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I. IDENTITY OF PETITIONERS.

The petitioners are Columbia Riverkeeper, Sierra Club, and Northwest Environmental Defense Center (collectively, “Riverkeeper”). Riverkeeper is the plaintiff in the matter below pending before the Clark County Superior Court.

II. DECISION BELOW.

Riverkeeper seeks discretionary review of the Order on Plaintiffs’ Motion for Summary Judgment and Defendants’ Renewed Motion for Summary Judgment entered by the Clark County Superior Court on September 23, 2015 (the “Order”), a copy of which is appended hereto. Combined Appendix (“Appx.”), pp. 1–6.

III. ISSUES PRESENTED FOR REVIEW.

1. The Order adopted a broad interpretation of an exception to the open government mandates of the Open Public Meetings Act (“OPMA”); is that interpretation a controlling question of law for which there is a substantial ground for a difference of opinion and for which immediate review may advance the ultimate termination of this litigation?
2. The Order refused to determine that numerous private meetings violated OPMA and instead determined that most such meetings were lawful; are these decisions controlling questions of law for which

there is a substantial ground for a difference of opinion and for which immediate review may advance the ultimate termination of this litigation?

3. The Order held that, irrespective of any OPMA violations, a public vote approving a lease renders moot requests for injunctive relief and to have the lease declared null and void; is that holding a controlling question of law for which there is a substantial ground for a difference of opinion and for which immediate review may advance the ultimate termination of this litigation?

IV. STATEMENT OF THE CASE.

Riverkeeper brings this action against the Port of Vancouver USA (“Port”) and its Board of Commissioners (“Board” or “Commissioners”) for repeatedly excluding the public from meetings while planning to construct the nation’s largest “crude-by-rail” terminal. Whether these closed-door meetings were permissible under an exception to OPMA’s open government mandates is central to this litigation. The superior court adopted an excessively broad interpretation of the OPMA exception, but recognized “[i]t’s likely that a reviewing Court would see this differently.” Appx., p. 16. The Order held that five of the seven private meetings at issue were permissible, necessitating a trial on whether two meetings fit within the superior court’s questionable interpretation of the OPMA exception. *Id.* at 4. The Order further held that, irrespective of any

violations, the Board's eventual public vote on a lease for the oil terminal mooted Riverkeeper's request to have the lease declared null and void.

The parties have stipulated, and the superior court certified, that the interpretation of the OPMA exception announced in the Order involves a controlling question of law for which there is a substantial ground for a difference of opinion and that immediate review may materially advance the ultimate termination of the litigation. *Id.* at 5. Interlocutory appeal is warranted to avoid a potentially unnecessary trial on whether two of seven private meetings complied with the superior court's questionable interpretation of OPMA.

A. The Open Public Meetings Act.

Public "commissions...should not be allowed to deprive the public of [its] inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made." *Cathcart v. Andersen*, 85 Wn.2d 102, 108 (1975) (quoting *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969)). In enacting OPMA, the Legislature declared:

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

RCW 42.30.010. This is “some of the strongest language used in any legislation.” *Equitable Shipyards, Inc. v. State*, 93 Wn.2d 465, 482 (1980).

OPMA’s centerpiece is the requirement that “[a]ll meetings of the governing body of a public agency shall be open and public..., except as otherwise provided in [OPMA].” RCW 42.30.030. This applies to *all stages* of government deliberations:

Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire *decision-making process* that the legislature intended to affect by the enactment of the [OPMA]...

**** **** **** **** **** ****

If the [OPMA] is to be effective, it must apply at the point where authority is exercised, as well as where it is initially lodged.

Cathcart v. Andersen, 10 Wn. App. 429, 435–36 (1974) (citation omitted), *affirmed*, 85 Wn.2d at 107.

OPMA contains narrow exceptions that permit a governing body to go into executive session to discuss specific issues, including:

To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price.

RCW 42.30.110(1)(c). This Court has repeatedly instructed that such exceptions must be narrowly confined under the Legislature's mandate for liberal construction of OPMA in furtherance of the statute's objectives. *E.g., Miller v. City of Tacoma*, 138 Wn.2d 318, 324–28 (1999) (executive session provision construed “narrowly and in accordance with the purposes of [OPMA]”); *Mead Sch. Dist. No. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 140, 145 (1975) (citing RCW 42.30.910). A governing body is “required to limit its action in executive session to that authorized by the relevant exception.” *Miller*, 138 Wn.2d at 327.

“[A]ny action taken in closed meetings is null and void.” *Clark v. City of Lakewood*, 259 F.3d 996, 1014 (9th Cir. 2001); *and see Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1089–91 (9th Cir. 2003). “Action” under OPMA is not limited to final action, but rather is defined to include “the transaction of the official business of a public agency by a governing body including but not limited to...deliberations, discussions, considerations, reviews, evaluations, and final actions.” RCW 42.30.020(3); *and see Miller*, 138 Wn.2d at 328–31.

B. The Proposed Crude-by-Rail Terminal.

A new joint venture between Tesoro Corporation and Savage Companies (“Tesoro-Savage”) seeks to construct a crude-by-rail terminal on Port property on the banks of the Columbia River near downtown

Vancouver, Washington. *See* Appx., pp. 121–22, 130–31, 136–37.

Tesoro-Savage visions the area becoming the “hub for the distribution of North American crude oil to West Coast refining centers.” *Id.* at 137.

The terminal would receive up to 360,000 barrels of petroleum daily. *Id.* at 126, 130. Four trains per day would bring crude oil from the Bakken Formation to the Port, each train consisting of 110 cars and measuring one and a half miles. *See id.* at 136. The oil would be stored in six tanks with a combined capacity of over 2.28 million barrels (95.76 million gallons) before being loaded onto marine vessels. *Id.* at 130.

The proposal terminal has attracted an enormous amount of public attention and concern. The public has demonstrated an overwhelming interest in observing and participating in all deliberations and decisions by its elected officials related to this project. *See, e.g., id.* at 72–78, 142–44.

C. The Board’s Private Meetings on the Terminal.

The Board met behind closed doors to discuss the proposed oil terminal at least thirteen times throughout the development of the project and the negotiations on the lease. *See id.* at 60–64. These private meetings, some of which occurred before the project was even announced to the public, included deliberations on regionally-important issues and constituted significant milestones for the project.

The Board met behind closed doors on March 26, 2013, to discuss, *inter alia*, various details about a proposed exclusive bargaining contract with Tesoro-Savage (e.g., schedule and duration) for negotiations on a lease for the oil terminal. *Id.* at 32, 153.

The Port invited Tesoro-Savage executives to a private meeting with the Board held April 9, 2013, at which Port staff and Tesoro-Savage gave presentations and answered questions from the Commissioners. *Id.* at 35–36, 38–39, 41–43, 81–82, 90, 154–57. This meeting covered many issues on the proposed terminal, including the type of oil expected and its corrosiveness, safety risks, whether new rail cars would be used, the number of trains and vessels expected, whether Tesoro and Savage had worked together before, why Tesoro-Savage was selected for negotiations on the terminal, rail capacity and need for rail modifications, the numbers and types of jobs expected, and variability in the market. *Id.* at 34–43, 81–82, 87–88. Port staff remarked that “[a]ll three Commissioners walked away excited about moving forward and...ready to handle Tesoro/Savage [public] announcement on [April] 22nd...” *Id.* at 84.

