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August 15, 2023

Horse Heaven Wind Farm v.

EF-210011

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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

| | | |
|------------------------------|---|----------------------|
| In the Matter of the |) | |
| Application of: |) | |
| |) | |
| |) | |
| Scout Clean Energy, LLC, for |) | Docket No. EF-210011 |
| Horse Heaven Wind Farm, LLC, |) | |
| |) | |
| |) | |
| Applicant. |) | |

ADJUDICATIVE HEARING
VERBATIM RECORD OF PROCEEDINGS

VOLUME 2

August 15, 2023

Lacey, Washington

(CLOSED-RECORD SESSIONS REDACTED)

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appearing remotely via Microsoft Teams.

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1 BE IT REMEMBERED that on Tuesday,
2 August 15, 2023, at 621 Woodland Square Loop Southeast,
3 Lacey, Washington, at 8:30 a.m., before the Washington
4 Energy Facility Site Evaluation Council; Kathleen Drew,
5 Chair; and Adam E. Torem, Administrative Law Judge, the
6 following proceedings were continued, to wit:

7
8 <<<<< >>>>>

9
10 JUDGE TOREM: Let's go ahead and be
11 on the record.

12 This is the Horse Heaven wind farm adjudication.
13 We're doing our housekeeping session for Tuesday,
14 August 15th, 2023. It is 8:30 in the morning.

15 Counsel, I can see Mr. Harper there, and I saw
16 Ms. Voelckers on the screen earlier.

17 Counsel for the applicant present?

18 How about Mr. --

19 MR. McMAHAN: Good morning, Judge
20 Torem. You were cutting out a lot in your query to us,
21 so just so you know.

22 JUDGE TOREM: Thank you.

23 MR. McMAHAN: But the applicant is
24 here and present. Thank you.

25 JUDGE TOREM: All right. Hopefully

1 we'll get the audio quality better. I think I was
2 leaning back to look at the screen there.

3 Mr. Aramburu, I can see you. Good morning.

4 And do we have counsel for the environment?

5 MS. REYNEVELD: Yes, I am here, Your
6 Honor.

7 JUDGE TOREM: All right. Good
8 morning, everyone.

9 Is the audio any better, Mr. McMahan?

10 MR. McMAHAN: I believe it is,
11 Judge. Thank you.

12 JUDGE TOREM: All right. I think
13 it's just a directional microphone question and keeping
14 straight ahead and looking at you guys as opposed to
15 trying to look at the court reporter behind me.

16 All right. My agenda for this morning is to talk
17 about a couple of motions that were outstanding and
18 decisions that are coming verbally during this
19 housekeeping session and also written, talk about some
20 screen sharing and exhibits and maybe allow for a quick
21 test of anybody's ability to do that today to take a
22 little bit of the burden off Ms. Masengale, and then
23 we'll turn to the scheduling question and
24 Ms. Perlmutter's health.

25 Does anybody else have agenda items we need to try

1 to cover before 9:00? And making sure if we don't
2 cover them before 9, we just take up housekeeping again
3 after today's business.

4 Mr. McMahan, anything else you want to add to the
5 agenda?

6 MR. McMAHAN: No, Your Honor. Thank
7 you.

8 And, unfortunately, we have not checked in with
9 Ms. Perlmutter today yet.

10 JUDGE TOREM: It's early.

11 MR. McMAHAN: It's early.

12 JUDGE TOREM: All right.

13 Mr. Harper, from the County's perspective?

14 MR. HARPER: Well, Your Honor, I
15 think you probably identified this already in your
16 comments, but if we could just do as a housekeeping
17 matter kind of a confirmation of which exhibits have
18 been requested for admission and admitted, that'd be
19 helpful.

20 JUDGE TOREM: All right. I think I
21 have a pretty good list of that. And I think it's good
22 practice, Mr. Harper, to do that on a running basis, so
23 we will do so.

24 Ms. Reyneveld, anything else to add to the agenda?

25 MS. REYNEVELD: Just briefly. The

1 parties did want for me to clarify who had been
2 involved in those kind of initial settlement
3 discussions in the spring for the record, so I was
4 going to provide some clarification on that.

5 JUDGE TOREM: Okay. We'll come to
6 that.

7 Ms. Voelckers, anything that the Yakama Nation
8 wants added today?

9 MS. VOELCKERS: Good morning. Thank
10 you, Your Honor. Yes, we have reached out to
11 Mr. Ganuelas and Mr. Neutzmann, who were scheduled to
12 be sworn in tomorrow and were -- they have made
13 themselves available the second half of this morning to
14 do that today since they are now the only ones, I
15 believe, on the schedule for tomorrow, and no party has
16 identified them for cross-examination.

17 So we would like to propose that they be called
18 today rather than doing all this tomorrow just for
19 their swearing in.

20 JUDGE TOREM: I'm making a note of
21 that. Thank you.

22 And, Mr. Aramburu, anything else for the
23 housekeeping part of our discussion?

24 MR. ARAMBURU: No. I think it might
25 be a good idea, if it's possible each day, for -- that

1 we get a running list of the exhibits so that we know
2 what the official version is that's being kept.

3 JUDGE TOREM: All right. Thank you.
4 I know that Ms. Masengale is keeping a master exhibit
5 list. And there's no reason that I don't think we
6 could share that or at least a version of that with all
7 the parties. I'll check with her to make sure there's
8 not any EFSEC internal information on the version that
9 we're keeping. But from what I've seen, it should be
10 an easy request, Mr. Aramburu.

11 MR. ARAMBURU: Okay. Thank you.

12 JUDGE TOREM: Okay. Let me turn to
13 the first item on my list.

14 Ms. Voelckers, you had supplied me, about a week
15 and a half, maybe two weeks ago, with your proposed
16 order on the motions to supplement the record with the
17 three Fish and Wildlife discovery depositions and also
18 Mr. Aramburu's motion separately to admit the Dave
19 Kobus deposition.

20 There were no objections to that by the parties
21 that I was made aware of, and I think your draft order
22 referenced that. And I think we talked about that at
23 Prehearing Conference No. 4. So I wrote up or edited
24 the version you sent me, Ms. Voelckers. It was a great
25 start. That should be coming out in writing sometime

1 this morning. Ms. Owens is working on that as we
2 speak.

3 On the motion to compel -- I'll move to the next
4 item on my list -- I wanted to give you essentially an
5 oral ruling on that rather than spend the time writing.
6 And if you're going to take notes, this is a good time
7 to start on this, the motion to compel filed by
8 Tri-Cities C.A.R.E.S.

9 My notes indicate that on July 28th, Mr. Aramburu
10 filed the motion to compel certain documents to be
11 produced by the applicant. The motion was based on an
12 impasse that was reached during discovery. And in
13 quick summary, the documents and the motions he's
14 trying to compel production of are meteorological data;
15 information about the applicant trying to do their
16 interconnections with BPA, the Bonneville Power
17 Association, and -- or Administration; and the
18 estimated production of the various turbines, and
19 essentially was questioning some of the commercial
20 viability aspects of the proposed project. And it may
21 have been seeking proprietary data, some indication of
22 that being discussed during testimony prefiled by a
23 Witness Poulos, P-o-u-l-o-s.

24 That was on a Friday afternoon. And the following
25 week, on Tuesday, August 1st, the applicant filed its

1 opposition. And the applicant indicated there were
2 four requests for production that they opposed. And
3 they were: No. 1, based on the July 28th order that
4 took BPA interconnection topics essentially off the
5 table for this adjudication.

6 They also, under RFP No. 2, cited to the Whistling
7 Ridge case and the same order that I just referenced
8 that I issued on July 28th. That particular RFP was
9 looking for wind resource potential, and the applicant
10 contended that I had made that not a topic for the
11 adjudication in the previous order.

12 And looking at the Whistling Ridge previous
13 prehearing conference order that was issued in that
14 matter, making these kind of inquiries essentially
15 not -- it's a business decision, and it'd be based on
16 proprietary information.

17 Request for Production No. 3 was opposed because
18 it went into energy production of the turbines, and the
19 applicant asserted again proprietary information there.

20 And, finally, for the Request for Production
21 No. 5, the applicant said that looking for a cost per
22 kilowatt hour on what the savings or cost to the
23 consumer might be was another commercial viability
24 issue and not within the realm of EFSEC's mission or
25 jurisdiction.

1 I looked at the Residents Opposed to Kittitas
2 County and EFSEC matter that came out from the supreme
3 court, otherwise known as the ROKT case, R-O-K-T, and
4 it ruled according to 80.50.040, Sub 2, that under that
5 statute, the economic viability of a proposed project
6 was not relevant. And the quote that I found
7 persuasive there in favor of the applicant's arguments
8 was as follows:

9 "As economic analysis does not relate to
10 environmental or ecological concerns, we" -- being the
11 supreme court -- "believe that EFSEC was within its
12 authority to refuse to review the economical viability
13 of the Kittitas Valley Wind Power Project."

14 In the Whistling Ridge case, Administrative Law
15 Judge Bob Wallis, on behalf of the Council, took the
16 same approach. His Prehearing Order No. 11, which is
17 also labeled as Council Order No. 855, took a fairly
18 careful and conservative approach to discovery,
19 particularly of confidential and sensitive information.

20 And in the Whistling Ridge case, that order
21 followed the Kittitas Valley precedent from the supreme
22 court and denied discovery based on the relevance of
23 that information to the adjudication and the
24 sensitivity of the proprietary data and information.

25 So my ruling denying the motion is that I won't

1 break with the precedent established by the ROKT court
2 or the ruling more recently in the Whistling Ridge
3 matter.

4 My prehearing orders in this case have already
5 indicated that certain economic viability information
6 is not germane or helpful to Council members or their
7 work to develop a recommendation to the governor. The
8 discovery of BPA interconnection issues, wind resource
9 potential data, and energy production and cost or rate
10 analysis data is not authorized in this matter. So,
11 therefore, Mr. Aramburu, the TCC motion to compel those
12 documents is denied.

13 I'm going to see if the court reporter can get me
14 a short little extract, a noncertified version of the
15 transcript of what I just read to you. If I do receive
16 that from the court reporter, I'll forward it on to the
17 parties or ask Ms. Masengale to post it as a summary of
18 the ruling that I just gave you on those matters.

19 On that note, as far as posting transcripts, I
20 wanted to let you know that Andrea Grantham has already
21 taken the hard work of taking yesterday's video of the
22 hearing, many hours that it was, getting it
23 appropriately edited and ready for prime time, and it's
24 already up and linked with the YouTube video from
25 yesterday's proceeding. So we'll be asking any Council

1 members that might have missed anything to already go
2 back and sort out and watch the portion of the video
3 that they missed.

4 All right. It's now 8:41. I wanted to ask
5 parties that might have cross-examination exhibits for
6 today if they wanted to test sharing one or more of
7 those at this time.

8 My look at the schedule says that when we get to
9 Ms. Cooke's testimony that, Mr. McMahan, Scout Clean
10 Energy may be doing at least a half an hour of
11 cross-exam. Did you intend to use any exhibits?

12 MR. McMAHAN: We do not, Your Honor.

13 JUDGE TOREM: All right.

14 Mr. Aramburu, you had some other examination of
15 this witness today as well. Do you have any exhibits
16 you're planning to share?

17 MR. ARAMBURU: No.

18 JUDGE TOREM: All right. And for
19 the Yakama Nation, Ms. Voelckers, any exhibits?

20 MS. VOELCKERS: No exhibits today,
21 Your Honor.

22 JUDGE TOREM: Okay. That's going to
23 make Ms. Masengale's job that much easier this morning.

24 If that changes for some reason or any of the
25 other parties decide they have questions, we'll go from

1 there.

2 If anybody wants to test screens later today after
3 the adjudication portion of the day is done, let me
4 know, and we'll stick around for some further testing.

5 All right. Let me turn to the last item that I
6 had, and then we'll pick up the parties' items.

7 Mr. McMahan, on Ms. Perlmutter's health, I hope
8 it's going well. You'll give us an update as we do.

9 What other proposals did you and Ms. Stavitsky
10 perhaps work out with the other parties for
11 rescheduling the Jansen, Rahmig, and perhaps the McIvor
12 examinations?

13 MS. STAVITSKY: Hi, Your Honor.
14 I'll take that one.

15 So we checked in with our Scout witness Morgan
16 Shook, who is currently scheduled to testify on next
17 Tuesday, the 22nd. And he is available for questioning
18 tomorrow. So, again, we're trying to find ways to sort
19 of front-load this week to fill the time that
20 Mr. Rahmig and Mr. Jansen were -- and Mr. McIvor were
21 going to take. So if that works for everyone else, he
22 could be slotted into tomorrow's morning session.

23 JUDGE TOREM: All right. I'm just
24 looking for where Mr. Shook had originally been on the
25 schedule.

1 MS. STAVITSKY: Yeah. So he was --
2 his testimony was set to begin Tuesday, August 22nd, at
3 11:40 a.m. and span past lunch to 2:30.

4 JUDGE TOREM: All right. Thank you.
5 I've got that now. I skipped right past him. And if
6 my eyes are crossing this early in the morning, that's
7 not a good sign.

8 Ms. Stavitsky, I wanted to let you know there's a
9 little bit of interference when you're speaking. I
10 don't know if it's, again, a microphone issue that I
11 was having, but it will be easier for the court
12 reporter if both of us keep it slow and deliberate
13 here.

14 Do any of the parties have a concern if Mr. Shook
15 moves the testimony from Tuesday, August 22nd? Looks
16 like there's at least an hour and a half to two hours
17 scheduled for his testimony if we move that to tomorrow
18 on Wednesday, August 16th.

19 Mr. Harper, any concern with that?

20 MR. HARPER: No concern.

21 JUDGE TOREM: Ms. Voelckers, any
22 concern?

23 MS. VOELCKERS: Your Honor, I would
24 just like to flag a general concern if we're going to
25 keep shifting around witnesses. This is being proposed

1 to us in real time. So we were not approached by the
2 applicant about these changes since yesterday's
3 hearing.

4 And so I don't want to speak for the other parties
5 that have expressed a desire to cross-examine
6 Mr. Shook, because we will not be, but we are concerned
7 about continuing shifting of schedules.

8 So, I mean, I just have a general concern that --

9 JUDGE TOREM: Noted.

10 MS. VOELCKERS: -- (indiscernible)
11 to respond.

12 JUDGE TOREM: Noted. But I'm
13 guessing because you're not going to have any
14 cross-examination questions, we're going to shift
15 witnesses. Just make it a continuing objection,
16 Ms. Voelckers. I sympathize, but I got to do what I
17 got to do. And it was the parties that asked me to
18 give up, I'll remind you, two days of hearing time.

19 I worried about this. We gave them up, and they
20 were on the -- on the front end, not on the back end.
21 So I can't add time back in. Work with me on this,
22 please.

23 Ms. Reyneveld, any concerns?

24 MS. REYNEVELD: I have no concerns,
25 Your Honor. Thank you.

1 JUDGE TOREM: Mr. Aramburu, you were
2 the other one with the more extensive cross-examination
3 for next week on Tuesday.

4 Can you have it ready to go tomorrow? I know
5 we're going to have additional time today, and I know
6 that other parties had seemed to think that the
7 applicant could magically take over Ms. Perlmutter's
8 duties by tomorrow.

9 Can you accelerate what you had planned for next
10 Tuesday, please?

11 MR. ARAMBURU: We'll work with the
12 parties and with the witness, and we'll be ready to go
13 for Mr. Shook tomorrow.

14 JUDGE TOREM: All right. Consider
15 it done.

16 Ms. Stavitsky, do you have a time suggested for
17 tomorrow?

18 MS. STAVITSKY: Your Honor, I would
19 propose that we can slot Mr. Shook in right where we
20 were supposed to take up with Mr. Rahmig tomorrow, so
21 that would be at 9 a.m.

