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*August 21, 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.	)	

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ADJUDICATIVE HEARING  
VERBATIM RECORD OF PROCEEDINGS

VOLUME 4

August 21, 2023

Lacey, Washington

(CLOSED-RECORD SESSIONS REDACTED)

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Reporter. All other participants are  
appearing remotely via Microsoft Teams.

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1 BE IT REMEMBERED that on Monday,  
2 August 21, 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: Good morning,  
11 everybody. Happy Monday. We're going to get started  
12 with our housekeeping session for the Horse Heaven wind  
13 farm adjudicative hearing.

14 Let me do a quick survey of who's here for the  
15 parties, and then we can talk about today's schedule  
16 and any other adaptations to schedule for this week we  
17 need.

18 Mr. McMahan, I see you up there. Who is present  
19 for applicant today?

20 MR. McMAHAN: Yeah, good morning,  
21 Your Honor. Tim McMahan here with Emily Schimelpfenig,  
22 Ariel Stavitsky, and Willa Perlmutter --

23 JUDGE TOREM: All right.

24 MR. McMAHAN: -- for the applicant.

25 JUDGE TOREM: Excellent. Thank you.

1 For the County today?

2 MR. HARPER: Good morning, Your  
3 Honor. Ken Harper and Z. Foster.

4 JUDGE TOREM: Good morning to both  
5 of you.

6 Ms. Reyneveld, I can see you up there. Thank you.  
7 Good morning.

8 And --

9 MS. REYNEVELD: Good morning, Your  
10 Honor.

11 JUDGE TOREM: -- for the Yakama  
12 Nation.

13 MS. VOELCKERS: Good morning, Your  
14 Honor. Shona Voelckers for the Yakama Nation. And I'm  
15 joined by my cocounsel Ethan Jones and Jessica Houston.

16 JUDGE TOREM: Thank you.

17 And, Ms. Voelckers, thank you for circulating the  
18 most updated schedule for our review this morning.

19 Mr. Aramburu, good morning. How are you?

20 MR. ARAMBURU: Good morning, Your  
21 Honor.

22 JUDGE TOREM: All right. Let's see  
23 if we can go and walk through today's schedule.

24 We have Emily Ragsdale starting at 9. And  
25 depending how that goes, we'll get to Jessica Lally at

1 10:45.

2 It's my understanding that essentially every  
3 witness today, we're going to be in a closed session.  
4 So what we'll do is start on the record in an open  
5 session, and I've asked Andrea Grantham to go ahead and  
6 build that group that's going into the closed session.  
7 So hopefully it's quicker today than it was last week  
8 when we initially tried that during the adjudicative  
9 hearing.

10 After our lunch break, we'll have George Selam and  
11 then Mr. Heemsah after that and then Caseymac Wallahee.  
12 And I think we took Jerry Meninick, and we're moving  
13 him to Thursday or Friday, from the notes I saw. So  
14 we've got one, two, three, four -- five witnesses  
15 today.

16 What other updates do we have for today?  
17 Mr. McMahan.

18 MR. McMAHAN: None from the  
19 applicant, Your Honor.

20 JUDGE TOREM: And in the shifting  
21 around for Ms. Perlmutter's witnesses, anything else  
22 than the ones maybe she's participating in today?

23 MR. McMAHAN: Ms. Perlmutter will be  
24 participating actively in the Jansen, McIvor, and  
25 Rahmig testimony. I believe that will be starting

1 tomorrow.

2 JUDGE TOREM: Okay. And I see that  
3 there. Excellent.

4 Mr. Aramburu, let me come to you next. Any other  
5 updates for today's particular schedule? And then  
6 we'll let you talk from there about the rest of the  
7 week.

8 MR. ARAMBURU: No updates for  
9 today's schedule.

10 JUDGE TOREM: Okay. Ms. Reyneveld,  
11 anything for today that we need to know?

12 MS. REYNEVELD: No, nothing from me.  
13 Thanks.

14 JUDGE TOREM: All right. And,  
15 Ms. Voelckers, am I right that Ms. Ragsdale is  
16 anticipated to talk about some confidential matters?

17 MS. VOELCKERS: Your Honor, I expect  
18 that it might come up. I don't know that my questions  
19 will result in an answer that's protected, but my  
20 understanding is that the goal would be to not put her  
21 in a difficult position in making that determination,  
22 but rather, to just be in a closed record for her  
23 testimony because of the sensitive information.

24 JUDGE TOREM: Okay. And,  
25 Ms. Reyneveld, your questions might go that direction

1 as well?

2 MS. REYNEVELD: Sorry. They -- they  
3 might. I don't anticipate that they would, but they  
4 might.

5 JUDGE TOREM: Okay. Well, I think  
6 we'll be in closed session for that entire piece as  
7 well. I've got some concerns about overuse of a  
8 closed-record proceeding in a public adjudication. But  
9 we'll see where her testimony goes, Ms. Voelckers,  
10 after yours and how much confidential information is  
11 actually discussed. And if we think we can reopen the  
12 session instead, let's try to do that, but I want to  
13 make sure we keep the confidential information within a  
14 closed record.

15 Mr. Harper, you're not featured -- yeah, you're  
16 not featured prominently on today's projected  
17 cross-exam, but anything else you need me to know about  
18 your -- County's participation today?

19 MR. HARPER: No.

20 JUDGE TOREM: All right. The rest  
21 of the week, then. Let's turn to that. I see at the  
22 really -- we moved the Jansen and Rahmig testimony  
23 mainly to tomorrow, and then we've got some other  
24 shifting around from there on Wednesday per the chair's  
25 request to hear Mr. Wiley. And looking to see how far

1 into the afternoon we're projected to go on the day of  
2 the public comment hearing now.

3 And I see, Mr. Harper, that you put in Ms. Cooke  
4 for some potentially limited rebuttal testimony. That  
5 will depend, I guess, on what Mr. Wiley says?

6 MR. HARPER: Yeah, I think that's  
7 right, Your Honor.

8 JUDGE TOREM: Okay. Sounds good.

9 What I'm hoping is that Mr. Wiley's testimony  
10 won't take nearly the hour that's projected there based  
11 on the questions we discussed on Friday's prehearing  
12 conference. So we'll just see how that goes. And if  
13 Ms. Cooke is ready to go closer, although I'm sure  
14 she'll be listening to what Mr. Wiley says. At least  
15 I'd anticipate, if it was my witness, I'd have her  
16 participating at that point.

17 So, Mr. Harper, was that your intent as well so  
18 she knows what she might be rebutting?

19 MR. HARPER: Yes, Your Honor.

20 JUDGE TOREM: Perfect. That ought  
21 to speed things up as well.

22 All right. And we'll hear from Mr. Krupin and  
23 Mr. Sharp on their testimony per the order that you got  
24 advance copy of last night and is now published. I  
25 think I saw the e-mail this morning.

1 MR. ARAMBURU: Your Honor, with  
2 respect to those two witnesses, I -- I have no reason  
3 to believe that they would not be available that day,  
4 but they just found out they were going to be  
5 witnesses, and I need to check with them, see if  
6 there's any serious conflicts. I don't believe there  
7 are, but -- but I do want to check with them.

8 JUDGE TOREM: All right. I think I  
9 saw Mr. Sharp pop up in the participants today. So,  
10 Mr. Sharp, if you want to unmute and just take care of  
11 that question as to your availability Wednesday in the  
12 morning, probably in the last half, 10:30 to 11 -- or  
13 sorry -- to the noon hour.

14 Mr. Sharp, if you can hear me, do you want to let  
15 Mr. Aramburu and the rest of the parties confirm your  
16 availability for late Wednesday morning?

17 MR. SHARP: Last I checked, I  
18 thought the time was in the afternoon. I have a  
19 doctor's appointment tomorrow at 10, but I guess I  
20 could change it.

21 JUDGE TOREM: Well, I think we're  
22 talking about Wednesday.

23 MR. SHARP: Oh. Wednesday. I'm  
24 okay, then.

25 JUDGE TOREM: Okay. Good.

1           So, Mr. Aramburu, just need to check with  
2           Mr. Krupin, unless he happens to be online this  
3           morning. I didn't necessarily catch him logging in.

4                       MR. ARAMBURU: Let's assume that the  
5           slot of 10:45 to 11:45 for Mr. Krupin is good unless I  
6           inform the parties within the next couple of hours.

7                       JUDGE TOREM: All right. Thank you,  
8           sir. I don't see him in the participants list, so  
9           we'll let you do that by e-mail or have Ms. Cohoe do  
10          that.

11          As to the witness exhibits for Mr. Krupin and  
12          Mr. Sharp as they currently stand on the prefiled,  
13          hopefully that can be filed today but certainly before  
14          Wednesday morning so that Ms. Masengale can get the  
15          updated ones into the file perhaps Tuesday night for  
16          the Council's review.

17                      MR. ARAMBURU: One other item. The  
18          County has Ms. Cooke as a potential rebuttal witness to  
19          Mr. Wiley. We are currently conferring regarding  
20          possible rebuttal testimony. This is all coming very  
21          quickly with lots of things. We'll let the parties  
22          know right away if we have some rebuttal testimony in  
23          mind to Mr. Wiley.

24                      JUDGE TOREM: And as you're forming  
25          those thoughts, Mr. Aramburu, about potentially a



1 rebuttal witness for Mr. Wiley, has that person already  
2 been identified by name in any of the filings, or are  
3 you thinking about somebody new altogether?

4 MR. ARAMBURU: This will be somebody  
5 new.

6 JUDGE TOREM: Okay. Well, for  
7 purposes of keeping the discovery going and that the  
8 applicant particularly feels as though they know what  
9 might be coming and the scope, I hope you'll  
10 communicate that sooner rather than later as you  
11 formulate the testimony.

12 And would you consider it's going to be submitted  
13 in writing, or given the short amount of time, it'll  
14 simply be verbal? And, if so, if it's verbal, if you  
15 could give a couple of points, maybe even just bullet  
16 points in a memo to the parties as to what that witness  
17 might be covering, that might be as best a discovery  
18 disclosure as we can do, given the short time between  
19 now and, what, 50 hours from now.

20 MR. ARAMBURU: We'll do the best we  
21 can. We understand currently we're working on the  
22 three questions that Ms. Drew posed in an e-mail from  
23 last week. So to the extent we do have a rebuttal  
24 witness, we will probably formulate our short responses  
25 to those three questions.

1 JUDGE TOREM: Let me hear from the  
2 applicant. Again, just for the record, any concerns on  
3 the rebuttal testimony both of Ms. Cooke and/or what  
4 might be coming from a yet unnamed witness?

5 MR. McMAHAN: Thank you, Your Honor.  
6 I do -- we do have some concerns about this. As, of  
7 course, we all are aware, the genesis of this was the  
8 Council Chair's request for some fairly confined  
9 information that she provided to the parties. Frankly,  
10 I, especially without knowing what rebuttal, what  
11 witness, who we're talking about, it's rather  
12 surprising that new witnesses will be put forward at  
13 this point in time. We -- we question the necessity of  
14 that, given the focused nature of the Chair's request.  
15 Ms. Cooke, I think, at least as -- it makes some sense,  
16 given that she is a party who's testified, and that  
17 makes sense that the County would perhaps want to have  
18 some testimony from her. But a mysterious unknown  
19 witness showing up on Wednesday is objectionable to us,  
20 Your Honor.

21 JUDGE TOREM: I thought it might be,  
22 so I'm hoping that you'll work with Mr. Aramburu to  
23 sort out who that person might be in the course of  
24 today or at the end of today's hearing and see whether  
25 the objection might be resolved by sort of an agreed

1 understanding on the scope of any rebuttal and whether  
2 that person might speak to, again, anything that Chair  
3 Drew expressed an interest in from Mr. Wiley and what  
4 Ms. Cooke might be anticipated to say in response.

5 I hesitate to call it trial by ambush in such a  
6 very limited scope of what's here, but if it can help  
7 the Council's understanding, again, I'd like to be more  
8 information than less. Hopefully, again, because this  
9 is a limited land-use compatibility issue as well as a  
10 long-term question of use of the lands, at least how I  
11 read Chair Drew's statements, it may -- it may help  
12 elucidate some points from the community perspective on  
13 compatibility and the other conditional use permit  
14 questions that this Council has to offer.

15 So, Mr. Aramburu, if it's limited to those types  
16 of things, that's what I anticipate would be  
17 appropriate rebuttal. If you have other breadth of  
18 topic in mind, try to work those out with Mr. McMahan  
19 and give me a better presentation maybe at tomorrow's  
20 housekeeping so we can sort that out before Wednesday's  
21 testimony. All right?

22 MR. ARAMBURU: So as we identify  
23 the -- the witness, or possible witness, I will let  
24 Mr. McMahan know right away, try to coordinate with him  
25 about understanding of the witness testimony, and so

1 that hopefully by tomorrow then we can -- we can have  
2 those issues sorted out. So I'm happy to work with --  
3 with Mr. McMahan and you, Judge Torem.

4 JUDGE TOREM: Great.

5 And please work with Mr. Harper as well, since  
6 this is his main topic, so that he understands how it  
7 might be complementary or adjacent to any rebuttal that  
8 Ms. Cooke might be offering. All right?

9 MR. ARAMBURU: Happy to do that.

10 JUDGE TOREM: Thank you, sir.

11 Any other items for today's housekeeping?

12 MS. VOELCKERS: Your Honor, just a  
13 logistical issue, if I may.

14 If --

15 JUDGE TOREM: Yes.

16 MS. VOELCKERS: If we're going to be  
17 going into the closed-record hearing very soon, are we  
18 going to be coming out of it on breaks, or will it just  
19 be closed record?

