporting exhibits. The letter is submitted
10 on behalf of Friends of the Columbia Gorge, Columbia
11 Riverkeeper, the Northwest Environmental Defense
12 Center, the Sierra Club, and the Center for Biological
13 Diversity.

14 I wanted to make a couple points about what
15 we're here for today. I'd like to respond to a couple
16 points made by Mr. Derr tonight.

17 First, he pointed out that the Supreme Court
18 decision in the Whistling Ridge case concludes that
19 the statute discusses that the land use consistency
20 hearing is for review with consistency -- consistency
21 with the Comprehensive Plan "or" the zoning
22 ordinances. That is correct. That is what the
23 statute says.

24 However, EFSEC's rules use the word "and."
25 In its rules, EFSEC had interpreted the statute to

1 mean that it will review consistency with the
2 Comprehensive Plan and the zoning ordinances.

3 And I also echo the point made by Mr. Potter
4 tonight that -- that the statutory definition of
5 zoning ordinance is much broader than simply the
6 zoning on the map. It refers to any local ordinance
7 regulating the use of land, including those adopted
8 pursuant to the police power -- the inherent police
9 power of the city. We have cited many zoning
10 ordinances that apply here in our comments.

11 And the land use consistency process is
12 actually very important, especially for this project.
13 Another thing that the Whistling Ridge decision
14 concluded or called into question, actually, is
15 it's -- it's a little bit unclear of what the
16 standards are in EFSEC's rules for the adjudication.
17 And there's -- there's a lack of clarity there.

18 To help clear that up, the city's ordinances
19 and Comprehensive Plan provides standards that must be
20 applied in the land use consistency process. And the
21 project must be consistent with those rules and plans
22 unless -- it -- the project cannot proceed unless the
23 governor approves the project and pre-empts any
24 ordinance or plan provision with which the project
25 would be inconsistent. So it actually is very

1 important to look closely at the Comprehensive Plan
2 and the zoning ordinances.

3 We would echo and support the City's request
4 to continue this public hearing to another date, once
5 the Environmental Impact Statement is available, and
6 also once the Applicant provides mandatory information
7 that will disclose details about this project and its
8 impacts.

9 This is required by law. There's two main
10 reasons. Both state law and the city's ordinances
11 require that the EIS, or Environmental Impact
12 Statement, be made available to the public, to the
13 City, and to the Council to disclose the environmental
14 impacts, which are very relevant to consistency with
15 the land use code.

16 And I'll give you a couple examples. The
17 City had adopted its own criteria and policies for
18 protecting endangered Salmonid salmon.

19 It's impossible to evaluate consistency with
20 those standards until the EIS is available and until
21 the Federal Fish and Wildlife Agencies have consulted
22 and weighed in on this matter.

23 And one more example. The Shoreline Master
24 Program applies here, and the EIS will contain
25 information about the potential impacts from oil

1 spills in the Columbia River. It's an example of
2 something that cannot be determined in the absence of
3 the EIS.

4 The other reason to continue the hearing is
5 that the application is missing required materials
6 that are essential to evaluate this project. So
7 unless the Council is prepared to find the project
8 inconsistent today for lack of those materials, the
9 Council should continue this hearing to a later date
10 and invite the Applicant to supply the missing
11 information.

12 Some examples are the critical areas report.
13 There is none. We have looked through the
14 application. We can't find it.

15 Final geotechnical investigation. So far,
16 the only geotechnical investigation in the application
17 covers only portions of the project site. It does not
18 cover it all.

19 A spill emergency response plan. There is
20 one in the application, but it says it's preliminary.

21 A closure plan addressing hazardous
22 materials for the life of the project.

23 A level 2 tree plan, because this project
24 would remove trees, and there are tree incident
25 requirements that must be met.

1 A landscape plan. The Applicant argues that
2 they don't have to do that, but we disagree and we
3 explain that in our comments.

4 Culture research surveys. The Applicant
5 stated last year that it would be conducting cultural
6 research surveys at the site. But to our knowledge,
7 those have not been submitted.

8 The Applicant's plans for avoiding outside
9 impacts from noise, runoff, and vibrations, a building
10 permit application which would disclose the details of
11 the structural design including whether this project
12 would withstand an earthquake.

13 Also, grading plans. Those are required as
14 well.

15 So I see my time is up. But we do encourage
16 you to look closely at our written materials, and it's
17 very important that you continue the public hearing to
18 a later date and allow the public to provide further
19 testimony once this information is available. Thank
20 you.

21 MR. TOREM: Thank you, Mr. Baker.
22 Ms. Goldberg.

23 MS. GOLDBERG: Thank you, Your Honor. My
24 name is Lauren Goldberg. I'm the staff attorney with
25 Columbia Riverkeeper. Thank you for the opportunity

1 to provide testimony this evening.

2 As the Council is aware, Tesoro's proposal
3 is unprecedented in size and in scope. By comparison,
4 their proposal involves transporting more oil than is
5 currently handled in one of the largest pipelines on
6 the West Coast, the Transmountain Pipeline. It
7 involves roughly just under half of the amount of oil
8 that's proposed in the controversial Keystone XL
9 Pipeline.