22 JUDGE TOREM: Okay. And that may
23 carry us to about 11 a.m. And that would be a good use
24 of the time we had scheduled up to 11:30. And we'll
25 have already moved up the Ganuelas and Nuetzmann

1 swearing in.

2 If there's anything else we can use up until for
3 another hour tomorrow, you'll let me know. But, again,
4 work that out with the parties that have the
5 cross-examination prescheduled. And, again, I'll note
6 the Yakama Nation's continuing concern for the
7 shuffling that we're doing. It's difficult, and I
8 appreciate if all the parties would just work with each
9 other and essentially stipulate we're going to try to
10 get this done in the eight days we have. It was pretty
11 efficient yesterday. I do appreciate that. But we're
12 working in real time, as you said, and trying to keep
13 the information flowing.

14 All right. That's taking care of that.

15 Was the applicant aware of any other scheduling
16 issues impacted by Ms. Perlmutter's ongoing health
17 concern?

18 MS. STAVITSKY: No, Your Honor.

19 JUDGE TOREM: And --

20 MS. VOELCKERS: Your Honor.

21 JUDGE TOREM: Hold on one second.

22 Ms. Reyneveld, as to Mr. McIvor, have you let him
23 know what's going on there?

24 MS. REYNEVELD: I have. And my
25 understanding is Mr. McIvor is flexible. And so if we

1 needed to slate him into Tuesday or Wednesday, that
2 would also be a possibility. But I would have to
3 confirm.

4 JUDGE TOREM: Okay. Keep working
5 with the other parties. And we'll see how that one
6 comes out.

7 Ms. Voelckers, you had something else?

8 MS. VOELCKERS: Thank you, Your
9 Honor. I just wanted to finish my statement earlier,
10 which would be a request that we do determine who is
11 going to be going in that time slot on Tuesday as soon
12 as possible rather than waiting till next week.

13 JUDGE TOREM: And we will have
14 another housekeeping opportunity either this afternoon
15 after our proceeding. That may not be particularly
16 informative, but definitely tomorrow morning we will
17 get an update.

18 All right. Let's move on to your documents.

19 Ms. Masengale, do you happen to be on the line
20 already?

21 MS. MASENGALE: Yes, Judge. This is
22 Lisa Masengale.

23 JUDGE TOREM: Do you have that
24 master exhibit list that you've been keeping up for me
25 and the rest of staff and the counsel?

1 MS. MASENGALE: I do. And I sent it
2 to the party e-mail list a few minutes ago. It's dated
3 with today's date, but it was last updated a little
4 after 5 p.m. last night.

5 JUDGE TOREM: And would you tell the
6 parties, please, how you're annotating the list as we
7 go to indicate what's admitted, rejected, or
8 particularly on the order yesterday, how Mr. Aramburu's
9 citizen and community member testimony was
10 recharacterized?

11 MS. MASENGALE: Absolutely.

12 So there's three columns a little to the -- to the
13 right of the middle. It'll make more sense if you have
14 it in front of you. But basically those columns are
15 added to the template that the parties are providing to
16 me, so it has some additional data in there.

17 And there's three columns basically indicating if
18 something was admitted, whether it was rejected or --
19 or stricken or if it has been withdrawn.

20 And so as a determination is made on the exhibits,
21 I am trying to update that in real time. And the notes
22 column is mostly for my reference, but parties may find
23 that helpful as well, indicating when something was
24 admitted or when something was stricken, or some of
25 them are notes for me about why it was a revised

1 exhibit.

2 So, again, that last column might make more sense
3 to me than to the parties, but I'm providing you with
4 the exact list that I am working off of right now.

5 JUDGE TOREM: All right. Thanks,
6 Ms. Masengale. And if the parties have questions about
7 that, I hope they'll e-mail and copy the other parties
8 so that everybody can benefit from any information that
9 you didn't just convey if it's not self-evident.

10 So hopefully, parties, that's going to work. And
11 I know Ms. Masengale, as she said, she's doing that in
12 real time. If she has time at the end of each day,
13 I'll ask that she send it out so you have it sooner
14 rather than the morning of, and for your own
15 housekeeping purposes, can keep tracking on what
16 exhibit were there.

17 Ms. Masengale, we had some cross-exam exhibits.
18 Are you adding those and indicating the ones that were
19 offered and ruled on?

20 MS. MASENGALE: That is correct. As
21 I receive e-mails with cross exhibits and the updated
22 exhibit list from parties with those cross exhibits,
23 I'm adding those in. And then as the parties move to
24 admit those, those are being indicated in there as
25 well.

1 JUDGE TOREM: And you and I spoke
2 yesterday just about the timing and, again, this
3 in-real-time item. Can you give the parties kind of a
4 best practice, at least notional best practice for them
5 to aspire to, to make -- help you help them?

6 MS. MASENGALE: Absolutely. I know
7 the -- the needs and the best practice for -- for the
8 parties and their legal counsel may be different than
9 for me, the records officer. But as the records
10 person, ideally, if I could get things at least by the
11 day before. In a perfect world, that way I have time
12 to appropriately add them to the main exhibit list and
13 have them ready, especially if I need to help parties
14 share their exhibits.

15 That way it's just a little bit tough. I can't
16 process e-mails if I'm sharing my screen. So just the
17 logistics of processing things that might arrive during
18 the hearings is a little complicated if things are also
19 arriving during the hearing as well that might need to
20 be referenced or shown on screen immediately.

21 So, if possible, from my perspective, it's great
22 if you can get them to me at least the night before,
23 but I understand for legal reasons you might not want
24 to do that. But from my perspective, it'd be super
25 helpful. So thank you.

1 JUDGE TOREM: And I want to
2 compliment Ms. Masengale, much as Mr. Harper did
3 yesterday, for really, really good work that she's
4 doing to help all of us keep this massive information
5 load going forward. It services the Council well.
6 And, Mr. Harper, no, you can't hire her away from
7 EFSEC.

8 All right. The Ganuelas and Nuetzmann testimony
9 being adopted today, anybody have objections to that?
10 I'm seeing some head nods "no." No objections.

11 So, Ms. Voelckers, what time would you think we
12 can take and adopt their testimony today?

13 MS. VOELCKERS: Thank you, Your
14 Honor. I think that we can stick to the schedule in
15 terms of Ms. Cooke's testimony and then have them adopt
16 it after she's done. We would just ask for a brief
17 break. But they -- they should be available starting a
18 little bit after 10.

19 JUDGE TOREM: Okay. That sounds
20 good.

21 We'll get a chance to break, then call them and
22 have them available.

23 And, Ms. Reyneveld, you had the last question
24 about the status of who was involved in settlement
25 items.

1 MS. REYNEVELD: Yes. Per the
2 parties' request, I just wanted to provide some
3 clarification for the record pertaining to the
4 settlement discussions between applicant and counsel
5 for the environment in the spring.

6 Upon review of my correspondence and meeting
7 invitations, I wanted to clarify for the record that
8 Yakama Nation was invited into and participated in a
9 meeting to discuss the proposal and provided a copy of
10 the settlement proposal, but TCC and Benton County were
11 not invited to these discussions. It was certainly my
12 intent to involve them had the settlement discussions
13 progressed or continued. And Mr. McMahan, I believe,
14 has now provided all parties with the settlement
15 proposal. Is that correct?

16 MR. McMAHAN: That is correct,
17 Ms. Reyneveld.

18 MS. REYNEVELD: That was my update.

19 JUDGE TOREM: Do parties have any
20 other questions for the record about the status and who
21 participated in those settlement items?

22 All right. Seeing none.

23 We've managed to push through an hour of material,
24 I think, in 25 minutes. Thank you for letting me push
25 hard on those.

Let's take a break until 9:00. We'll go on the record then, and we'll get started with Ms. Cooke's adoption of her testimony and cross-exam.

Thank you. We'll be back on here in about five minutes.

(Pause in proceedings from
8:55 a.m. to 9:00 a.m.)

JUDGE TOREM: Good morning,
everyone. This is Day 2 of our adjudicative hearing in
the Horse Heaven wind power project.

I'm going ask our staff today to just take a poll of who's here from the Council. I know we have one that's running late and will be listening in to the recording at a later time here.

And I see our witness is here already. Ms. Cooke,
good morning. We'll get to you very shortly.

If the staff could call the roll.

MS. SHILEY: When I proceed through the roll call, please be sure to state your name for the record as well as your status as present. Thank you.

EFSEC Chair.

COUNCIL CHAIR DREW: Kathleen Drew,
present.

MS. SHILEY: Department of Commerce.
Department of Ecology.

COUNCIL MEMBER LEVITT: Eli Levitt,
present.

MS. SHILEY: Department of Fish and
Wildlife.

COUNCIL MEMBER LIVINGSTON: Mike
Livingston, present.

MS. SHILEY: Department of Natural
Resources.

COUNCIL MEMBER YOUNG: Lenny Young,
present.

MS. SHILEY: Utilities and
Transportation Commission.

COUNCIL MEMBER BREWSTER: Stacey
Brewster, present.

MS. SHILEY: For the Horse Heaven
project: Department of Agriculture.

And Benton County.

All right. Judge Torem, that's who we have.

JUDGE TOREM: All right. So it
looks to me that Mr. Brost will have to review some of
the testimony at a later date, and I think it's Kate
Kelly for Commerce.

MS. GRANTHAM: Judge Torem, this is

1 Andrea Grantham. Really quick: For Department of
2 Commerce, it is Elizabeth Osborne now. She is our new
3 Department of Commerce Council member. She did inform
4 us that she will be running a bit late this morning.

5 Also, I do see Ed Brost's phone number online. It
6 is just muted. So he is here. I just -- Mr. Brost, if
7 you would like to try to unmute, you can do "#6" or
8 "*6" and see if you can confirm that you are present.

9 JUDGE TOREM: All right. We'll see
10 if Mr. Brost, at least if he's called in, we'll figure
11 out with him. Maybe Ms. Grantham can send another
12 e-mail and sort out any confirmation.

13 Let's go over the parties and make sure
14 everybody's present.

15 For the applicant today.

16 MR. McMAHAN: Your Honor, applicant
17 is present. Tim McMahan -- excuse me -- with --
18 with -- excuse me -- Emily Schimelpfenig and Ariel
19 Stavitsky.

20 JUDGE TOREM: Thank you,
21 Mr. McMahan.

22 For Benton County.

23 MR. HARPER: Good morning, Your
24 Honor. Ken Harper and Z. Foster for Benton County.

25 JUDGE TOREM: Counsel for the

1 environment.

2 MS. REYNEVELD: Good morning, Your
3 Honor. Sarah Reyneveld for counsel for the
4 environment. Thank you.

5 JUDGE TOREM: For the Yakama Nation.

6 MS. VOELCKERS: Good morning, Your
7 Honor, Shona Voelckers, Ethan Jones, and Jessica
8 Houston for the Yakama Nation.

9 JUDGE TOREM: And for Tri-Cities
10 C.A.R.E.S.

11 MR. ARAMBURU: Richard Aramburu for
12 Tri-City C.A.R.E.S. Thank you, Your Honor.

13 JUDGE TOREM: All right. Council
14 members, today's agenda, if you looked at the daily
15 schedule, I've already had a housekeeping meeting with
16 the parties and gone over some of the schedule
17 modifications that are necessary by moving the Jansen
18 and Rahmig testimonies to a later date, as well as
19 tomorrow's McIvor testimony that's scheduled at 10:30.

20 Just as I think you heard yesterday, we have some
21 questions of one of the attorney's health and
22 participating in cross and redirect of those witnesses.
23 Today we do have Michelle Cooke. She's scheduled here
24 at 9:00 for about an hour and a half to two hours of
25 examination. I hope you've read her testimony, which I

1 believe is Exhibit 2003.

2 Mr. Harper, is that correct?

3 MR. HARPER: That's correct, Your
4 Honor.

5 JUDGE TOREM: The parties have done
6 some shuffling, Council members, to see if we can adopt
7 certain testimony from the Yakama Nation's witnesses
8 tomorrow that were originally scheduled at 11:30 on
9 Wednesday, August 16th. Those would be for Leon
10 Ganuelas and Mark Nuetzmann.

11 Today when we take Mr. Ganuelas's adoption of his
12 testimony, much of it is subject to confidentiality
13 provisions, so my proposal to staff was that we attempt
14 to see, on kind of a low-threat environment
15 opportunity, how the procedures we've developed to move
16 us all into a breakout room for a closed-record session
17 might work.

18 So today when we're done with Ms. Cooke's
19 testimony and we get Mr. Ganuelas and Mr. Nuetzmann
20 together, I think what I'll do is take Mr. Nuetzmann,
21 have him adopt his testimony, and let him go, and then
22 Mr. Ganuelas, we'll all see how it works for us to go
23 into closed-record session to adopt his testimony, work
24 out any glitches on that today when we have a little
25 extra time. That way when we take a number of other

1 confidential matters in a closed-record session next
2 week it looks like, we'll have a better idea how that
3 all works and be able to be that much more efficient.

4 I think the only other update is the exhibit
5 running list that Lisa Masengale is updating in real
6 time has now been shared with the parties, so they'll
7 also be tracking, Council members, what we made sure
8 you understood yesterday afternoon for your purposes of
9 keeping score.

10 I think those are all the things that I covered
11 with the attorneys during housekeeping that I wanted
12 you to know about.

13 You'll also have seen that Ms. Grantham sent an
14 e-mail this morning to the service list linking to
15 yesterday's video of the entire hearing. So those
16 members that missed anything or think they need to
17 review anything on the video side can get it there.

18 Transcripts may take a little longer to hit the
19 website, particularly because we're using the same
20 court reporter for the bulk of this adjudicative
21 hearing. So in mercy to the court reporter, we're not
22 asking him to continue to work that many more hours
23 after what we do each day.

24 All right. Anything else from the parties by just
25 a raising of your hand electronically before I swear in

1 Ms. Cooke?

2 All right. I'm not seeing any.

3 I have one, looks like open microphone on a "509"
4 number. We'll see if staff -- it starts with a "53,"
5 something. If you can mute yourself, that'd be great.
6 Otherwise I'll have --

7 MS. GRANTHAM: Judge.

8 JUDGE TOREM: -- do that.

9 MS. GRANTHAM: Okay. Yeah, this is
10 Andrea. That was Ed Brost's number. Just letting you
11 know.

12 JUDGE TOREM: Okay. I know you had
13 manually maybe unmuted that. But I haven't heard
14 anything from Mr. Brost yet. And hopefully if he has a
15 question for Ms. Cooke, we can unmute him at that time.

16 MS. GRANTHAM: Sounds good.

17 (Witness Michelle Cooke
18 appearing remotely.)
19

20 JUDGE TOREM: All right. Not seeing
21 any other delays. Let me -- Ms. Cooke, I'm Judge
22 Torem. Good morning. I've got your --

23 **THE WITNESS: Good morning, Your**
24 **Honor.**

25 JUDGE TOREM: I've got your prefilled

1 testimony, Exhibit 2003_T, in front of me. And our
2 process is going to be that I swear you in, ask you to
3 adopt that testimony. Let us know if there's any
4 changes, modifications. And then I'll turn you over
5 for cross-examination, unless Mr. Harper, I think your
6 sponsoring witness, has anything else. So I'll ask
7 him, and then we'll go from there.

8 So if you'll raise your --

9 MR. HARPER: No, Your Honor. That's
10 fine.

11 JUDGE TOREM: -- right hand.

12 MR. HARPER: I'm sorry.

13 JUDGE TOREM: All right. Ms. Cooke,
14 if you'll raise your right hand.

15
16 MICHELLE COOKE, appearing remotely, was duly
17 sworn by the Administrative
18 Law Judge as follows:

19
20 JUDGE TOREM: Do you solemnly swear
21 or affirm that all the testimony contained in your
22 prefiled testimony, Exhibit 2003_T, and the rest of
23 your testimony provided today will be the truth, the
24 whole truth, and nothing but the truth?