The Board held an executive session on July 9, 2013, during which it discussed the formation of a new joint venture—Tesoro-Savage—to operate the crude-by-rail terminal and the risks associated therewith. *Id.* at 47, 157; *see also id.* at 108 (the Board was concerned as to whether

Tesoro-Savage “was merely a shell without adequate assets to do the cleanup and things that [it] was concerned about”).

Executive sessions were held on July 16 and 17, 2013, for extensive discussions on numerous issues related to the proposed terminal, including the key terms of the lease. *Id.* at 48, 92–98. Other issues and concerns discussed included the types of crude oil expected at the facility and the differences and risks associated therewith, the size of the storage tanks and the risks associated therewith (*e.g.*, risks from vapors), the Port’s ability to require newer rail cars, and insurance requirements (property, liability, and pollution insurance). *Id.* at 47–49.

The Board held a public meeting the evening of July 22, 2013. *See id.* at 69. Thirty to forty members of the public testified, the vast majority of which opposed the project. *See id.* at 72–78, 165. Commissioner Oliver announced that the Board would go into executive session after the comments to discuss “what they had heard during public testimony and how that impacts their deliberations.” *Id.* at 165–66. The public was then excluded and Port staff went over the themes of public comments—safety, fossil fuel, and emissions—and inquired as to whether the Board wanted revisions to the lease before voting on it. *Id.* at 49–50. Commissioner Wolfe indicated that “needed to have in the lease” a provision requiring Port approval of a safety and operations plan for the terminal. *Id.* The

Commissioners considered at that private meeting whether to postpone the vote, but decided that they “had enough information” and were “ready to go forward.” *Id.* at 109–10.

The Board met in private the next morning—July 23, 2013—to review the new lease term included in response to Commissioner Wolfe’s insistence the prior evening. *Id.* at 50–51. The Board voted to approve the lease in a public meeting immediately thereafter. *See id.* at 145.

D. Proceedings Below.

Riverkeeper filed a complaint on October 2, 2013, alleging OPMA violations associated with the July 22, 2013, meeting. The Board thereafter held another public vote re-approving the lease on October 22, 2013, in an effort to “cure” its OPMA “shortcomings.” *Id.*

The Board moved for an early summary judgment on December 2, 2013. The superior court continued the motion under CR 56(f) to allow discovery. *Id.* at 170. However, the superior court found that the Board’s public votes approving the lease mooted Riverkeeper’s requests for injunctive relief and to have the lease declared null and void. *Id.*

Riverkeeper subsequently discovered that, in addition to the July 22, 2013, executive session, the Board had repeatedly excluded the public from meetings during the development of the project. *See id.* at 60–64.

Riverkeeper supplemented its pleadings to allege that numerous meetings violated OPMA.

Riverkeeper moved for summary judgment on June 12, 2015, requesting the superior court find that the Board violated OPMA by excluding the public from seven meetings on the proposed terminal. *Id.* at 147–48. Riverkeeper further requested that the superior court reconsider its mootness ruling and declare the lease null and void in light of the expanded claims addressing OPMA violations throughout the lease negotiations. *Id.* at 147. The Board argued that all the meetings were permissible under OPMA’s allowance for executive sessions “[t]o consider the minimum price at which real estate will be offered for...lease when public knowledge regarding such consideration would cause a likelihood of decreased price.” *Id.* at 152–53, 158–59.

The superior court issued an oral ruling on July 24, 2015, and signed the written Order on September 23, 2015. *Id.* at 1–21. The superior court affirmed its prior mootness ruling, indicating that “any sort of [OPMA] violations” were cured by the Board’s public votes approving the lease. *Id.* at 3, 10–11. The superior court adopted the Board’s interpretation of OPMA’s “minimum price” exception, under which the Board may exclude the public to discuss any:

(1) information that would give the customer an advantage in negotiating a lower price; and (2) information that would give a competitor an opportunity to negotiate with the Port's customer, thus creating a bidding process that would decrease the Port's price.

Id. at 3–4. In announcing this interpretation, the superior court recognized that “[i]t’s likely that a reviewing Court would see this differently.” *Id.* at 16. The superior court denied Riverkeeper’s request for a determination that seven meetings violated OPMA and instead held that five of the meetings were permissible and that disputed facts precluded summary judgment on the other two meetings. *Id.* at 4.

The parties then stipulated, and the superior court certified, that the interpretation of the OPMA exception announced in the Order involves a controlling question of law for which there is a substantial ground for a difference of opinion and that immediate review may materially advance the ultimate termination of the litigation. *Id.* at 5.

V. ARGUMENT.

The superior court’s Order presents controlling questions of law for which there are substantial grounds for differing opinions. Interlocutory review of these issues may materially advance the ultimate termination of the litigation by avoiding an unnecessary trial that would apply the superior court’s questionable interpretation of OPMA. Immediate appellate review is therefore warranted. *See* RAP 2.3(b)(4).

A. Standard of Review.

Discretionary review of non-final orders may be accepted where:

The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is a substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

RAP 2.3(b)(4). “The purpose of discretionary review under RAP 2.3(b)(4) is to narrow and advance the litigation in order to avoid a useless trial.” *Tapps Brewing Co., Inc. v. McClung*, No. 31959-4-II, 2005 Wash. App. LEXIS 158, at *16 (Wash. App. Jan. 25, 2005). The Court may also accept discretionary review of issues not certified by the superior court if the issue could arise again in an effort to avoid additional appeals. *State v. McNeal*, 156 Wn. App. 340, 356 (2010).

B. Immediate Review of the Superior Court’s Interpretation of OPMA’s “Minimum Price” Exception is Warranted.

The Order’s interpretation of OPMA’s “minimum price” exception conflicts with the plain language of the provision and with this Court’s direction to narrowly construe exceptions to OPMA. Immediate review of this controlling question of law may advance the ultimate termination of this litigation by avoiding an unnecessary trial.

The scope of OPMA’s minimum price exception is a controlling issue of law. Notably, the Board’s primary defense is that all of the topics

discussed at the seven meetings at issue fit within this OPMA exception. Appx., pp. 152–53, 158–59.

There are substantial grounds for a difference of opinion with the interpretation of OPMA’s minimum price exception announced in the Order. The superior court noted that the issue “is a question of first impression...on which there is no direct appellate authority” and, with respect to its interpretation, that “[i]t’s likely that a reviewing Court would see this differently.” *Id.* at 5, 16. The parties and the superior court thus all agreed that there is a substantial ground for a difference in opinion on this issue. *Id.* at 5.

The OPMA provision at issue allows the Board to go into executive session to consider only “the minimum price” at which property will be leased and only when public disclosure of “such consideration would cause a likelihood of decreased priced.” RCW 42.30.110(1)(c). The superior court adopted an interpretation that reads the limitation to “minimum price” out of the statute. Instead, the superior court found that this provision allows discussion of *any* information that would give a customer an advantage in negotiating a lower price or that would give a competitor an opportunity to negotiate with a customer. *See* Appx., pp. 3–4. This interpretation is inconsistent with the plain language of the statute and with this Court’s direction to narrowly construe OPMA’s exceptions.