20 This is just a logistical question. We're having  
21 some Monday morning technology -- we're trying to work  
22 it out so, like I said, that the tribal council could  
23 view from their own offices. And if that doesn't work,  
24 then we will invite them into our office. But they  
25 might not have logged on by the 9:00 'cause they're

1     trying to work that out right now.

2             So I just want to kind of see what the plan is for  
3     the -- going in and out of the closed-record hearing so  
4     I could flag for you when they're available to join.

5                     JUDGE TOREM:   What I'd like to do,  
6     Ms. Voelckers, is start on the record in an open  
7     hearing, explain exactly what the testimony today might  
8     be covering.   And I'm going to ask, because the  
9     applicant is calling Ms. Ragsdale first, to give a  
10    quick summary, for those in the public that might be  
11    listening, as to what she'll be covering.   So,  
12    Mr. McMahan, if you'd be ready to do that.

13            And then I'll explain that some of the  
14    cross-examination that we anticipate both from the  
15    Yakama Nation and from counsel for the environment may  
16    take us into areas of her testimony that will require  
17    confidential questioning.   And depending on when we're  
18    done with your test- -- your questions, Ms. Voelckers,  
19    we may be coming out.

20            We're going to have a slide on the screen, for all  
21    those that log in to the open meeting, that say we're  
22    in closed record and when we anticipate coming out.   So  
23    if we're going in at, say, 10 after 9, I'll have a post  
24    that we're going to try to come out at 9:45 at the  
25    break, whatever we need to do this morning.   And then

1 we'll see if we're going back into closed record per  
2 your questioning and where from there counsel for the  
3 environment thinks.

4 For each break, I think it's better for us to come  
5 out when we go to break and let the parties know that  
6 we're coming out. We'll come back from the break and  
7 then announce how long the next one is anticipated for.  
8 I think that's fairer to the public if they happen to  
9 be listening, but we're at a break, to know. And we'll  
10 put up an updated slide. Those are my thoughts on in  
11 and out of closed record rather than just staying in  
12 closed record the bulk of the day. I think we ought to  
13 pop our heads up and keep the public apprised.

14 Any other concerns on in and out of closed record  
15 from any of the parties? I see some nodding heads, but  
16 I'm not sure if it's a complete agreement on my  
17 suggestion.

18 Okay. Hearing none from that.

19 Any other matters we should take up before we come  
20 back at 9:00?

21 Not seeing any.

22 Ms. Voelckers, good luck working out the items  
23 with the technology for the tribal elders. If you need  
24 more time to bring them over before we start the  
25 Ragsdale, let me know when we start the public process

1 this morning at 9, and we'll see. I don't know how  
2 long that will take. Do you think it's a couple  
3 minutes or a more extended time?

4 MS. VOELCKERS: Thank you, Your  
5 Honor. We're here in the same building with them, so I  
6 don't anticipate we'll need to ask for more time. We  
7 just might -- and they might just choose to join after  
8 Ms. Ragsdale's testimony. So I will -- I will speak up  
9 again if I need to, but otherwise, I think we're good  
10 to proceed.

11 JUDGE TOREM: Great. Thanks,  
12 Ms. Voelckers.

13 One other item that came to my attention courtesy  
14 of Ms. Masengale this morning is you submitted a  
15 Exhibit 4014 for cross-examination with Jessica Lally;  
16 is that right? I think it was the Moon memo?

17 MS. VOELCKERS: Yes, Your Honor. We  
18 submitted that not for the purpose of cross but for the  
19 purpose of asking her about the -- the memo, given that  
20 it discusses project modifications that are meant to  
21 address Yakama Nation's concerns.

22 JUDGE TOREM: All right. And  
23 Ms. Masengale identified on Page 3 a couple of things  
24 that might need to be redacted. So because we'll  
25 probably take it up in closed session, it may not be an

1 issue today, but she'll work with you to make sure the  
2 appropriate items are redacted so that when we post it  
3 to any portion of the website, that it be appropriately  
4 marked and nothing confidential disclosed. 'Cause I  
5 guess we'll have a confidential and a redacted version  
6 of that for appropriate posting.

7 So the other parties who may have received 4014, I  
8 don't know what they -- if it's Sub X or Sub something  
9 else, but 4014, on Page 3, will have some redactions  
10 when it's actually posted to the public.

11 All right. Let's go off the record, then. We'll  
12 come back in 10, 12 minutes at 9:00, and we'll get  
13 started as indicated. Thank you.

14 (Pause in proceedings from  
15 8:48 a.m. to 9:00 a.m.)  
16

17 JUDGE TOREM: All right. Good  
18 morning, everybody. It is Monday, August 21st. It's  
19 now 9:00 in the morning. We're ready to begin our  
20 Horse Heaven wind farm Day 4 hearings.

21 We have a number of witnesses today who will be  
22 providing confidential information in their testimony,  
23 so we're going to be in and out of closed-record  
24 session as we need to be. Some parts of the day will  
25 be longer in closed session than others, but we just



1 ask that you bear with us. We'll try to keep a slide  
2 up in the main room letting you know our approximate  
3 times in and out of session.

4 Before we get started any further, I'd like our  
5 staff to call the Council roll so we know who's here  
6 today for the Horse Heaven Council.

7 MS. GRANTHAM: EFSEC Chair.

8 COUNCIL CHAIR DREW: Kathleen Drew,  
9 present.

10 MS. GRANTHAM: Department of  
11 Commerce.

12 MS. OSBORNE: Elizabeth Osborne,  
13 present.

14 MS. GRANTHAM: Department of  
15 Ecology.

16 COUNCIL MEMBER LEVITT: Eli Levitt,  
17 present.

18 MS. GRANTHAM: Department of Fish  
19 and Wildlife.

20 COUNCIL MEMBER LIVINGSTON: Mike  
21 Livingston, present.

22 MS. GRANTHAM: Department of Natural  
23 Resources.

24 COUNCIL MEMBER YOUNG: Lenny Young,  
25 present.

1 MS. GRANTHAM: Utilities &  
2 Transportation Commission.

3 COUNCIL MEMBER BREWSTER: Stacey  
4 Brewster, present.

5 MS. GRANTHAM: For the Horse Heaven  
6 project: Department of Agriculture.

7 And Benton County.

8 I believe they'll be joining after.

9 That is everyone, Judge.

10 JUDGE TOREM: All right. I'll ask  
11 that if we do go into closed session and our  
12 Agriculture and County representative have not yet  
13 joined, that staff look to move them into that closed  
14 session if at all possible.

15 And I'll also ask, if there's a background staff  
16 member that can e-mail or reach out by phone to both of  
17 them to let them know what we'll be doing today so just  
18 that if they do come in while we're in closed session,  
19 they realize they need to message somebody to identify  
20 they need to move into the closed session to hear the  
21 testimony.

22 Council members, we're going to start today with  
23 Emily Ragsdale's testimony. She's sponsored by the  
24 applicant, so I'm going to do a quick roll call of the  
25 parties so you can see who's participating today. At

1 that point, I think we'll be ready to call Ms. Ragsdale  
2 to testify.

3 The general process for today will be Ms. Ragsdale  
4 starting here at 9:00. Perhaps by 10:45, we'll be  
5 going into closed session with Jessica Lally's  
6 testimony. That will carry us, as scheduled, through  
7 the lunch hour. We'll have George Selam as the first  
8 witness after Ms. Lally's completed and go on to two  
9 more additional witnesses this afternoon on cultural  
10 resource topical issues.

11 If you're still looking at your schedule that you  
12 received last week, I don't know if Ms. Masengale's  
13 posted a new one yet, but there's an updated version  
14 for this week, and you'll see that Jerry Meninick, who  
15 you might have thought we were preparing for today, is  
16 going to be moved to later in the week.

17 Chair Drew, we've also come up with a time for  
18 Mr. Wiley's testimony. That will be on the aft- --  
19 sorry -- in the morning of Wednesday this week, on  
20 August 23rd.

21 And Mr. Harper has proposed -- and I think it's a  
22 good idea -- that we have a very limited redirect for  
23 Ms. Cooke. So we'll see how the scope of testimony  
24 goes with Mr. Wiley. And Ms. Cooke, I think, is  
25 planning to listen in, so she'll know what, if any,

1 rebuttal testimony she needs to offer.

2 Mr. Aramburu has proposed a witness. We don't  
3 have a name or any other identification yet. But if  
4 appropriate, he's going to work with Mr. McMahan and  
5 the other parties to identify who that might be as a  
6 potential rebuttal witness as well from TCC. And if  
7 that works out within the scope of Mr. Wiley's  
8 testimony, we'll see if Mr. McMahan wants to put any  
9 objections on the record in tomorrow or Wednesday's  
10 housekeeping session and what we do from there.

11 So those are some other things to anticipate based  
12 on Chair Drew's questions. I had a good conversation  
13 with the parties Friday afternoon and relayed your  
14 specific questions. And I think they're essentially  
15 the same as what you had sent over to me that day. I  
16 might have changed the wording slightly. So we'll make  
17 sure we know where we're going with those in general on  
18 Wednesday morning.

19 All right. Let me take the party roll.

20 For the applicant.

21 MS. STAVITSKY: Good morning, Your  
22 Honor. Ariel Stavitsky here for Scout Clean Energy.  
23 I'll be handling the cultural witnesses today.

24 JUDGE TOREM: All right. And for  
25 Benton County?

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

3 JUDGE TOREM: Counsel for the  
4 environment?

5 MS. REYNEVELD: Sarah Reyneveld on  
6 behalf of counsel for the environment. Good morning,  
7 Your Honor.

8 JUDGE TOREM: Good morning.  
9 And Yakama Nation.

10 MS. VOELCKERS: Good morning. Shona  
11 Voelckers for Yakama Nation along with Ethan Jones and  
12 Jessica Houston.

13 JUDGE TOREM: And Tri-Cities  
14 C.A.R.E.S.

15 MR. ARAMBURU: Morning, Your Honor  
16 and Council members. Rick Aramburu representing  
17 Tri-City C.A.R.E.S.

18 (Witness Emily Ragsdale  
19 appearing remotely.)  
20

21 JUDGE TOREM: All right. Ms. Emily  
22 Ragsdale, good morning. I'm Judge Torem. Nice to meet  
23 you.

24 **THE WITNESS: Good morning.**

25 JUDGE TOREM: Our process, as you've

1 heard, is going to be some in open session today, and  
2 then we'll be moving to a closed-record session.

3 Ms. Voelckers, after some thought about trying to  
4 keep things open as long as possible, I'll have you let  
5 me know when the first question you think might raise  
6 any confidential information.

7 And, Ms. Ragsdale, if you think an answer is going  
8 to stray into something that's protected information, I  
9 think you're probably well aware of where things might  
10 be in that regard for your testimony. I'll ask you to  
11 say, "I think I'm going to answer with confidential  
12 information," and advise we need to go into  
13 closed-record session. So Ms. Voelckers probably knows  
14 which questions she's got in mind, but your answers may  
15 be a little broader than she's anticipating. So if the  
16 both of you would help me keep the sensitive and  
17 confidential information limited to those who have  
18 signed our confidential agreements, that would be  
19 great.

20 As I said earlier, for those members of the  
21 public, we'll try to keep things open as much as  
22 possible. Open government and open proceedings are in  
23 everybody's interest, and we'll go from there.

24 I see that Ed Brost has joined us, for the record.

25 Mr. Brost, can you hear us okay?

1 COUNCIL MEMBER BROST: Yes.

2 JUDGE TOREM: All right. Thank you.

3 And has our Agriculture representative joined us?

4 All right. Not yet.

5 So, Ms. Stavitsky, I hope you were listening  
6 earlier. I'm going to ask you once I swear in  
7 Ms. Ragsdale. She's going to be adopting Exhibits  
8 1004\_T and 1005. Once I have sworn her in to do that,  
9 I'll have you maybe give a quick overview of what her  
10 testimony is going to cover so that members of the  
11 public have an idea of the scope. Just a couple  
12 sentences. And then we'll see when we go into  
13 closed-record session.

14 All right. Ms. Ragsdale, if you'll raise your  
15 right hand.

16  
17 EMILY RAGSDALE, appearing remotely, was duly  
18 sworn by the Administrative  
19 Law Judge as follows:  
20

21 JUDGE TOREM: Do you, Emily  
22 Ragsdale, solemnly swear or affirm that all of your  
23 prefiled testimony as included in Exhibits 1004\_T and  
24 1005 and any answers you give today in the course of  
25 this proceeding will be the truth, the whole truth, and

1 nothing but the truth?

2 **THE WITNESS: I do.**

3 JUDGE TOREM: Thank you, ma'am.

4 So Exhibit 1004\_T and 1005 are now adopted and  
5 part of our record. They're admitted as evidence.

6 (Exhibit Nos. 1004\_T\_Revised  
7 and 1005 admitted.)  
8

9 JUDGE TOREM: Ms. Stavitsky, I'm  
10 going to go on "mute" on this end and let you introduce  
11 the witness and then turn it over to Ms. Voelckers for  
12 cross-exam.

13 MS. STAVITSKY: Thank you, Your  
14 Honor.

15 Hi, everyone. Ariel Stavitsky here for Scout  
16 Clean Energy. We're joined today by Emily Ragsdale,  
17 who is an archaeologist with HRA, who produced the  
18 cultural resource report that underlie the project  
19 application in the application for site certification,  
20 the ASC.