25 THE WITNESS: I do.

1 JUDGE TOREM: All right. Now that
2 you've adopted your testimony, that exhibit can be
3 marked admitted.

4 (Exhibit No. 2003_T
5 admitted.)
6

7 JUDGE TOREM: Did you have any
8 modifications or updates you wanted to share before
9 cross-exam?

10 **THE WITNESS: I do not.**

11 JUDGE TOREM: All right. Then I'm
12 going to look at my schedule and see who has questions
13 first.

14 I believe Mr. McMahan from Scout Clean Energy has
15 questions for you, then Mr. Aramburu from Tri-Cities
16 C.A.R.E.S., and then Ms. Voelckers from the Yakama
17 Nation. After that, I'll see if anybody else from
18 Council members have questions as well as other parties
19 that didn't specifically list anything. And depending
20 on what's asked, I may have some questions for you as
21 well.

22 Mr. McMahan, we'll mute here in Lacey, and we'll
23 turn it over to you.

24 MR. McMAHAN: Thank you, Your Honor.

25 ////

CROSS-EXAMINATION

BY MR. McMAHAN:

Q Good morning, Ms. Cooke. I'm Tim McMahan. I'm lead counsel representing Scout Clean Energy in these proceedings. Thank you for being here today.

A Good morning.

Q Just to --

A And thank you.

Q Yes. Thank you.

And I just was -- I just violated what I was just about to say, which is yesterday Mr. Wendt and I tended to talk over each other a little too often. I'm sure I have 50 percent of that responsibility. So if I do that -- I will try not to -- and I think you and I can perhaps develop a vibe where that doesn't happen, so I promise to do my part there. And, yeah, I think that was kind of the main thing I just wanted to introduce. So let me know.

And I also tend to be a fast talker. I will try to discipline myself there as well. But if I go too fast -- I don't know -- show me a hand or something, and I'll slow myself down. All right?

A Okay.

Q All right. Thank you.

Ms. Cooke, getting into your testimony here, on

Page 10 of your testimony, you state that fragmentation from the project will cause the children of landowners to be less likely to -- and you're -- you're in quotes -- leave their non-farming-related jobs in order to renew the farming legacy, the legacy of farming.

Are you insinuating that it is the County's land-use policy or role to influence the succession planning of farming families?

A No. I -- no. I was not insinuating that at all. I was insinuating it's the scope of the County to practice good planning, that -- which leads not to the fragmentation of agricultural lands, which are economically important to our area. It's not a socio-impact to a certain family or demographic. It's the protection and conservation of the agricultural lands as a whole and keeping those from fragmenting.

Q And we'll get into this a little further.

So is it actually your testimony that this project, around 1 percent of the overall agricultural lands in the County, will in fact interrupt succession planning or make it more difficult for farmers to farm?

A I think it's -- it's a lot more likely, yes. Absolutely. Especially the farming portion, seeing as that a majority of the land that's going to be lost or the term of the lease is under solar, and you can't

1 **farm under solar panels. So, yeah, absolutely, I do**
2 **think that.**

3 Q For the solar facility. Okay.

4 Have you -- did you ever reach out to landowners
5 and farmers involved in the project to ask them what
6 their long-term plans were for their lands?

7 A **I didn't reach out to specific lease owners, as that**
8 **information was not made publicly available to myself.**
9 **I would have for sure if I would have known who those**
10 **lease owners were. But I did reach out to other people**
11 **that I know in the area and asked questions about their**
12 **practices and what they would do in a similar**
13 **circumstance.**

14 Q So you're saying you -- you had no idea who these lease
15 owners or landowners were that were involved in the
16 project, never?

17 A **I was never made aware of who they were or where to**
18 **find that information.**

19 Q Okay. Are you aware of any other Benton County
20 representative that reached out to landowners or
21 farmers who were involved in the project to ask about
22 their long-term plans for their lands?

23 A **I'm not aware, but it's not the scope of the County to**
24 **get involved with private leases between farmers and --**
25 **and developers. It would be unheard of -- it would be**

1 unheard of for me, my staff, or anyone else here at
2 the -- at the County to get involved or ask questions
3 about the nature of a lease or their impressions for
4 any development, whether it's this one, a subdivision,
5 or anything of -- of that nature.

6 Q So you are, in fact, not aware of any such outreach to
7 these landowners.

8 That's the answer to your question?

9 A No. Yeah, that's the answer to my question.

10 Q Okay. So in your testimony, Page 9, Lines 5 through
11 6 -- and if you need to pull that up, I'm fine with you
12 doing so.

13 A I'm -- can you also put that on the screen for us as
14 well?

15 Q You know, I don't have it on -- I'm not able to share
16 it on the screen. Ms. Masengale --

17 A You said Page 5, Lines 9 -- 5 through 6?

18 Q 5 through 9.

19 MS. STAVITSKY: We'll work to get
20 that on the screen.

21 MR. McMAHAN: If you need it on the
22 screen, we can pull it up, or if you've got it in your
23 hand, I think we can proceed.

24 JUDGE TOREM: All right. I
25 understand that Ms. Masengale is in the process of

1 pulling that exhibit up.

2 Ms. Cooke, if you wait for Mr. McMahan to finish
3 the question just half a breath, I think it's going to
4 make the gentleman to my right a little happier. It's
5 just --

6 **THE WITNESS: Okay.**

7 JUDGE TOREM: -- the nature of court
8 reporting. It's not a -- I have to tell a lot of
9 witnesses it's just not a normal conversation. It's
10 being taken down verbatim. Anything you and
11 Mr. McMahan can do on this dance and the other counsel
12 will help.

13 All right. And here comes your exhibit. We're
14 going to go to Page 5, Lines 5 through 7.

15 Thank you, Ms. Masengale.

16 Mr. McMahan, if you want to --

17 MR. McMAHAN: Thank you, Your Honor.

18 JUDGE TOREM: -- re-ask your
19 question.

20 MR. McMAHAN: Yes.

21 Q (By Mr. McMahan) In your testimony, Ms. Cooke, you
22 indicate -- and I'm quoting -- "The land is more
23 suitable for continuing farming industry in Benton
24 County than being put to use as a large industrial
25 project."

1 Is that your testimony?

2 **A Yes, as you can see clearly in the exhibit, that is my**
3 **testimony.**

4 **Q Shouldn't the property owners, themselves, be the ones**
5 **to determine how best to manage their farmlands and**
6 **their family legacy?**

7 **A That's an interesting question. Unfortunately, the**
8 **State of Washington mandates land-use planning**
9 **practices, which is our office's purview. So although**
10 **the line sometimes is contentious about private**
11 **property owners' rights and what they can and can't and**
12 **should and should not do with their property and what**
13 **the state law mandates the County to regulate, it's a**
14 **little contentious.**

15 And so for us as land-use planners to do -- uphold
16 what the State has charged us with, we have determined
17 these areas are suitable for farming as they are zoned
18 agricultural.

19 **Q Right.**

20 And, in fact -- and, in fact, farming will
21 continue on the wind energy site after the construction
22 of the facility, won't it?

23 **A Yes. Unfortunately, that's a minority of the property**
24 **that's going to be lost. You cannot farm under solar**
25 **panels, and that's a majority of the acres lost.**

1 Q I understand what you're saying.

2 So -- so you -- you -- are you insinuating that
3 the planning department should decide the destiny of
4 these landowners?

5 A The -- the County has zoned this as agriculture, and we
6 are maintaining those permitted uses, which are
7 agricultural in nature. We're not deciding what people
8 should and should not do with their property. There is
9 a list of allowed uses, and those are what are
10 permitted on the property. If someone wants to go
11 outside of that, then that would be not consistent with
12 what the State has mandated us to do in these areas,
13 and that would be going against our County code.

14 Q Is there anything that restricts renewable energy
15 development based upon the soil classification?

16 A Can you repeat your question?

17 Q Is there anything that restricts renewable energy
18 development on these lands based on soil
19 classification?

20 A I'm not aware that there is.

21 Q And isn't it true that, at least what I think I'm
22 hearing, is that you or the planning department decide
23 what is compatible for these landowners on behalf of
24 these landowners?

25 A We don't decide that. Our county code, which has been

1 **adopted into law, lays that out.**

2 Q But for this project, are you -- is it your role to
3 decide whether or not renewable energy is -- is allowed
4 as a compatible use on the wind facility portion of
5 this project?

6 A **For this project, it's EFSEC's role to decide whether**
7 **or not compatibility is there.**

8 Q Okay. All right. Good. Well, we agree on that, then.
9 So concerning the soils classification, is there
10 anything that restricts development on the land based
11 upon soil classification?

12 A **Not to my understanding. But the land was designated**
13 **as soil classification is a consideration, one of eight**
14 **considerations that -- that are used to designate ag**
15 **lands.**

16 Q And do you have knowledge of the farm soils on this
17 property, on -- excuse me -- on the -- on this -- on
18 the -- on the area that's proposed for development?

19 A **It's a very large area, so I'm not specifically aware**
20 **of what they are, but I did take an active role in our**
21 **ag lands reclassification, and I know that they're not**
22 **poor soils.**

23 Q But your testimony, you characterize this as prime
24 farmland, right?

25 A **Yes.**

1 Q Okay.

2 A Like I said, there's eight factors that go into --

3 Q Yes.

4 A -- prime farmland, not just soils.

5 Q I understand that.

6 Prime farmland designation, however, is typically
7 referencing USDA NRCS farmland classification, correct?

8 A Are you speaking as far as soils go?

9 Q Yes. So far as soils go.

10 A That's one of eight tests to designate ag lands of
11 long-term significance.

12 Q Yes. And I'm talking about your testimony that calls
13 this project prime farmland.

14 You do state that in your testimony, don't you?

15 A Yes.

16 Q And isn't it true that for this particular soil -- and
17 I know you come from a farming family.

18 Isn't it true that for the Ritzville silt loam
19 soils, which is about 92 percent -- I can -- I can
20 represent to you 92 percent of the project lease
21 boundary, is classified as prime farmland if irrigated,
22 correct?

23 A No, that's not correct. It has to do with water
24 availability, including precipitation.

25 Q So you're disputing that definition from USDA NRCS data

1 concerning the -- the characteristics of prime
2 farmland?

3 **A As I said, it's one of eight criterias. And water and**
4 **precipitation is another criteria. So those factored**
5 **together. So if there's enough precipitation for**
6 **dryland wheat farming, those soils, that area, are**
7 **suitable as an agricultural area.**

8 **Q And you are aware that none of this property is**
9 **irrigated, correct?**

10 **A I am aware.**

11 **Q All right.**

12 **A But it does have good precipitation levels.**

13 **Q Well, what is the annual precipitation per year in this**
14 **area?**

15 **A In -- in this area? I believe it's -- well, and I**
16 **can't say this for sure on the record, but the last**
17 **time I read the memo, I want to say it's four to six**
18 **inches of rain a year, roughly.**

19 **Q So rather arid, isn't it?**

20 **A Not for dryland wheat. That's enough.**

21 **Q But it is arid land up there, isn't it?**

22 **A It's dryland. It's not arid.**

23 **Q Okay. Right.**

24 Is it your -- oh, let's see.

25 So is your testimony that this location, Benton

County, differs from other dryland wheat areas in the Northwest is just somehow unique, or is it pretty -- typical?

A I'm not familiar with other dryland wheat operations in the Northwest as I'm not from there.

Q Okay. Where are you from? I'm sorry. That's interesting.

Where are you from?

A I'm from Prosser, Washington, the Horse Heaven Hills.

Q Okay.

A But I'm not familiar with the other dryland wheat regions of Washington State, such as the Palouse, because I'm not from there, and I don't know --

Q All right.

A -- what their yields are like.

Q I understand. Thanks for the clarification there.

What about for Nine Canyon? Are you aware that that is dryland wheat, unirrigated, on the Nine Canyon wind farm?

A I don't know what the history of Nine Canyon was, but given the topography of where it's located, I would have -- I would have assumed that it was not dryland. My assumption is it was probably rangeland, because it's on top of a hill. But I don't know that for a fact, because I wasn't in the country at the time it

1 **was developed.**

2 Q So you are speculating with that answer, aren't you?

3 A **You're asking me a question I can't answer, so yes.**

4 Q Yes, you're speculating. Thank you.

5 Have you visited other wind farms in Oregon or
6 Washington?

7 A **I have. On a --**

8 Q Which wind farms?

9 Excuse me.

10 A **I haven't --**

11 Q I'm sorry.

12 A **I haven't on a professional level. I have on a
13 personal level. I've visited the one out in Bickleton.**

14 Q Okay. In -- in Klickitat County, then?

15 A **In Klickitat County.**

16 Q All right. And have you discussed farm operations with
17 any farmers out in the Klickitat County area?

18 A **I have. I...**

19 Q And have you discussed whether or not -- well, have you
20 discussed with those farmers in Klickitat County
21 whether their farming operations are in any way
22 disrupted by the renewable energy development that's
23 hosted on their lands?

24 A **I haven't -- I haven't had conversations with the
25 actual landowners who have the turbines on their**

1 properties. I've had conversations with adjacent
2 landowners in the area, so I can't answer that
3 question.

4 Q All right. Thank you.

5 Do you dispute that farmers customarily farm
6 around local topography, including, you know, for
7 example, canyons, sloped areas?

8 I mean, it's pretty typical, isn't it, for farmers
9 to farm around topographic features?

10 A It is. And in our area, it's a very small percentage
11 of the -- of the land. Because the Horse Heaven Hills
12 is a mesa and very flat, we do have some areas of
13 shrub-steppe habitat and critical areas in the -- in
14 the drainages, and they do farm around those areas.

15 Q And the farmers can customarily farm around, oh, power
16 poles, ditches, many things, right?

17 A Typically in the Horse Heaven Hills, they don't have
18 any of those, as ditches are not and irrigation is not
19 up there, and all of the power poles run along the road
20 right-of-way infrastructure, so they don't need to go
21 around those necessarily. Those are on the periphery
22 of their operations.

23 Q So you're saying that entire area up on the Horse
24 Heaven Hills is all flat as a table.

25 Is that what you're saying?

1 **A** It's predominantly flat. It's not flat as a pancake,
2 but it's predominantly flat. There are some rolling
3 hills, but not to any great extent. The slopes are on
4 the fringe.

5 **Q** In your -- I want to just turn to your testimony about
6 support services.

7 And is it your testimony -- I believe it's your
8 testimony that due to Horse Heaven, somehow the
9 agricultural economy will wither, that farmers will let
10 the land go, all because of the construction of the
11 solar and wind projects.

12 Is that your testimony?

13 **A** Can you reference where you're finding that at in my
14 testimony?

15 **Q** Page 6.

16 **A** And what line?

17 **Q** I am not sure about that.

18 MR. McMAHAN: Okay. All right.

19 Yeah, could you scroll down, please.

20 Yeah, I'm going to come back to that. I'm sorry,
21 Ms. Cooke. I want to come back to that, so if you
22 could just hold on that, we're going to -- we're going
23 to revisit that in a minute.

24 **Q** (By Mr. McMahan) Is it your opinion that this 1
25 percent of Benton County farms proposed for wind and

1 solar development will actually destroy agricultural
2 support services?

3 **A Can you define what you mean by destroy agricultural**
4 **support systems?**

5 Q Well, agricultural support industries, agricultural
6 support systems. Things like selling fertilizer,
7 seeing things like selling equipment, tractors.
8 Agricultural support services, which you have -- have
9 provided testimony about.

10 Is it your opinion that this project, at 1 percent
11 or so of the local agricultural economy, will somehow
12 undermine those agricultural services?

13 **A Well, I'm not exactly qualified to speak to economic**
14 **development and farming practices such as that. I do**
15 **believe that this project will impact those services.**

16 Will it destroy or undermine? Those are very
17 aggressive words, and I don't -- I think that's taking
18 it a little too brusque. But I do believe it will have
19 impact to the support services of those types of
20 businesses that help the farmers out in that area.