10 So with that context in mind, I want to
11 address two specific sections of the Vancouver
12 Municipal Code, specifically the Critical Areas
13 Ordinance and the Shoreline Master Program.

14 As Mr. Baker pointed out, the Applicant has
15 not carried its burden to demonstrate that its
16 proposal -- its unprecedented proposal is consistent
17 with the requirements of those sections of the City's
18 ordinance.

19 Specifically, the terminal is proposed in
20 four different areas that are protected through the
21 Critical Areas Ordinance. And I'm only -- in the
22 short time allotted, I'm only going to address one of
23 those. That's the geologic hazard area.

24 So the particular site that Tesoro has
25 selected along the Columbia River is a site that is

1 very susceptible in the event of an earthquake. And
2 Tesoro acknowledges this in their application and in
3 their preliminary geotechnical report.

4 The reason it's susceptible is due to
5 liquefaction. Now, what's interesting is that just
6 last year across the river, the Oregon Department of
7 Geology and Mineral Industries, DOGAMI, prepared an
8 in-depth report looking at critical energy -- critical
9 energy infrastructure located in the Portland metro
10 area and its susceptibility in the case of an
11 earthquake.

12 And what that report found in soils that are
13 very similar to where Tesoro is proposing its project
14 is that the primary concern for oil terminals are
15 terminals that are located where there are soils that
16 are susceptible to liquefaction.

17 Now, despite this fact that this is an
18 acknowledged area with a high susceptibility in the
19 event of an earthquake, Tesoro decided, in
20 February 2014, to file a supplemental application
21 containing only a preliminary geotechnical report.

22 It also, in that preliminary report,
23 acknowledges that it has yet to prepare a report that
24 covers the berths, the docks over the Columbia River.
25 And in doing that, what the company has done is it has

1 robbed the public, it has robbed my clients of the
2 opportunity to hire engineers to work with experts and
3 examine whether they are actually up to building
4 standards, whether their unprecedented proposal can
5 withstand the types of earthquakes that are predicted
6 in this area, and whether this is truly the best site
7 for an unprecedented oil terminal of this size.

8 I want to turn next to the City's Shoreline
9 Master Program. This March marked the 25th
10 anniversary of the Exxon Valdez oil spill. In turn,
11 there's been a tremendous amount of focus on what
12 we've learned in the 25 years since that unprecedented
13 spill. And what we've learned is that oil spills are
14 concentrated where there are oil terminals, where
15 there is oil shipping.

16 And in turn, it's critical that this
17 particular Applicant demonstrate that its project is
18 consistent with the City's Shoreline Master Program.
19 Because that master program recognizes the
20 significance to the state of the Columbia River.

21 In particular, in Section 3.2 of the City's
22 master program, the City recognizes that the Columbia
23 River is a shoreline of statewide significance. And
24 in that section, there are a series of policies.
25 They're very broad policies.

1 For example, recognizing that the City must
2 protect the statewide interest over the local
3 interest; that the City must preserve the natural
4 character of the shoreline, and that the City must
5 provide for uses that result in long- over short-term
6 benefit.

7 And this is a perfect example of how the
8 Environmental Impact Statement will inform this
9 council's decision on these particular critical
10 policies of the Shoreline Master Program.

11 Finally, Tesoro failed to demonstrate
12 compliance with the City's criteria protecting
13 threatened and endangered species. In their
14 application, they have not provided any information to
15 demonstrate that they satisfied the City's
16 requirements for protecting ESA-listed species.

17 So these are just a couple of examples of
18 key areas where Tesoro has pushed this application
19 forward without providing the fundamental information
20 that the public, as well as the City, needs in
21 evaluating whether the proposal is consistent with the
22 City's code. Thank you very much.

23 CHAIRMAN LYNCH: I have a quick question.
24 You mentioned that under the critical area ordinance,
25 you flagged the geological hazardous area. I know

1 it's in the written testimony, but could you please
2 list the other three provisions that you think are
3 areas of concern?

4 MS. GOLDBERG: Absolutely. Right.

5 So the Applicant recognized the three --
6 there are four areas. They describe that in the
7 pre-application report. It's the wetlands, the flood
8 plane hazard area, and the fish and wildlife
9 conservation area.

10 CHAIRMAN LYNCH: Thank you.

11 MR. TOREM: Any other questions? All right.
12 Thank you. Mr. Grady.

13 MR. GRADY: Good evening. My name is Matt
14 Grady. Can you guys hear the microphone here? I know
15 everyone's been having different varying degrees of
16 success, so I want to be as successful instead of, you
17 know, the other side.

18 Welcome, Judge Torem and Chairman Lynch and
19 members of the council. My name is Matt Grady. I'm
20 testifying on behalf of the Columbia Waterfront, LLC.

21 As you may know, the Columbia Waterfront is
22 the developer for the new waterfront community along
23 the banks of the Columbia River down at the foot of
24 the Vancouver, Washington city.

25 The waterfront is located a little over

1 2 miles east of the proposed terminal and immediately
2 adjacent to the Port's Spur rail line, which are used
3 by all the trains headed towards the Tesoro/Salvage
4 terminal.