21 Ms. Ragsdale will be testifying today about her  
22 research on the cultural resource reports and the  
23 content based on those reports that is in the ASC, and  
24 that section is 4.2.5.2.

25 JUDGE TOREM: All right. Thank you,



1 Ms. Stavitsky. That, I think, orients the Council  
2 members and members of the public.

3 Ms. Voelckers, your examination, which I think is  
4 scheduled to maybe take a half an hour, and then we'll  
5 come to Ms. Reyneveld.

6 MS. VOELCKERS: Thank you, Your  
7 Honor. We might not need that whole time.

8  
9 CROSS-EXAMINATION

10 BY MS. VOELCKERS:

11 Q Good morning, Ms. Ragsdale. My name is Shona  
12 Voelckers. I represent the Confederated Tribes and  
13 Bands of the Yakama Nation in this proceeding.

14 I have a few questions today about your background  
15 and the scope of your research.

16 Are you originally from the Pacific Northwest?

17 **A No, I'm not.**

18 Q Where -- where did you grow up?

19 **A I grew up mostly in Reno, Nevada, so Great Basin.**

20 Q And in looking at your résumé, is it fair to say that  
21 you also didn't obtain any of your formal training in  
22 the Pacific Northwest?

23 **A Not my education, no.**

24 Q Okay. I did see as well -- and this is Exhibit 1005.

25 I did see as well in your résumé that you've worked on

1 multiple development projects, the impact to Yakama  
2 Nation's members and Yakama Nation's treaty reserve  
3 rights aside from this project.

4 But you've never been hired by Yakama Nation to  
5 conduct any professional research, correct?

6 **A Correct.**

7 Q So you've only been representing developers, correct?

8 **A Correct. Yes. Or federal agencies as well. And**  
9 **probably State agencies too. But, you know, we work**  
10 **for Bonneville Power, for example, a lot, who has lots**  
11 **of transmission projects in Yakama Nation land.**

12 Q Okay. But it's also fair to say that you work for a  
13 number of developers that are proposing industrial  
14 projects that impact the Yakama Nation, correct?

15 **A Yes.**

16 Q And I saw in Page 2 of your direct testimony, I believe  
17 Exhibit 1004, that one of the reasons that you were  
18 engaged by the applicant to work on this project was  
19 to, I believe you said, quote, assist with tribal  
20 communications and outreach.

21 You haven't engaged directly with Yakama Nation's  
22 tribal council regarding the project, have you?

23 **A Nope. That was not my role.**

24 Q Okay. Do you believe that your company's reports on  
25 the project's cultural resource impacts contain

1 sufficient information regarding the project's  
2 potential impacts to Yakama Nation's traditional  
3 cultural properties?

4 **A Our reports don't necessarily describe the impacts.**  
5 **The impacts are addressed in the application. Our**  
6 **reports are about the background research and the**  
7 **results of our investigations. So it's a documentation**  
8 **of archaeological and architecture resources.**

9 But they don't analyze the impact. Sorry. Didn't  
10 mean to cut you off. They don't analyze the impacts of  
11 the project. Just provide recommendations for how to  
12 deal with the resources that are identified.

13 Q And is it your opinion that they contain sufficient  
14 information about Yakama Nation's traditional cultural  
15 properties to fully inform the Council?

16 **A That was not the scope of our reports.**

17 Q Okay. And is it your professional opinion that the  
18 application, itself, contains sufficient information  
19 regarding the project's potential impacts to Yakama  
20 Nation's traditional cultural properties to inform the  
21 Council?

22 **A That is outside the scope of my role on this project.**

23 Q Okay. Do you know what Yakama Nation's historic  
24 traditional use areas are?

25 **A I am not an expert by any means, no.**

1 Q Do you know -- do you know anything, though, about the  
2 ethnographic history --

3 A Yes. As the -- in the course of our research, yes, we  
4 do cover that.

5 Q So would you say that the course of your research  
6 covers sufficient information about where Yakama  
7 Nation's ancestors lived, hunted, and gathered?

8 A Yes. I mean, sufficient in terms of what we were  
9 trying to do for our report, not sufficient probably  
10 for a TCP analysis. For the scope of what our work  
11 was, yes.

12 Q Okay. Are you familiar with the historic kinship ties  
13 of the 14 tribes and bands that make up what is now the  
14 Confederated Tribes and Bands of the Yakama Nation?

15 A On a broad level, yes.

16 Q What do you broadly know about the historic kinship  
17 ties of all 14 tribes and bands of the Yakama Nation?

18 A Broadly that they have existed for a time immemorial  
19 that people have been on the landscape. My perspective  
20 is that I know about the archaeology, you know, the  
21 evidence that was left by those people. I am not an  
22 ethnographer. I -- I know what was written in  
23 literature that was produced at the time of contact up  
24 and through the historic period, but I'm by no means an  
25 expert on Yakama Nation history.

1 Q And you didn't submit any rebuttal testimony in  
2 response to Jessica Lally's report regarding the  
3 project's potential impacts to Yakama Nation's TCPs, or  
4 traditional cultural properties, correct?

5 A **Correct.**

6 Q Can we agree that Jessica Lally's experience working  
7 for Yakama Nation and her ability to obtain information  
8 directly from Yakama Nation members makes her the most  
9 qualified archeologist to provide a professional  
10 opinion regarding the project's impacts to Yakama  
11 Nation's TCPs?

12 A **Absolutely.**

13 MS. VOELCKERS: Those are my only  
14 questions at this time, Your Honor.

15 JUDGE TOREM: All right. Thank you.

16 If we need to on follow-up, Ms. Voelckers, let me  
17 know if we need to go into closed session for anything.  
18 We didn't have to yet.

19 Ms. Reyneveld, you're scheduled for some questions  
20 as well. When yours are done, I'll go around the room  
21 for all the rest of the parties, and then we'll come to  
22 the Council and see if Chair Drew and the Council  
23 members have any questions for you, Ms. Ragsdale.

24 Ms. Reyneveld.

25 ////

CROSS-EXAMINATION

BY MS. REYNEVELD:

Q Good morning, Ms. Ragsdale. My name is Sarah Reyneveld. I'm an assistant attorney general in the Environmental Protection Division of the attorney general's office. And I'm the counsel for the environment assigned to this matter, which represents the public and its interests in protecting the environment. And I have a few questions for you.

So you are a principal archaeologist at Historic Research Associates, which provides cultural resourcing consulting services; is that correct?

**A Correct.**

Q And turning to your direct examination, your cultural resource credentials including completing pre-contact and historic period archeological surveys, research evaluation and data, archaeological monitoring, and also government and tribal communications -- correct? -- among other things?

**A Correct.**

Q And for this project, you were first contracted to complete a desktop survey analysis of the project, or a desktop analysis of the project, also conduct a limited field survey, and assist with tribal communications and outreach; is that correct?

1   **A   That is correct.**

2   Q   And you prepared portions of the appendices, including  
3       Appendix R, cultural resource reports, for the  
4       application for site certification, correct?

5   **A   Correct.**

6   Q   And is your tribal communications and outreach for this  
7       project accurately summarized in Appendix R?

8   **A   Yes, summarized.**

9   Q   Okay.  And is there any additional relevant  
10      communication that was particularly relevant to your  
11      survey results and the conclusions today that you had  
12      with the tribes?

13  **A   No.  I think that the -- the tables that have all of**  
14      **the information, you know, they summarize all the**  
15      **communications that happened.  You know, the details of**  
16      **some of the earlier conversations aren't listed in**  
17      **those communication tables from the, you know, the**  
18      **first year of the project, but they're all summarized**  
19      **there.**

20  Q   You are not a member of a federally recognized tribe,  
21      correct?

22  **A   Correct.**

23  Q   And you've never been a member, correct?

24  **A   Correct.**

25  Q   You were also contacted to complete a desktop analysis

1 for this project, correct?

2 A I don't -- I don't know what you mean by "a desktop  
3 analysis," I suppose.

4 Q I was going to ask you what that entailed.

5 A Where is that language coming from? I guess.

6 Q I believe it is in the description of what you  
7 performed in the project. So if you can't speak to  
8 that, then I can move on in my questioning.

9 A Well, yeah, I can tell you generally what a desktop  
10 analysis is. You know, it's all the background  
11 research that goes into deciding what the possibility,  
12 the probability of their -- what types of resources are  
13 existing, known to exist in a landscape, and what types  
14 of resources could possibly exist, where they might be,  
15 how they might have been affected by landscape changes  
16 over the years. It sort of helps inform your field  
17 methodologies. It provides a context for analyzing and  
18 interpreting resources. That's what a desktop analysis  
19 is.

20 We didn't produce an actual product of a desktop  
21 analysis, per se. That would have been all wrapped up  
22 in our cultural resource reports, but there wasn't,  
23 like, a standalone desktop analysis document produced.

24 Q Okay. But it's fair to say that you conducted one?

25 A Oh, absolutely. Yeah. That's all part of -- that's



1        sort of, like, first, second step of starting any sort  
2        of survey, archaeological survey.

3    Q    You also conducted a limited field survey, correct?

4    A    I wouldn't call it limited at this point. We surveyed  
5        22,000 acres.

6    Q    Okay. So you surveyed those 22,000 acres over five  
7        field sessions; is that correct?

8    A    I couldn't say the number of field sessions. That  
9        would be listed in our reports. You know, it was over  
10       a two-and-a-half-year period. So many, many field  
11       sessions, yes, with lots of crew members. Each field  
12       session is about 80 hours' worth of work, so...

13   Q    Okay. And is it fair to say that all of the project  
14        area was not surveyed?

15        There was an area of the project area you did not  
16        survey; is that correct?

17   A    No. We survey -- we didn't survey the lease boundary.  
18        We surveyed the micro-siting corridor, which is where  
19        all the impacts, the -- the physical disturbances will  
20        be.

21   Q    Okay. And you didn't survey the lease boundary?

22   A    Correct.

23   Q    And why was that?

24   A    Because there will not be any physical impacts in the  
25        areas outside the areas where we have surveyed. And if

1       **there are, we would survey those in the future.**

2       Q   Gotcha.

3               So as part of the application as well as the  
4       appendix, you were required to identify historic and  
5       archeological sites within the areas of the facility  
6       that were -- are going to be affected by construction  
7       operation; is that correct?

8       **A   That is correct.**

9       Q   And did you evaluate the resources identified for  
10      eligibility for listing in the National Register of  
11      Historic Places?

12      **A   We did for the historic-period archaeological sites and**  
13      **also for the built environment.**

14      Q   Okay. And were there other sites that you did not  
15      identify?

16      **A   Not identify or not evaluate?**

17      Q   Not evaluate.

18      **A   Not evaluate. Yes, there are two pre-contact**  
19      **archaeological sites that are not evaluated, because**  
20      **that -- because the regulatory context.**

21      Q   Okay. Did you also give consideration to significant  
22      properties; specifically, those listed in our eligible  
23      for the Washington Heritage Register?

24      **A   That is part of our analysis, yes.**

25      Q   Okay. And your survey results are summarized in the

1 application; is that correct?

2 **A Correct.**

3 Q Okay. And as a result of your survey, you identified  
4 14 archaeological resources and five historic  
5 properties in the area you surveyed; is that correct?

6 **A That is not correct.**

7 Q Okay. Can you clarify the record, then?

8 **A Sure. We -- we -- we identified 41 archaeological**  
9 **resources, so that's 29 sites and 12 isolates.**

10 Q Okay. And of those, how many did you recommend be  
11 avoided?

12 **A All of them.**

13 Q All of them.

14 **A That were -- I'm sorry. Let me -- let me go back on**  
15 **that.**

16 We -- we recommend avoiding all of them. However,  
17 under state law, historic-period archaeological  
18 resources that have been determined not eligible for  
19 the National Register do not require avoidance. So  
20 that was our answer in our reports.

21 Q Okay. And correct me if I'm wrong. But you said that  
22 you did not evaluate all of them for the National  
23 Register; is that correct?

24 **A That is correct.**

25 Q Okay. And when does that evaluation process occur?

1 A Well, evaluation of historic-period sites, by its very  
2 nature, is invasive. So we have to go into  
3 archaeological sites and dig holes in them, which is a  
4 destructive process -- right? -- in and of itself.

5 So we don't necess- -- we don't need to go down  
6 that route and destroy more sites, historic portions of  
7 sites to determine eligibility if they're not going to  
8 be physically impacted. So we can just leave them as  
9 unevaluated and avoid them. And that, you know, is in  
10 the spirit of preservation essentially.

11 So the only time we would go in and do that  
12 evaluation testing is if we think that there might be  
13 an impact. So we did that for five of the resources.  
14 And then there's some other types of sites, you know,  
15 the historic-period isolates that you can make an  
16 evaluation determination without doing that subsurface  
17 investigation.

18 So there's a handful of those that we did that.  
19 There's some that we did some testing. And then the  
20 rest are unevaluated, with no plans to evaluate them  
21 unless they're going to be physically impacted.

22 Q Okay. And I believe that you might have reviewed --  
23 well, you probably reviewed the updated application for  
24 a site certification, correct?

25 A Correct.

1 Q Okay. And did you also review what is being dubbed the  
2 Moon memo, which was a memo to Amy Moon titled "Horse  
3 Heaven Wind Farm Anticipated Project Modifications for  
4 Final Application Certification"?

5 Are you familiar with that?

6 **A I'm familiar with that. I received it just very**  
7 **recently. I have -- you know, I couldn't quote it by**  
8 **any means, but I do know of its existence, yes.**

9 Q Okay. And would it be fair to say that you don't know  
10 whether the current project, even with these  
11 modifications, will avoid these archaeological  
12 resources and the isolate that you identified?

