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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
Friday, August 1, 2014
1:35 P.M.

SPECIAL COUNCIL MEETING
Verbatim Transcript of Proceeding
Transcribed from Digital Recording

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A P P E A R A N C E S

Councilmembers Present:

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

Local Government and Optional State Agencies:

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

Staff in Attendance:

Stephen Posner, EFSEC Manager
Jim LaSpina, Siting Specialist
Tammy Talburt, Commerce Specialist 1
Sonia Bumpus, Siting Specialist
Kali Wraspir, Administrative Assistant
Joan Aitken, Office Assistant 3

Assistant Attorney General:

Ann Essko, Assistant Attorney General

Guests in Attendance:

Irina Makarow, BergerABAM
Nathan Baker, Friends of the Columbia Gorge
Mark Anderson, Department of Commerce

1 OLYMPIA, WASHINGTON, AUGUST 1, 2014

2 1:35 P.M.

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

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7 CHAIR LYNCH: So let's go ahead and convene the
8 special meeting of the Energy Facility Site Evaluation Council.

9 And today is August 1, 2014, and the purpose of this
10 meeting is to address the land use consistency order that the
11 Council had directed Staff to prepare at our last public
12 hearing.

13 And before we have further discussion on that, I
14 would like to hear a little more -- kind of an overview from
15 that from our Assistant AG, Ann Essko.

16 Oh, excuse me. Before we do that, how about if we
17 have the Staff call the roll? Thank you.

18 MS. TALBURT: Department of Commerce?

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

20 MS. TALBURT: And Department of Ecology?

21 MR. STEPHENSON: Cullen Stephenson here.

22 MS. TALBURT: Fish and Wildlife?

23 CHAIR LYNCH: Mr. Stohr is excused.

24 MS. TALBURT: Department of Natural Resources?

25 MR. HAYES: Andy Hayes is here.

1 MS. TALBURT: Utilities and Transportation
2 Commission?

3 MR. MOSS: Dennis Moss is here.

4 MS. TALBURT: Local Governments and Optional State
5 Agencies:

6 Department of Transportation?

7 City of Vancouver?

8 MR. SNODGRASS: Bryan Snodgrass here.

9 MS. TALBURT: Clark County?

10 MR. SWANSON: Jeff Swanson is here.

11 MS. TALBURT: Port of Vancouver?

12 Chair, there is a quorum.

13 CHAIR LYNCH: Thank you. And is there anybody else
14 on the phone that wishes to identify themselves? I don't
15 believe we're opening the phone up for other people for this
16 hearing, but just thought I'd ask.

17 No? Very good.

18 So, Ms. Essko, do you want to please give us an
19 overview of where we left off last time and where we are now?

20 MS. ESSKO: Yes. Good afternoon, Chair Lynch and
21 Members of the Council. At the Council's July 15th meeting, the
22 Council directed Staff to prepare a proposed order that did two
23 things: first, finds the site consistent and in compliance with
24 the City's land use plans and zoning ordinances; and, two, states
25 that the order does not preclude the Council's consideration of

1 other issues during the rest of the Council's process. These
2 other issues that are not to be precluded by the order include,
3 but are not limited to: offsite impacts, shoreline management,
4 stormwater, critical area ordinances, service availability in the
5 case of a spill or fire, impact on other neighborhoods, or spill
6 avoidance.

7 The Staff has prepared a proposed order that
8 emphasizes the narrow scope of EFSEC's land use decision in
9 accordance with the Council's directive, and also emphasizes the
10 fact that the order does not preclude EFSEC's later
11 consideration of other substantive issues. The order gives
12 basic background information on EFSEC's proceedings and on the
13 testimony and other correspondence received by the Council.

14 The order also has a section devoted to the question
15 raised by the requests for delay that the Council received. The
16 order explains five things in response to these requests for
17 delay: first, the order explains that SEPA does not require an
18 EIS before the City considers the narrow question of land use
19 consistency; second, the order says that SEPA does not require
20 an EIS before EFSEC makes a narrow land use decision; third, the
21 order says that the record does not support a conclusion that
22 the public had insufficient time to prepare comments on the very
23 narrow question before the Council; fourth, the order discusses
24 the City's Type II process and concludes that it does not apply
25 to this sort of decision and as a corollary, that the City had

1 adequate time to comment on the narrow land use issue before
2 EFSEC; fifth, and, finally, the order says that the hearing
3 notice was adequate.