5 By way of background, I'm a senior project
6 manager with Gramor Development. I've worked there
7 for several years on the waterfront project alone,
8 with respect to the land use and planning development
9 issues.

10 I have over 29 years of experience in
11 planning and land use development experience in the
12 private and public sectors.

13 I'm also a member of the American Planning
14 Association and a certified member of the American
15 Planning Association.

16 Now, we'll find that RCW 80.50.090 (2)
17 requires EFSEC to conduct a public hearing subsequent
18 to the information of public comment to determine
19 whether or not the proposed site is consistent with
20 and in compliance with city, county or regional land
21 use plans or zoning ordinances.

22 Columbia Waterfront respectfully submits
23 that the Council does not have the information before
24 it at this time to make either part of this
25 determination. More information from the City and the

1 Applicant are needed before the Council can determine
2 whether the Tesoro/Salvage proposal is both consistent
3 with and in compliance with the City of Vancouver's
4 land use requirements.

5 For the following reasons, the Council
6 should keep the record open on land use consistency
7 and continue this matter until the Council and the
8 City and public have complete environmental and other
9 information about this proposal.

10 Two questions involved in this land use
11 sufficiency. First, is the use allowed? And second,
12 if so, under what conditions?

13 Simply reading the zoning code and the
14 application is not enough to answer these questions.
15 The anticipated impacts of the proposal must be
16 evaluated by the City in order to determine whether
17 all or part of the proposed activities can be carried
18 out in compliance with its land use codes and
19 requirements.

20 All proposed major land use developments in
21 the city are required to meet all of the applicable
22 provisions of the Vancouver Municipal Code.

23 And by way of an example, if the City were
24 the permitting agency for this application, the City
25 staff would review that application and materials and

1 issue a decision approving, approving with conditions,
2 or denying.

3 Well, Vancouver Municipal Code 20.270.020
4 states that all new developments and modifications to
5 the existing developments shall require site plan
6 review and approval prior to the issuance of any
7 building permits, establishment of any new uses, or
8 commencement of any site work on that site.

9 Well, here, in this example Tesoro proposal,
10 the code requirements are related to stormwater,
11 surface water, streets, fire, critical areas, and
12 shorelines, amongst other things which come into play
13 here.

14 So for example, the City has designated the
15 project site as a critical area for liquefaction,
16 which we just heard in their other testimony about
17 that. And the nature of these materials being handled
18 at the proposed facility present risks to complete --
19 the risk of catastrophic fire or explosions which must
20 be evaluated by the City's first responders.

21 The site is located on a shoreline of
22 statewide significance. So the Applicant must
23 specifically demonstrate that the proposal will
24 prevent irretrievable damage to the shoreline
25 environment of the Columbia River.

1 It's simply not enough for the Applicant to
2 state that the facility will be in compliance with the
3 comprehensive local, state and federal regulatory
4 requirements for facility design, construction,
5 operation, and contingency planning.

6 In addition, the proposed site is
7 inconsistent with and significantly impacts the City's
8 plan for transformation of its downtown waterfront
9 through the mixed-use project being developed by
10 Columbia Waterfront and the creation of a major public
11 park.

12 The impacts of the Tesoro proposal on this
13 redevelopment are outlined in Colombia Waterfront's
14 SEPA scoping comments, which we ask be considered in
15 this proceeding. We are submitting a copy of my
16 comments here tonight, along with our SEPA scoping
17 comments.

18 In conclusion, there are only a few of these
19 issues and impacts that must be resolved before the
20 Council and the City can determine whether or not the
21 proposed site for the distribution facility is
22 consistent with and in compliance with city land use
23 plans or zoning ordinances.

24 Furthermore, the public needs this
25 information in advance of a land use consistency

1 determination in order to provide meaningful public
2 testimony to you, the Council.

3 The Council should continue this matter and
4 keep the record open on its land use consistency
5 determination until the Environmental Impact Statement
6 for the project is complete and the City has all of
7 the information it needs to do its consistency and
8 compliance reviews.

9 Thank you for my time in front of you. And
10 I have a copy of what I just said to you guys for the
11 record.

12 MR. TOREM: If you'll hand that to
13 Mr. Posner.

14 At this time -- I had called a list of folks
15 that had signed up to testify. Is there anyone on
16 that list or anyone else present tonight that wants to
17 express the desire to intervene and be a full party in
18 the adjudication that's coming up in the months ahead?

19 All right. Seeing none, then what I'm going
20 to do is ask each of you to stand when I call your
21 name and stay standing.

22 Ms. Talburt, is there anyone on the sign-up
23 list in the back that I need to call?

24 MS. TALBURT: No, Your Honor.

25 MR. TOREM: All right. So I'm going to ask

1 the remaining, I think it's eight people, to stand
2 when I call your name. I'll stand up as well, and I
3 will swear all of you in together, and then we'll take
4 your testimony.