13 **A I have not reviewed it in detail, no.**

14 Q So you don't know?

15 **A I don't know.**

16 Q Okay. And will there be a point in time where that  
17 determination regarding avoidance is made?

18 **A Yes. But probably not by me. That was not my role in**  
19 **this project.**

20 Q Okay. And is it your understanding that the  
21 applicant's going to retain a qualified archaeologist  
22 kind of prior to the construction of this project?

23 **A Yes.**

24 Q Okay. And that person is going to be responsible for  
25 preparing and implementing cultural resource pre- --

1 pre-construction surveys and avoidance plans; is that  
2 correct?

3 **A Yes. Though we do have a draft avoidance plan written**  
4 **that HRA wrote, that I wrote.**

5 Q Okay. And we mentioned tribal coordination. But is  
6 this plan going to be developed in coordination with  
7 the Yakama Nation and other tribes?

8 **A Yep. And it says that right in the draft plan.**

9 Q And just because I'm not familiar with this process, is  
10 this plan also going to assess whether these sites can  
11 be avoided?

12 **A No. It's going to list the sites, and it's going to**  
13 **show how they are avoided. It's not going to assess if**  
14 **they will be.**

15 Q Okay. And assuming that at least some of these sites  
16 cannot be avoided, what additional work would be  
17 necessary to determine the site significance and  
18 integrity?

19 **A I guess it depends on what -- what sites we're talking**  
20 **about here.**

21 Q Okay. Well, just hypothetically --

22 **A Hypothetically, if it was a -- a historic-period**  
23 **archaeological site, we would -- and it couldn't be**  
24 **avoided, we would -- similar to the five sites that we**  
25 **have tested for the project, we would get an**

1 archaeological excavation permit from the DAHP. We  
2 write a research design. That research design would be  
3 written in coordination with the consulting parties,  
4 the tribes, the DAHP.

5 We would then do more research about that very  
6 specific location to see if we could get more  
7 information about that resource. We would go and do  
8 some formal testing, excavation, to -- square formal  
9 holes to look at the stratigraphy of the site, collect  
10 the artifacts. We would do a laboratory analysis, and  
11 then we would write a report that would make  
12 recommendations as to the site's eligibility for the  
13 National Register.

14 Q Okay. I just have a few other questions.

15 Ms. Voelckers, counsel to Yakama Nation, asked you  
16 about the term "traditional cultural property,"  
17 correct?

18 A Correct.

19 Q And are -- are the traditional cultural properties,  
20 from your understanding, did you account for those?  
21 Are those -- are those reflected at all in your survey  
22 results?

23 A That is outside the scope of what HRA provides. We do  
24 mention the communications that I had with Jessica  
25 Lally about, but a very limited -- you know, I had very

1       limited information, and it is no- -- noted in our  
2       report about a TCP in one particular location.

3   Q   Do you agree that the criteria for traditional cultural  
4       property can mirror basic National Register for  
5       Historic Places criteria?

6   A   **Yeah, there's federal guidance on that issue. Excuse**  
7       **me.**

8   Q   And do you agree that the traditional cultural  
9       properties of the tribe could be considered eligible  
10      for listing in the National Register of Historic  
11      Places?

12   A   **I would assume so, yes. I'm not an expert in TCPs nor**  
13      **do I -- you know, only Yakama Nation can say what is**  
14      **important and eligible to Yakama Nation. That's not**  
15      **something that I can do.**

16   Q   Do you think it would be important to assess whether  
17       any of the traditional cultural properties were  
18       eligible for the National Register of Historic Places  
19       particularly pertaining to this project?

20   A   **Absolutely, yeah.**

21   Q   But you didn't do so, correct?

22   A   **That is not the scope of what HRA, the services that**  
23      **HRA provides, yeah.**

24                               MS. REYNEVELD:   Okay.   Thank you.

25                               I don't have any further questions.



1 JUDGE TOREM: All right.

2 Ms. Ragsdale, I'm going to check with the other  
3 parties. And before I come back to Ms. Stavitsky for  
4 any redirect, I have a question for you as well.

5 Mr. Harper, any questions for Ms. Ragsdale?

6 MR. HARPER: I have no questions.

7 JUDGE TOREM: Thank you.

8 Mr. Aramburu, any questions for Ms. Ragsdale?

9 Mr. Aramburu, I didn't hear anything you might  
10 have said.

11 All right. I'll come back to Mr. Aramburu. He  
12 may be stepped away or be having technical  
13 difficulties.

14 Ms. Ragsdale, I'm looking at the application  
15 Exhibit R, and your conclusions and recommendations are  
16 on Page 44 in the version that I've got.

17 And so if I understand the scope of your testimony  
18 and the questions posed to you so far, as an  
19 archeologist, you looked at the corridor for the  
20 transmission that's there, the corridor of the various  
21 proposed strings of turbines, and I trust also under  
22 anything that might be impacted permanently, the  
23 buildings that would support the project, the battery  
24 energy storage facility that's proposed, as well as the  
25 solar arrays that are in the application.

1           Is that the scope of the archaeology look as a  
2       footprint of those items?

3                       **THE WITNESS:**   That is correct.   But  
4       buffered.   So the -- the corridors that we surveyed  
5       were -- were buffered, you know.   In certain instances  
6       it would be 400 feet wide.   But the -- the actual  
7       disturbances are going to be that wide.   And that was  
8       to allow the project to have some wiggle room, so if we  
9       did find a resource, it would be easier to avoid.   They  
10      could just move a line over or move a turbine over.

11                    JUDGE TOREM:   Okay.   And then the  
12      word "no shovel probes" meant it was just walked, the  
13      viewing was done, and you had another map of previously  
14      identified cultural properties that were significant on  
15      these lands?

16                    **THE WITNESS:**   That is correct.   It  
17      was all pedestrian survey.   So we walk along transects  
18      spaced 20 meters apart and observe the ground surface.

19                    JUDGE TOREM:   All right.   And,  
20      again, as you indicated in your answers and on this  
21      page, the summary, if when it goes to the actual  
22      excavation, there'll be the archaeologist on-site  
23      looking for remains or other indicators of a cultural  
24      property that might not be readily visible from the  
25      surface?

1                   THE WITNESS: Well, I think that  
2 depends on -- on the results of the consultation and  
3 communications as it comes to the monitoring plan. I  
4 don't know if there will be an archaeologist during all  
5 excavations for the entire project. That remains to be  
6 seen.

7                   JUDGE TOREM: All right. And I  
8 think you've said earlier, you're not an ethnologist.  
9 But if this project was approved and the current  
10 routing of and placement of all the facilities is done,  
11 do you have an opinion as an archaeologist on the  
12 impact overall on the Yakama Nation, on what the  
13 project would do on the scope and scale of it as to any  
14 impact on archaeological resources or anything beyond  
15 on cultural practices and resources on the land?

16                  THE WITNESS: It is my understanding  
17 that there have been several TCPs identified in the  
18 project area. And that viewshed is a very important  
19 part of that. And the landscape, itself, where the  
20 project is going to be built is going to adversely  
21 impact that.

22                  Beyond that, I can't really say much about the  
23 TCPs. And that's just from what I've read, you know,  
24 from Jessica Lally's most recent testimony. I'm not  
25 really privy to that information.

1           In terms of the archaeological resources, we have  
2     five resources that have some sort of pre-contact  
3     component, and those are all being -- there's three  
4     sites and two isolates.

5           And I don't know if you're familiar. An isolate  
6     is a single artifact, and a site is more than one  
7     artifact and/or feature, so some more permanent  
8     cultural material on the ground. Like, a building  
9     foundation would be a feature, for instance.

10          And those are being avoided -- the three sites, as  
11     far as I know, are being avoided by the project. There  
12     will be no physical impacts to them.

13          And then the isolates are not protected in any way  
14     under state law. So I'm not sure if those will be  
15     avoided or not. But we would come up with a plan with  
16     the tribes to determine what they would like to happen  
17     with those two isolates.

18                   JUDGE TOREM: And final question:  
19     To the best of your knowledge, will any of the access  
20     for tribal members to these TCPs or isolates included  
21     be impacted at all by the construction of the project  
22     as proposed?

23                   THE WITNESS: I would -- well,  
24     without -- I guess I can't say, because I don't know  
25     the boundaries of where these TCPs are. I haven't seen

1     **that.**

2                     JUDGE TOREM: But you're not aware  
3 of any alteration of existing access rights?

4                     **THE WITNESS: Correct.**

5                     JUDGE TOREM: Ms. Stavitsky, I'm  
6 going to come to you for any redirect, and after that,  
7 go around to the Council members. And then we'll see  
8 if there's any recross, Ms. Voelckers, from you, from  
9 Ms. Reyneveld, and then also Mr. Harper. And if  
10 Mr. Aramburu is back with us, I'll come back to him as  
11 well.

12                    Ms. Stavitsky, I'm going to mute on this end. Go  
13 ahead.

14                    MS. STAVITSKY: Thank you, Your  
15 Honor. If -- could I request a five-minute break just  
16 to collect my notes and make sure I have my redirect  
17 questions done?

18                    JUDGE TOREM: Sure. Would it help  
19 you if I ask the Counc- --

20                    MS. GRANTHAM: I apologize.

21                    JUDGE TOREM: Sure. Before I do  
22 that, would it help you for me to ask the Council  
23 members at this point if they have questions that might  
24 also help your redirect?

25                    MS. STAVITSKY: Yeah, that would be

1 helpful. Thank you.

2 JUDGE TOREM: Chair Drew has her  
3 hand up, so I'm going to go to Chair Drew first.

4 COUNCIL CHAIR DREW: Thank you, Your  
5 Honor.

6 Ms. Ragsdale, so what I hear you saying is that  
7 your charge was to look at the ground below, what might  
8 be affected or impacted in the construction of the  
9 project, but you didn't look at how the construction of  
10 that project might affect other traditional cultural  
11 properties that may be in the region; is that correct?

12 **THE WITNESS: That's correct. That**  
13 **is not within the scope of our work.**

14 COUNCIL CHAIR DREW: Okay. Thank  
15 you.

16 JUDGE TOREM: Other Council members,  
17 questions at this point for Ms. Ragsdale.

18 Stacey Brewster. If you'll introduce yourself to  
19 Ms. Ragsdale so she knows what agency you work for and  
20 then pose your question.

21 COUNCIL MEMBER BREWSTER: Hello,  
22 Ms. Ragsdale. My name is Stacey Brewster, and I'm a  
23 representative for the Utilities & Transportation  
24 Commission.

25 I'm wondering, can you talk a little bit about

1 what avoidance means? Is there specific parameters?  
2 Is...?

3 **THE WITNESS:** Sure. Yeah.

4 Avoidance means no ground-disturbing actions whatsoever  
5 within a buffer of a resource boundary. So right now  
6 we have a draft avoidance plan, and there's some  
7 suggested buffers in there, but of course that is up to  
8 change. You know, it could be changed, depending on  
9 what sort of feedback we get on it.

10 So generally we have, you know, a 20-meter buffer  
11 on the boundary of sites' resources that should be  
12 avoided. So in practice, that would mean, you know,  
13 archaeologists going out ahead of time during  
14 construction or right before construction and  
15 physically staking off these buffered areas so that  
16 construction personnel can't enter into them and then  
17 monitoring during construction to make sure that  
18 construction personnel stay out of these sensitive  
19 areas.

20 **COUNCIL MEMBER BREWSTER:** Thank you.

21 **THE WITNESS:** Yeah.

22 **JUDGE TOREM:** I see Eli Levitt has a  
23 hand up.

24 If you'll introduce yourself. Then we'll have you  
25 ask your question.

1 COUNCIL MEMBER LEVITT: Hi,  
2 Ms. Ragsdale. My name is Eli Levitt, and I'm a section  
3 manager at the Washington Department of Ecology and  
4 Ecology's EFSEC Council member.

5 I believe your testimony references that you got  
6 feedback from three -- three tribes. Can you briefly  
7 characterize at a high level what kind of feedback you  
8 received?

9 THE WITNESS: Well, we had  
10 conversations early on with as many tribal member -- or  
11 tribal representatives from the cultural resource  
12 departments that would -- that would talk with us. You  
13 know, gave them introductions to the project.

14 Definitely received initial feedback from  
15 representatives of Yakama Nation and the CTUIR. The  
16 Nez Perce gave us some information, and -- but mostly  
17 specifically I would say it would be in response to any  
18 time we would write a report -- we've written six  
19 reports at this point for this project.

20 And any time we have a draft report, we would send  
21 it around for review to solicit comments and edits and  
22 feedback. And then we would take those and make edits  
23 that went into our final, final draft.

24 So I would say that's probably the biggest portion  
25 of -- of comments we received.



1 COUNCIL MEMBER LEVITT: Okay. Thank  
2 you.

3 JUDGE TOREM: Council members, any  
4 other questions before we take a break before redirect  
5 examination of Ms. Ragsdale?

6 All right. I'm happy to tell all of you also that  
7 we're making great headway. This might be a good  
8 time -- I think Ms. Lally is already on the call,  
9 Ms. Voelckers. So maybe you want to check with her and  
10 make sure she's ready to go sooner. I think we'll  
11 anticipate we'll be done well ahead of the 10:45  
12 schedule. We can call her sooner and continue to make  
13 good progress today.

14 All right. Everybody, it's 9:39. Let's go ahead  
15 and take ten minutes till 9:50. And we'll come back  
16 then, Ms. Stavitsky, with your redirect of  
17 Ms. Ragsdale. Thanks, all.