See, e.g., Miller, 138 Wn.2d at 324. There is, at a minimum, substantial grounds for a difference in opinion from the superior court's interpretation.¹

Immediate review of this issue could advance the ultimate termination of the litigation by eliminating the need for a trial. The superior court found that a trial is necessary to determine whether the Board violated OPMA by excluding the public from meetings on April 9 and July 22, 2013. Appx., p. 4. However, it is undisputed that these meetings covered topics well beyond the minimum price at which the lease would be offered.² An appellate ruling limiting OPMA's minimum

¹ Topics discussed at private meetings that the superior court determined lawful include, *inter alia*, an exclusive bargaining agreement with Tesoro-Savage, risks associated with development of the oil terminal by a new corporate joint venture, the types of crude oil to flow through the facility and the risks associated therewith, insurance requirements, the key lease terms, Commissioner Wolfe's concerns about "the size of the tanks and the risks associated with the tanks," and the Port's ability to require newer rail cars. *See* Appx., pp. 32, 47–49 (describing meetings held on March 26, 2013, July 9, July 16, and July 17, 2013).

² For example, the Port admitted that the April 9 meeting, at which Tesoro-Savage was present, covered essentially every aspect of the project, including the number and type of trains and vessels expected at the facility, rail capacity and the need for rail modifications, safety risks, the numbers and types of jobs expected, the type of oil involved, impacts on other tenants, why the Port chose Tesoro-Savage, construction impacts, and variability in the crude oil market. Appx., pp. 34–43; *see also id.* at 154–57. The Port admitted that the July 22, 2013, executive session covered the themes of public comments on the project—including safety, fossil fuel, and emissions—whether the Board wanted additional terms in

price exception to discussions on the minimum price at which property will be offered for lease would therefore avoid the need for a trial on the lawfulness of these two meetings.

Immediate review could also eliminate the possibility of second trial. Absent review, there will be a trial at which the parties will present evidence limited to whether topics discussed at two meetings fit within the superior court's interpretation of OPMA's minimum price exception. If that interpretation is rejected on appeal, a second trial may be necessary to determine whether any of the seven meetings at issue were permissible. Immediate review of this controlling issue is warranted to advance the ultimate termination of the litigation.

C. Immediate Review of the Superior Court's Refusal to Declare that Seven Meetings Violated OPMA is Warranted.

Riverkeeper's motion for a determination that seven of the Board's private meetings violated OPMA was based on unrefuted admissions from the Board and the Port. Immediate review of the superior court's denial of that motion is warranted to advance the ultimate termination of the litigation and to reduce the possibility of multiple appeals.

the lease in response to the public comments, and Commissioner Wolfe's insistence on an additional term requiring that the Port approve the terminal's safety and operations plan. *Id.* at 49–50.

Only the Board and the Port know what was discussed at their executive sessions—Riverkeeper does not have any independent knowledge or evidence as to the content of these private meetings. Riverkeeper deposed each of the Board’s three Commissioners. *See* Appx., pp. 100, 105, 113. The Port was also deposed under CR 30(b)(6), which required that it “give complete, knowledgeable, and binding answers.” *See Flower v. T.R.A. Indus., Inc.*, 127 Wn. App. 13, 39 (2005) (citation omitted); *and see* Appx., pp. 31, 53–56. Riverkeeper’s summary judgment motion was based on the Port’s and the Board’s admissions made during these depositions—admissions that were not impeached. The factual record as to the content of these seven meetings is therefore undisputed.

The only assertion as to the presence of disputed facts came from the Board and was exceedingly narrow and misguided. Specifically, the Board contended that there are disputed facts as to which slides from a PowerPoint presentation by Tesoro-Savage were orally discussed at the April 9, 2013, executive session. *See* Appx., pp. 160–61. Riverkeeper was not at that private meeting, and therefore does not contest or seek to expand upon the Board’s admissions as to the scope of Tesoro-Savage’s presentation. *See id.* at 155–56 (the Board admits that Tesoro-Savage’s presentation addressed “insurance needs; capacity, including the number

of barrels, tanks, trains, and vessels; TSJV's oil through-puts and volumes; anticipated number of jobs; [and] number of acres to be leased").

Regardless, it is undisputed that other portions of this three-hour meeting covered extensive topics, including those addressed by questions from each of the Commissioners. *Id.* at 34–43, 154–57.

The superior court's denial of Riverkeeper's request for a determination that the seven private meetings violated OPMA is a controlling issue in this case. Immediate review of that decision is likely to advance the ultimate termination of this litigation by avoiding the need for a trial where there are no material facts in dispute. Moreover, appellate review of this ruling—which is central to this litigation—reduces the likelihood of future appeals. Accordingly, immediate review is warranted. *See Tapps Brewing Co.*, No. 31959-4-II, 2005 Wash. App. LEXIS 158, at *16; *and see McNeal*, 156 Wn. App. at 356.

D. Immediate Review of the Superior Court's Mootness Ruling is Warranted.

The Court should also accept review of the superior court's mootness ruling. Review of this controlling legal issue, which significantly limits the relief available for extensive OPMA violations, is likely to advance the ultimate termination of this litigation.

The superior court found that “any sort of [OPMA] violations can be cured by retracing the steps and going through the appropriate procedures” and that the Board’s public votes to approve the lease thus rendered moot requests for injunctive relief and to have the lease declared null and void. Appx. 10–11 (citing *Org. to Preserve Agric. Lands v. Adams Cnty.*, 128 Wn.2d 869 (1996) (“*OPAL*”)); and *id.* at 3. This is a controlling issue of law because it substantially limits the relief available.

There are substantial grounds for a difference of opinion from this ruling. In *OPAL*, upon which the superior court relied, the Court held that a permit need not be vacated where there was a single telephone call between two commissioners regarding who would move for a public vote on the permit. 128 Wn.2d at 881–84. That decision does not support the superior court’s finding that a public vote erases “any sort” of OPMA violations. *See* Appx., pp. 10–11. To the contrary, the Court in *OPAL* discussed with approval cases indicating that vacatur is appropriate where the final action is “merely summary approval of decisions made in numerous and detailed secret meetings.” 128 Wn.2d at 884.

The lease at issue here was developed and formulated at a series of meetings from which the public was excluded. Executives from Tesoro-Savage were even allowed to provide presentations at the April 9, 2013, executive session and answer questions on issues of particular concern to

the Board. *See* Appx., pp. 35–36, 38–39, 41–43. Port staff remarked that “[a]ll three Commissioners walked away [from that meeting] excited about moving forward and...ready to handle Tesoro/Savage [public] announcement on [April] 22nd.” *Id.* at 84. Extensive executive sessions were held on July 16 and 17, 2013, during which the Board discussed all of the key terms of the proposed lease and Commissioner Wolfe’s concerns related thereto. *Id.* at 47–49, 92–98. At a private meeting on July 22, 2013—the evening before the Board approved the lease—the Port and the Board discussed public comments on the proposed terminal and whether any additional terms should be included in the lease in response thereto. *Id.* at 49–50. Commissioner Wolfe insisted on a final revision to the lease during that closed meeting and the Commissioners then collectively decided that they “were ready to go forward” with the public vote. *Id.* at 49–50, 109–110.