5 First, Mr. Don Steinke, Chris Connolly,
6 Karen Axell, DenMark Wichar -- is it Marla or Maya
7 Nelson?

8 MS. NELSON: Marla.

9 MR. TOREM: Marla Nelson. Thank you.
10 Cathryn Chudy, Judy Hudson, and Tim Rajeff -- thank
11 you -- and Noreen Hine.

12 All right. Thank you. I'm going to give
13 you all the oath of witness: Do each of you solemnly
14 swear or affirm that all testimony you will provide to
15 the Council in tonight's land use proceeding will be
16 the truth?

17 (Citizens concurred.)

18 MR. TOREM: All right. Thank you. You've
19 all been sworn. Mr. Steinke, if you'll come forward.

20 And I want each of you to remember, again,
21 tonight, with the broad scope of issues, if you can do
22 the Council and yourselves the courtesy of sticking to
23 the land use and as much as you can, cite to the
24 Vancouver Comprehensive Plan or Vancouver Municipal
25 Code, we'll know that you're on target.

1 If you don't know those particular code
2 numbers, that's fine. But if you stick to land use, I
3 won't have to interrupt you. Mr. Steinke.

4 MR. STEINKE: Thank you for letting me
5 speak.

6 I don't know if you've seen a photograph of
7 the Columbia Waterfront Development, but I made three
8 copies and I was hoping Mr. Posner might make them
9 available to you.

10 The Columbia Waterfront Development has been
11 Vancouver's vision for 15 years. Many people have
12 worked on committees to establish this vision. And
13 it's not just a dream. We've already spent
14 \$45 million on it. Governor Gregoire was down here at
15 a ribbon-cutting ceremony for this development. And
16 our mayor -- I hope I'm quoting him right -- in The
17 Columbian last fall said that the Vancouver Waterfront
18 Project is of utmost importance, not only to Vancouver
19 but to Southwest Washington, end quote.

20 There is no way that an oil terminal would
21 be compatible with that land use. Investors will
22 perceive risk and put the money into safer projects.
23 If the oil terminal is built, the chance of success
24 for the Vancouver Waterfront to succeed would be slim.

25 Ask any real estate agent. Don't need

1 rocket science. I hate to use that expression, but
2 it's the only one I had. So either we're going to
3 have a dangerous oil terminal which will degrade
4 property values and provide only a few jobs, or we'll
5 have a beautiful waterfront project providing far more
6 jobs that will make us proud. But we can't have both.

7 So save our vision, the waterfront project.
8 Deny the permits for the oil terminal. Thank you.

9 MR. TOREM: Chris Connolly.

10 MS. CONNOLLY: Hi. Thank you for letting us
11 speak.

12 I'm not going to be real specific tonight,
13 but I have dealt with Comprehensive Plan issues
14 before. And from what I've read, parts say
15 "sustainability" several times in your Comprehensive
16 Plan. Sustainability: Meeting today's needs without
17 compromising the ability of future generations to meet
18 theirs with a range of goals and strategies to reduce
19 greenhouse gas emissions and facilitate efficient
20 energy and resource use.

21 I think this is a really important part.
22 It's more emotional than it is specific land use
23 issues, but it does give the vision, the idea of what
24 your vision was.

25 In light of the history of oil, when you

1 look at these applications and look if they're
2 compatible with your zoning and your Comprehensive
3 Plan, do you look at the history of the Applicant? Do
4 you recognize the history of oil is unequivocally
5 incompatible with what your vision is?

6 Big oil has a very bad history. Big oil is
7 getting to be too big to govern, it seems. In other
8 countries, they've burned down whole villages.

9 I realize this isn't an issue that falls
10 under zoning exactly, but I would hope that when you
11 look at these sorts of applications, you recognize
12 that these are issues that this kind of industry
13 brings with it because -- because it's getting to be
14 too big to govern.

15 It -- it -- it lobbies hard to gut things
16 like zoning laws, Comprehensive Plans. It lobbies
17 hard to gut environmental issues.

18 It is important that we recognize that when
19 they have an oil spill, they don't necessarily tell us
20 the truth. They don't clean up their acts. Is this
21 compatible with your vision that you have for your
22 City?

23 I see you trying to consider whether or not
24 I'm staying on track, but I think this is an emotional
25 issue also that needs to be addressed.

1 When you talk about vision, do you look at
2 past? Do you look at how well you can get them to
3 comply with your requirements? Can you get the oil --

4 MR. TOREM: Ms. Connolly, I'm going to
5 interrupt you at this time. We have to focus on the
6 land use codes that were adopted at the time. And I
7 appreciate the emotional and the broader issues.
8 We've heard your concerns on that.

9 Do you have any more specific issues about
10 the site itself?

11 And the other issues, I encourage you to
12 bring up again at a future public hearing, perhaps at
13 the Draft EIS.

14 MS. CONNOLLY: I have brought them up
15 before, and it seems like it's not what anybody wants
16 to hear. They want the, did you address in your
17 Comprehensive Plan these sorts of possibilities.

18 MR. TOREM: Tonight that's what we need, by
19 law and by regulation. I encourage you to come back
20 when we have the Draft EIS. That's when it will be
21 appropriate to hear these broader concerns, okay?

22 MS. CONNOLLY: Well, I would hope it would
23 be appropriate at all times to hear the broader
24 concerns, in light of what those broader concerns are.