4 The order then addresses land use consistency in
5 several steps: first, the order defines the three key terms in
6 EFSEC's statute. Those terms are: land use plan, zoning
7 ordinance, and the phrase "consistent and in compliance"; second,
8 the order identifies the pertinent portion of the City's
9 comprehensive plan as the land use map and associated
10 definitions in Chapter 1 of the plan; third, the order
11 identifies the pertinent important portions of the City's zoning
12 ordinances as the zoning map, the development restrictions and
13 associated definitions; fourth, the order identifies the
14 pertinent test for consistency as being whether pertinent local
15 land use provisions, quote, prohibit, unquote, the site, quote,
16 expressly or by operation clearly, convincingly, and
17 unequivocally; fifth, the order applies the pertinent test and
18 concludes that the site is consistent and in compliance because
19 the pertinent land use provisions do not prohibit the site
20 clearly, convincingly, and unequivocally.

21 To the contrary, the plan designates the area of the
22 site as industrial and allows the IH, heavy industrial subtype
23 intended for intensive industrial manufacturing, service,
24 production, or storage, often involving heavy truck, rail, or
25 marine traffic, or outdoor storage and generating vibration,

1 noise, and odors. The site is zoned IH heavy industrial, which
2 is appropriate for intensive industrial uses such as
3 warehousing, freight movement, and railroad yards. Proper
4 activities in the zone include the use of raw materials,
5 significant outdoor storage, and heavy rail traffic. Permitted
6 uses within the zone includes storage and movement of large
7 quantities of materials or products outdoors and uses associated
8 with significant rail traffic.

9 Accordingly, the proposed order concludes that the
10 site is consistent and in compliance with local land use plans
11 and ordinances. It concludes that the applicant has met its
12 burden of proof demonstrating that the site is consistent and in
13 compliance. And the order states that nothing in the order
14 precludes the raising of issues during the adjudication, the
15 process of adopting an environmental impact statement, or the
16 issuance of environment permits with respect to on or off-site
17 impacts or mitigation of those impacts.

18 The proposed order also contains a concurring opinion
19 from Bryan Snodgrass, the City's representative to the Council,
20 emphasizing, again, the narrow scope of the Council's land use
21 decision.

22 Thank you. That's the end of my description of
23 what's in the proposed order for the Council to consider.

24 CHAIR LYNCH: Thank you.

25 Any questions for Ms. Essko?

1 And I understand -- I think I heard that we are
2 joined on the phone by another Councilmember.

3 Do you please want to identify yourself?

4 MS. MARTINEZ: Hi, there. This is Christina Martinez
5 with Washington State Department of Transportation.

6 CHAIR LYNCH: Welcome. What you missed a minute of
7 was an overview of where we were in developing this order from
8 our Assistant AG, Ann Essko, but we have not yet begun the
9 discussion of the order as a Council.

10 And I would like to just start off by saying thank
11 you for all the -- to all the Councilmembers for your engagement
12 and attention for developing this particular order, and we could
13 not have put this order together without the very hard work of
14 our Assistant AG, Ann Essko. And you can tell that a lot of
15 work went into this because there's more than a hundred
16 footnotes, and it shows just the thoroughness of -- of the work
17 that was -- went into in analyzing the law, the legislative
18 history, the cases, and the particular facts that were involved
19 in this case.

20 And one thing is that I think that we -- that came
21 out of the discussion by the Council last time was that we
22 really did want a narrow order, and I think this particular
23 order reflects that. The numerous places in this particular
24 decision, it makes it clear that parties aren't precluded from
25 raising other issues as part of the adjudication, part of the

1 SEPA process, or part of the permit issuance, and it states
2 throughout including, but not limited to, a number of issues.
3 We didn't think it was appropriate for us to issue every -- to
4 list every conceivable issue that could be brought up, because
5 we think that's more for the parties to do in this case, but we
6 just wanted to make sure that we weren't limiting by this order
7 issues that people might be interested in raising other than the
8 very narrowness of this particular decision.

9 And I guess at this point in time, I'll just open it
10 to other Councilmembers to -- regarding this order. You've
11 already directed the Staff to prepare this order. And this, I
12 think, reflects that decision, but I open it up for any further
13 comments.