18 (Pause in proceedings from  
19 9:40 a.m. to 9:50 a.m.)  
20

21 JUDGE TOREM: All right, everyone.  
22 We're ready to come back with Ms. Ragsdale's testimony.  
23 We'll have some redirect as needed from Ms. Stavitsky.  
24 Looking to see if -- it looks like everybody is back.

25 Ms. Stavitsky, why don't we go ahead.

1 MS. STAVITSKY: Thank you, Your  
2 Honor.

3  
4 REDIRECT EXAMINATION

5 BY MS. STAVITSKY:

6 Q Thank you, Ms. Ragsdale, for being here today and  
7 answering all these questions.

8 First I want to address: You got a few questions  
9 asking about your experience as an archeologist and  
10 with your familiarity studying and working with tribal  
11 issues.

12 I wanted to give you another chance to describe.  
13 Can you describe for us your experience working with  
14 tribes and your familiarity with tribally sensitive  
15 resources?

16 A Yeah, absolutely.

17 I mean, every -- every project that we work on, we  
18 try to coordinate to the best of our ability with  
19 tribes. Tribes have a very unique and important voice  
20 in archeology, and we would seek to incorporate that  
21 whenever we can.

22 Often there are things that -- that tribes don't  
23 want to share with us, and that's perfectly fine.  
24 That's definitely within their rights, you know. So we  
25 just can take the information that is provided to us

1 and incorporate that to the best of our abilities.

2 So generally when -- you know, when we're starting  
3 a project, we try and reach out to cultural resource  
4 programs that different tribes have, you know,  
5 communicate with them, Hey, we have a project coming  
6 up. We wanted to let you know about it. We wanted --  
7 we're seeking your input. Do you have any concerns?  
8 Do you have any information you can share?

9 We always try and offer -- and we did for this  
10 project -- you know, the opportunity to come out and  
11 meet us in the field, to share perspective or just to  
12 get a sense of what the project is about. We offer the  
13 opportunity for tribal members to monitor our work.  
14 Any tribe can always, always, always send a tribal  
15 monitor to come out and physically watch what we are  
16 doing and the decisions that we're making in the field.

17 We also on this project offered to subcontract to  
18 tribal members from these cultural resource programs  
19 and, in fact, did so with the CTUIR. You know, they  
20 staffed -- actually provided staff members to be  
21 archaeological technicians on some of the early surveys  
22 for the project.

23 And then try and communicate about the results in  
24 our reports. Like I mentioned earlier, you know, we  
25 send out reports to solicit feedback. And then try and

1 incorporate those comments that we received into the  
2 final product. And then it just -- I guess that's just  
3 sort of, like, the general philosophy for -- for all  
4 projects that we do here in the Pacific Northwest.

5 Q Great. Thank you.

6 So you've mentioned, you know, there's this  
7 connection between your archaeological work and  
8 traditional cultural properties, TCPs. And some of the  
9 questions got a little bit there, but I want to make  
10 sure everybody sort of understands those categories and  
11 how they relate.

12 So can you explain, you know, what archaeological  
13 resources are and what TCPs are and the differences in  
14 how those two relate to each other?

15 A Sure.

16 So archaeological resources are generally defined  
17 anything that's older than 50 years old that's the  
18 physical remnant of people being on the landscape,  
19 right? So they can be a historic period, which here in  
20 the Pacific Northwest in this region, you know, goes  
21 back to the, I guess, 1805, Lewis and Clark coming  
22 through -- right? -- the first colonialists that came  
23 into the Pacific Northwest. And then prior to that we  
24 generally call pre-contact archaeology.

25 So it's -- again, it's the physical remnants that

1 we find on the ground. And that can be artifacts.  
2 That can be features. That can be midden deposits. It  
3 can be faunal remains. It can be all sorts of things.

4 TCPs, on the other hand -- which, again, I'm not  
5 an expert in, but we -- they are intertwined, of  
6 course. You know, it's a -- a place or a property  
7 that's associated with cultural practices and ideas.  
8 It's rooted in the history of a group of people, and  
9 it's -- it's integral to their cultural identity today.  
10 And it can be, as I'm sure we'll get into once we get  
11 into Jessica Lally's testimony, a wide array of  
12 features and aspects of the natural world of which  
13 archaeology is one portion of.

14 So we might have an archaeological site that is  
15 part of a bigger TCP that contributes to the  
16 significance of that TCP. I imagine that there might  
17 be some instances when an archaeological site, itself,  
18 could be a TCP. I mean, I'm not familiar with any of  
19 those that that is the TCP, itself, you know. But  
20 archaeology is one aspect of it, I suppose you could  
21 say.

22 Q Okay. So if I'm understanding you, your answer, some  
23 archaeological resources are also part of TCPs?

24 A Yeah.

25 Q And some -- and some --

1   **A   Mm-hmm.**

2   Q   -- TCPs can also be part of archaeological resources;  
3       is that accurate?

4   **A   Sure.**

5               And I would say the TCPs don't have to include any  
6       archaeology, from my understanding.

7   Q   Okay.  So we -- let's see.

8               So you testified that strictly analyzing TCPs was  
9       not part of the scope of your archaeological analysis  
10      in your cultural resource reports.

11              But were there any TCP-relevant -- was there any  
12      TCP-relevant information discussed with you or that you  
13      considered during your evaluation of the archaeological  
14      resources in play?

15  **A   Absolutely.  I mean, one of the very first**  
16  **conversations I had was with Jessica Lally, and she**  
17  **mentioned to me that a particular resource was**  
18  **associated --**

19  Q   I'm sorry.  Ms. Ragsdale, I'm really sorry to  
20      interrupt.  I just want to make clear too that none of  
21      my questions are going to require disclosure of  
22      confidentiality, and so we don't need to discuss what  
23      the resources are, if any.  Just to flag that for you.

24              So I'm sorry.

25  **A   Sure.  Okay.**

1 Q Do you remember --

2 A She did mention the TCP. Yes, she did -- she did  
3 mention the TCP to me immediately, and I brought that  
4 right back to Scout immediately. So there -- there  
5 was -- and that is mentioned in our report as well.

6 Q Okay. So is that -- the -- the -- the TCP information  
7 that was disclosed to you by Jessica Lally is included  
8 and addressed in your reports; is that accurate?

9 A It is mentioned in our reports, but it is not analyzed.  
10 That was not the scope of the project. But, hey --  
11 like, hey, there's this thing that needs to be  
12 considered in a different context than the  
13 archaeological report.

14 Q So within the EFSEC standard framework that was  
15 informing the structure of your reports, that  
16 information from Yakama Nation was considered under the  
17 applicable standards; is that accurate?

18 A Yes.

19 Q Okay. Let's see.

20 You mentioned in a couple of your responses that  
21 nothing in state or federal law necessarily protects  
22 archaeological resources or TCPs, but you mentioned  
23 that there is a need for a DAHP disturbance permit if  
24 those resources are going to be disturbed.

25 Can you clarify? These resources may not

1 necessarily be protected, but what is the regulatory  
2 framework that applies to them?

3 A Well, as you probably are aware, you know, the EFSEC  
4 standards don't define historic or archaeological  
5 sites. They just say, Come up with a list of these  
6 sites, and then talk about impacts and talk about  
7 mitigation.

8 So we really have to rely on state law in this  
9 regard. And archaeological site is the very big  
10 definition. You know, it's basically -- it contains  
11 archaeological objects. Then there's another section  
12 that tells you what an archaeological object is, you  
13 know, and that goes back to that physical evidence of a  
14 pre- -- of people on the landscape.

15 But there's also other Revised Code of Washington  
16 that defines archaeological resources and doesn't  
17 define prehis- -- pre-contact or prehistoric resources  
18 but does define historic-period resources. So that's  
19 sort of the -- the framework that we're -- we're  
20 working within.

21 Q Okay. So then under that --

22 A Sorry. I didn't answer the second half of your  
23 question, which is are they protected or not.

24 So Revised Code of Washington, I guess it's 27.53,  
25 states that you need a permit to disturb -- a permit



1 from the DAHP to disturb an archaeological site. But  
2 when you get into what is an archaeolog- -- or an  
3 archaeological resource, it covers all pre-contact  
4 resources, and it covers historic-period resources that  
5 are eligible for the National Register. So there's  
6 sort of a split in Washington State law about what a  
7 resource is, if it's pre-contact or if it's historic  
8 period.

9 Q Okay.

10 A So it doesn't necessarily protect that -- it protects  
11 them in the sense that you can't disturb them without a  
12 permit.

13 Q Understood.

14 So then how are TCPs typically treated under that  
15 framework?

16 And really what I'm asking is: How are TCPs  
17 typically addressed and treated in a project-planning  
18 context like the one we're -- we're in now?

19 A I was going to say it really depends on what the -- the  
20 context is. If you're in a federal process, there's  
21 pretty well-defined methods for it. In the state  
22 process, it's -- it's less defined. There is a policy  
23 memorandum where the DAHP defines what a TCP is. And  
24 that sort of speaks to how I described a TCP earlier.  
25 And I guess it just falls into this pot of historic and

1 archaeological resources. But it's not well-defined, I  
2 would say.

3 Q Okay. Then I'd like to move on to talking more about  
4 the outreach you performed and the coordination that  
5 you engaged in with the tribes.

6 You mentioned that there were offers for studies  
7 and that you engaged with the CTUIR.

8 MS. STAVITSKY: And for the court  
9 reporter, that's the Confederated Tribes of the  
10 Umatilla Indian Reservation.

11 Q (By Ms. Stavitsky) So did any of the tribes take you  
12 up on the offer to conduct those studies?

13 A Yeah, so that was actually really early on in the  
14 project, based on the initial feedback that we had, you  
15 know, the initial conversations, right out of the gate,  
16 like I mentioned earlier. We were hearing feedback  
17 right away that there were TCPs or potential TCPs in  
18 the project vicinity.

19 I brought that back to Scout. And Scout  
20 immediately said, Let's offer to have some TCP studies.  
21 Let's offer all of the tribes who are interested to  
22 have a TCP study, and we'll fund that. And we can work  
23 with them directly to make sure that any infor- -- that  
24 they will only share information that they feel  
25 comfortable with, understanding this is highly

1 confidential and really sensitive cultural information.

2 So we -- you know, within the first month of  
3 working on the project, we -- the HRA that I worked on  
4 the project made those offers both informally over the  
5 phone, and then -- and we sent out a letter. And, like  
6 you said, the CTUIR decided that they would like to  
7 conduct a study, and they did conduct a study. And  
8 we've been working with them.

9 They -- working with them in terms of -- they  
10 conducted the study. They provided us the executive  
11 summary of the study. 'Cause it was, like I said,  
12 confidential information that they didn't want to  
13 share, which is great. And then we've been working  
14 with them on a resulting mitigation agreement for the  
15 impacts to the TCPs that they identified.

16 Q Okay. And was there funding associated with -- funding  
17 offers associated with those --

18 A Yeah. Absolutely. They were -- huh-uh. Yeah.  
19 Mm-hmm.

20 Q Okay. Okay. Ms. Voelckers asked you about your  
21 engagement with the tribal council, and you testified  
22 that you hasn't talked with the tribal council.

23 Who did you speak with during your work with  
24 Yakama Nation?

25 A Jessica Lally. Well, my very first call was to Johnson

1       **Meninick. And I spoke with him a couple of times, and**  
2       **then he -- he referred me to Jessica. And then after**  
3       **that, it was -- it was Jessica.**

4   Q   Okay. And who is Johnson Meninick?

5   A   **He's the former head of their cultural resource**  
6       **program.**

7   Q   Okay. Okay. So you testified that you had received  
8       feedback from Yakama Nation from Jessica Lally on your  
9       draft cultural resource reports; is that right?

10   A   **Yes.**

11   Q   Okay. And did you incorporate that feedback into the  
12       reports?

13   A   **Yes. Yes.**

14   Q   Okay. Let's see.

15               Have you read Jessica Lally's testimony as part of  
16       this adjudication, her direct testimony and her report?  
17       I'll call it a report.

18   A   **I have, yeah.**

19   Q   Okay. And, again, I'm not asking about the content of  
20       that report, but I just want to ask:

21               Did you read specifically the information that's  
22       at Pages 16 through 18 of -- of her report that discuss  
23       sensitive sites to the Yakama Nation?

24   A   **Yes.**

25   Q   Had you seen that information before?

1   **A   No.**

2   Q   Okay.  So it wasn't provided to you when you were  
3       circulating your reports and asking for feedback?

4   **A   No.**

5   Q   Okay.  Let's see.

6           You talked about -- Ms. Reyneveld asked you about  
7       the Moon memo, or the memo that's been circulated that  
8       discusses some proposed recent changes to the project  
9       laid out.  And she asked you about whether that  
10      impacted -- might impact the avoidance plan.  And I  
11      heard you testify, I think, that you weren't aware if  
12      there would be changes or hadn't fully analyzed that.

13           Are you -- do you have any information to suggest  
14      that the changes proposed in the Moon memo would cause  
15      a disturbance of certain archaeological resources?

16   **A   No.  It's my understanding that -- that the changes are**  
17   **actually a reduction in impacts.  So the footprint has**  
18   **gotten smaller.  So, if anything, it would move project**  
19   **elements away from resources, not -- not changes that**  
20   **would lead to more impacts.**

21   Q   Okay.  And the avoidance plan that you discussed  
22       earlier, that you explained that HRA prepared and that  
23       will apply moving forward, would that avoidance plan  
24       apply to the project footprint ultimately, whatever it  
25       ends up being?