25 And the oil industry is a very, very

1 difficult industry for a board like you to deal with.

2 So I appreciate the short amount of time,
3 and I will probably be back.

4 MR. TOREM: I hope you will, and we'll have
5 you at another hearing when those topics are on point.

6 Next is Karen Axell.

7 MS. AXELL: Thank you so much for giving us
8 the opportunity to speak tonight.

9 My name is Karen Axell. I'm with the
10 Rosemere Neighborhood Association. I'm here speaking
11 on our behalf.

12 I guess the first thing I'd like to say is
13 we would request that you would defer your
14 determination until the EIS and public comment.
15 You've heard that a number of times. I heard even the
16 counsel for the terminal said it seemed premature to
17 adequately judge the land use merits. And it seems
18 like that speaks volumes.

19 So we request that you defer your decision
20 until more information in the EIS can be determined.

21 Beyond that, I'd like to agree with
22 Mr. Potter's statement from the City that the
23 consistency is not just governed by zoning
24 requirements themselves, but the greater picture. And
25 reading the City of Vancouver Municipal Code Title 20

1 land use and development, it states, in part --
2 there's three things. 1, Commit to responsible
3 stewardship of the city's natural resources, including
4 airsheds, watersheds, wildlife habitats, and open
5 space, with special attention paid to protecting the
6 Columbia River with its contribution to the city's
7 visual character history and economic base.

8 The second thing, Provide the city's
9 residents with quality urban services, while at the
10 same time preserving the character of existing
11 neighborhoods and enhancing the livability of the
12 area.

13 And to that point, there are a number of
14 other area/subarea plans that address the same thing
15 in areas that are adjacent to the Port's area; the
16 Fruit Valley subarea plan, the Vancouver City Center
17 Vision subarea plan, which was adopted in 2007.

18 And all of these plans speak to the
19 livability and enhancing the quality of life in the
20 neighborhoods in those areas, and we wish you would
21 take those into consideration as well.

22 I guess that's it. Thank you very much.

23 MR. TOREM: Thank you, Ms. Axell.

24 Mr. Wichar.

25 MR. WICHAR: My name is DenMark Wichar. I'm

1 a science teacher. Live in the Hough neighborhood.

2 Not being a city planner, attorney, or
3 related professional but a concerned citizen and
4 neighbor of the Port, I read Title 20 of the Vancouver
5 Municipal Code with interest and with awe.

6 Chapter 20.110 gives me even more certainty
7 that the oil facility proposal is inappropriate. I
8 cite VMC Title 20, Chapter 20.110, Subsection B, which
9 is called community goals.

10 Community goals, quote: The Development
11 Code contains regulations to manage the community's
12 growth in a manner that ensures efficient use of land,
13 preserves natural resources, and encourages good
14 design. Specifically, the code is designed to
15 implement adopted policies including: 1, Support the
16 creation of a responsive, open government that
17 operates in partnership with all citizens for the
18 purpose of maximizing participation, as well as with
19 city employees to ensure that they are empowered to
20 effectively meet citizens' needs.

21 MR. TOREM: Mr. Wichar, you don't have to
22 read the whole sentence with one breath. We'll save
23 that challenge for another speaker.

24 MR. WICHAR: Okay. Number 2, Celebrate the
25 city's cultural diversity and heritage.

1 Number 3, Provide diverse employment
2 opportunities within the community, maintaining a
3 healthy business climate that also ensures that the
4 city's residents will be provided a full range of
5 goods and services.

6 And number 4, Commit to the responsible
7 stewardship of the city's natural resources including
8 airsheds, watersheds, wildlife habitats and open
9 space, with special attention paid to protecting the
10 Columbia River, with its contribution to the city's
11 visual character, history, and economic base.

12 Number 5, Provide the city's residents with
13 quality urban services while at the same time,
14 preserving the character of existing neighborhoods and
15 enhancing the livability of the area.

16 And number 6, Integrate land use and
17 transportation planning to ensure the efficient use of
18 land, promote use of alternative modes of
19 transportation, and reduce congestion and air
20 pollution. This is -- unquote. This is in the code.

21 I suggest that the oil terminal proposal
22 does not measure up to these community goals,
23 especially goals 3 through 6. If built, the oil
24 transfer and storage facility would not -- and the
25 many consequent long oil trains -- would not maintain

1 a healthy business climate; would not help steward
2 airsheds, watersheds, wildlife habitats and open
3 space; would not allow special attention to Columbia
4 River and contribute to the city's visual character,
5 history and economic base; would not preserve the
6 character of existing neighborhoods and enhance
7 livability of the area; would not reduce congestion
8 and air pollution.

9 Regardless of the convolutions of the
10 remainder of Title 20, this present proposal does not
11 pass the fundamental standards of the first chapter,
12 as specifically demonstrated at prior hearings and
13 will be demonstrated at future hearings.

14 Not only does the proposal not measure up to
15 community goals, it actually threatens them. The
16 premise of "nothing can go wrong" is empty. Just one
17 incident of something major going wrong could destroy
18 all cited goals, while even the mere day-to-day
19 presence of the terminal would not support them.