These undisputed facts are in stark contrast with those presented in cases where courts have found that OPMA violations do not warrant vacatur of a final action. *See OPAL*, 128 Wn.2d at 881–84. Notably, the proposed lease that was presented to the Board for a public vote was the product of numerous private meetings. There are substantial grounds for a difference in opinion from the superior court’s ruling that a public vote moots any requests for injunctive relief or to have the lease declared null

and void. *See Mason Cnty. v. Pub. Emp't Relations Comm'n*, 54 Wn. App. 36 (1989) (agreement negotiated and formulated at meetings that violated OMPA could not be ratified by public vote); *and see Feature Realty, Inc.*, 331 F.3d at 1091 (where an agreement was approved in a meeting that violated OPMA, a public vote to authorize actions required by the agreement was “a far cry” from retracing the steps and remedying the defects that is required under Washington law). OPMA’s fundamental purpose of ensuring access to the “decisionmaking process at all stages” would be eviscerated if merely holding an eventual public vote rendered moot “any sort” of prior violations. *See Cathcart*, 85 Wn.2d at 107.

Immediate review of this issue could advance the termination of the litigation by reducing the potential for multiple piecemeal appeals. Review is therefore warranted. *See McNeal*, 156 Wn. App. at 356.

VI. CONCLUSION.

For the foregoing reasons, Riverkeeper respectfully requests that the Court accept discretionary review under RAP 2.3(b)(4) of the issues described herein.

RESPECTFULLY SUBMITTED this 6th day of November, 2015.

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CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of the State of Washington, that I am co-counsel for Plaintiffs-Petitioners Columbia Riverkeeper, Sierra Club, and Northwest Environmental Defense Center and that on November 6, 2015, I caused the foregoing Motion for Discretionary Review to be served on the following in the manner indicated:

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s/ Brian A. Knutsen
Brian A. Knutsen, WSBA # 38806

OFFICE RECEPTIONIST, CLERK

To: Brian Knutsen
Subject: RE: Columbia Riverkeeper, et al. v. Port of Vancouver USA, et al., No. 92455-4

Received on 11-06-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Brian Knutsen [mailto:brian@kampmeierknutsen.com]
Sent: Friday, November 06, 2015 12:13 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Columbia Riverkeeper, et al. v. Port of Vancouver USA, et al., No. 92455-4

Clerk of the Court,

Please accept for filing in the matter of Columbia Riverkeeper, et al. v. Port of Vancouver USA, et al., No. 92455-4, the attached Plaintiffs-Petitioners' Statement of Grounds for Direct Review and Motion for Discretionary Review. The Appendix to these documents exceeds 25 pages and is therefore being delivered separately via U.S. Mail. Please let me know if you have any difficulty accessing the attached documents.

Thank you, Brian.

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**COMBINED
APPENDIX**

to

**Statement of Grounds for
Direct Review**

and

**Motion for Discretionary
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SEP 23 2015

Scott G. Weber, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA CLUB; and NORTHWEST ENVIRONMENTAL DEFENSE CENTER,

Plaintiffs,

vs.

PORT OF VANCOUVER USA; JERRY OLIVER, Port of Vancouver USA Board of Commissioners President; BRIAN WOLFE, Port of Vancouver USA Board of Commissioners Vice President; and NANCY I. BAKER, Port of Vancouver USA Board of Commissioners Secretary,

Defendants.

No. 13-2-03431-3

[PROPOSED] ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT

THIS MATTER came for hearing on July 24, 2015 before the Court, the Honorable David E. Gregerson, on plaintiffs' Motion for Summary Judgment filed on June 12, 2015 as to Plaintiffs' First, Third, and Fourth Causes of Action, as amended, and on Defendants' renewed Motion for Summary Judgment, originally filed on December 6, 2013, as to Plaintiffs' First, Second, Third, and Fourth Causes of Action. Plaintiffs were represented by Brian A. Knutsen and Miles Johnson, and Defendants were represented by David Markowitz, Lawson Fite, and Kristin Asai. The Court heard oral argument of counsel and considered the following documents and other evidence:

1 - **[PROPOSED] ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT**

MARKOWITZ HERBOLD PC
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 295-3085

- 1 1. Defendants' Motion for Summary Judgment and supporting declarations filed on
- 2 December 6, 2013;
- 3 2. Plaintiffs' Response to Defendants' Motion for Summary Judgment and supporting
- 4 declarations filed on December 31, 2013;
- 5 3. Defendants' Reply in Support of Motion for Summary Judgment and supporting
- 6 declarations filed on January 7, 2014;
- 7 4. Plaintiffs' Motion for Summary Judgment;
- 8 5. Third Declaration of Brian A. Knutsen;
- 9 6. Declaration of Donald Steinke;
- 10 7. Declaration of Marla Nelson;
- 11 8. Declaration of Linda McClain;
- 12 9. Defendants' Opposition to Plaintiffs' Motion for Summary Judgment;
- 13 10. Declaration of Kristin Asai;
- 14 11. Declaration of Michelle Allan;
- 15 12. Declaration of Patty Boyden;
- 16 13. Declaration of Katy Brooks;
- 17 14. Declaration of Todd Coleman;
- 18 15. Declaration of David Hepler;
- 19 16. Declaration of Kathy Holtby;
- 20 17. Declaration of Todd Krout;
- 21 18. Declaration of Alicia Lowe;
- 22 19. Declaration of Julianna Marler;
- 23 20. Declaration of Mary Mattix;
- 24 21. Declaration of Mike Schiller;
- 25 22. Declaration of Curtis Shuck;
- 26 ///

1 23. Plaintiffs' Reply in Support of Motion for Summary Judgment; and

2 24. Fourth Declaration of Brian A. Knutsen.

3 The Court, being fully advised, hereby enters the following ORDER:

- 4 1. As stated in its Order of March 26, 2014, the Court granted Defendants' Motion
5 for Summary Judgment against Plaintiffs' claims for injunctive relief and
6 Plaintiffs' claims for a declaration that the lease at issue is null and void.
7 Plaintiffs' Motion for Summary Judgment requested that the Court reconsider its
8 earlier ruling. The Court declines to reconsider its earlier ruling and affirms its
9 prior finding that the corrective actions taken by Defendants, including the public
10 votes on July 23 and October 22, 2013, and adoption of a revised executive
11 session announcement procedure beginning on August 13, 2013, render moot
12 Plaintiffs' requests for injunctive relief under the Open Public Meetings Act
13 ("OPMA") and Plaintiffs' request for a declaration that the lease is null and void.
14 Plaintiffs' Motion for Summary Judgment, construed as a motion for
15 reconsideration, is DENIED as to Plaintiffs' claims for injunctive relief and for a
16 declaration that the lease is null and void for the alleged OPMA violations.
- 17 2. The Court concludes that RCW 42.30.110(1)(c), which allows the Port to consider
18 the minimum price at which real estate will be offered for sale or lease when
19 public knowledge regarding such consideration would cause a likelihood of
20 decreased price, permits the Port to discuss in executive session various factors
21 which go into the price of a particular transaction. The Court finds that factors
22 other than a bare numeric term are essential to an ultimate determination of price,
23 and that the statute includes a necessary degree of latitude beyond the bare
24 numeric terms. The Court therefore sustains the interpretation of RCW
25 42.30.110(1)(c) generally proffered by Defendants as a permissible construction
26 of the statute. Specifically, the Court sustains Defendants' interpretation of RCW

1 42.30.110(1)(c) to allow executive sessions to discuss two categories of
2 information: (1) information that would give the customer an advantage in
3 negotiating a lower price; and (2) information that would give a competitor an
4 opportunity to negotiate with the Port's customer, thus creating a bidding process
5 that would decrease the Port's price.