21 Q And do you deny that new revenues from the wind leases
22 will spur further investments by these landowners?

23 **A In what capacity are you speaking?**

24 Q Any capacity.

25 Will the new revenues for these landowners, with

1 new generation of additional income, is it your opinion
2 that that -- that that will not spur further
3 investments?

4 **A Further investments into what? Stocks or into their**
5 **land or what?**

6 Q Into their land. Into their farming operations.
7 Into buying --

8 **A I -- I can't speak to what the farmers are --**

9 Q Excuse me.

10 **A -- going to do --**

11 Q Excuse me.

12 **A -- with their payouts.**

13 Q Excuse me. We're not going to talk over each other.
14 Tractors, any equipment.

15 **A I can't --**

16 Q Go ahead.

17 **A -- speak to that. I don't -- I don't know what the --**
18 **the personal financial agenda is for -- for the farmers**
19 **getting the payouts.**

20 Q All right. Well, let's try this.

21 With lease revenues, do you deny that farmers will
22 not make additional investments in things like repair
23 and replacement of old equipment?

24 **A I would hope so. But that's speculation on my part,**
25 **that I'm hoping that they will put the money back into**

1 the land and continue and improve their practices. I
2 don't know that. That's speculation on my part.

3 Q Enhancement of crop -- of crop -- of protection of
4 crops?

5 A Is that a question?

6 Q Yes.

7 A I don't understand the question. Sorry.

8 Q Purchase of more fertilizer?

9 A Again, that's speculation. I have no idea how the
10 farmers are going to spend their money, if they even
11 ferti- --

12 Q So you don't --

13 A -- if they fertilize. I have no idea.

14 Q So you don't think the lease revenues are going to spur
15 these kinds of investments?

16 A I didn't say that. I said it was speculation. I don't
17 know how they're going to spend their money. I would
18 hope so. As a -- as a child of a farmer, yes, I would
19 hope so, but I can't say.

20 Q So you don't know whether -- you speculate -- you can't
21 speculate. I guess you can't guess that these
22 landowners, with their lease revenues, might invest in
23 additional technology, changes in farm practices,
24 beneficial tools in farming production.

25 As a farmer, as a child of farmers, do you believe

1 that that actually won't happen, that those investments
2 actually won't be made in these farms --

3 MR. HARPER: Your Honor.

4 Q (By Mr. McMahan) -- as a consequence of lease
5 revenues?

6 MR. HARPER: I'm objecting at this
7 point, Your Honor. This has gone on long enough. This
8 seems to be repetitive, argumentative. It's just
9 badgering the witness. Mr. McMahan is testifying.
10 He's not examining at this stage.

11 JUDGE TOREM: Mr. McMahan, I have to
12 agree with Mr. Harper. I think you've made your point.
13 It's becoming argumentative.

14 MR. McMAHAN: All right. All right.

15 JUDGE TOREM: So that on that basis,
16 it's sustained.

17 MR. McMAHAN: All right. Thank you,
18 Your Honor. I'll move on.

19 JUDGE TOREM: Mr. McMahan, if you
20 wanted to go back, if -- if it's still germane --

21 MR. McMAHAN: Yes.

22 JUDGE TOREM: -- to your inquiry,
23 the portion you were looking for about support starts
24 at the bottom of Page 6, Line 24, and continues to
25 approximately that level on Page 7. Maybe you've

1 already gone through it with your questions, but that
2 was, I think, what you were looking for.

3 MR. McMAHAN: All right.

4 MS. STAVITSKY: You got to those
5 questions.

6 MR. McMAHAN: Okay. Yeah, I think I
7 did end up getting to those questions, Your Honor.
8 Thank you.

9 JUDGE TOREM: All right. What's
10 next?

11 MR. McMAHAN: All right. Thank you.

12 Q (By Mr. McMahan) Ms. Cooke, you provided testimony
13 about the potential loss of agricultural economy or
14 agricultural products.

15 And your testimony really only references dryland
16 wheat, doesn't it?

17 A Dryland wheat and rangeland are the majority of what
18 this operation will be taking up.

19 Q Yes. Understood.

20 But you have test- -- your testimony indicates
21 that there are -- that -- you talk about -- we talked
22 in the testimony about -- about specialty crops and any
23 crops other than wheat.

24 Are you -- are you indicating that -- your
25 testimony seems to only be dealing with dryland wheat,

1 right?

2 A I try to narrow the focus to the -- the agricultural
3 production which is occurring on the lands that are
4 slated for this development. So I did not speak to
5 other types of agriculture.

6 Q But in representing 1 percent of supposed destruction
7 of the -- of the agricultural economy, you don't
8 account for any specialty crops other than wheat,
9 right?

10 A Again, I'm only speaking to wheat and rangeland,
11 because those are the two primary operations that will
12 be impacted by this, because of that -- of the
13 footprint of it. If you'd like me to speak to other
14 agricultural in the greater Horse Heaven Hills, I'd be
15 happy to, if you have a question.

16 Q Well, the question is this: Your -- or the point is
17 this. The question is this:

18 Your testimony talks a lot about the destruction
19 of the farming economy because of the loss of dryland
20 wheat and this 1 percent of the agricultural economy or
21 the agricultural products.

22 That is your testimony, right? Focusing on that 1
23 percent which is dryland wheat.

24 A The -- I'm -- yes, my testimony does speak to the
25 agricultural economy and how this project would impact

1 **that. Because the scope of the project is within the**
2 **dryland area of Benton County.**

3 Q Yet isn't it true that Benton County grows many
4 crops -- grapes, potatoes, onions, apples, hops -- that
5 have a much, much higher value than dryland wheat?

6 A **The agricultural economics isn't at debate here for the**
7 **conditional use criteria, sir.**

8 Q Well, actually, I -- I disagree with that. I'm trying
9 to understand your testimony, which infers that this
10 project is going to have a material impact on the
11 agricultural economy of Benton County.

12 Yet your testimony does not account for products
13 other than wheat. Is that true?

14 A **Yes. Well, wheat and rangeland, which would be cattle.**

15 Q Okay. I think we can -- we can move on here.

16 Isn't it true -- and perhaps you can't answer this
17 question, but I'll try.

18 Isn't it true that dryland wheat is really a very
19 small fraction of the value and use of these lands when
20 you account for all of the other agricultural products,
21 including specialty products and specialty crops which
22 I just described?

23 A **I don't think that we're comparing the agricultural**
24 **economy as a whole of Benton County here, which**
25 **surprises me especially as your expert witness**

1 **Mr. Wiley, that's his bread and butter. That's his**
2 **family's income, and you're demeaning their -- the**
3 **value of their products that they're bringing to the**
4 **county. I find that --**

5 Q No, I'm not demeaning Mr. Wiley at all, nor am I
6 demeaning you, ma'am.

7 What I am just indicating, that your testimony is
8 based on dryland wheat. You characterized the
9 agricultural economy based on dryland wheat, correct?

10 A **It's one of the factors of Benton County's agricultural**
11 **economies, yes.**

12 Q And you -- your testimony does not account for all the
13 other crops, espec- -- particularly specialty crops or
14 high-value crops -- grapes, potatoes, onions, apples
15 hops -- that have a much higher value than dryland
16 wheat, right?

17 A **Again, I don't see the relevance here to the scope of**
18 **this project.**

19 Q Ma'am, you are not -- excuse me. You are not the
20 adjudicator of relevance or not. I'm trying to get you
21 to answer a specific question and get your opinion.

22 A **Can you re-ask the question, then, in a way that --**

23 Q Yes.

24 A **-- I can understand?**

25 Q You -- your characterization of the agricultural

economy in Benton County is limited in your testimony to nothing but dryland wheat, correct?

A I have spoken to the project area, which is dryland wheat and rangeland, and how this project will affect that and the overall economy of Benton County from an agricultural standpoint.

Q Right.

JUDGE TOREM: All right.

Mr. McMahan, I think you made your point here. I'm going to let Ms. --

MR. McMAHAN: Yes. Right, Your Honor.

JUDGE TOREM: If there --

MR. McMAHAN: Thank you.

JUDGE TOREM: If there are other crops of value that Mr. Harper wants to draw out on redirect, we'll learn about that and find it in the testimony at that point.

What else have you got?

MR. HARPER: Your Honor, I'm going to interrupt now, if I may, because Mr. McMahan has continued to talk over Ms. Cooke's answers. I understand that occasionally Ms. Cooke anticipates his question, but it's particularly important that the Council hear her complete thought before Mr. McMahan

1 moves on.

2 JUDGE TOREM: And I'll interject,
3 Mr. Harper and Ms. Cooke. If it's a yes-or-no
4 question, it's a lot simpler if you just answer "yes"
5 or "no" up front. And if it's necessary to elaborate,
6 you can, but you may want to wait for Mr. Harper to
7 redirect on the things he thinks the Council will find
8 most important.

9 Again, it's not the most natural thing in
10 conversation to just drop a "yes" or a "no," but for
11 purposes of cross-exam, it might speed things up a
12 little bit, and then we can see what else Mr. Harper
13 wants to make sure the Council knows.

14 So thank you for continuing to answer.

15 Mr. McMahan, back to you.

16 MR. McMAHAN: Yes. And, again, I
17 apologize for talking over you, Ms. Cooke. You and I
18 both seem to have a habit of doing that, and so I
19 will -- I have just one more question, and so hopefully
20 we can do that without talking over each other.

21 Q (By Mr. McMahan) On Page 3, Line 22, of your
22 testimony, Ms. Cooke, you claim that the land will be
23 permanently taken out of production.

24 Are you aware that the land can and will be fully
25 restored after the life of the project?

1 **A It's my professional opinion as a land-use planner that**
2 **the majority of the land will not go back to**
3 **agriculture after the lifetime of this project.**

4 Q So you dispute the findings throughout the Northwest,
5 in general, that -- and the understanding that, after
6 retirement, the land will be returned to agricultural
7 use. You -- you --

8 MR. HARPER: Objection. That --
9 that -- objection, Your Honor. That lacks foundation.
10 I don't know what he means, throughout the Northwest,
11 the land will be returned after retirement.

12 JUDGE TOREM: Mr. McMahan, can you
13 give a little bit more specificity so the Council knows
14 what you might be referring to as well?

15 Q (By Mr. McMahan) Well, Ms. Cooke, are you aware that
16 wind facilities throughout the Northwest, all of them,
17 are required to restore the land upon which they have
18 hosted the projects?

19 Are you aware of that?

20 **A I'm not familiar with other wind projects or their**
21 **conditions of approval in the Northwest, but I am aware**
22 **that they do need to have a plan in place for the**
23 **removal of these. However, I -- I've yet to see a**
24 **successful wind farm being removed to this point in**
25 **my -- in my career or my lifetime.**

1 MR. McMAHAN: Understood. It's a
2 relatively new industry.

3 With that, I -- I have no further questions. I
4 thank you for your time.

5 JUDGE TOREM: All right,
6 Mr. McMahan.

7 Let's go on to Mr. Aramburu.

8
9 CROSS-EXAMINATION

10 BY MR. ARAMBURU:

11 Q Good morning, Ms. Cooke. I'm Richard Aramburu. I
12 represent Tri-City C.A.R.E.S.

13 Good morning.

14 **A Good morning.**

15 Q Just a couple of questions for you on behalf of the
16 community.

17 You're the Benton County planning manager. What
18 is your responsibilities as planning manager?

19 **A That's correct. I am the planning manager. I oversee**
20 **the planning staff. And I essentially make all of the**
21 **administrative decisions for the planning department on**
22 **behalf of Benton County.**

23 Q And have you been involved in the designation of -- of
24 agricultural lands of long-term significance?

25 **A Yes. I was involved during our 2018 comprehensive plan**

1 **update where we did an agricultural lands**
2 **classification memo.**

3 Q And was that confirming the designation of -- of
4 agricultural lands of long-term significance from prior
5 versions of the comp plan?

6 A **For the most part, yes. We de-designated a few areas.**
7 **But overall, we had a net gain of agricultural land**
8 **that we add into the county. But the majority of that**
9 **land stayed the same, which was historically classified**
10 **as agricultural lands and are continuing to be zoned**
11 **agriculture.**

12 Q And was there any challenges or appeals of the County's
13 designation of agricultural lands of long-term
14 significance to the Growth -- Growth Management
15 Hearings Board?

16 A **There was not. The groups that we typically get**
17 **appeals from had no issue with our classification memo.**

18 Q And were there any challenges from -- from anyone in
19 the farming community to the desi- -- to the
20 designation of agricultural lands of long-term
21 significance?

22 A **No, there was not. And I believe we did hold public**
23 **meetings for that classification and designation.**

24 Q And do you recall what -- whether there was significant
25 opposition at those meetings?

1 **A** There was a pretty good turnout. I can't say that
2 there was significant opposition. I know a lot of
3 people had questions, whether or not they were --
4 particularly the property owners that were either going
5 to be included in or excepted out of the -- the zone,
6 as is normal when you're changing zonings on
7 landowners.

8 However, there was no significant objections that
9 our office received.

10 **Q** And did -- did the County do SEPA compliance for this
11 designation?

12 **A** Yes, I believe we did as part of the comprehensive plan
13 update. The ag- -- agricultural lands classification
14 memo was part of an appendix to our comprehensive plan.

15 **Q** And was a threshold determination entered regarding the
16 decision to designate the lands as agricultural lands
17 of long-term significance?

18 **A** Are you asking what the designation was?

19 **Q** No.

20 I'm asking you whether there was a -- a -- with
21 SEPA compliance, was there a checklist, and was there a
22 threshold determination?

23 **A** Yes, I believe there was.

24 **Q** Okay. And was -- was the threshold determination
25 appealed?

1 **A I don't -- I don't know off the top of my head.**

2 **Actually, I believe our -- I believe our -- well, I**
3 **don't know if the threshold determination was appealed,**
4 **but our comprehensive plan, I believe, was appealed on**
5 **different grounds.**

6 **Q But not on -- on the grounds that we're discussing**
7 **today?**

8 **A No. It was on groundwater, I believe.**

9 **Q Okay. And the -- let's see.**

10 **That's all the questions I have. Let me just look**
11 **here for a moment.**

12 **And is -- is the designation of long- --**
13 **agricultural lands of long-term significance, that's a**
14 **part of the comprehensive plan, correct?**

15 **A The -- we do have a land-use designation. The process**
16 **of designating them is part of the Washington State**
17 **WAC, not necessarily spelled out in our comprehensive**
18 **plan, but we do discuss that under the agricultural**
19 **land-use designation in the comp plan.**

20 **Q And then for the comp plan, then zoning is adopted for**
21 **agricultural lands; is that correct?**

22 **A That's correct. The comp plan is a guiding document,**
23 **and from there, it's more specific into which zoning**
24 **designation it is classified as.**

25 **Q And were there any appeals of the zoning designation**

1 that's being discussed here by anyone in the Horse
2 Heaven Hills?

3 **A No, I'm not aware of anyone appealing the agricultural**
4 **zone designation for this area.**

5 **Q And is the -- the zoning designation, comprehensive**
6 **plan designation, taken into account by the Benton**
7 **County assessor when he assesses value of property?**

8 **A Not to my knowledge. My understanding is the appraisal**
9 **of property, the taxation of property is a separate**
10 **process than the land-use designation or the zoning**
11 **designation of property.**

12 Typically we see the assessor pick up similar
13 descriptions of land use based on what we've zoned it,
14 but not always necessarily; such as if there's an
15 agricultural piece of property and there's a home on
16 it, they may have it as residential for appraisal
17 purposes, but maybe they don't reflect that it's
18 necessarily agriculture in nature or zoned agriculture
19 if it's not being currently farmed.

20 MR. ARAMBURU: Okay. No further
21 questions. Thank you, Ms. Cooke.

22 JUDGE TOREM: All right. Let's turn
23 to Ms. Voelckers at the Yakama Nation.

24 MS. VOELCKERS: Thank you, Your
25 Honor.

CROSS-EXAMINATION

BY MS. VOELCKERS:

Q Good morning, Ms. Cooke. My name is Shona Voelckers, and I represent Yakama Nation in this proceeding.