20 I ask for rejection of the permit.

21 MR. TOREM: Thank you, Mr. Wichar.

22 Ms. Nelson.

23 MS. NELSON: Good evening. My name is Marla
24 Nelson, and I'm with the Northwest Environmental
25 Defense Center. We join in the comments submitted by

1 Friends of the Columbia Gorge and Columbia
2 Riverkeeper, but we do not intend to intervene.
3 That's why I'm also giving these comments tonight as
4 testimony.

5 I echo much of the testimony that has come
6 before me, but I want to highlight two important
7 points.

8 First, the Washington State Environmental
9 Policy Act prohibits EFSEC from making a land use
10 compatibility determination prior to completion of the
11 Environmental Impact Statement. Understanding that
12 the Council has stated it does not intend to make a
13 determination tonight, I still believe that the legal
14 implications of this are important and critical to
15 understand.

16 EFSEC has explained that its land use
17 determination will be made according to EFSEC's
18 statute and rules, but not Washington Administrative
19 Code 197-11. This ignores the fact that EFSEC's own
20 actions, including any determination on land use
21 compatibility, is expressly subject to SEPA's
22 regulations under Washington's Revised Code 80.50.180,
23 which states, in part, that -- and I quote -- nothing
24 in this section shall be construed as exempting any
25 action of the Council from any provision of chapter

1 43.21C RCW.

2 EFSEC's determination under WAC 463-26-110
3 is precisely the type of action subject to SEPA under
4 RCW 43.21C and WAC 197-11.

5 Second, I want to turn to, regardless of
6 whether the construction site itself is heavily zoned,
7 I want to focus on the City of Vancouver's
8 Comprehensive Plan, highlighting one crucial aspect of
9 the comments -- the written comments that we submitted
10 tonight, namely that the proposal is not sustainable.

11 The City's Comprehensive Plan states a goal
12 to develop integrated land use patterns and
13 transportation networks that foster reduced vehicle
14 miles traveled, and associated greenhouse gas
15 emissions. That's at C-16.

16 Tesoro's proposal and application, however,
17 at Section 4.3, states that construction and operation
18 of the facility will result in additional motor
19 vehicle traffic, including construction traffic, such
20 as workers, equipment, deliveries, as well as
21 operational traffic, such as employees, visitors and
22 deliveries.

23 In addition, the proposal contemplates four
24 train arrivals per day, which adds up to more than
25 1,700 train arrivals per year, more than 3,400

1 additional trains slicing through the city of
2 Vancouver, which in turn is likely to increase vehicle
3 congestion and pedestrian obstructions.

4 The proposal also adds 730 marine vessel
5 transits to and from the facility per year, not
6 counting the tug barges and associated marine traffic.

7 For similar reasons, the proposal conflicts
8 with the City's goals for urban centers and corridors
9 and neighborhood livability. Specifically, at
10 CD-4(e), dramatically increasing rail traffic through
11 the heart of downtown Vancouver is expressly
12 inconsistent with the City's goal to establish
13 connectivity within each center and to other areas to
14 provide accessibility.

15 Finally, it would negate any attempt by the
16 City, and I quote from the Comprehensive Plan, to
17 maintain and facilitate development of stable,
18 multiuse neighborhoods that contain public spaces in a
19 well-planned, safe pedestrian environment. Thank you.

20 MR. TOREM: Thank you, Ms. Nelson.

21 Cathryn Chudy.

22 MS. CHUDY: Good evening. Let me say at the
23 beginning that I'm concerned that your website did not
24 list this hearing, as far as I could see. The last
25 event or meeting associated with -- or hearing

1 associated with this project was May 14th, so -- I'm
2 not on the mailing list, and I don't get The
3 Columbian. But I do have sources that let me know
4 that this is happening. But I think there are a lot
5 of other people who might miss it if they go to the
6 EFSEC website. I'm not sure, if I didn't know where
7 to find it.

8 But anyway, that aside, I appreciate the
9 opportunity to give input, and I would like you to
10 consider the following: First, I agree with everyone
11 else who's asked you to hold another land use
12 consistency hearing to be scheduled once the
13 Environmental Impact Statement is available.

14 The EIS is necessary and legally required
15 for the public, the City, and the Council to review
16 the proposal for land use consistency.

17 Second, Washington law requires EFSEC
18 hearings to be open to consideration of the
19 environmental impact of the proposal, WAC 197-11-535.
20 The project would adversely affect air quality, water
21 quality, and endanger our communities and special
22 places like the Columbia River Gorge National Scenic
23 Area.

24 The Tesoro/Salvage terminal proposal is
25 incompatible with surrounding land uses. For example,

1 a billion dollar investment planned to revitalize
2 Vancouver's waterfront and reconnect the community
3 with our Columbia River. This massive oil terminal
4 and daily influx of oil trains would undermine this
5 project.

6 And then number 4, the oil terminal would be
7 inconsistent with the Lewis & Clark Discovery Greenway
8 Trail, a segment of which has been planned to be sited
9 immediately adjacent to the proposed oil tanker
10 storage site. Thank you.

11 MR. TOREM: Thank you, Ms. Chudy. We will
12 look into the website. I believe it was listed, but
13 we'll make sure that it's more obvious for public
14 hearings. We'll figure out a way. I appreciate the
15 feedback.