- 6 3. The Court finds, with respect to Plaintiffs' First Cause of Action, that there are no
7 disputes of material fact regarding the executive sessions held on March 26, July
8 9, July 16, July 17, and July 23, 2013. The Court further finds that the undisputed
9 factual record shows that each of these five sessions complied with RCW
10 42.30.110(1)(c), as interpreted by the Court. Accordingly, Plaintiffs' Motion for
11 Summary Judgment is DENIED and summary judgment is GRANTED to
12 Defendants as to the executive sessions held on March 26, July 9, July 16, July
13 17, and July 23, 2013, as alleged in Plaintiffs' First Cause of Action;
- 14 4. The Court further finds, with respect to Plaintiffs' First Cause of Action, that
15 genuine issues of material fact preclude summary judgment to any party as to
16 whether Defendants violated the OPMA during the executive sessions held on
17 April 9 and July 22, 2013. Plaintiffs' Motion for Summary Judgment on their
18 First Cause of Action is DENIED as to the executive sessions held on April 9 and
19 July 22, 2013;
- 20 5. With respect to Plaintiffs' Second Cause of Action, Plaintiffs represented to the
21 Court in their Motion for Summary Judgment that they are no longer pursuing this
22 claim. Defendants' Motion for Summary Judgment is therefore GRANTED as to
23 Plaintiffs' Second Cause of Action.
- 24 6. The Court finds, with respect to Plaintiffs' Third and Fourth Causes of Action,
25 that there are no genuine issues of material fact and Defendants concede that
26 Commissioner Oliver's announcement of the executive session on July 22, 2013

1 violated the OPMA. Plaintiffs' Motion for Summary Judgment is GRANTED as
2 to Plaintiffs' Third and Fourth Causes of Action seeking a declaration that
3 defendants violated the OPMA by improperly announcing the executive session
4 on July 22, 2013. Under Plaintiffs' Third Cause of Action, the Court declares that
5 Commissioner Oliver violated RCW 42.30.110(2) by failing to announce a
6 definite end time for the July 22, 2013 executive session. Under Plaintiffs' Fourth
7 Cause of Action, the Court declares that Commissioner Oliver violated RCW
8 42.30.110(2) when he stated that the purpose of the July 22, 2013 executive
9 session was to review public comments.

10 7. As stated at the July 24 hearing, the scope of RCW 42.30.110(1)(c) is a question
11 of first impression for this Court and a question on which there is no direct
12 appellate authority. The parties have stipulated, and the Court certifies and
13 orders, pursuant to RAP 2.3(b)(4), that the Court's rulings outlined in paragraph 2
14 involve a controlling question of law as to which there is substantial ground for a
15 difference of opinion and immediate review of the order may materially advance
16 the ultimate termination of the litigation.

17 8. The parties stipulate, and the Court orders, that all trial court proceedings and
18 deadlines are hereby STAYED pending the resolution of Plaintiffs' request for
19 discretionary appellate review.

20 IT IS SO ORDERED.

21 DATED this 23 day of Sept, 2015.

22
23 /s/ David E. Gregerson

24 Hon. David E. Gregerson
25 Superior Court Judge
26 Clark County Superior Court

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Presented by, and stipulated as to paragraphs 7-8:

By: 
David B. Markowitz, *pecially admitted*
Lawson E. Fite, WSBA #44707
Kristin M. Asai, *pecially admitted*
MARKOWITZ HERBOLD, P.C.
Of Attorneys for Defendants

Agreed as to form, notice of presentation waived, and stipulated as to paragraphs 7-8:

By: 
Brian A. Knutsen, WSBA #38806
KAMPMEIER & KNUTSEN, PLLC.
Miles Johnson, *pecially admitted*
COLUMBIA RIVERKEEPER
Of Attorneys for Plaintiffs

COLUPV466431

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

COLUMBIA RIVERKEEPER; SIERRA)
CLUB; and NORTHWEST)
ENVIRONMENTAL DEFENSE CENTER,)

Plaintiffs,)

vs.)

No. 13-2-03431-3

PORT OF VANCOUVER USA; JERRY)
OLIVER, Port of Vancouver USA)
Board of Commissioners)
President; BRIAN WOLFE, Port)
of Vancouver USA Board of)
Commissioners Vice President;)
and NANCY I. BAKER, Port of)
Vancouver USA Board of)
Commissioners Secretary,)

Defendants.)

TRANSCRIPT OF PROCEEDINGS FROM CD

RULING

HELD BEFORE THE HONORABLE

DAVID E. GREGERSON

* * *

July 24, 2015

1200 Franklin Street

Vancouver, Washington

SINEAD R. WILDER, RPR, CSR, CCR
Court Reporter

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Also Present: (Not disclosed)

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4		
5	EXHIBITS	
6	(None)	

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1 VANCOUVER, WASHINGTON; FRIDAY, JULY 24, 2015

2 2:40 p.m.

3 * * *

4 RULING

5 THE COURT: I first wish to start by
6 thanking counsel for the briefing and the argument.
7 Very interesting issues.

8 And obviously, it's not lost upon the Court
9 that this is a very significant decision to the
10 community in many, many regards.

11 I'm going to start first with the request on
12 summary judgment for the invalidation of the lease.

13 The Court concludes that it had previously
14 ruled on the prior argument in summary judgment that
15 mootness applied, which made that argument
16 unpersuasive. The basic idea being that by correcting
17 whatever defects, if there were any, at the October
18 meeting, and putting it appropriately on the agenda,
19 that the final action as to the lease taken on that
20 date was not in violation of open public meetings, and
21 therefore, does not constitute any sort of basis for
22 this Court to invalidate or otherwise abrogate the
23 lease that was entered into.

24 The question before the Court is whether,
25 today, having conducted some discovery, whether

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1 there's some new information which would justify
2 changing that ruling.

3 This Court can conclude that, regardless of
4 whatever factual information has come up, it does not
5 change the Court's analysis, which the Court deems to
6 be consistent with the OPAL case and other cases like
7 it, which establish what appears to be a
8 well-established rule, that any sort of violations can
9 be cured by retracing the steps and going through the
10 appropriate procedures.

11 I can see the wisdom in that line of cases
12 in that, without the ability to do that, an agency
13 would conceivably be hamstrung into perpetuity and
14 never being able to make any sort of decision under
15 those circumstances.

16 So the Court will affirm its previous ruling
17 in summary judgment, denying any sort of invalidation
18 or declaration regarding the legality or invalidity of
19 the -- of the lease.

20 The next question comes about with respect
21 to the executive session meetings. Both sides are
22 basically moving for cross-judgment -- cross-motions
23 for summary judgment.

24 Counsel are well aware of the standards
25 under Rule 56, namely that whether there are any

1 genuine issues of material fact, and whether a moving
2 party is entitled to judgment is a matter of law on
3 those issues.

4 The Court will note that the briefing has
5 been extensive with respect to proposed
6 interpretations of RCW 42.30.110 (1)(c). And I've
7 looked at some of the cases cited by counsel, which
8 are not directly on point, but which sort of dance
9 around the issue.

10 I've looked at this language so many times,
11 I feel like I can recite it in my sleep.

12 I looked at the contrast between the
13 language under (b) that pertains to selection or
14 acquisition of real estate or lease, meaning the buyer
15 or lessor -- excuse me, buyer or lessee, that a public
16 agency would be in the shoes of.