1 A Yeah, it's just a draft at this point. You know, we  
2 didn't even put, you know, site locations or anything  
3 in it, because things are in flux, you know. But once  
4 everything is decided and once we've gotten feedback  
5 from all of the parties that are noted in the plan,  
6 then it would outline the details of exactly the  
7 specific locations that need monitoring, things like  
8 that.

9 Q Okay. And let's see.

10 You've mentioned DAHP a couple times. I want to  
11 clarify for the court reporter again for the record.  
12 That's the Washington Department of Archaeology and  
13 Historic Preservation; is that right?

14 A That's correct. It's where the state historic  
15 preservation officer is housed. The state SHPO.

16 Q And can you explain what's DAHP's role in this EFSEC  
17 permitting process?

18 A Sure.

19 So DAHP offers -- has several different roles, you  
20 know. A primary role is guidance, interpretation of  
21 state law and their own regulation, their own guidance  
22 that they put out for conducting archaeological survey  
23 standards and such.

24 They're also -- they also house all of the site  
25 resource forms, cultural resource forms and reports

1 that are produced in this state. So they're where we  
2 go to get all of our background research of what sites  
3 have been identified on the landscape, where -- what  
4 areas have been surveyed.

5 And then they act as the agency that reviews  
6 reports that either concurs with determinations or  
7 recommendations, depending on what regulatory context  
8 we're in.

9 So in this case, you know, we made recommendations  
10 about eligibility in certain cases and/or the  
11 suggestions about avoidance, things like that. So they  
12 review all of our reports and then provided concurrence  
13 on said reports.

14 And then if the project moves into -- I don't know  
15 exactly how this will apply for this, but they --  
16 they -- in general, I guess, I would say that they are  
17 signatories on agreement documents for mitigation. So  
18 if there's a memorandum of understanding or a  
19 memorandum of agreement, they would be someone who -- a  
20 party that would be a signatory to that. So they help  
21 with the consultation process, I guess, in determining  
22 how to resolve impacts.

23 Q Okay. So if -- if the, I'll call it the sensitive site  
24 information that's in the -- in Jessica Lally's report,  
25 if that had been submitted to DAHP, would DAHP have

1       been able to release it to you for study and to be  
2       discussed in your reports if --

3   **A**   No, there's sort of two levels of information that's  
4       provided to -- in DAHP.

5               So it's a confidential database that you have to  
6       have certain qualifications as an archaeologist to have  
7       access to. But then there's another level of it that's  
8       even more restricted that holds TCP information that --  
9       that -- the only people that can access that are the  
10      people who have been given permission by the -- the  
11      folks who submitted the TCP information.

12             And the TCP information often doesn't make it to  
13      DAHP anyways, 'cause it's -- it's so confidential.

14   **Q**   Okay.

15   **A**   So I would have had -- I don't know if they have it,  
16       and I wouldn't have had access to it.

17   **Q**   Okay. So am I understanding correctly that in order --  
18       if -- if it had been submitted to DAHP, in order for  
19       DAHP to release it to you to include in your studies,  
20       the Yakama Nation would have had to provide express  
21       approval?

22   **A**   That's correct.

23   **Q**   And did you submit your reports to DAHP?

24   **A**   Yep.

25   **Q**   Okay. Did DAHP concur with your findings?



1   **A   Yes.  They concurred with every recommendation we made**  
2   **as -- as it relates to archaeology.**

3                   MS. STAVITSKY:  Okay.  No further  
4   questions, Your Honor.

5           Thank you, Ms. Ragsdale.

6                   JUDGE TOREM:  All right.  Let me  
7   come back to Ms. Voelckers from the Yakama Nation and  
8   then to counsel for the environment.

9           Ms. Voelckers.

10                   MS. VOELCKERS:  Thank you, Your  
11   Honor.  I do have a clarifying question.

12  
13                   RECROSS-EXAMINATION

14   BY MS. VOELCKERS:

15   Q  Ms. Ragsdale, you were just talking a little while ago  
16   with Ms. Stavitsky about -- I'll use the term  
17   "intersection" -- the intersection between  
18   archaeological resources and traditional cultural  
19   properties.

20           Isn't it -- and you also talked about how DAHP  
21   defines a TCP or how you consider TCP.

22           But isn't it true and, I believe, didn't you say  
23   earlier that it's your professional opinion that only  
24   tribes can define and identify their own traditional  
25   cultural properties?

1   **A   Yeah.   Absolutely.**

2   Q   And why is that?   Can you help -- help the Council  
3       understand why that's your opinion?

4   **A   Well, I mean, because I am not an expert, and anybody**  
5       **who is outside a culture is not an expert on what's**  
6       **important to them.   I don't know about the traditions.**  
7       **I don't know about why things contribute to their**  
8       **cultural identity because I'm not them, right?**

9   Q   And so would it also be necessary, then, to defer to  
10      tribal knowledge on when there might be an intersection  
11      between an archaeological resource that you identify  
12      and a traditional cultural property that their members  
13      hold?

14   **A   Yep.   And that's exactly why our report is written how**  
15      **our report is, is noting that certain resources have**  
16      **been identified as potentially being associated with a**  
17      **TCP but not delving into any further analysis, because**  
18      **that's not my analysis to make.**

19                   MS. VOELCKERS:   Okay.   Thank you.  
20      Those are my questions at this time.

21                   JUDGE TOREM:   Thank you.

22                   Ms. Reyneveld, any follow-up?

23                   MS. REYNEVELD:   I just have a  
24      follow-up based on, I believe, some of the questions  
25      you posed, Judge.

RECROSS-EXAMINATION

BY MS. REYNEVELD:

Q Ms. Ragsdale, you were asked some questions about shovel probing, I believe.

And as part of your survey results or as part of the survey process, did you recommend any locations within the surveyed area for shovel probing?

A No, we did not. And that's based on the ground surface visibility and the depositional environment of the project area. Surveying area -- as you might imagine, archaeological survey in general is a -- is a -- is a sampling strategy, right? It's all about sampling. No survey is 100 percent. It's all about, you know, spacing of your transects or whatever.

So the large majority of the survey is agricultural fields which had very good visib- -- surface visibility but also had the benefit of being tilled. So it's churning up the top, you know, 30, 40, 50 centimeters of soil, which is giving you way, way, way, way, way more visibility to what's happening in the subsurface than you could ever hope -- hope to get with any sort of systematic shovel probing.

Q Is it fair to say that it's possible that there could be buried cultural deposits even with the conditions that you mentioned?

1   **A   I would say that's fair to say about any archaeological**  
2       **survey ever.**

3   **Q   Okay.  And do you intend to conduct any shovel probing?**

4   **A   No.**

5                               MS. REYNEVELD:  Thank you.  I don't  
6       have any further questions.

7                               JUDGE TOREM:  All right.  
8       Mr. Harper, did that raise any questions the County  
9       wants to pose?

10                              MR. HARPER:  No questions, Your  
11       Honor.  Thank you.

12                              JUDGE TOREM:  Thank you, Mr. Harper.  
13       And, Mr. Aramburu, I see you're back.  Do you have  
14       any questions for this witness?

15                              MR. ARAMBURU:  I do not.

16       And we are coordinating with the Yakama Nation  
17       concerning these issues, so it is unlikely that I will  
18       have questions of the witnesses today, just to alert  
19       you and the other parties.  So -- so if I don't  
20       respond, it's not -- it's not for lack of interest, but  
21       we don't have any questions of these witnesses.

22                              JUDGE TOREM:  All right.  Thanks,  
23       Mr. Aramburu.  I just want to extend the courtesy in  
24       case something comes up that might touch on TCC's  
25       overlapping interests.

1 MR. ARAMBURU: Thank you.

2 JUDGE TOREM: Let me come back to  
3 Chair Drew and the Council, Ms. Ragsdale, and then we  
4 may be able to release you.

5 Any other questions from Chair Drew or the Council  
6 members?

7 All right. Seeing none.

8 Thank you very much, Ms. Ragsdale. Appreciate all  
9 of your testimony today.

10 I wanted to ask the parties: Were there any cross  
11 exhibits that I might have missed posed for  
12 Ms. Ragsdale that need to be considered for admission?  
13 I didn't think there were any. At least none  
14 mentioned.

15 All right. Thank you, Ms. Ragsdale.

16 **THE WITNESS: Thank you.**

17 (Witness excused.)  
18

19 JUDGE TOREM: Ms. Voelckers, are we  
20 ready to swear in Ms. Lally and get started with her  
21 testimony and sort out when we might take a break from  
22 there?

23 MS. VOELCKERS: We are, Your Honor.  
24 I did have a procedural request to make first before I  
25 move off of Ms. Ragsdale's testimony.

1           The Appendix R was not shared directly with the  
2 parties and is not available publicly online, and so  
3 while I believe that we have everything that you are  
4 looking at, I would ask that EFSEC staff send the  
5 totality of Appendix R to all the (videoconference  
6 technical difficulties).

7                       JUDGE TOREM: I'm sorry. We're  
8 hearing a little bit of interference, Ms. Voelckers.  
9 Can you -- you're asking simply that Appendix R to the  
10 application be submitted to the parties?

11                      MS. VOELCKERS: Yes, Your Honor.  
12 Has not -- not yet happened.

13                      JUDGE TOREM: All right. Yeah, that  
14 Appendix R was simply part of the original application  
15 for site certification that's been on file on the  
16 EFSEC's website. There's a redacted version that's on  
17 the public website since February 8th of 2021 or  
18 thereabouts. So that's just commonly known materials.  
19 It's something that Council's already reviewed as part  
20 of both its SEPA review and in preparation for today.

21           It doesn't need to be made an exhibit. It's  
22 already essentially part of the Council's application  
23 review record. So I'm not sure if you -- it's not  
24 going to be marked as an exhibit or separately  
25 admitted.

1 MS. VOELCKERS: Your Honor, if I may  
2 respectfully highlight that it's not available on the  
3 website anymore. I know that it was at a time. And  
4 it's been removed. And so my request is, yes, not that  
5 we make this necessarily a formal exhibit that she  
6 needs to adopt, but that we all have the same copy of  
7 Appendix R that EFSEC and the Council is looking at as  
8 they make their deliberations so that we are citing to  
9 the same document.

10 JUDGE TOREM: All right. I'll have  
11 Ms. Masengale e-mail back and forth with me as opposed  
12 to including all the parties so we can make sure that  
13 the version I was looking at is posted at least for  
14 Council and party review if not necessarily an exhibit.

15 Thanks, Ms. Voelckers. I didn't realize you  
16 weren't able to find that on the website at this time.

17 (Witness Jessica Lally  
18 appearing remotely.)  
19

20 JUDGE TOREM: All right. Good  
21 morning, Ms. Lally. I'm Judge Torem. How are you?

22 **THE WITNESS: Good morning. I'm**  
23 **well.**

24 JUDGE TOREM: All right. I was  
25 looking at your background and see you spent some time

1 in Ellensburg where I now live and work with some of my  
2 KITTCOM folks that I deal with in some of my pro tem  
3 judging, so another Ellensburg Wildcat. Welcome on the  
4 screen.

5 I'll swear you in, and we're going to have you  
6 adopt your testimony today. My understanding is  
7 Exhibits 4001\_T, there's a revised version of that.  
8 4003\_Revised. That's confidential. And there'll be a  
9 number of cross-exam exhibits that are introduced  
10 during the course of questioning today.

11 Ms. Voelckers, is there a 4002 that I'm --

12 MS. VOELCKERS: Yes.

13 JUDGE TOREM: -- not identifying?

14 MS. VOELCKERS: Yes, Your Honor.

15 There's an Exhibit 4002.

16 JUDGE TOREM: All right. Thank you.

17 So, Council members, those would be found on -- I  
18 just didn't put that in my notes, Ms. Voelckers, but I  
19 do have it up on my screen here.

20 So, Ms. Lally, I'm going to swear you in, have you  
21 adopt those items. Then I'm going to let Ms. Voelckers  
22 make a quick summary of the areas you'll be covering.

23 We may be going into closed session due to the  
24 confidential nature of a number of the things you'll be  
25 testifying to, so Ms. Voelckers will identify -- or



1 perhaps the ones asking the cross-examination questions  
2 will identify when they're going to go that route.

3 But if there's any answer you intend to give that  
4 we haven't already moved in the closed session that you  
5 think we should, I leave it at your discretion to bring  
6 that to my attention and staff, and we'll pause and go  
7 into closed-record session until it's designated  
8 appropriate to come out.

9 If we're going to cover things that are no longer  
10 confidential or sensitive, we'll keep things as open  
11 and transparent for members of the public that are  
12 listening in as possible, but certainly let's be  
13 conservative in what we protect in the discussion of  
14 cultural resources.

15 Ms. Lally, with that, any questions from me?

16 **THE WITNESS: No, Your Honor.**

17 JUDGE TOREM: All right. Court  
18 reporter's going to be taking down everything that's  
19 said, so speaking a little slower and more deliberate  
20 and making that attempt not to talk over each other is  
21 appreciated. I didn't mention that to the other  
22 witness. We got a little bit fast at times, so take  
23 that into consideration as well.

24 All right. Ms. Lally, if you'll raise your right  
25 hand.

1 JESSICA LALLY, appearing remotely, was duly  
2 sworn by the Administrative  
3 Law Judge as follows:  
4

5 JUDGE TOREM: Do you, Jessica Lally,  
6 solemnly swear or affirm that all the testimony you  
7 filed previously in Exhibits 4001, 4002 and 4003 and  
8 any answers you'll give in the course of questions  
9 today will be the truth, the whole truth, and nothing  
10 but the truth?