My question for you this morning is: Can Benton County, under the Benton County Code, issue a conditional use permit to a development that needs water without first determining that the proposed development has a legally available water source to serve that development?

A Sorry. Can you rephrase the question a little bit? I think I -- I think I understand what you're asking, but I just want to make sure.

Q Yeah.

Does Benton County Code allow issuance of a conditional use permit to a development that needs water if the permitter has not yet determined that water is actually legally available for that development?

A It's not typical. So typically from a conditional use permit, we will ensure there's water or at least help district approval. Most of our conditional use permits don't get into the depth of water law and actual water rights from the Department of Ecology because of their -- their size and scope and nature.

1 Most just require approval of the use from the
2 Benton Franklin Health District, which would approve
3 the well and/or sanitary facilities. And we require,
4 as a part of their application, that Benton Franklin
5 Health District letter before they can apply, or with
6 their application materials. If their water source is
7 from somewhere else, then we generally ask for
8 compliance from that water purveyor as part of their
9 application materials.

10 I'm trying to think of a larger-type conditional
11 use permit in the last ten years. We've only had a few
12 of them.

13 And I would say groundwater compliance would be
14 something, as staff, we would certainly look at. We
15 also -- when we send out the agency packet to the
16 reviewing agencies, they often -- the Department of
17 Ecology often will comment back that need for
18 groundwater is required, and so we will use that as a
19 condition of approval in the conditional use permit,
20 that they seek compliance with that groundwater
21 requirement.

22 Q And if you have concerns about whether or not they can
23 comply with the groundwater requirement, would you
24 investigate those concerns before issuing a conditional
25 use permit?

1 A Typically, yes. Most of them -- I won't say all of
2 them. Again, it depends on the nature of a conditional
3 use permit. The scope is huge as far as, you know,
4 something small such as a dog kennel versus something
5 large like a con- -- a confined animal feed lot
6 operation. You know, the -- the intensity on the land
7 is much different. But we would ensure that there's
8 compliance with water regulations for that.

9 I know before I'd started at Benton County, there
10 was a proposed dairy or a feed lot up on the
11 Rattlesnake Hill, and I believe it was denied due to
12 groundwater issues and concerns. And that was a
13 conditional use permit as well in an agricultural zone.

14 MS. VOELCKERS: Thank you. I may --
15 I may have other questions, depending on what else is
16 asked, but that's all I have at this time.

17 JUDGE TOREM: Thank you,
18 Ms. Voelckers.

19 Ms. Cooke, can you clarify: When you said it was
20 denied for groundwater concerns, was that water supply,
21 or was that potential for water pollution?

22 THE WITNESS: I don't -- I don't
23 know. As I said, it was before I arrived. I just know
24 that water -- groundwater was an issue of some sort. I
25 don't know -- I don't know the status of it entirely.

1 JUDGE TOREM: Okay. If it becomes
2 relevant to the Council whether it was for nonpoint
3 pollution or contamination concerns or water supply, it
4 may come from another witness.

5 Ms. Reyneveld, I know you're not listed for any
6 cross-exam questions. Did you have anything this
7 morning?

8 MS. REYNEVELD: I don't have
9 anything at this time. Thank you, Judge.

10 JUDGE TOREM: All right.

11 Mr. Harper, I'm going to come back to you and go
12 one more round of questions. Then I'll ask the Chair
13 and the Council members for their questions if they
14 haven't already been asked.

15 Mr. Harper.

16 MR. HARPER: All right. Thank you,
17 Your Honor.

18
19 REDIRECT EXAMINATION

20 BY MR. HARPER:

21 Q Good morning, Ms. Cooke. How are you?

22 A Good. Thank you.

23 Q All right. Ms. Cooke, Mr. McMahan spent a fair amount
24 of time focusing his questioning on what he portrayed
25 as a -- as a, I guess, a farm economics dispute.

1 And what I'd like you to do, Ms. Cooke, is -- if
2 you could -- just, could you -- could you -- could you
3 tell the Council about whether that in your view is
4 germane to the concept of long-range planning and how a
5 conditional use permit in this case may factor into the
6 County's long-range interests in its agricultural
7 lands?

8 **A** The County does consider economics when it comes to
9 long-range planning in a small sense, but economic
10 development isn't necessarily our scope of or area of
11 expertise. While our land-use practices, we try very
12 hard to ensure that they promote economic development
13 throughout the county, whatever that may be, we
14 certainly try not to have land-use long-range code
15 provisions such as our comprehensive plan that would go
16 against the benefit of economic development in the
17 county.

18 But when it comes to -- so that is within the
19 scope of long-range planning or, you know,
20 comprehensive long -- long-term planning.

21 Within the scope of a conditional use permit,
22 the -- it's a little bit different. So while we have
23 our comprehensive plan designation for planning -- so
24 planning goes kind of top down -- we have this giant
25 20-year plan with all of our hopes and dreams and good

1 visions for the future, how you do good practical
2 planning that will have a robust -- robust economy.

3 From there, you whittle down -- as I said earlier
4 in one of my other statements, from there you whittle
5 down into specifics, and get into the day-to-day
6 permits, which the conditional use permit would be one
7 of those, and it gets a lot more limited in its scope.

8 And, unfortunately, for a conditional use permit,
9 we take out the economic gain or the opportunity to a
10 certain demographic of people or that sort of specifics
11 from our evaluation, and we just look at our set of
12 criteria, which doesn't include that economic gain or
13 benefit to a small group of citizens.

14 And as I said earlier, it's a really tough
15 conversation to have, because somebody's coming to you,
16 wanting to develop their land, and you know from a
17 human level that they will have economic gains from
18 this. But from a regulation standpoint -- and,
19 honestly, that's what we are; we're regulators of the
20 state statutes -- we can't allow it.

21 And so our -- our limitations, you know, prevent
22 us from doing that. Even though it makes sense from a
23 human standpoint, professionally it's just not a
24 factor, unfortunately. And -- and, you know, it's --
25 it's hard. As a professional, it's really hard.

1 Because you understand that there's going to be
2 economic impacts to a group of people if -- if a use is
3 denied or not allowed or not permitted, you know.

4 And personally, the Wileys are my family. They're
5 my cousins. So do I want them to have economic gain?
6 Absolutely I do. But professionally, this isn't an
7 allowed use. This isn't a permitted use. It doesn't
8 further the protection of agricultural lands. So
9 professionally, I have to say no.

10 Q Ms. Cooke, is there a sense in which your permitting
11 decision-making or your -- your -- your testimony in
12 this case -- because it is certainly correct you're not
13 deciding the outcome of the CUP.

14 But is there a sense in which your -- your -- your
15 permitting analysis is intended to further and help
16 facilitate longer-range planning goals?

17 Are those in harmony in some sense?

18 A They are, on a -- on a kind of a 3,000-foot level, I
19 would say. Although one permitted use may be denied or
20 isn't permissible, it doesn't take away from the
21 objectives of the allow- -- the allowable uses in a
22 zone, which then further the goals and the policies
23 that we in the state have for each one of our areas.

24 So let's say a oil refinery isn't allowed in the
25 agricultural zone, since we heard that yesterday. That

1 may not -- that may not improve the economy of Benton
2 County, but it is going to keep farmers and the
3 agricultural zone -- it's going to allow them to
4 continue to have the ability to implement their own
5 economy.

6 And so the allowable uses that we have in our
7 zoning designation further that economy. It's just
8 kind of a narrow scope, unfortunately.

9 Q Is it -- is it fair to say, Ms. Cooke, that -- that a
10 significant portion of your prefiled testimony is
11 intended to draw the attention of the Council to the
12 long duration of the Horse Heaven wind farm facility?

13 A Yeah, I would say so. I think a lot of people are
14 looking at this project within a limited scope, you
15 know, whether it's 30 years or a lifetime. And from
16 planning, we try to look much further out.

17 And for us, we only have a limited area of
18 agriculture. We're not making new agricultural lands.
19 And so that protection is key.

20 And it's not just protecting it for 10 or 20 years
21 or 30 years, or however long the lease is. I -- I know
22 from practice that as soon as a use is established, it
23 generally is there in perpetuity. It doesn't
24 necessarily go away. It definitely shifts the
25 landscape and -- and what goes on there in the future

1 long after I'm gone.

2 And so these are things that we consider as
3 land-use planners.

4 Q Ms. Cooke, Mr. McMahan asked you a question that I
5 objected to as lacking foundation. He asked you about
6 other examples of restoration after retirement of a --
7 of a -- term a similar type of project. I don't know
8 quite what he was trying to draw to there.

9 But are you aware of any example -- whether it's a
10 wind farm project or any other example -- of proven,
11 demonstrable restoration after compaction of soil,
12 after exporting of soil, after importing of soil,
13 alterations of the landscape, are you aware of any
14 area-wide soil rehabilitation effort that would be
15 comparable to what Horse Heaven wind farm portrays in
16 its ASC here?

17 A I'm not aware of that. I'm not aware of any projects
18 that have amended the project boundaries or the
19 footprint for reintroduction.

20 And one example that, you know, from -- a small
21 example that I can give off the top of my head is CRP
22 ground. So Conservation Reserve Program has fallow
23 areas of wheat. And you -- I drive home to visit my
24 family up on Horse Heaven, and you still see these
25 wheat fields that aren't in production. And, you know,

1 that was supposed to be kind of a short-term program
2 from the federal government, and they're still laying
3 fallow. And that's not necessarily an intense use
4 which stopped farming for a short period of time.

5 Larger impacts, such as solar project, I don't
6 think people realize how critical that microclimate is
7 and how sensitive the microclimate of the shrub-steppe
8 is. And those solar panels are going to devastate
9 that.

10 So we're not just talking about can you put it
11 back into dryland wheat. We're talking about can
12 you -- can you grow shrub-steppe back under those solar
13 panels; can you grow those native plants back there
14 that are sensitive and rare species.

15 I don't believe you can after it's been shaded for
16 30 years. It's going to completely change that
17 microclimate. And I don't know of any conservation
18 practices that has successfully done that on, you know,
19 thousands and thousands of acres.

20 Q Does the ASC and the supporting materials that you've
21 had a chance to review in the SEPA documents, does it
22 adequately engage with this -- this topic, in your
23 opinion?

24 A I don't believe it does.

25 Q Ms. Cooke, do you know what the useful operating life

1 of the Horse Heaven wind farm project is?

2 **A I don't know for sure, but I believe it's 30 years.**

3 **Q** Yeah, I think that's correct.

4 I guess the question is this, Ms. Cooke.

5 What will essentially happen if, at the end of the
6 30-year period, it proves to be infeasible or just
7 uneconomic to engage with this restoration effort to
8 return the soils to the kind of growing capacity that
9 they currently have?

10 Do you have any opinion on that?

11 **A** Well, it's going to -- it's going to continue
12 fragmenting the landscape if they're not able to
13 restore it. And, you know, as I said in my testimony,
14 if that's the case, I believe, then, that it will lead
15 to other uses.

16 So what typically happens in land-use planning is,
17 let's say for some reason a use isn't allowed or it was
18 what we call grandfathered in and today it's not
19 allowed. Well, it's been there forever, so I should be
20 able to do this thing.

21 And so if we have an industry scale or an
22 industrial-type use out in an agricultural zone and
23 that use ends its life cycle or goes away, but maybe
24 the infrastructure is there or something of that
25 nature, we'll see inquiries of more industrial uses

1 come in, say, Yeah, well, but for the last 30 years,
2 there's been a wind turbine here, so of course I should
3 have a communication facility, or of course I should
4 have, you know, a data server farm. It -- it won't be
5 any more intense than what was there previously.

6 And that's a -- that's a hard argument from our
7 standpoint to make. That's typically when we see a lot
8 of petitions for rezoning, reclassification, when you
9 have that legacy of fragmentation in a particular zone.

10 Q Is it a concern of the County, Ms. Cooke, that in the
11 same manner that Mr. McMahan has tried to portray the
12 Scout facility as a natural extension of the Nine
13 Canyon project, that subsequent projects will be viewed
14 or sought in relationship to the Horse Heaven wind farm
15 should it be approved?

16 A Yeah, I think, you know, in our layman's terms -- and
17 I'm sorry, but in our -- in our terms, we say
18 essentially we're opening a can of worms. If you --
19 you know, and Nine Canyon is a really good example of
20 that.

21 So Nine Canyon was approved by the Board of
22 Adjustment, which is a citizen panel who may not be
23 adequately sufficient to consider all of the facts and
24 the criteria and the issues at hand when it comes to a
25 large-scale project like this, what effect it will

1 have.

2 And so because Nine Canyon was approved, unlike
3 the other -- we've had two other wind farms that
4 weren't approved, and they were larger and almost in
5 the same area. It essentially opens the floodgates to
6 other inquiries. And I feel like, if this is approved,
7 other developers will come in and say, Yeah, but
8 there's this large-scale project right here, so, you
9 know, it's not going to be that -- that much different
10 of an impact.

11 Unfortunately, when we're analyzing the CUP
12 criteria or other uses in a -- in a zone for
13 permitting, we don't look at what's historically been
14 done, especially if there were some errors in analyzing
15 them.

16 So we look at what's before us, not what was done
17 previously. And so we would look at what's happening
18 now, not what happened then, and base it on today's
19 factors and today's criteria.

20 And, like you said, you know, I just feel like if
21 this is approved, then it's going to lead to more
22 fragmentation, more interest, more developers. And
23 that really has me concerned, because our landscape is
24 rare and unique and beautiful. And, you know, we as
25 farmers, speaking from a personal sense, try really

1 **hard to be good stewards of the land, both for**
2 **ourselves, our families, and our econ- -- our**
3 **community.**

4 Q I've tried to focus, Ms. Cooke, on factors that are
5 germane to the CUP criteria. Some of those are very,
6 very specific. Some of those have to do almost with
7 SEPA-level mitigation. Others are more values-based
8 and more subjective. I think you heard Mr. Wendt's
9 testimony on that.

10 Let me wrap up with this, Ms. Cooke.

11 Regardless of Mr. McMahan's discussion of economic
12 impacts, bringing it down to a farmer-by-farmer level,
13 speaking strictly now to CUP criteria contained in the
14 Benton County Code, are you aware of any other
15 conditional use permit that would have a comparable
16 effect to the 10 square miles of irrevocably lost or
17 permanently disturbed, if you will, footprint or the
18 110-square-mile area-wide, lease-wide boundary of this
19 project?

20 Is there anything else that you've seen as a CUP
21 approved by Benton County comparable to this?

22 A **I have -- I have not seen any CUP approved comparable**
23 **to this. The only CUP that we've had in the last**
24 **eight, six years that wasn't an intense use was denied,**
25 **and that was for our gravel pit.**

1 MR. HARPER: Ms. Cooke, I will end
2 there. Thank you very much.

3 **THE WITNESS: Thank you.**

4 JUDGE TOREM: All right. We've
5 completed the redirect. We're going to do a little bit
6 of recross-exam, and then we'll come to the Chair and
7 the Council.

8 Mr. McMahan, anything further?

9 **THE WITNESS: Your Honor, can I**
10 **request a short break?**

11 JUDGE TOREM: Sure. We have gone
12 for an hour. So let's come back at 10:10, and we'll --

13 **THE WITNESS: Thank you.**

14 JUDGE TOREM: -- go from there.

15 (Pause in proceedings from
16 10:04 a.m. to 10:10 a.m.)
17

18 JUDGE TOREM: All right, everybody.
19 Let's see if we can get back on screen here. Court
20 reporter's ready to go.

21 Ms. Cooke, you ready?

22 **THE WITNESS: I am. Thank you for**
23 **the break.**

24 JUDGE TOREM: No worries. I think
25 everybody probably it needed. I appreciated the cue.

1 There were some nodding heads when you asked.

2 Mr. McMahan, recross.

3 MR. McMAHAN: Thank you, Your Honor.
4 One question. I promise.

6 RECROSS-EXAMINATION

7 BY MR. McMAHAN:

8 Q Ms. Cooke, are you aware that the project will cause or
9 propose only one acre of shrub-steppe habitat impacted?

10 A **I don't know that for a fact, but if you're saying that**
11 **that's the impact, then okay.**

12 MR. McMAHAN: Okay. That's my only
13 question. Thank you.

14 JUDGE TOREM: Mr. Aramburu, any
15 follow-up?

17 RECROSS-EXAMINATION

18 BY MR. ARAMBURU:

19 Q Ms. Cooke, during your testimony, you expressed some
20 concerns about future development following the
21 cessation of the wind and solar aspects of this
22 project.