17 Or under paragraph (c), the opposite, where
18 the agency would be the grantor or lessor of that
19 property.

20 There's some similarities in the language,
21 and then there are also some discrepancies between
22 those two clauses, as well. And that's really where
23 the rubber hits the road in this case.

24 Without some clear guidance from the
25 appellate courts up above, we are, I think, to some

1 extent, in an area of first impression, at least for
2 me. And I think both sides have acknowledged the
3 absence of that clear and controlling authority on the
4 specific statute.

5 As I look at the language, particularly of
6 (c), in a dream world, if I were a legislator, I would
7 have drafted this with some -- some more clarity. And
8 I'm stuck trying to interpret the language and the
9 intent, and how it fits with the entire statute as a
10 whole.

11 The argument, I think it's fair to say, from
12 Riverkeeper's side is that minimum price --
13 consideration of minimum price should be interpreted
14 quite narrowly, so that whatever was discussed in
15 those seven sessions ran afoul of the executive
16 session exception to the Open Public Meetings Act.

17 The argument made by the Port of Vancouver
18 is what I'll call either a more expansive
19 interpretation, or what they would call is a more
20 practical interpretation. Which means that the only
21 way to really be able to do business is to consider a
22 multitude of factors, which -- I believe the verb was
23 drive price.

24 And the more I thought of this and looked at
25 the briefing back and forth, it really occurs to me

1 that the -- the method of establishing something like
2 price, and the unfortunate reality, is the legislature
3 gave us this one clause with one word that fails to
4 take into account in a transaction of this size and
5 complexity and scope the multitude of possible factors
6 that play into the decision-making of this agency
7 body.

8 And the notion of price taken by itself in a
9 vacuum really means nothing. Price to me is a
10 function of a prior equation. It's the result that
11 you get when you include variables, such as A, B, C
12 and D. And then you get to this notion of price.

13 It also is compelling to me that the section
14 has the second sentence, which is really the qualifier
15 and I think those two need to be read together. It
16 says, However, final action selling or leasing public
17 property shall be taken in a meeting open to the
18 public.

19 So as I look at that language and try to
20 apply it to this particular context, I think there is
21 understood to be a necessary degree of latitude on the
22 part of the Port to be able to discuss in executive
23 session many things which go into the price of a
24 particular transaction.

25 Like I say, price by itself means nothing.

1 The term, who the tenant is, what the proposed use is,
2 all of those things are so essential to an ultimate
3 determination of price, that it strikes me as trying
4 to either unscramble an egg or unhomogenize milk.

5 So it's the conclusion of this Court that
6 the interpretation generally offered by the Port by
7 these arguments is sustained.

8 However, I will find the following: The
9 Port has conceded that, I believe, the July 22nd
10 executive session was not in compliance with the Open
11 Public Meetings Act. The Court will grant summary
12 judgment in the favor of the plaintiffs on the
13 July 22nd meeting.

14 With respect to the April 9 meeting, the
15 Court concludes that there is a factual dispute which
16 precludes summary judgment for either party, given the
17 fact that factual inferences must be construed most in
18 favor to the nonmoving party.

19 So, basically, each side has the benefit of
20 some doubt there. And the Court is unable to conclude
21 that there's no genuine issue of material fact, and
22 that one side is entitled to judgment as a matter of
23 law.

24 With respect to the other meetings, the
25 Court is satisfied, based on the record provided to

1 it, that the parameters set forth were within the
2 parameters of the statute that governs addressing
3 issues in executive session to consider minimum price
4 for which the real estate, in this case, would be
5 offered for sale or, in this case, leased to the
6 Tesoro-Savage Joint Venture.

7 I recognize that it's a very, very tough
8 issue. It's likely that a reviewing Court would see
9 this differently, and I recognize that. I'm just
10 trying to make my best read and my best shot at it,
11 given the case authorities that exist in Washington,
12 and the briefing and argument of the parties.

13 I don't know if you have a proposed order
14 today, or there are any questions. My hunch is you're
15 probably going to need some time to craft a
16 custom-made order based on my ruling, which has some
17 variations and complexities. It's not an absolute one
18 way or the other.

19 Second of all, are there any questions or
20 clarifications which either side needs of the Court's
21 ruling today?

22 MR. KNUTSEN: Yes, Your Honor. I think
23 we'll need clarification on the scope of the Court's
24 determination regarding the July 22nd meeting.

25 It's my reading of the defendants' briefing

1 that they conceded that there were violations with
2 respect to the announcement of the executive session.
3 But they have not conceded that there were violations
4 with respect to the discussions at executive session.

5 And so I think we need a little
6 clarification on the scope of the Court's order with
7 respect to what violations it's finding with respect
8 to that meeting.

9 THE COURT: Well, certainly, the -- the
10 announcement and the time parameters, I think, were
11 conceded to be in violation.

12 The -- the remaining issue -- the
13 defendants' position is that Mr. Oliver misspoke,
14 because he was tired, in terms of what was being
15 considered.

16 I don't know that I can make a judgment one
17 way or the other as to whether there was any more
18 substantive violations of that.

19 The limit of the Court's ruling is that
20 there was at least one violation of the Open Public
21 Meetings Act on that date. And that would be the --
22 the announcement of the timing, I guess, is the -- is
23 that the best way to word that?

24 With respect to any other violations, I
25 think the Court's ruling would be similar to the

1 April 9 ruling, in that there exists a factual dispute
2 which prevents summary judgment for either side at
3 this time. There may be more violations from that
4 meeting.

5 Any other questions or clarifications?

6 MR. MARKOWITZ: Your Honor, if it would
7 satisfy counsel, we'll prepare a first draft of a
8 proposed order, and circulate it for discussion.

9 THE COURT: Do you want to have a -- do you
10 want to have a date set right now as a hard target, as
11 a backstop for presentation? And that way, if you
12 can't work it out, then we've got something right on
13 calendar to -- to have (unintelligible) on the final
14 wording of the order.

15 MR. MARKOWITZ: All right.

16 THE COURT: Do we have a civil docket date
17 approximately three weeks out?

18 THE CLERK: We have one on August 21st. We
19 don't have one on the 14th.

20 THE COURT: August 21st. Is that acceptable
21 for counsel? 9 a.m.?

22 MR. MARKOWITZ: One of us will be here.

23 THE COURT: Okay. If you reach -- if you
24 reach agreement on the form of the order before that
25 time, simply sign off and bring it to us ex parte.

1 And that will excuse any attendance at that particular
2 civil motion docket.

3 One additional matter I'll add to the -- to
4 the ruling of the Court is that the Court did not give
5 weight or consideration to the ruling in the recall
6 petition matter. That was not a part of the Court's
7 overall analysis, just so you know.

8 Okay?

9 MR. MARKOWITZ: Your Honor, with the -- if I
10 may -- with the Court's denial of
11 cross-summary-judgment motions as to the April and
12 July 22nd meetings, we have an issue of fact which
13 needs to be resolved in a bench trial.

14 I assume, if we could get that scheduled,
15 that would be beneficial for all of the parties. I'm
16 guessing we're looking at a day.

17 THE COURT: I would suggest, then, that the
18 parties -- that either side submit a trial setting
19 notice, which is required by our rules. And then we
20 will get to work on that.

21 I will also strongly encourage -- there was
22 at least some mention at some point about a settlement
23 conference or a mediation.

24 Given the Court's rulings previously, and
25 the Court's rulings today, I don't know if that helps

1 narrow some of the issues. You'll need some time to
2 talk to your clients about that.