11 **THE WITNESS: Yes, I do.**

12 JUDGE TOREM: All right. Thank you.

13 So then I'll note for Ms. Masengale to mark that  
14 4001, 4002, and 4003 have been adopted and are now  
15 admitted as part of our record.

16 (Exhibit Nos. 4001\_T\_Revised,  
17 4002\_Revised,  
18 4003\_Revised\_Confidential,  
19 and 4003\_Revised\_Redacted  
20 admitted.)  
21

22 JUDGE TOREM: Ms. Voelckers, if  
23 you'll give a quick introduction to this witness to set  
24 the scene, and then we'll move on for questioning by  
25 the applicant and come back to you for any follow-up.

1 MS. VOELCKERS: Thank you, Your  
2 Honor.

3 Ms. Lally is a professional archaeologist  
4 currently employed by the Yakama Nation Cultural  
5 Resource Program. And the bulk of her testimony is  
6 with regard to what is Exhibit 4003, which is a  
7 traditional cultural property study. And I will --  
8 will ask her -- clarify exactly what that is. I do  
9 have a few questions that I can ask before we go to  
10 closed session, Your Honor.

11  
12 DIRECT EXAMINATION

13 BY MS. VOELCKERS:

14 Q Ms. Lally, to clarify, I want to ask you. There's a  
15 statement in applicant's prehearing brief, and then  
16 there was also some inference, I think, this morning  
17 about whether or not Yakama Nation declined applicant's  
18 invitations to conduct the study of their traditional  
19 cultural property.

20 Can you please answer whether or not the Yakama  
21 Nation declined to conduct a traditional cultural  
22 property study?

23 A Yes. The issue of the traditional cultural property  
24 study was really an issue of confidentiality and  
25 disclosure. I did conduct a traditional cultural

1 property study, but it was done (videoconference  
2 technical difficulties) in-house and unfunded by the  
3 applicant.

4 MS. VOELCKERS: Okay. And I'm going  
5 to ask: Judge Torem, are you hearing us clearly? I'm  
6 having a little bit of a connection issue. I don't  
7 know if it's me or -- or not.

8 JUDGE TOREM: Ms. Grantham is  
9 indicating it might be on your end. So it might be  
10 helpful if you mute between question and answer.

11 (Clarification by reporter.)  
12

13 JUDGE TOREM: You may want to re-ask  
14 that question simply because court reporter indicated  
15 part of Ms. Lally's answer was garbled.

16 Q (By Ms. Voelckers) Okay. Ms. Lally, the question was  
17 whether or not Yakama Nation declined applicant's  
18 invitation to conduct a study of the Yakama Nation's  
19 traditional cultural properties.

20 Can you clarify that, please?

21 A Yes, I can.

22 I did complete a traditional cultural property  
23 study. We did that in-house on our own time. It  
24 was -- we did not take the applicant's offer. Because  
25 the information's confidential, I did not want to

1       **disclose it.**

2       Q   And how long would you say that this study took?

3       A   **It took a better part of a year. The better part of a**  
4       **year.**

5       Q   Even though you already had some -- some information  
6       that was held by -- by your program before you began  
7       this specific study, correct?

8       A   **Yes, that's correct. The -- the information that I'm**  
9       **presenting has been collected and documented over the**  
10      **course of many years at Yakama Nation through --**  
11      **through various studies.**

12      Q   Can you talk a little more generally about how long  
13      these studies usually take and why?

14      A   **Traditional cultural property studies generally take**  
15      **about a year to do. And that is because the**  
16      **information that we're gathering is complex. It's also**  
17      **because it's highly sensitive. Some of this**  
18      **information takes a great amount of time to identify**  
19      **people we might want to interview and really delve into**  
20      **the issues at hand that a particular project may be**  
21      **affecting.**

22                There's a significant amount of archival research  
23      that goes into compiling this level of documentation as  
24      well as those interviews.

25                               MS. VOELCKERS: Your Honor, I would

1 ask that we go into closed session before we move  
2 further.

3 JUDGE TOREM: All right. For  
4 members of the public, we're moving into areas that are  
5 confidential and only disclosable in the course of the  
6 proceeding for those that are on the Council, making  
7 the recommendation to the governor, and/or folks that  
8 have been designated as experts by other parties and  
9 all parties that have signed their confidentiality  
10 agreements.

11 So apologies for leaving you if you're paying  
12 attention today. Ms. Lally's testimony on these areas  
13 may go for a period of time during the  
14 cross-examination by the applicant that's been  
15 designated for up to an hour and redirect, which will  
16 probably happen after lunch by the Yakama Nation's  
17 attorneys.

18 So it's now 10:26. I'm going to project that we  
19 might be back around 11:30. There may be some periods  
20 of time the applicant will let us know if we can come  
21 back and share the testimony with the public.

22 All right. I'll ask staff to now move us into the  
23 closed session.

24 MS. VOELCKERS: And, Your Honor, the  
25 Yakama Nation's tribal council is on a separate log-in.

1 I think they're identified pretty clearly at this point  
2 so that they can be moved over as well, please.

3 JUDGE TOREM: All right. When we  
4 get over there, Ms. Voelckers -- it's all right.

5 MS. GRANTHAM: It was already  
6 moving.

7 JUDGE TOREM: It's all right.

8 \*\* Closed-record hearing \*\*

9 \* Not available to general public per protective order \*

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(Closed-record session  
concluded.)

JUDGE TOREM: Good morning. This is  
Judge Torem. It's now 11:35 a.m. We've been in a  
confidential closed-record session since approximately  
10:15, 10:20, somewhere in that neck of the woods. So



1 for the last hour and a quarter, the Council has been  
2 hearing confidential and sensitive testimony from the  
3 tribe's archaeologist, a Ms. Jessica Lally.

4 We're now completed with the first round of  
5 questions, and the Council's going to come back for  
6 some additional closed-record testimony at 12:50.  
7 We'll open the session again here in the public session  
8 and then be immediately be moving into closed-record  
9 session for those that have signed the confidentiality  
10 agreements or otherwise participating as Council  
11 members or staff.

12 Thank you for your patience as we do this  
13 closed-record testimony.

14 After lunch today, we have three additional  
15 witnesses: George Selam; Terry Heemsah, Senior; and  
16 Caseymac Wallahee. It's anticipated that some or all  
17 of their testimony will also be necessary to be taken  
18 in a closed-record session. We'll put up the  
19 appropriate slide that tells you what's going on and  
20 keeps you apprised.

21 Thank you. We're going to adjourn for lunch.  
22 We'll be back at 12:50.

23 (Pause in proceedings from  
24 11:37 a.m. to 12:50 p.m.)

25 /////

1 JUDGE TOREM: All right. Good  
2 afternoon, everyone. This is Judge Torem bringing us  
3 back into the Horse Heaven wind farm adjudication.  
4 This is Day 4. We're coming back from a lunch break  
5 into the public session, and shortly we'll be going  
6 back into closed-record session for additional  
7 questions for Jessica Lally.

8 Ms. Voelckers, anything before we go back into  
9 that session?

10 MS. VOELCKERS: Thank you. Yes,  
11 Your Honor. I'm sorry to inform you, but I learned  
12 that one of our witnesses this afternoon, Councilman  
13 Wallahee, is still at services for his brother who  
14 passed, so he is not available this afternoon to  
15 testify.

16 JUDGE TOREM: Well, understandable.  
17 And I appreciate the heads-up. And he is listed for  
18 2:55 p.m. to 3:25. So we'll see what we can do to  
19 reschedule based on the family's schedule, I would  
20 imagine, as you informed me last Friday afternoon that  
21 there were some other issues. I didn't realize that --  
22 who was involved, but I appreciate you sharing that  
23 today and clarifying.

24 I'll let you work with the other parties based on  
25 the grieving schedule for that family and any other

1 customary needs, and we'll see what can be done to get  
2 Council Member Wallahee -- Councilman Wallahee back in  
3 front of the members when he's ready.

4 MS. VOELCKERS: Thank you, Your  
5 Honor. And I will continue to update the parties as  
6 I'm aware of rescheduling opportunities.

7 But I also did confirm with Mr. Meninick that he  
8 is out at least for the next few days for his own  
9 attendance at a service. A separate -- separate  
10 service, I believe.

11 JUDGE TOREM: Okay. Please keep us  
12 posted. And we'll inform the whole EFSEC staff and  
13 Council members as we go forward with the updated  
14 schedules.

15 Any other party have anything we need to put on  
16 the open record before we go back into closed session?

17 Seeing no hands other than, Ms. Voelckers, yours  
18 is still electronically up there.

19 There we go.

20 Okay. Members of the public, if you were hoping  
21 to hear testimony this afternoon, we're really just  
22 going to be in and out of closed session, mainly taking  
23 confidential and sensitive information by testimony  
24 today. We've got Jessica Lally. And then we also have  
25 two other witnesses who both have a number of items of

1 confidential testimony.

2 When we're done with Ms. Lally's testimony in  
3 closed-record session, we will come back out to swear  
4 in George Selam, and we'll also be swearing in Terry  
5 Heemsah, Senior. Those adoptions of their testimony  
6 will be done in public session. And some of the  
7 questioning might occur where everybody that's  
8 interested today can hear the questions and answers,  
9 but as soon as we get into any confidential or  
10 sensitive information, we're going to defer back to  
11 closed-record session. And that's what we're going to  
12 do now.

13 So for those members of the public, we'll post  
14 probably a sign that says we'll be back in 30 to 60  
15 minutes to take Mr. Selam and swear him in. He's  
16 scheduled for 1:45. It may be earlier.

17 Thank you. Staff will move us over, please.

18 \*\* Closed-record hearing \*\*

19 \* Not available to general public per protective order \*

1 (Closed-record session  
2 concluded.)

3  
4 JUDGE TOREM: All right. Looks like  
5 we're back into the open session.

6 We just completed the testimony of Jessica Lally.  
7 We're going to take a break until about 1:20 and then  
8 come back into the public session where you'll get a  
9 chance to see George Selam, S-e-l-a-m -- that's the  
10 spelling of the last name -- adopt his testimony, which  
11 if you have it accessible is Exhibit 4005\_T. We likely  
12 will go back into closed-record session for  
13 cross-examination of Mr. Selam and any other follow-up  
14 questions.

15 So, members of the public, we're going to be on  
16 break until 1:20. And then we'll come back, and you'll  
17 get a chance to be introduced to the next witness. And  
18 as much as we can make public, we will.

19 Thank you. We'll take a recess till 1:20.

20 (Pause in proceedings from  
21 1:13 p.m. to 1:20 p.m.)

22 (Witness George Selam  
23 appearing remotely.)

24  
25 JUDGE TOREM: All right. Welcome

1 back, everybody. We're still on Day 4 of our Horse  
2 Heaven wind farm adjudication.

3 We're going to take up the remaining two witnesses  
4 for today. Hopefully I'm going to pronounce the name  
5 that I've been cued.

6 We have, is it George Selam?

7 **THE WITNESS: Yes.**

8 JUDGE TOREM: All right. Thank you.  
9 I think I was pronouncing it -- I know I was  
10 pronouncing it wrong earlier, so I'm glad to have been  
11 corrected.

12 Members of the public, we're going to swear in  
13 this next witness, George Selam, and Shona Voelckers --  
14 Shona Voelckers, the attorney for the Yakama Nation,  
15 will give us a brief overview of what he'll be  
16 testifying to.

17 I believe there's one, Mr. Selam, exhibit. 4005\_T  
18 is how we've got it mentioned here today. And I'll  
19 have you adopt that and swear that it'll be true and  
20 any other answers you give today.

21 If and when Ms. Voelckers or you feel that we're  
22 going to stray into anything that's confidential or  
23 sensitive, please don't answer the question until we  
24 can move into the closed-record session. Only the  
25 Council members and those that have signed the

1 appropriate confidentiality agreements will be  
2 permitted again into that electronic closed hearing.

3 So for the members of the public to have an idea,  
4 we've got about a half hour of preplanned testimony  
5 or -- sorry -- cross-exam or follow-up redirect time  
6 with Mr. Selam.

7 Ms. Voelckers, I think you've got the bulk of that  
8 time; is that right?

9 MS. VOELCKERS: Yes, Your Honor.  
10 Good afternoon.

11 Applicants say that they were not going -- or, I  
12 believe, were not planning to cross-exam, so we request  
13 this time for Mr. Selam to speak on his supplemental  
14 testimony that was not appropriate for inclusion in  
15 written form.

16 JUDGE TOREM: Okay. Great. That  
17 helps clarify for the Council members where we're  
18 going.

19 So without any further ado, I'm going to swear you  
20 in, Mr. Selam, and then we'll see how far we get before  
21 we go into closed record.

22 If you'll raise your right hand, sir.

23 ////

24 ////

25 ////

1       GEORGE SELAM,                               appearing remotely, was duly  
2   sworn by the Administrative  
3   Law Judge as follows:

4  
5                       JUDGE TOREM:   Do you, George Selam,  
6       solemnly swear or affirm that all testimony you'll  
7       provide by adopting Exhibit 4005\_T and any answers you  
8       provide to questions from Ms. Voelckers or any other  
9       parties or Council members will be the truth, the whole  
10      truth, and nothing but the truth?