14 Councilmember Moss?

15 MR. MOSS: Thank you, Mr. Chairman. I just want to
16 comment briefly that I think the order was very nicely prepared.
17 Having written one or two of these myself, I can -- I can
18 understand just how much work went into producing this, how
19 thorough it is, it's well documented, and I'm perfectly
20 satisfied with it and prepared to -- well, I don't guess we sign
21 it. You only. I'm prepared to have Chairman Lynch sign it on
22 our behalf.

23 CHAIR LYNCH: Thank you.

24 Anyone else care to comment?

25 Mr. Stephenson?

1 MR. STEPHENSON: Thank you, Chairman. I agree this
2 should be a narrow order. I made a motion that was rather
3 broad, and I'm happy that it's been narrowed down. I'm just
4 making sure that the broadness is still okay and just want to
5 discuss that a bit because I think what we're asking, at least
6 from my chair -- not your chair, but my chair -- is to say
7 there's a bunch of other issues out there, and I want to make
8 sure they're going to be taken care of.

9 And it sounds to me, like in all the rest of what
10 we've got here in the document, that we're still allowing those
11 to be taken care of in the adjudication, in the SEPA, in the
12 permitting, and I just want to affirm that so I'm comfortable.

13 CHAIR LYNCH: That's correct. We are allowing those
14 other issues to be raised. I think your motion took up four
15 pages of transcripts from the -- no, I'm just kidding, but we
16 thought it was more appropriate instead of laundry listing every
17 potential issue because we didn't want to create an inference
18 that the Council had a concern with something. It was just
19 we -- or we just wanted to make sure that we weren't precluding
20 anybody from raising issues.

21 And so I think this order does that, and people will
22 be able to raise issues in other parts of the process.

23 MR. STEPHENSON: Thank you.

24 CHAIR LYNCH: Ms. Green-Taylor, you had a comment?

25 MS. GREEN-TAYLOR: Yes. Thank you, Chair.

1 I just wanted to concur with the opinions that the
2 other Councilmembers have expressed about the quality of the
3 analysis in the order, and I appreciate the narrow scope that is
4 described in the order. I think it is supported by
5 straightforward interpretation of our law and the Court's
6 decisions in the past. And at the same time I'm looking forward
7 to learning more about what the City's concerns are with regard
8 to their shoreline management plan and some other -- other
9 planning tools.

10 CHAIR LYNCH: Thank you.

11 Any other comments?

12 I would also like to thank --

13 MR. SNODGRASS: Oh, Bryan Snodgrass here. I just
14 really quickly want to echo thanks for the Chair, as well as
15 Staff and Ann's work in drafting the order. It is very thorough
16 and very narrow.

17 CHAIR LYNCH: Thank you, Mr. Snodgrass, and I was
18 just ready to compliment you on your working with the
19 Councilmembers and the Staff on coming up with language that was
20 satisfactory to you. And the -- your concurrence, I think,
21 demonstrates that close attention needs to be focused on the
22 narrowness of this decision, and I think that does a good job of
23 doing that.

24 And with that, I will entertain a motion that the
25 Council issue the decision as written.

1 MR. MOSS: So move.

2 CHAIR LYNCH: Do we have a second?

3 MS. GREEN-TAYLOR: I'll second that.

4 CHAIR LYNCH: It's been moved and seconded that EFSEC
5 issue Council Order No. 872, the order determining land use
6 consistency regarding the Tesoro Savage project.

7 All those in favor, say "aye."

8 MULTIPLE SPEAKERS: Aye.

9 CHAIR LYNCH: Opposed?

10 Motion carries.

11 And is there any further business in front of us
12 today?

13 Mr. Stephenson, you looked like you wanted to add
14 something.

15 MR. STEPHENSON: I'm just wondering without a
16 reporter here, could we please note that -- okay. Great.

17 CHAIR LYNCH: Yeah. We're all set with recording
18 this proceeding, and with that, we are adjourned. Thank you.

19 MALE SPEAKER: Thank you.

20 MS. MARTINEZ: Thank you.

21 CHAIR LYNCH: Thank you.

22 (Whereupon, the meeting was adjourned at 1:50 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 12th day of August, 2014.

SHELBY KAY K. FUKUSHIMA, CCR

My commission expires:
June 29, 2017