16 MR. POSNER: Judge Torem, I'll just note for
17 the record, it is on our website. It is noted under
18 project highlights on our home page.

19 It may have been that you looked under the
20 calendar of events, and it wasn't listed there. But
21 it is right on our home page. So I apologize for
22 that.

23 MR. TOREM: We will try to make sure that
24 you don't have to get The Columbian to get notice.
25 We'll do better next time. But I bet you there's a

1 sales associate here in the crowd tonight that can
2 work with you.

3 All right. Judy Hudson from the League of
4 Women Voters.

5 MS. HUDSON: My name is Judy Hudson, and I'm
6 representing the League of Women Voters of Clark
7 County. My statement is going to be very brief.

8 The League of Women Voters of Clark County
9 has endeavored to find and understand the facts and
10 issues with this process of the Tesoro/Salvage
11 application. So we have a little different approach
12 because we like to do a lot of studying, a lot of fact
13 finding.

14 But one thing we've discovered, you can say,
15 well, yes, this is an industrial build, a construction
16 project that would comply with the Port. But it's a
17 huge scope, and that's one thing we've really found
18 out. Very large project, and a huge impact to our
19 community.

20 Now, I know we're talking about land use,
21 but briefly I would like to say in the Vancouver
22 Comprehensive Plan, one of the things that's stated in
23 there is that you should minimize the adverse impact
24 to adjacent areas, you know, neighborhoods, Vancouver
25 Lake. You know, they talked a lot about that.

1 And we really feel like -- and I don't know
2 if the process is that you should do an impact
3 statement along with this so when you're looking at
4 it, you can really take a broad look at it. But we're
5 very concerned that there could be a devastation to a
6 lot of things that are around this area because of the
7 size of the project and because of the type of the
8 project.

9 And so that would be our input. And again,
10 we'll be back, looking for facts and probably coming
11 back to hearings. Thank you.

12 MR. TOREM: Thank you, Ms. Hudson.

13 Tim Rajeff.

14 MR. RAJEFF: Thank you, Your Honor. I'm not
15 prepared to speak at this time. Thank you.

16 MR. TOREM: All right. Thank you.

17 The last person that I have sworn in tonight
18 is Ms. Noreen Hine. And I've had at least one person
19 called to my attention who would still like to speak
20 after Ms. Hine. So, ma'am, if you'll come up.

21 MS. HINE: I want to thank you for this
22 opportunity.

23 This is democracy at work, hopefully.
24 Anyway, Vancouver is a very exceptional town. I came
25 from a small town back east in Stafford, Connecticut.

1 And when I saw Vancouver, I felt like I was back home
2 where I grew up. It was a small community, but a nice
3 community. And the environment was great. No
4 problem. That's why I fell in love with Vancouver.

5 Then the next thing I know is, not many
6 years ago, I'd lived in this area and I could smell
7 natural gas. And I paid attention to it, and it
8 wasn't just a one-time thing. It was constant.

9 So I went ahead and I contacted one of my
10 elected officials. And I said, there is a natural gas
11 leak in Vancouver Lake. He trusted me. He had it
12 checked out and sure enough, the natural gas line pipe
13 coming down in Vancouver was leaking.

14 MR. TOREM: Ms. Hine --

15 MS. HINE: And later I was told that it
16 could have caused a big explosion.

17 MR. TOREM: Ms. Hine, are you going to
18 testify about the land use issues?

19 MS. HINE: Yes, I am.

20 MR. TOREM: I want to make sure we're going
21 that way.

22 MS. HINE: I'm using that as an example.
23 And the problem was solved.

24 But now here we have something very similar
25 going on. Something dangerous in our town, in our

1 area, that could cause earth -- well, we have
2 earthquakes -- it could cause a lot of damage. Kill a
3 lot of people.

4 We should be proud of our environment, what
5 we have, take care of it, embrace it, and not pollute
6 it and destroy it. Thank you.

7 MR. TOREM: All right. Thank you, Ms. Hine.

8 Are there others that want to testify
9 tonight? I have one name. That's Lisa Ross.

10 Are there others that still want to provide
11 testimony on land use tonight? Sir, your name?

12 MR. JANDER: Marc Jander, J-A-N-D-E-R.

13 MR. TOREM: All right. If -- any others?
14 All right. Seeing that, I'm going to have Ms. Ross
15 and Mr. Jander, if you'll both rise, I'll give you
16 both the oath at once.

17 Do you, Lisa Ross, and do you, Marc Jander,
18 each solemnly swear or affirm that all testimony you
19 will provide before this council in this proceeding
20 will be the truth?

21 (Citizens concurred.)

22 MR. TOREM: Ms. Ross, if you'll come
23 forward. And then Mr. Jander, you'll be our last
24 speaker tonight.

25 MS. ROSS: Hi. I just wanted to remind the

1 Council of a few things and correct a few things that
2 have been stated.

3 First of all, the oil that is projected to
4 be moving through the port and is currently moving
5 through the port is not big oil. It's small, private
6 companies.