3 But we have several retired judges who would
4 be excellent mediators for those remaining issues.
5 And that may be a way to get those resolved.

6 I'm not ordering those at this time. But
7 I'm certainly suggesting that counsel consider those
8 after consultation with your clients.

9 It's been requested -- we get quite a volume
10 of materials. I'm going to give back at least the
11 notebooks, which I think came back from the Port side.

12 UNIDENTIFIED SPEAKER: We're overloaded with
13 notebooks. We don't have any room to store any more
14 notebooks.

15 THE COURT: So I appreciate the bench
16 copies. But we're going to give these notebooks back
17 to you. And I'd ask you to take those today.

18 MS. ASAI: Okay.

19 THE COURT: Thank you.

20 (The proceeding concluded at 2:53 p.m.)

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I, Sinead R. Wilder, a Certified Court

Reporter for Washington, pursuant to RCW 5.28.010

authorized to administer oaths and affirmations in and

for the State of Washington, do hereby certify that

after having listened to an official audio recording

of the proceedings having occurred at the time and

place set forth in the caption hereof, that thereafter

my notes were reduced to typewriting under my

direction pursuant to Washington Administrative Code

308-14-135, the transcript preparation format

guidelines; and that the foregoing transcript, pages 1

to 14, both inclusive, constitutes a full, true and

accurate record of all such testimony adduced and oral

proceedings had on the official audio recording, to

the best of my ability, and of the whole thereof.

Witness my hand and CCR stamp at Vancouver,

Washington, this 10th of August, 2015.

SINEAD R. WILDER
Certified Court Reporter
Certificate No. 3227

Schmitt Reporting & Video, Inc.
(360) 695-5554 -- (503) 245-4552 -- (855) 695-5554

1 Honorable David E. Gregerson (Dept. 2)
2 Set: July 24, 2015 at 1:30 p.m.

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 FOR CLARK COUNTY

10
11 COLUMBIA RIVERKEEPER; SIERRA) No. 13-2-03431-3
12 CLUB; and NORTHWEST)
13 ENVIRONMENTAL DEFENSE CENTER)

14 Plaintiffs,

15 v.

) THIRD DECLARATION OF BRIAN
) A. KNUTSEN IN SUPPORT OF
) PLAINTIFFS' MOTION FOR
) SUMMARY JUDGMENT

16 PORT OF VANCOUVER USA; JERRY)
17 OLIVER, Port of Vancouver USA Board)
18 of Commissioners President; BRIAN)
19 WOLFE, Port of Vancouver USA Board of)
20 Commissioners Vice President; and)
21 NANCY I. BAKER, Port of Vancouver)
22 USA Board of Commissioners Secretary,)

23 Defendants.

24 I, Brian Knutsen, declare the following on the basis of personal knowledge to which I
25 am competent to testify:

26 1. I am co-counsel for Plaintiffs in the above-captioned matter;

27 2. Attached hereto as Exhibit A is true and accurate copy of the condensed

28 transcript from the Rule 30(b)(6) deposition of Defendant Port of Vancouver USA (excerpts),

which I took on February 27, 2015, and a true and accurate copy of Exhibit 39 from that

THIRD DECLARATION OF BRIAN
KNUTSEN - 1

KAMPMEIER & KNUTSEN, PLLC
833 S.E. Main St., Suite 327 Mail Box 318
Portland, OR 97214
(503) 841-6515

1 deposition, which is Plaintiffs' Notice of Rule 30(b)(6) Deposition of Defendant Port of
2 Vancouver USA that I had served on the parties in this matter. These documents were
3 provided to me by the court reporter;

4 3. Attached hereto as Exhibit B is a true and accurate copy of the Defendant Port
5 of Vancouver USA's Second Amended Response to Plaintiffs' Third Set of Interrogatories,
6 which I received from Defendants' counsel;

7
8 4. Attached hereto as Exhibit C is a true and accurate copy of the Port of
9 Vancouver USA Board of Commissioners meeting minutes from June 11, 2013, which I
10 downloaded from a website maintained by Defendant Port of Vancouver USA;

11 5. Attached hereto as Exhibit D is a true and accurate copy of the Port of
12 Vancouver USA Board of Commissioners meeting minutes from June 27, 2013, which I
13 downloaded from a website maintained by Defendant Port of Vancouver USA;

14 6. Attached hereto as Exhibit E is a true and accurate copy of the Port of
15 Vancouver USA Board of Commissioners meeting minutes from July 22, 2013, which I
16 downloaded from a website maintained by Defendant Port of Vancouver USA;

17 7. Attached hereto as Exhibit F is a true and accurate copy of the Port of
18 Vancouver USA Board of Commissioners meeting minutes from July 23, 2013, which I
19 downloaded from a website maintained by Defendant Port of Vancouver USA;

20 8. Attached hereto as Exhibit G is a true and accurate copy of the Port of
21 Vancouver USA Board of Commissioners meeting minutes from March 26, 2013, which I
22 downloaded from a website maintained by Defendant Port of Vancouver USA;

23 9. Attached hereto as Exhibit H is a true and accurate copy of the Port of
24 Vancouver USA Board of Commissioners meeting minutes from April 9, 2013, which I
25
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28 THIRD DECLARATION OF BRIAN
KNUTSEN - 2

KAMPMEIER & KNUTSEN, PLLC
833 S.E. Main St., Suite 327 Mail Box 318
Portland, OR 97214
(503) 841-6515

1 downloaded from a website maintained by Defendant Port of Vancouver USA;

2 10. Attached hereto as Exhibit I is a true and accurate copy of Exhibit 13 from the
3 Deposition of Defendant Commissioner Oliver from December 2, 2014, which I attended. I
4 received a copy of this exhibit from the court reporter as part of the transcript of the
5 deposition;

6 11. Attached hereto as Exhibit J is a true and accurate copy of Exhibit 16 from the
7 Deposition of Defendant Commissioner Oliver from December 2, 2014, which I attended. I
8 received a copy of this exhibit from the court reporter as part of the transcript of the deposition.
9 This exhibit was previously provided to me from counsel for Defendants in response to formal
10 discovery requests in this matter;

11 12. Attached hereto as Exhibit K is a true and accurate copy of Exhibit 15 from the
12 Deposition of Defendant Commissioner Oliver from December 2, 2014, which I attended. I
13 received a copy of this exhibit from the court reporter as part of the transcript of the deposition.
14 This exhibit was previously provided to me from counsel for Defendants in response to formal
15 discovery requests in this matter;

16 13. Attached hereto as Exhibit L is a true and accurate copy of Exhibit 19 from the
17 Deposition of Defendant Commissioner Oliver from December 2, 2014, which I attended. I
18 received a copy of this exhibit from the court reporter as part of the transcript of the
19 deposition;

20 14. Attached hereto as Exhibit M is a true and accurate copy of Exhibit 54 from the
21 Rule 30(b)(6) Deposition of Defendant Port of Vancouver USA from February 27, 2015,
22 which I took. I received a copy of this exhibit from the court reporter as part of the transcript
23 of the deposition. This exhibit was previously provided to me from counsel for Defendants in
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28 THIRD DECLARATION OF BRIAN
KNUTSEN - 3

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Portland, OR 97214
(503) 841-6515

1 response to formal discovery requests in this matter;

2 15. Attached hereto as Exhibit N is a true and accurate copy of a document
3 provided to me from counsel for Defendants in response to formal discovery requests in this
4 matter;