23 Do you remember that?

24 A **Yes.**

25 Q And is that a factor that's taken up during SEPA

1 review?

2 MR. McMAHAN: Your Honor, if you
3 don't mind, I would object to this. This -- if we're
4 following the scope of the -- the direct and
5 cross-examination, this is a new area that
6 Mr. Aramburu's taking us into that has not been
7 previously covered and is not within the appropriate
8 scope right now.

9 JUDGE TOREM: Got it.

10 MR. ARAMBURU: I'm following up on
11 the witness's testimony, Your Honor. That was her
12 testimony.

13 JUDGE TOREM: Mr. Aramburu, we have
14 a little bit of time today, so I'm going to allow it.
15 But for future witnesses and we have a tight time
16 frame, we do have to, as Mr. McMahan said, keep
17 funneling down within the scope of things.

18 So go ahead and ask a question again, and then
19 Ms. Cooke can answer, and then we'll keep moving along.

20 Q (By Mr. Aramburu) Okay. Ms. Cooke, I went back and
21 refreshed your recollection a bit about your testimony
22 concerning your concerns about future use once
23 particularly the solar aspects of this might be
24 removed.

25 And is -- is the question of whether the project

1 would create a precedent for further actions, is that a
2 matter that's covered by SEPA review?

3 A I am unsure. I don't know that a SEPA review would
4 speak directly to that or setting a precedent for
5 something, but it -- a SEPA review would definitely
6 review and comment on the loss of habitat, the impacts
7 to, or I would hope that it would. You know, what the
8 ramifications would be both short-term and long-term,
9 which then may set a precedent later in the future.

10 Q And is it the case that no final action is taken by
11 Benton County on proposals until a final environmental
12 impact statement is prepared?

13 A On conditional use permits, that's -- that's correct.
14 So typically for conditional use permits, we have
15 concurrent applications. We have a conditional use
16 permit application, and we have a SEPA application or a
17 checklist. And those run concurrently. However, the
18 conditional use permit doesn't go to the hearing
19 examiner until the SEPA has -- determination has been
20 made.

21 Q And a final impact statement prepared; is that correct?

22 A I've never dealt with one of those, but, yes, if it got
23 to that point, I assume we would need an FEIS before we
24 come to a hearing for a CUP.

25 Q And -- and under the -- the Benton County SEPA

1 ordinance, is it the case that the adequacy of a final
2 environmental impact statement is subject to appeal?

3 **A Yes.**

4 Q Okay. And -- and --

5 JUDGE TOREM: Mr. Aramburu, I just
6 want to -- I just want to interrupt you here. SEPA's
7 not on trial in the adjudication. It's not appropriate
8 to go down that road.

9 Do you have any non-SEPA-related questions?

10 MR. ARAMBURU: Mr. Examiner, I'm
11 asking what the Benton County procedures are. I
12 understand that the -- that a ruling has been made by
13 you, which we take great exception to, that SEPA will
14 be somehow excised from this process. But I think I'm
15 entitled to ask questions about the Benton County
16 procedures and what procedures would be followed in
17 Benton County.

18 JUDGE TOREM: I'm not going to allow
19 it, Mr. Aramburu. We already understand what the
20 Benton County procedures are for conditional use, and
21 we understand how the EFSEC procedures are in their
22 place. We're applying those. We're not applying
23 Benton County SEPA. We're using state rules, and we're
24 having EFSEC as the lead agency.

25 Do you have any non-SEPA-related questions?

1 MR. ARAMBURU: Witness has testified
2 that in -- in her analysis of the County's analysis of
3 conditional use permits, they also comply with SEPA.

4 JUDGE TOREM: And so does EFSEC.
5 We're done -- we're done with this line of questioning,
6 Mr. Aramburu. I'm going to take great exception if you
7 ask another SEPA question and ask our administrator to
8 mute your mike.

9 Do you have any non-SEPA-related questions?

10 MR. ARAMBURU: Okay. You're going
11 to cut me off. That's fine, Mr. Torem.

12 JUDGE TOREM: I am. If you don't
13 have any other non-SEPA-related questions, I'm going to
14 move on to the Yakama Nation.

15 Ms. Voelckers, any other follow-up?

16 MS. VOELCKERS: Nothing from --
17 further from the Yakama Nation for Ms. Cooke. Thank
18 you, Your Honor.

19 JUDGE TOREM: All right. Chair
20 Drew, do you have any questions that you wanted to ask?

21 COUNCIL CHAIR DREW: I do not.
22 Thank you.

23 JUDGE TOREM: Council members, any
24 questions you wanted to ask?

25 COUNCIL MEMBER LEVITT: This is Eli.

1 I have some questions.

2 JUDGE TOREM: All right, Mr. Levitt.
3 If you'll introduce yourself to the witness so she
4 knows where you're from, and go ahead and ask your
5 questions.

6 COUNCIL MEMBER LEVITT: Hi,
7 Ms. Cooke. My name is Eli Levitt. I'm a section
8 manager at the Washington Department of Ecology, and
9 I'm Ecology's Council member for EFSEC.

10 **THE WITNESS: Hello.**

11 COUNCIL MEMBER LEVITT: Just a --
12 just a moment. I need to pull up my questions.

13 So do you or Mr. Wendt or your team do the GIS
14 analysis on land use on behalf of the County? Land use
15 or zoning?

16 **THE WITNESS: We used to. However,**
17 **we established the GIS department, so now we work with**
18 **them to do our mapping.**

19 COUNCIL MEMBER LEVITT: Okay. Do
20 you know, does anyone on that team kind of ground-truth
21 the maps by going out into the field ever? You know,
22 to see, okay, this industrial land use borders this
23 agricultural use and, you know, try to get the lines as
24 correct as possible, so to speak?

25 **THE WITNESS: Typically -- typically**

1 that falls on the planners as we do site visits and
2 work with landowners. The planners will be the ones
3 that bring up to GIS any amendments needed if there's a
4 mapping error.

5 However, we as staff do not make any amendments or
6 mapping changes to our data layers, which we get from
7 other agencies. So coming to mind, a pretty
8 contentious one that we have is wetlands. And although
9 they may not be the most accurate, we're not able to
10 make amendments to those. We send them to the
11 appropriate State agency to work with in determining
12 whether or not the wetland is actually present, as we
13 don't have the expertise to make those determinations.

14 COUNCIL MEMBER LEVITT: Got it.

15 Yesterday, Mr. Wendt's testimony implied that, you
16 know, between the 2018 comprehensive plan and the
17 previous one --

18 What was that? Around 2006 or something.

19 THE WITNESS: Mm-hmm.

20 COUNCIL MEMBER LEVITT: -- that the
21 acres of ag land jumped, increased by something like
22 4,000 acres.

23 Is it possible that 4- to 6,000 acres, that --
24 that sort of level of change, is within a margin of
25 error or due to the changes in the way, the

1 methodology -- methodologies that the County GI mappers
2 use?

3 **A** No, that change was -- came about from our ag lands
4 classification memo. So we hired developers to analyze
5 a set of criteria, the eight criteria listed in the
6 WAC, and our -- and our current zoning. And that net
7 gain came about from that classification memo. So
8 after that data was provided to us, then we implemented
9 that into code by making those zone changes, which is
10 when we held the public hearings and that sort of
11 things. We physically kind of added those areas into
12 our agricultural zoning designation as staff.

13 COUNCIL MEMBER LEVITT: Okay. I
14 guess I just want to note, it -- it seems that your
15 testimony combines both personal and lived experience,
16 so I just wanted to ask one quick question about the
17 personal experience.

18 **THE WITNESS: Sure.**

19 COUNCIL MEMBER LEVITT: And it's --
20 it's valuable for us to learn about, you know, how ag
21 works in your county for sure. I visited multiple
22 farms in the Palouse in my past work at Ecology, so I
23 know a little bit about no-till and low-till dryland
24 wheat farming.

25 Do you -- does your -- you know, you mentioned

1 your family members in your testimony. Do any of them
2 or the other farmers you've spoken to about solar and
3 wind developments use low- or no-till wheat farming
4 techniques?

5 THE WITNESS: Yeah. My cousins
6 actually use no-till wheat farming. It seems to be a
7 general practice of the Horse Heaven wheat farmers. I
8 don't know that -- I don't know their practices as
9 intimately as I do irrigated ag, grow crops, and animal
10 husbandry, which is more of my background. But in
11 speaking with them both in Klickitat County and in
12 Benton County as dryland wheat farmers, they both use
13 no-till practices.

14 Our irrigated ag land, my cousin actually runs
15 soil regeneration practices on -- in the -- in the
16 critical areas using animal husbandry to regenerate
17 soil habitat and, you know, continue the economic
18 development of our farm in the areas that we don't
19 actually till up or irrigate or remove out of a
20 critical area. And that's been extremely successful,
21 and he's actually taking it to defend in his thesis
22 this year as a senior at USC.

23 COUNCIL MEMBER LEVITT: Interesting.

24 Well, going back to the GIS questions: Does the
25 County GIS -- do GIS maps or layers at the level where

1 you can differentiate exactly where active dryland
2 wheat farming is occurring in the Horse Heaven Hills
3 area?

4 THE WITNESS: It's pretty appar- --
5 yeah, it's pretty apparent from aerial imagery. You
6 have a swath of blond, which is the wheat field, and
7 then you have the clear cutoff line.

8 The other defining factor is that the wheat
9 farmers tend to use sections. Because of the large
10 linear squares that they have up there, irrigated ag
11 tends to use crop circles. And so just visually, you
12 can kind of see the difference between those two
13 visually from the aerial imagery.

14 COUNCIL MEMBER LEVITT: So if you
15 asked your GIS mapping team, they could estimate the
16 number of acres in the Horse Heaven region that is in
17 active use right now for dryland wheat farming and/or
18 ranching?

19 THE WITNESS: Ranching is a lot -- a
20 heck of a lot tougher, just because you can't really
21 define where people run cattle on. It looks like
22 open -- open habitat. So you wouldn't know if it was
23 preserved or not.

24 But as far as dryland wheat goes, you could
25 probably slap a polygon and get a rough estimate,

1 obviously not including physical barriers and canyons
2 and that sort of thing.

3 COUNCIL MEMBER LEVITT: Okay. And
4 jumping around here a little bit.

5 JUDGE TOREM: Excuse me, Mr. Levitt.
6 Ms. Cooke, you just called something slap a pole
7 up...?

8 THE WITNESS: Sorry. Sorry.

9 JUDGE TOREM: What was that?

10 THE WITNESS: To draw a polygon
11 using GIS, you know, roughly. Not necessarily
12 accurately as far as determining how many acres within
13 the Horse Heaven region would be dryland versus
14 irrigated. But we do actually have that analysis for
15 zoning -- specific zoning designations.

16 JUDGE TOREM: That's fine.

17 THE WITNESS: We just don't have --
18 okay.

19 JUDGE TOREM: I just -- I missed the
20 word "polygon" as you spoke quickly.

21 THE WITNESS: Oh.

22 JUDGE TOREM: I wanted to make sure
23 it was accurate in the record.

24 Mr. Levitt, you had a follow-up.

25 COUNCIL MEMBER LEVITT: Yeah. Just

1 a few more. Three more maybe.

2 To your knowledge, has the County, Energy
3 northwest, or any other entity that you partner with
4 surveyed and/or reviewed the productivity of farming or
5 any lessons learned in general, such as challenges and
6 opportunities, associated with the Nine Canyon wind
7 farm?

8 **THE WITNESS: Not to my knowledge,**
9 **no.**

10 COUNCIL MEMBER LEVITT: Okay. So
11 the County and/or partners like Energy Northwest have
12 not, for example, asked the -- the wheat farmers in
13 that area how are things going since --

14 **THE WITNESS: I'm not --**

15 COUNCIL MEMBER LEVITT: -- since the
16 wind farm was established?

17 **THE WITNESS: Yeah, I'm -- I'm not**
18 **aware of it, but Ener- -- I mean, Energy Northwest may**
19 **check in with their leaseholders. I -- I just -- we,**
20 **the County, are a bit disattached from that narrative,**
21 **so we don't -- we don't hear things like that unless we**
22 **know someone personally involved or professionally**
23 **involved.**

24 COUNCIL MEMBER LEVITT: Okay.
25 Mr. Wendt didn't get into this yesterday, but I guess

1 I'm curious.

2 You said something earlier about a board of
3 citizens approved the Nine Canyon winds -- wind farm in
4 some way.

5 **THE WITNESS: Yes.**

6 COUNCIL MEMBER LEVITT: Do you have
7 any -- yeah. Okay.

8 Could you give me just a very brief background on
9 that, what that process was, from your perspective?

10 **THE WITNESS: Yeah. So currently a**
11 **conditional use permit is heard by a hearings examiner,**
12 **which is a quasi-judicial, typically a lawyer that we,**
13 **the County, hire. And she -- she's a woman for us.**
14 **She's an unbiased third party. So she will hear these.**
15 **She's also professionally trained generally in land-use**
16 **law. And so she will go through our code and all the**
17 **testimony she's received and the application and review**
18 **it for consistency and then will make her determination**
19 **as to whether something should be approved or denied.**

20 The Nine Canyon project -- so prior to having a
21 hearing examiner set up, my understanding is -- 'cause
22 I wasn't here at the time -- the County used a Board of
23 Adjustment, and that was a panel of -- of citizens with
24 no particular training who would hear land-use matters
25 and make a decision based -- which was supposed to be

1 based on the county code.

2 We have a similar board called the planning
3 commission, which I oversee, and I can tell you that
4 the difference in the hearings are night and day,
5 especially with consideration and the scope that needs
6 to be narrowed into what they're reviewing. I feel
7 that hearings examiners are a lot more defensible and
8 accurate in their decisions. The -- when you get
9 boards of private citizens making decisions on land
10 use, sometimes they're not always the best decisions or
11 the most appropriate decisions.

12 COUNCIL MEMBER LEVITT: Okay. Then
13 I'm curious, I guess, from just the County staff
14 perspective, so this includes you and Mr. Wendt and
15 other County officials.

16 Is there anything official that changed at the
17 County level, 2020 and prior -- you know, it could be a
18 commissioner's resolution; it could be changes to code;
19 it could be white papers, policies, procedures that
20 changed -- that would impact how you and your team
21 approach the consideration of proposed wind farms or --
22 or solar farms?

23 THE WITNESS: I don't believe so. I
24 mean, we had a tax amendment which prohibited them
25 after 2020, but I don't -- I don't believe that there

1 was any documentation or guidance of how to review a
2 wind proposal except for those that are listed in our
3 county code and our comprehensive plan, kind of those
4 guiding documents that we as staff would use.

5 But, again, you know, that's outside of our -- our
6 purview, because we don't get to make those decisions
7 on those types of permits. It's the same as a dog
8 kennel. I don't get to decide if somebody gets a dog
9 kennel or not. That has to go through another
10 administrator as far as approval goes.

11 COUNCIL MEMBER LEVITT: Okay. Thank
12 you. That's it.

13 JUDGE TOREM: Do other Council
14 members have any questions for Ms. Cooke?

15 All right. Hearing none.

16 I have one question, Ms. Cooke.

17 From Page 8 toward the end of your -- to the end
18 of your testimony, there -- the theme talks about
19 taking land out of production and not maintaining
20 agricultural viability for a variety of concerns
21 between family farms and succession.