11                   **THE WITNESS:   Yes.**

12                   JUDGE TOREM:   All right.   Thank you  
13      very much.

14               I will show that Exhibit 4005\_T has been adopted  
15      and is now admitted to the record.

16                               (Exhibit Nos.  
17                               4005\_T\_Confidential and  
18                               4005\_T\_Redacted admitted.)  
19

20                   JUDGE TOREM:   Ms. Voelckers.

21                   MS. VOELCKERS:   Thank you, Your  
22      Honor.   I am going to ask that we go into closed  
23      session at this time.

24                   JUDGE TOREM:   Okay.   So we are going  
25      to go into some very sensitive and confidential



1 information, members of the public. I'll ask those on  
2 the line to stand by, and if you were admitted to the  
3 previous closed-record session, we'll expect to see you  
4 on the other side here as well.

5 \*\* Closed-record hearing \*\*

6 \* Not available to general public per protective order \*

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(Closed-record session  
concluded.)

JUDGE TOREM: All right. We're back  
in the public portion of the hearing. We've just  
finished the testimony and examination from George  
Selam from the Yakama Nation tribe. Was nice,  
heartfelt testimony from a tribal member adding to the  
perspective the Council needs to consider as we go

1 forward with the application review and this  
2 adjudication.

3 For those members of the public that couldn't hear  
4 this testimony due to its sensitive nature both  
5 culturally and archaeologically and so many other ways,  
6 I would just encourage any other study of the local  
7 first nations, if you will, that are in your area and  
8 educate yourselves. The -- the Council's been given a  
9 thorough, better understanding than we might have had  
10 just from paper, so I thank Mr. Selam, again, for his  
11 testimony and only wish it could be shared with more  
12 people.

13 We're going to take a break before we have one  
14 additional witness today, Terry Heemsah, Senior. And I  
15 apologize in advance. I have a feeling this testimony  
16 will have similar impact on us personally. But, again,  
17 most of it will be in private.

18 You'll be introduced to Mr. Heemsah at about 2:15  
19 today. He'll adopt his testimony, and we'll go into  
20 the closed-record session shortly thereafter. And  
21 that'll be our last witness for the day. We'll come  
22 back out to talk about the schedule for tomorrow and  
23 the rest of the week and adjourn for the day.

24 So we'll take a brief recess until --

25 MS. VOELCKERS: Your Honor.

1 JUDGE TOREM: -- 2:15.

2 Ms. Voelckers.

3 MS. VOELCKERS: I'm so sorry to  
4 interrupt, Your Honor. I just -- I know we're  
5 scheduled for 2:15. Given that this is our last  
6 witness of the day, I'm going to ask for a few more  
7 minutes for myself personally and ask if we could come  
8 back at 2:20.

9 JUDGE TOREM: Sold. Done. 2:20.  
10 We're at recess.

11 (Pause in proceedings from  
12 2:07 p.m. to 2:20 p.m.)  
13

14 JUDGE TOREM: All right. We are  
15 back for what promises to be one of our last sessions  
16 of the day. We're in a public session right now in the  
17 Horse Heaven wind farm adjudication. We completed all  
18 of the witness testimony for today except that of Terry  
19 Heemsah, Senior. We're going to adopt his testimony  
20 here. I believe it's Exhibit 4006\_T.

21 And I'm waiting to see him come up on my screen.

22 (Witness Terry Heemsah, Sr.,  
23 appearing remotely.)  
24

25 JUDGE TOREM: Good afternoon. Are

1 you Mr. Heemsah?

2 **THE WITNESS: Yes.**

3 JUDGE TOREM: Good afternoon. I'm  
4 Adam Torem. I'm the administrative law judge helping  
5 the Energy Siting Council with this adjudicative  
6 proceeding.

7 Sir, what we're going to do is have you take the  
8 oath of witness and adopt your testimony. And  
9 Ms. Voelckers will then let us know when we're ready to  
10 go into closed session. It may be pretty promptly.

11 And members of the public, while we're in closed  
12 session, we'll be hearing from Mr. Heemsah, one of the  
13 Yakama Nation elders. And there are confidential and  
14 sensitive materials that he'll be testifying about but  
15 definitely providing the Energy Siting Council and the  
16 other parties the information they need to help process  
17 this adjudication forward over the coming weeks and  
18 months.

19 Ms. Voelckers, anything else you want me to go  
20 over before I swear in this witness?

21 MS. VOELCKERS: Not at this time.  
22 Thank you, Your Honor.

23 JUDGE TOREM: All right.

24 Mr. Heemsah, again, good afternoon. We do have a  
25 court reporter taking everything down that's said in

1 English. I understand you may also speak in your  
2 language. So if you will, at those times, speak slowly  
3 and well enough that the Council members can hear you.  
4 And if there are any words in the native language that  
5 have a spelling in English, as I've learned from the  
6 last witness, that will help the court reporter  
7 tremendously.

8 And, Ms. Voelckers, you may get an e-mail about  
9 some spellings to suggest so that the transcript  
10 reflects everything in a respectful manner.

11 All right. Mr. Heemsah, if you'll raise your  
12 right hand, I'll swear you in.

13  
14 TERRY HEEMSAH, SR., appearing remotely, was duly  
15 sworn by the Administrative  
16 Law Judge as follows:

17  
18 JUDGE TOREM: Do you, Terry Heemsah,  
19 Senior, solemnly swear or affirm that all testimony  
20 you'll provide, including that contained in Exhibit  
21 4007\_T, your prefiled testimony, and all answers to  
22 questions posed today, will be the truth, the whole  
23 truth, and nothing but the truth?

24 **THE WITNESS: I do.**

25 JUDGE TOREM: Thank you.

1 I'll turn you over to Ms. Voelckers. When she's  
2 done with her questions, I'll survey the other  
3 attorneys for the other parties and then the Chair and  
4 the Council members to ask questions as well, and as --  
5 I may have some questions as well.

6 So, Ms. Voelckers, I turn it over to you.

7 MS. VOELCKERS: Thank you, Your  
8 Honor. And I am going to ask that we go into closed  
9 session.

10 JUDGE TOREM: All right. So,  
11 members of the public, it looks like the entirety of  
12 this testimony will likely be sensitive and  
13 confidential. We'll post an indication that we may be  
14 back at -- at or around 3:00 into public session to  
15 close out today's proceedings. So be on the lookout  
16 for that in the next 20 to 40 minutes when we'll be  
17 coming back, but I would anticipate no later than 3:00.  
18 I might be wrong, but look for us then.

19 Staff, please move us into closed session.

20 MS. GRANTHAM: Really quick. Lisa  
21 messaged me saying that the wrong exhibit number was  
22 stated. It should be 4006.

23 JUDGE TOREM: Correct. The exhibit,  
24 if I misspoke, is 4006. That's been adopted.

25 ////

(Exhibit Nos.

4006\_T\_Confidential and

4006\_T\_Redacted admitted.)

MS. GRANTHAM: Okay. Now I'll move  
over.

\*\* Closed-record hearing \*\*

\* Not available to general public per protective order \*



(Closed-record session  
concluded.)

JUDGE TOREM: All right. We're back  
in the public session. We've completed our witness  
testimony for today. We heard from council elder and  
council tribal member Terry Heemsah and some, again,  
more heartfelt and very personal testimony that needed  
to be kept on a confidential and sensitive  
closed-record hearing.

We have one other witness that needs to be  
rescheduled, and I'll be waiting to hear from  
Ms. Voelckers as to when Caseymac Wallahee might be  
available. That witness is in a time of grief, and we  
want to respect that, so we're not going to take that  
testimony today.

Council members, as shown on your schedule, that  
will be moved over to another date later this week.

Tomorrow we have testimony starting at 9:00 with a  
series of witnesses, one from the applicant, Andrew  
Lines, and many from the Tri-Cities C.A.R.E.S., Jim  
Sanders, Kurt Kielisch, Linda Lehman, Roger Richard  
Hagar, Karl Dye, and Fire Chief Lonnie Click.

1           None of the parties have questions for those  
2 witnesses. But in order to admit their testimony, as  
3 you saw one day last week, we'll be calling those  
4 witnesses, giving them an opportunity to adopt their  
5 testimony, and present them for questions to Chair  
6 Drew, yourself, and the Council members.

7           Tonight please go ahead and review those  
8 testimonies. We want to avoid, given the waning number  
9 of days we have left, any recall like we're doing with  
10 Mr. Wiley on Wednesday, but we'll have less and less  
11 time if we have witnesses that we adopt their testimony  
12 and later witnesses raise questions. But I'll ask  
13 Council members to pay special attention with that in  
14 mind.

15           And we'll see if it can be done in less than the  
16 hour and a half allotted and if we can get to the  
17 Jansen and Rahmig testimonies before lunch and  
18 certainly finish up with Ms. -- with the Rahmig  
19 testimony as close to or earlier than 4:45 tomorrow.  
20 So it will be anticipated to be a full day on Tuesday.

21           Wednesday, recognize we do have the public comment  
22 hearing scheduled to begin at 5:30. The Tri-City  
23 Herald has been making clear they published a  
24 clarification today that I was able to read and share  
25 with EFSEC staff, reminding people that if they've made

1 any public comment on the application prior to the end  
2 of business on January 31st of this year, they're  
3 eligible, according to statute, to still provide public  
4 comment on Wednesday evening.

5 There was some confusion last week, I think very  
6 unintentional with the link to the Council members --  
7 or Council's website, and it seemed as though we were  
8 artificially limiting comment. That should have been  
9 clarified now for the public. I don't know if we have  
10 a number yet. Lisa Masengale may be able to tell me  
11 the number of folks that are currently signed up.

12 We're scheduled to go from 5:30 p.m. Wednesday  
13 night until around 8:00. I don't know -- it depends on  
14 the number of people -- whether they'll have two  
15 minutes or three minutes or some other period of time.  
16 It'll -- I want to accommodate as many and, if  
17 possible, every single person from the community or  
18 otherwise who wants to comment.

19 So if they filed a previous written comment, we're  
20 going to see if they want to elaborate on that on  
21 Wednesday night, but I want to make sure you're rested  
22 for that as well.

23 With that in mind, if you look at the Wednesday  
24 schedule, we're starting again at 9:00 and trying to  
25 fit in quite a number of things. That schedule's still

1 a little bit in flux. It looks like we may go as late  
2 as 2:45, but I'm hoping counsel will be efficient and  
3 we'll continue along the way of finishing a bit early  
4 as we have several other days this week.

5 So hopefully you'll have enough time to get some  
6 sustenance and maybe a little bit of rest. Give your  
7 brain a rest from the adjudication between Wednesday's  
8 hearing and the public comment hearing.

9 I'm not even going to guess what the impacts on  
10 Thursday or Friday's schedule are for you. We'll  
11 continue to develop particularly Friday, and we're  
12 going to make sure we get all the testimony in for you.  
13 I may have an update for you tomorrow morning as to the  
14 number of public commenters seeking to be signed up for  
15 Wednesday.

16 Chair Drew, do you have any questions as to where  
17 we are going forward?

18 Okay. Council members, any questions that need to  
19 be answered today before I let you go?

20 Okay. I'm not seeing any.

21 Let me go around the room to the parties. I see  
22 Mr. Aramburu. I'll come to you first, see if there's  
23 any questions going forward. And particularly if the  
24 Council members need to hear it. If not, we can stay  
25 on in a housekeeping session.

1 MR. ARAMBURU: The testimony of  
2 Mr. Sanders that he was to affirm tomorrow will be  
3 withdrawn.

4 JUDGE TOREM: Okay. Thank you for  
5 that.

6 Does the applicant have anything else for today?

7 MS. STAVITSKY: No, Your Honor.

8 JUDGE TOREM: All right. Thank you,  
9 Ms. Stavitsky.

10 Mr. Harper?

11 MR. HARPER: Nothing, Your Honor.  
12 Thank you.

13 JUDGE TOREM: And Ms. Reyneveld.

14 MS. REYNEVELD: I don't have  
15 anything other than I do have a hard stop tomorrow at  
16 4:45. So hopefully if we need to carry over any  
17 wildlife testimony, we can.

18 JUDGE TOREM: Okay. Thanks for  
19 letting me know that. We'll manage accordingly.

20 MS. REYNEVELD: Thank you.

21 JUDGE TOREM: And, Ms. Voel- --  
22 Ms. Voelckers, anything else for the record today?

23 MS. VOELCKERS: Nothing else today.  
24 Thank you, Your Honor.

25 JUDGE TOREM: All right, everybody.

1 Have a great afternoon. It's 3:05 p.m. We're  
2 adjourned for the day.

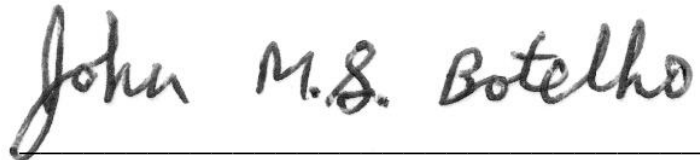
3 (Proceedings adjourned at  
4 3:05 p.m.)  
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1 STATE OF WASHINGTON ) I, John M.S. Botelho, CCR, RPR,  
2 ) ss a certified court reporter  
County of Pierce ) in the State of Washington, do  
hereby certify:

3  
4 That the foregoing proceedings were taken in my  
5 presence and were adjourned on August 21, 2023, and  
6 thereafter were transcribed under my direction; that the  
7 transcript is a full, true and complete transcript of the  
8 said proceedings and was transcribed to the best of my  
9 ability;

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

14 IN WITNESS WHEREOF, I have hereunto set my hand  
15 this 12th day of September, 2023.

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John M.S. Botelho, CCR, RPR  
Certified Court Reporter No. 2976  
(Certification expires 5/26/2024.)

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