7 And also, the Council is allowed to make
8 their decision tonight, I believe, because of what the
9 Supreme Court said. If you agree with them that you
10 can make it on the zoning or the -- or the land use,
11 then you can make a decision tonight.

12 Now, that local ordinance that said that the
13 zoning includes all of the land use sounds like it
14 rolls it all up into one, and it might be in conflict
15 with the other ordinance, and that might need to be
16 resolved.

17 The tracks that will actually be moving the
18 oil through the port once it gets into the city will
19 be moved to type 2 tracks as opposed to the type 1
20 tracks, and that's an even better track so that
21 they're even flatter, even smoother so that everything
22 will be okay. I learned that at a port meeting.

23 And also, they're talking about it being
24 congruent with the goals of Vancouver and the City.
25 And if our goal is to be a leader in North American

1 energy distribution and thereby helping American
2 people with American ships with American crews, then
3 this oil -- I mean, this terminal is what we should
4 pursue. And this oil is a game changer for our
5 country and for our continent.

6 MR. TOREM: Thank you, Ms. Ross.

7 Mr. Jander.

8 MR. JANDER: I thought I'd jump in, sir,
9 because I live here. I live right down there
10 (indicating) in a building that looks out on the
11 water. When that new affair goes in, I'll lose my
12 view, but I have a view right now. And I also have a
13 view of the trains. And in the six years that I've
14 lived there -- and you probably know this -- the unit
15 train level has gone up through the sky to the dismay
16 of the Amtrak train that comes in every morning and is
17 usually now two, three, four hours late.

18 But the land use of those tracks is that the
19 trains stop right out in front of my apartment. Three
20 engines, two engines sometimes. And they sit there
21 and idle, for some reason, some clearance to get into
22 the yard. And you know every oil train, every coal
23 train, every wheat train stops there.

24 Now, I know this much. I'm not going to buy
25 stock in that new building or set of buildings. I

1 don't want to look out my window and see these trains
2 cooking away in front of me. So -- but that doesn't
3 bother me because I'm 200 meters away, and I probably
4 won't be living there.

5 I'm dismayed that we would consider this
6 number of trains going through this town, and it's
7 going to probably double from what it is now.

8 I would encourage you to come visit me
9 sometime -- I'll have cocktails, what have you. I'm
10 on the fourth floor. -- and just watch for a couple of
11 hours, this process. Just feel it in your gut. This
12 is Bayonne, New Jersey, mini Bayonne, New Jersey being
13 built out here. It's a heck of a shame, such a nice
14 town as this is going to have that imposed upon them.

15 Thank you for this quick jump in here.

16 MR. TOREM: And thank you, Mr. Jander, for
17 the invitation.

18 MR. JANDER: Coffee in the morning, though.

19 MR. TOREM: I know the Council in its
20 adjudication will anticipate a site visit. I'm not
21 sure we can do that, but it's a good way to go.

22 That concludes our public testimony for the
23 night. I want to turn it back over to our chairman,
24 Bill Lynch, and see if there's any closing comments or
25 advice to those that are gathered here tonight on the

1 way ahead.

2 CHAIRMAN LYNCH: Thank you, Judge Torem. As
3 you heard at the start of this meeting and which was
4 reinforced, the purpose of tonight's meeting was very
5 limited. There will be more opportunities for the
6 public to comment, particularly when we have our Draft
7 Environmental Impact Statement available.

8 And I'm going to ask Mr. Posner, can you
9 give us a ballpark for when you think that Draft EIS
10 would be available?

11 MR. POSNER: At this time, I don't have a
12 specific time when it would be available, but I expect
13 within the next couple of months or sometime this
14 summer.

15 CHAIRMAN LYNCH: So it would be unlikely
16 that it would be available before July; is that
17 correct?

18 MR. POSNER: I don't believe it would be
19 available for distribution to the public by then.
20 It's possible, but I don't believe so.

21 CHAIRMAN LYNCH: Okay. Thank you. So stay
22 tuned to our website if you -- in order to keep track
23 of things. Again, we also have a mailing list. If
24 you're not on the mailing list, there's an opportunity
25 to sign up on our mailing list tonight.

1 And I guess I'll just go ahead and adjourn
2 the meeting. Thank you.

3 (The meeting adjourned at 7:25 p.m.)
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1 CERTIFICATE

2
3 I, Marcel N. Johnson, Certified Shorthand Reporter
4 for Oregon and Washington, and a Registered
5 Professional Reporter, do hereby certify that the
6 proceedings were had before me at the time and place
7 set forth herein; that at said time and place I
8 reported in stenotype all testimony adduced and other
9 oral proceedings had in the foregoing matter; that
10 thereafter my notes were transcribed using
11 computer-aided transcription under my direction; and
12 the foregoing transcript constitutes a full, true and
13 accurate record of such testimony adduced and oral
14 proceedings had and of the whole thereof.

15 Witness my hand and stamp at Portland, Oregon, this
16 9th day of June, 2014.

17
18
19 _____
20 Marcel N. Johnson
21 Oregon Certified Shorthand
22 Reporter No. 02-0380
23 Washington Certified Shorthand
24 Reporter No. 0002947
25