22 When I got down to Page 10, your conclusion was it
23 won't be economically viable for farmers to return the
24 agricultural lands of long-term commercial significance
25 to agricultural use at the end of the Horse Heaven wind

1 farm project life.

2 Have you thought about any ways that you could
3 assist from the County level or you might ask EFSEC or
4 the State government to assist, assuming this
5 recommendation is for approval and it's built?

6 With that scenario, have you thought of any ways
7 that would change your conclusion to make it easier for
8 things to go back to long-term commercial significance
9 and agricultural use?

10 **THE WITNESS:** I have not. But I can
11 see where you're going with it. And honestly I would
12 hope that either the State or, you know, another body
13 would help incubate and, you know, generate these maybe
14 progressive ideas that would help them keep in the
15 scope of agricultural while maintaining a new source of
16 income. I just personally don't -- I haven't done it
17 myself or thought about it or engaged with anybody on
18 that in the context of this project.

19 **JUDGE TOREM:** One of the ideas that,
20 as I looked at your testimony last night, that came to
21 mind -- I don't know if the Council, it's within their
22 scope even -- is a question of you -- you made it seem
23 as though it's economically infeasible to reverse the
24 effects of the wind farm and get things done. It would
25 be a financial issue for the landowners.

THE WITNESS: Mm-hmm.

JUDGE TOREM: And I wondered if there was any consideration in the County for financial assistance to do that, and if so, some kind of long-term trust that may be part of the conditioning the Council considers. Again, sometimes we're looking at environmental impacts, not financial impacts, but part of the decommissioning of the project usually includes posting a bond and other fiscal things.

So I'm wondering again in the context of decommissioning whether the County has thought about -- for this project, for Nine Canyon, for any of them that might be a change to an agricultural area -- a trust fund of some sort -- how it's funded, I don't know -- to make sure it's not a financial burden on the individual, and the County, as you've said, can maintain its regional and zoning area interests to get things back and what the County's vision might be for beyond our lifetimes.

Long question, but the concept, I hope, is clear.

THE WITNESS: Yeah. Yeah. No, and it's a great concept, and it's a great idea. You know, unfortunately, I just -- I don't know about the greater County as a whole, but certainly for -- for my office, you know, we just don't have the legal ability to do

1 that or make those requirements on the applicant. I
2 would feel like it's outside the burden of what, you
3 know, a conditional use permit or other, you know,
4 permit that we apply conditions of approval for.

5 It's kind of outside the scope of what we normally
6 would have done. But that's not to say it's
7 impossible. There -- you know, there's universities
8 and all sorts of interest groups that are continuing to
9 work on the promotion of agricultural, so maybe in the
10 future it would get -- it would get approved into state
11 law and we could have something set up like that for
12 them. It's just not something that's available on the
13 table at the moment.

14 JUDGE TOREM: And, admittedly, I
15 don't understand all of the decommissioning scope of
16 what EFSEC can or can't do. It's just an outside-the-
17 box thought on, as you say, the longer term and perhaps
18 more progressive thinking. Thank you for the input on
19 that.

20 Mr. Harper, does that raise anything else -- this
21 is your witness -- before we...?

22 MR. HARPER: No. No, it doesn't.
23 Thank you, Your Honor.

24 JUDGE TOREM: All right. Council
25 members, Chair Drew, any other questions?

1 I see Eli Levitt has his hand up.

2 COUNCIL MEMBER LEVITT: Yeah.

3 Sorry. I guess, just a quick follow-up question.

4 So you mentioned that there were two wind farms
5 proposed in the county in the past, and those were
6 denied in some fashion.

7 Can you talk about, just briefly, about how the
8 process worked for Nine Canyon versus those two other
9 farm -- wind farm proposals that you mentioned?

10 THE WITNESS: I believe they were
11 all heard by the Board of Adjustment. I'm not entirely
12 sure. The other two are from 2001, and our records
13 from those days are quite sparse. Recordkeeping wasn't
14 quite a priority then as it was now.

15 But my understanding is they were larger projects,
16 anywhere from 200 to 500 turbines that were roughly 250
17 to maybe 300-plus feet, covering 4,000-ish acres.

18 One was denied. The other, we don't know -- it
19 was not approved. I just don't know what the status is
20 because of recordkeeping purposes, but it was not
21 approved. But those more than likely went in front of
22 the Board of Adjustments as well.

23 COUNCIL MEMBER LEVITT: And to your
24 knowledge, for all three of those, Nine Canyon and the
25 two -- other two you mentioned, did the County ever

1 discuss mitigation measures, that they would be
2 interested if -- if the projects went forward? Does
3 that make sense?

4 **THE WITNESS:** Not to my knowledge.
5 I haven't done a deep dive into the Nine Canyon project
6 myself, so I don't know what was discussed. I know it
7 was an MDNS, which professionally for me is an
8 interesting choice. I feel like that's something I
9 wouldn't have made a determination on.

10 But one of the other projects actually had an EIS
11 request, and I don't know that it was ever seen
12 through, so my guess is, from that project, that one,
13 that had an EIS, it could have had mitigation measures
14 or, you know, spoken to that as part of that scope for
15 an EIS.

16 **COUNCIL MEMBER LEVITT:** Okay. Thank
17 you.

18 **JUDGE TOREM:** Lenny Young?

19 **COUNCIL MEMBER YOUNG:** Yeah.

20 Good morning, Ms. Cooke. I'm Lenny Young. I'm a
21 Department of Natural Resources representative to
22 EFSEC. And quick follow-up to Mr. Levitt's question.

23 Could you -- do you know the name or some type of
24 a reference if we wanted to look more into those two
25 other projects that were denied? Is there some kind of

1 a name or identifier we could use to -- to find
2 information on those?

3 **THE WITNESS: Yeah, the one was,**
4 **ironically, Horse Heaven Wind. The other was Maiden**
5 **Wind.**

6 COUNCIL MEMBER YOUNG: Thank you.

7 **THE WITNESS: M-a-i-d-e-n.**

8 COUNCIL MEMBER YOUNG: Got it.

9 JUDGE TOREM: Any others?

10 **THE WITNESS: Those are the only two**
11 **besides Nine Canyon that I'm aware of.**

12 JUDGE TOREM: Oh. I'm sorry. Any
13 other questions --

14 **THE WITNESS: Oh. Sorry.**

15 JUDGE TOREM: -- from Council
16 members?

17 All right. Seeing none.

18 I want to make sure the parties understand. I
19 think when Mr. Young's asking about getting other
20 information, we'll make sure we have advice from our
21 attorney general as to what's in the record and what's
22 not. We talked with Council members about not doing
23 our own research outside the record, so that advice is
24 being given as we go. And if anything else is sought
25 for the record, it will be in the form of a data

1 request to parties, and you'll know what the Council
2 members are considering.

3 So if there's any concerns that Council members
4 are asking questions in that regard, they're not
5 necessarily familiar with the -- the niceties of the
6 APA, typical trial practice, and what might be a
7 limited record. But certainly if the Council members
8 for the adjudication are going to have anything, you'll
9 know what it is.

10 All right. Anybody have any other questions for
11 Ms. Cooke that I need to recognize before we let her go
12 and move on to our next order of business?

13 All right. Hearing none.

14 Ms. Cooke, thank you. Good morning. And --

15 **THE WITNESS: Thank you.**

16 JUDGE TOREM: -- I appreciate your
17 time and testimony.

18 (Witness excused.)
19

20 JUDGE TOREM: All right. Council
21 members, today we had just the one scheduled witness.
22 And previous at the housekeeping session, there was a
23 question of whether or not we could move some things
24 around.

25 We have permission from the Yakama Nation and all

1 the other parties to call Mr. Ganuelas and
2 Mr. Nuetzmann today.

3 Ms. Voelckers, what's the status of their
4 availability?

5 MS. VOELCKERS: Thank you, Your
6 Honor. They are available. I would ask that we take a
7 brief break. But they are here and available to be
8 sworn in.

9 JUDGE TOREM: All right. We're
10 going to take a break just to get them on the line.
11 We'll come back at 10:45.

12 Before we go off to our break, the Nuetzmann
13 exhibits that you might want to have, if you have any
14 questions, Council members, even though they're not
15 scheduled for cross-exam, would be 4011_T and 4012.

16 As for Mr. Ganuelas, they would be mostly
17 confidential. But 4008_T and then 4009 and 4010.
18 Those are both marked as confidential, and you have a
19 redacted version as well. The reply testimony is an
20 Exhibit 4013. So if you are looking for something to
21 do in the next eight minutes --

22 COUNCIL CHAIR DREW: Judge.

23 JUDGE TOREM: -- to get ready, we
24 would have those.

25 Chair Drew.

1 COUNCIL CHAIR DREW: Would you
2 please have someone put those in the chat since I
3 didn't write that quickly.

4 JUDGE TOREM: Sure. They're easy --

5 CHAIR DREW: Thank you.

6 JUDGE TOREM: -- to find in the
7 exhibit list. The -- the Yakama Nation's exhibits all
8 start with a 4.

9 COUNCIL CHAIR DREW: Okay.

10 JUDGE TOREM: And I'll ask that --
11 we'll get those in the chat, 4011 and -12, 4008 through
12 -13.

13 All right. Thank you. We'll take our break.

14 COUNCIL CHAIR DREW: Oh. I just got
15 a message. Okay. Thank you.

16 JUDGE TOREM: Yep. We'll take our
17 break and come back at 10:45.

18 (Pause in proceedings from
19 10:37 a.m. to 10:45 a.m.)
20

21 JUDGE TOREM: All right. It's now
22 10:45. We're back on the record.

23 Ms. Voelckers, have you had a chance to make sure
24 whether Mr. Ganuelas and Nuetzmann are on the line?

25 MS. VOELCKERS: Yes, Your Honor.

1 They are logging on through Mr. Jones' computer. I see
2 Mr. Nuetzmann now.

3 If I could ask a clarifying question before we get
4 going regarding something that you said before the
5 break.

6 JUDGE TOREM: Yes, ma'am.

7 MS. VOELCKERS: Our understanding
8 was that Council was going to be provided with the
9 confidential versions of everything, not just the
10 redacted ones. And so I don't know if that -- I just
11 wanted to make sure that that was the case.

12 JUDGE TOREM: Yes. And
13 Ms. Masengale has definitely provided all of those
14 documents. We've got them in a separate part of our
15 SharePoint drive that only has access to Council
16 members and not to the general EFSEC or UTC population
17 that is on the same server, to my understanding. So,
18 yes, they have both.

19 MS. VOELCKERS: Okay. I appreciate
20 the clarification and also just making sure they have a
21 chance to review that before Monday for the other
22 members that are testifying. So thank you for that.

23 I see that Mr. Nuetzmann is all set up.

24 (Witness Mark Nuetzmann
25 appearing remotely.)

1 JUDGE TOREM: All right. Let me get
2 to where his exhibits are.

3 All right. Good morning, Mr. Nuetzmann. How are
4 you?

5 THE WITNESS: Good morning, Judge
6 Torem. I'm good.

7 JUDGE TOREM: I'm going to swear you
8 in to adopt your testimony, and then we'll see if
9 there's any questions.

10 Again, my understanding is that your testimony is
11 limited to two exhibits. They are 4011_T, your
12 prefiled direct testimony; and Exhibit 4012, your reply
13 testimony to Erik Jansen's rebuttal testimony.

14 Are those the two documents that you're aware of
15 you've submitted as testimony?

16 THE WITNESS: That's correct.

17 JUDGE TOREM: All right. I'm going
18 to have you raise your right hand and adopt that, and
19 then we'll see if the Council members have any
20 questions.

21
22 MARK NUETZMANN, appearing remotely, was duly
23 sworn by the Administrative
24 Law Judge as follows:

25 ////

1 JUDGE TOREM: Do you, Mark
2 Nuetzmann, solemnly swear or affirm that all testimony
3 you've indicated you'll adopt today and any answers you
4 give to Council questions will be the truth, the whole
5 truth, and nothing but the truth?

6 **THE WITNESS: I do.**

7 JUDGE TOREM: All right. Thank you.
8 I'm going to note that for the record, those
9 exhibits I talked about have been adopted under oath,
10 and they're now admitted to the record.

11 (Exhibit Nos. 4008_T_Revised,
12 4009_Confidential,
13 4009_Redacted,
14 4010_Confidential,
15 4010_Redacted, 4011_T, 4012,
16 and 4013 admitted.)
17

18 JUDGE TOREM: Council members, Chair
19 Drew, any questions for Mr. Nuetzmann?

20 All right. I'm not hearing any, Mr. Nuetzmann.
21 That's probably the easiest morning at trial you'll
22 ever experience.

23 And we're going to take our next witness from the
24 Yakama Nation, Mr. Leon Ganuelas. So thank you,
25 Mr. Nuetzmann. So thank you, Mr. Nuetzmann. You can

1 stand down and switch places.

2 **THE WITNESS: Thank you.**

3 (Witness excused.)

4 (Witness Leon Ganuelas
5 appearing remotely.)

6
7 JUDGE TOREM: Good morning. Are you
8 Leon Ganuelas?

9 **THE WITNESS: Good morning. Yes,**
10 **sir, I am.**

11 JUDGE TOREM: Out of respect for the
12 confidentiality of much of your testimony, Council
13 members, we're now going to make sure that our system
14 for moving into closed-record hearing works. So I'm
15 going to ask staff to move us to a Microsoft Teams
16 breakout room.

17 So, Mr. Ganuelas, hopefully everybody transfers
18 over. And I'll do a quick roll call of parties and
19 Council members to make sure we're all there, and then
20 we'll take your testimony.

21 (Pause in proceedings from
22 10:49 a.m. to 10:53 a.m.)

23 ** Closed-record hearing **

24 * Not available to general public per protective order *
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(Closed-record session
concluded.)

JUDGE TOREM: All right. I can see
that a number of us are back, moved over automatically
from the other meeting. Let's see if I can have the
participant list put up on the side. I see there's
more of us in this session than there were in the
other.

1 For any members of the public that are listening,
2 we're back from a closed-record session where witness
3 Leon Ganuelas was talking about some privileged and
4 confidential information regarding pronghorn antelope.

5 There are redacted versions of his testimony
6 available on the EFSEC website if you're interested.
7 Those are -- the redacted portions are the ones that
8 members of the public or those that haven't signed
9 confidentiality agreements can -- can access.

10 And we were gone out of public session for about
11 30 minutes, maybe less.

12 All right. Council members, I don't know that
13 there's any other business. I'm going to ask the
14 parties again if I'm overlooking anything we said we
15 would do on the record today with all of the Council
16 members.

17 Mr. McMahan, was there anything on your list that
18 we still needed to do with the Council members today?

19 MR. MCMAHAN: Not that I'm aware of,
20 Your Honor. Thank you.

21 JUDGE TOREM: Mr. Harper?

22 MR. HARPER: No. I don't think so.

23 JUDGE TOREM: And Ms. Reyneveld.

24 MS. REYNEVELD: Nothing further.

25 Thank you.

1 JUDGE TOREM: Mr. Aramburu, let me
2 come to you. Was there anything else we needed to do
3 on the record with Council members?

4 MR. ARAMBURU: I do have an item,
5 but the Council members' presence is not necessary.

6 JUDGE TOREM: Okay. Thank you.
7 We'll do another housekeeping session here shortly.

8 And, Ms. Voelckers, anything else from the Yakama
9 Nation we need to do with the Council members today?

10 MS. VOELCKERS: Nothing else for the
11 Council today from Yakama Nation. Thank you, Your
12 Honor.

13 JUDGE TOREM: All right. Then
14 looking forward to tomorrow, Council members, the
15 Rahmig scheduled testimony is still not happening
16 tomorrow. But I understand that we're going to have
17 Morgan Shook.

18 And Morgan Shook, I'll go over the exhibit numbers
19 with you if you have your pens and pencils ready.
20 Morgan Shook's testimony will be available also, I'm
21 sure, from the very busy Ms. Masengale in a daily
22 folder on the SharePoint drive to make it easy to
23 access and review this evening.

24 Morgan Shook was originally scheduled for next
25 Tuesday, August 22nd, at 11:40 a.m. and supposed to go

1 after a lunch break into 2:30 p.m. So there's
2 approximately two hours of testimony to be ready for
3 tomorrow. And unless there's anything else added,
4 we'll start at 9:00, and then we have the monthly
5 Council meeting at 1:30. Please plan on being
6 available for this adjudication maybe up till 12 or
7 12:30 just in case we're able to add anything else and
8 front-load the schedule a little bit more to
9 accommodate the ever-fluid schedule we've got.

10 But the exhibits that I have for this
11 applicant-sponsored witness start with 1008_T. And
12 that's a set of revised testimony filed by the
13 applicant. The supporting exhibits follow in sequence
14 through 1009 all the way through 1020. And there's
15 also some reply testimony, if I'm not mistaken, at
16 1051_R. So essentially 1008 through 1020 and 1051.

17 Mr. McMahan, Ms. Stavitsky, did I get those
18 correct?

19 MS. STAVITSKY: Yes, Your Honor.
20 Thank you.

21 JUDGE TOREM: And Ms. [Sic] Shook
22 will be available at 9 a.m. tomorrow?

23 MS. STAVITSKY: Correct.

24 It's "Mr. Shook" --

25 JUDGE TOREM: Oh.

1 MS. STAVITSKY: -- just for the
2 record. Thank you.

3 JUDGE TOREM: Thank you.

4 Council members, any question on your homework for
5 tonight and ready for tomorrow?

6 All right. Then we'll recess the adjudicative
7 hearing portion.

8 I have a question from Mr. Livingston.

9 COUNCIL MEMBER LIVINGSTON: Yeah.
10 I'm sorry, Judge. I missed: What time will we start
11 tomorrow?

12 JUDGE TOREM: 9:00. I'll do a
13 housekeeping session with the parties to see about any
14 other schedule items I can advise you of, and then at
15 9:00 we'll have Mr. Morgan Shook adopt his testimony
16 and see if there's any questions.

17 We know we're going to have cross-exam from --
18 it'll be a follow-up after Mr. Aramburu's questions on
19 behalf of Tri-Cities C.A.R.E.S. from the applicant. So
20 about an hour-plus is what Mr. Aramburu is estimating,
21 followed by any redirect exam. And then, as you've
22 seen, the round-robin that we do. And then we'll get
23 to the Council members' questions along with anything
24 else we need after that.

25 Any other Council questions?

1 All right. You had a short day today. I can't
2 promise there'll be many of these ahead. Especially
3 tomorrow you'll have a follow-on Council meeting. So
4 thank you very much. And I'm going to take a brief
5 recess here till 11:25 so people can stretch and
6 everybody can sign on or off, and we'll resume at 11:25
7 with our housekeeping session.

8 (Pause in proceedings from
9 11:22 a.m. to 11:25 a.m.)

10
11 JUDGE TOREM: Okay. We're back into
12 a housekeeping session. We're back on the record to
13 take any notes that we need.

14 Mr. Aramburu, I'll come to you first. You said
15 you had a note you wanted to take up.

16 MR. ARAMBURU: I have a question for
17 you, Judge Torem. When might we expect decisions on
18 the other outstanding motions?

19 JUDGE TOREM: Tomorrow morning.
20 I've got some time this afternoon suddenly. So I
21 apologize that you're still waiting. But tomorrow
22 morning, you'll have my answers on as many of them as I
23 can get to. And given the time balance I have today,
24 I'm hoping all.

25 MR. ARAMBURU: And particularly

1 because at least one of the motions deals with
2 scheduling, if you don't have a written ruling, an oral
3 ruling would be -- would be helpful to us as well, just
4 so we -- we know how to -- how to schedule things. So
5 thank you for that.

6 JUDGE TOREM: I appreciate that.
7 And that's why I try to make notes on that oral ruling
8 today. And I've asked the court reporter to make sure,
9 if it's reduced to writing that way, then it can also
10 be circulated to the parties as soon as possible.

11 So if it's efficiency sake, Mr. Aramburu, I will
12 give the oral rulings as best we can and use the
13 transcript to document those going forward for
14 preserving issues for appeal and a way to cite to them.
15 I'm trying to make sure that to service both purposes
16 of efficiency and any other errors that might want to
17 be called out by parties.

18 MR. ARAMBURU: So let me just
19 understand the process here. You -- you made an oral
20 ruling on our motion to compel. Are you going
21 to re- -- are you going to enter an independent written
22 ruling on that, or are we just going to rely on your
23 oral comments?

24 JUDGE TOREM: I am not planning to
25 issue a further written ruling, but I will circulate in

1 advance a separate piece of the transcript that
2 memorializes it. Just given the time constraints on
3 everything else, Mr. Aramburu, I just -- I don't want
4 to keep the parties waiting for those written products.
5 The ruling has been made, and I think from there, it
6 will speak for itself.

7 MR. ARAMBURU: So the date of your
8 ruling is today, then? Would that be correct?

9 JUDGE TOREM: It must be, yes.

10 MR. ARAMBURU: Okay. Thank you.

11 JUDGE TOREM: All right.

12 Mr. McMahan, any other housekeeping items that the
13 applicant had for me today? Perhaps you've heard from
14 Ms. Perlmutter over the course of the morning.

15 MR. MCMAHAN: I will let
16 Ms. Stavitsky talk about her communication with
17 Ms. Perlmutter.

18 MS. STAVITSKY: Yeah, nothing more
19 for Scout, Your Honor, except just I can provide an
20 update. We heard back from Ms. Perlmutter, who says
21 she's feeling slightly better but still out of
22 commission. So we'll keep checking in and update
23 you-all.

24 JUDGE TOREM: All right. Thank you.
25 Mr. Harper, any other updates from the County or

1 housekeeping measures for today?

2 MR. HARPER: No. Thank you, Judge.

3 JUDGE TOREM: All right.

4 Ms. Reyneveld?

5 MS. REYNEVELD: I don't have
6 anything except for, if we wanted to try to move up the
7 wildlife testimony, then Your Honor's direction is for
8 us to coordinate that and come to you with a proposal.

9 JUDGE TOREM: Maybe not you
10 individually, but the parties together collaboratively.

11 MS. REYNEVELD: Okay. Thank you.

12 JUDGE TOREM: Do you have any status
13 updates, if appropriate, on your proposed settlement
14 agreement that you referenced, I think, last Thursday
15 in the fifth prehearing conference regarding the
16 eastern solar array wildlife impacts, and there was
17 some reference to the memorandum Page 2? I don't
18 remember if we're calling it the Kobus memo or the Moon
19 memo. Any updates on that?

20 MS. REYNEVELD: I do not have any
21 updates. And there will not be any updates until the
22 conclusion of the adjudicative process from the
23 attorney general's perspective.

24 JUDGE TOREM: Okay. That helps.
25 Because I was wondering if I needed to mention to the

1 Council members they might see that during the course
2 of the adjudication. Because it won't be signed before
3 the end of the adjudication, it's probably best not to
4 give them any anticipation that there is something
5 coming in. I don't want any negative connotation or
6 positive connotation to be implied because of the
7 ongoing negotiations there.

8 Would you agree, Ms. Reyneveld?

9 MS. REYNEVELD: Yes, I think that
10 makes sense. Thanks, Your Honor.

11 JUDGE TOREM: Over the course of my
12 career, I've learned that settlements in principle are
13 not always settlements in writing. So we'll leave it
14 at that.

15 MS. REYNEVELD: Yeah, and I would
16 say that it's not even a settlement in principle.
17 It's -- we've had discussions around the potential for
18 settlement.

19 JUDGE TOREM: Excellent. That helps
20 clarify it even further. Okay.

21 MS. VOELCKERS: Your Honor.

22 JUDGE TOREM: Yes. Ms. Voelckers, I
23 was about to come to you.

24 MS. VOELCKERS: Oh. Well, just
25 before we move on from this topic, if Ms. Reyneveld was

1 able to, we would appreciate clarity on when those
2 discussions ceased.

3 MS. REYNEVELD: I think we had the
4 discussions in the spring, and that's -- I think --
5 correct me if I'm wrong, Mr. McMahan, but I don't think
6 there were further -- further discussions specifically
7 on this that were substantive after that.

8 MR. McMAHAN: Yes, Ms. Reyneveld, I
9 think that's correct. And I -- if I remember right --
10 stand to be corrected -- there was a date on the
11 document after we essentially completed those tentative
12 discussions. And as far as I can recall -- and, Sarah,
13 correct me if you think I'm wrong -- I think that was
14 it from the -- from the date of the last version that
15 we circulated.

16 MS. REYNEVELD: That's my
17 recollection. Thanks, Mr. McMahan.

18 MS. VOELCKERS: So is it fair to
19 say, then, that there weren't further discussions about
20 the proposal after the date of the one that Mr. McMahan
21 e-mailed to the parties last Friday?

22 MR. McMAHAN: Well, I didn't want to
23 speak for Sarah, or for Ms. Randolph -- excuse me --
24 but I believe that's correct.

25 MS. REYNEVELD: Yeah, I don't -- I

1 think we might have checked in on the status of it, but
2 there was no substantive discussions after that, is my
3 recollection after that date, so...

4 MS. VOELCKERS: Thank you. We
5 appreciate the clarification.

6 JUDGE TOREM: Ms. Voelckers, did you
7 have any other items for the housekeeping?

8 MS. VOELCKERS: Just a request to
9 the parties, Your Honor, that -- that we do engage in
10 that conversation around who might be taking
11 Mr. Shook's spot on Tuesday before tomorrow morning's
12 check-in with you.

13 JUDGE TOREM: Yeah, I think we will
14 hear from you guys in the morning. I won't participate
15 in those conversations, but hopefully the parties will
16 make time today.

17 I just see that Ms. Masengale's posted an updated
18 exhibit list. I have one question about an exhibit
19 yesterday. Ms. Masengale, maybe you can clarify it
20 best.

21 I'm looking for Exhibit 1040_R. I think that was
22 from Ms. McClain. And I don't know if we expressly
23 asked her to adopt that testimony. My notes didn't
24 catch up to that. Did yours?

25 MS. MASENGALE: Judge Torem, I'm

1 just reopening that document, and I will be back with
2 you shortly.

3 JUDGE TOREM: All right. While
4 you're doing that, the four items. And, Mr. Aramburu,
5 you might keep along with me here to make sure I've got
6 them.

7 There's your motion to reconsider the
8 witnesses' -- the testimony that were stricken:
9 Krupin, Sharp, Dunn, and Simon. That's one item I know
10 you're waiting for.

11 Related to that is the applicant's motion to
12 strike certain rebuttal response testimony of, I think,
13 those same witnesses. There may be more.

14 And, Ms. Reyneveld, there's your motion, which I
15 think will be the easiest for me, on your proposed
16 supplemental testimony.

17 And, finally, there's Mr. McMahan and the
18 applicant's motion to supplement the record with
19 Mr. Kobus's testimony.

20 Mr. Aramburu, were there any other items that
21 you're still waiting for that I didn't list?

22 MR. ARAMBURU: Those sound like the
23 ones that are on the list that have not yet been
24 decided.

25 JUDGE TOREM: All right. Thank you.

1 I'm just making sure I'm not overlooked something.

2 Sometimes the e-mails have been voluminous, or I think

3 I've used the word "onslaught" before.

4 Mr. McMahan, anything on the list that I didn't
5 call out that needs to be?

6 MR. McMAHAN: No, Your Honor. Thank
7 you.

8 JUDGE TOREM: Mr. Harper?

9 MR. HARPER: No. Thank you.

10 JUDGE TOREM: All right.

11 Ms. Reyneveld?

12 MS. REYNEVELD: That summary
13 reflects my understanding of the pending motions.
14 Thank you.

15 JUDGE TOREM: And Ms. Voelckers?

16 MS. VOELCKERS: Nothing further.
17 Thank you, Your Honor.

18 JUDGE TOREM: All right. That's my
19 homework for this afternoon.

20 Ms. Masengale, what did you find out about
21 Exhibit 1040, Sub R?

22 MS. MASENGALE: Judge Torem, I had
23 marked that as admitted, but if that's an error, I can
24 delete that.

25 JUDGE TOREM: No. I'll just ask

1 applicant's counsel: Was that, to your recollection,
2 also adopted by the witness yesterday?

3 MS. STAVITSKY: Your Honor, I'm
4 sorry. The sound broke out.

5 Did -- Ms. Masengale, did you say 1040 was or was
6 not adopted?

7 MS. MASENGALE: I marked it as being
8 admitted. However, that may have been an error on my
9 part.

10 MS. STAVITSKY: No, it was -- that
11 was what I had in my notes as well, and it should be
12 admitted. So that's correct and accurate. Thank you.

13 JUDGE TOREM: All right. Again,
14 it's probably my note-taking as I was multitasking.

15 Does any other party have a question and concern
16 whether we can just on the record today confirm 1040_R
17 from Ms. McClain was adopted?

18 All right. Hearing no objections, then. If it
19 wasn't yesterday, it is today.

20 Thank you, Ms. Masengale. Your notes, I expect,
21 are better than mine on some of these as we work
22 through it.

23 All right. Tomorrow morning at 8:30, then, is
24 when we'll convene our housekeeping session, and we'll
25 go on with Mr. Morgan Cooke's [sic] testimony and

1 whatever else you agree might be fit in before we break
2 for the afternoon Council meeting.

3 After our session tomorrow morning and before the
4 Council meeting, we'll talk again and confirm as best
5 we can the week of August 21st to 25th and what we can
6 do going forward.

7 And I'd ask Mr. McMahan and Ms. Stavitsky to keep
8 us apprised, even though we're not going to conduct
9 sessions on Thursday, Friday, or over the weekend, on
10 any developments with Ms. Perlmutter's health.
11 Hopefully it takes a turn for the better and we'll have
12 her with all vim and vigor ready to go next week.

13 So with that, thank you very much for your time.
14 At 11:36, we're adjourned for the day, and we'll pick
15 up tomorrow.

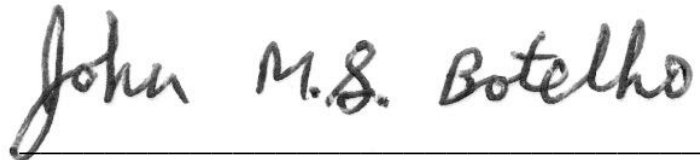
16 (Proceedings adjourned at
17 11:36 a.m.)
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1 STATE OF WASHINGTON) I, John M.S. Botelho, CCR, RPR,
2) ss a certified court reporter
County of Pierce) in the State of Washington, do
hereby certify:

3
4
5 That the foregoing proceedings were taken in my
presence and were adjourned on August 15, 2023, and
6 thereafter were transcribed under my direction; that the
transcript is a full, true and complete transcript of the
7 said proceedings and was transcribed to the best of my
ability;

8 That I am not a relative, employee, attorney or counsel
of any party to this action or relative or employee of any
9 such attorney or counsel and that I am not financially
interested in the said action or the outcome thereof;

10
11 IN WITNESS WHEREOF, I have hereunto set my hand
this 11th day of September, 2023.

12
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15
16 John M.S. Botelho, CCR, RPR
Certified Court Reporter No. 2976
17 (Certification expires 5/26/2024.)
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|--|---|---|
| # | 1:30 395:5 | 4008_T 368:17 |
| | 1st 276:25 | 4008_t_revised 372:11 |
| #6 294:7 | | 4009 368:17 |
| | 2 | 4009_confidential 372:12 |
| - | 2 277:6 278:4 292:10 400:17 | 4009_redacted 372:13 |
| -12 369:11 | 20 338:20 | 4010 368:17 |
| -13 369:12 | 20-year 335:25 | 4010_confidential 372:14 |
| | 200 364:16 | 4010_redacted 372:15 |
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