5 16. Attached hereto as Exhibit O is a true and accurate copy of Exhibit 61 from the
6 Rule 30(b)(6) Deposition of Defendant Port of Vancouver USA from February 27, 2015,
7 which I took. I received a copy of this exhibit from the court reporter as part of the transcript
8 of the deposition. This exhibit was previously provided to me from counsel for Defendants in
9 response to formal discovery requests in this matter;

10 17. Attached hereto as Exhibit P is a true and accurate copy of the Port of
11 Vancouver USA Board of Commissioners meeting minutes from July 9, 2013, which I
12 downloaded from a website maintained by Defendant Port of Vancouver USA;

13 18. Attached hereto as Exhibit Q is a true and accurate copy of the Port of
14 Vancouver USA Board of Commissioners meeting minutes from July 16-17, 2013, which I
15 downloaded from a website maintained by Defendant Port of Vancouver USA;

16 19. Attached hereto as Exhibit R is a true and accurate copy of Exhibit 7 from the
17 Deposition of Defendant Commissioner Oliver from December 2, 2014, which I attended. I
18 received a copy of this exhibit from the court reporter as part of the transcript of the deposition.
19 This exhibit was previously provided to me from counsel for Defendants in response to formal
20 discovery requests in this matter;

21 20. Attached hereto as Exhibit S is a true and accurate copy of Exhibit 60 from the
22 Rule 30(b)(6) deposition of Defendant Port of Vancouver USA from February 27, 2015, which
23 I took. I received a copy of this exhibit from the court reporter as part of the transcript of the
24

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28 **THIRD DECLARATION OF BRIAN
KNUTSEN - 4**

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Portland, OR 97214
(503) 841-6515

1 deposition. This exhibit was previously provided to me from counsel for Defendants in
2 response to formal discovery requests in this matter;

3 21. Attached hereto as Exhibit T is a true and accurate copy of the Port of
4 Vancouver USA Board of Commissioners meeting minutes from October 22, 2013, which I
5 downloaded from a website maintained by Defendant Port of Vancouver USA;

6 22. Attached hereto as Exhibit U is true and accurate copy of the condensed
7 transcript from the Deposition of Defendant Commissioner Jerry Oliver (excerpts), which I
8 attended on December 2, 2014. I received a copy of this transcript from the court reporter;

9 23. Attached hereto as Exhibit V is a true and accurate copy of Exhibit 9 from the
10 Deposition of Defendant Commissioner Jerry Oliver from December 2, 2014, which I
11 attended. I received a copy of this exhibit from the court reporter as part of the transcript of
12 the deposition;

13 24. Attached hereto as Exhibit W is true and accurate copy of the condensed
14 transcript from the Deposition of Defendant Commissioner Brian Wolfe, which I attended on
15 December 3, 2014. I received a copy of this transcript from the court reporter;

16 25. Attached hereto as Exhibit X is true and accurate copy of the condensed
17 transcript from the Deposition of Defendant Commissioner Nancy Baker (excerpts), which I
18 attended on December 4, 2014. I received a copy of this transcript from the court reporter;

19 26. Attached hereto as Exhibit Y is a true and accurate copy of Exhibit 30 from the
20 Deposition of Defendant Commissioner Brian Wolfe from December 3, 2014 (excerpts),
21 which I attended. I received a copy of this exhibit from the court reporter as part of the
22 transcript of the deposition;

23 I declare under penalty of perjury under the laws of the United States of America and
24
25

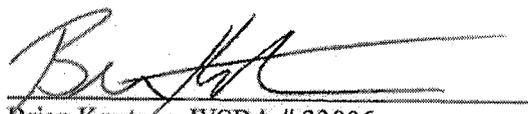
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27
28 **THIRD DECLARATION OF BRIAN
KNUTSEN - 5**

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the State of Washington that the foregoing is true and correct.

Executed this 12th day of June, 2015.


Brian Knutsen, WSBA # 33806

THIRD DECLARATION OF BRIAN
KNUTSEN - 6

KAMPMEIER & KNUTSEN, PLLC
833 S.E. Main St., Suite 327 Mail Box 318
Portland, OR 97214
(503) 841-6515

EXHIBIT A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA)
CLUB; and NORTHWEST)
ENVIRONMENTAL DEFENSE CENTER,)
Plaintiffs,)

v.)

PORT OF VANCOUVER USA; JERRY)
OLIVER, Port of Vancouver USA Board)
of Commissioners President; BRIAN)
WOLFE, Port of Vancouver USA Board)
of Commissioners Vice President; and)
NANCY I. BAKER, Port of Vancouver)
USA Board of Commissioners)
Secretary,)
Defendants.)

No. 13-2-03431-3



30 (b) (6) DEPOSITION UPON ORAL EXAMINATION OF

PORT OF VANCOUVER USA

TODD M. COLEMAN, PE

Friday, February 27, 2015; 9:00 a.m.

700 Washington Street, Suite 701

Vancouver, Washington

REPORTED BY: PEGGY J. HUGHSON, CCR No. 3120



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29	ALSO PRESENT: Ms. Becca Fischer	
30	Ms. Julianna M. Marler	
31	Ms. Marla Nelson	
32		
33		
34		
35		

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VANCOUVER, WASHINGTON, FRIDAY, FEBRUARY 27, 2015

9:00 a.m.

--OOO--

TODD M. COLEMAN, PE

sworn as a witness by the Certified Court Reporter, testified as follows:

EXAMINATION BY

MR. KNUITSEN:

Q. Good morning, Mr. Coleman. My name is Brian Knutsen, I represent plaintiffs in this matter. Would you please state your name and address for the record.

A. Todd Michael Coleman and address for the Port is 3103 Northwest Lower River Road, Vancouver, Washington 98666.

Q. Mr. Coleman, have you been deposed before?

A. Yes.

Q. Approximately how many times?

A. About three times.

Q. Always in your professional --

A. Yes, that is correct.

Q. Okay. What was the nature of those litigations?

A. Primarily around real estate disputes relative to the Port.

Q. Okay. It sounds like you're probably familiar with the



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<p style="text-align: right;">Page 6</p> <p>1 deposition format but I'm going to go ahead and go over a few 2 ground rules if you don't mind anyway. 3 A. Makes sense. 4 Q. I'm going to ask you questions. Your attorney may 5 object but unless you're instructed not to answer please 6 provide an answer after the objection. Please answer 7 verbally and not with gestures or uh-huhs so the record is as 8 clear as possible. 9 A. Will do. 10 Q. If any of my questions are confusing or unclear, please 11 let me know and I will do my best to clarify. We can take 12 breaks, just let me know if you need a break. I'd just 13 request that you answer any pending question before we take a 14 break. 15 A. Yes. 16 (Notice of Deposition, Exhibit 39 Marked) 17 Q. All right. Mr. Coleman, you've been handed 18 an exhibit labeled Exhibit 39. Have you seen this document 19 before? 20 A. Yes, I have. 21 Q. Do you understand that you've been designated to testify 22 on behalf of the Port as to the issues identified in this 23 Notice of Deposition? 24 A. Yes, I do. 25 Q. And do you understand that under Rule 30(b)(6) you're to</p>	<p style="text-align: right;">Page 8</p> <p>1 Brookes, Mike Schiller, Todd Krout, I already mentioned Lisa 2 Lowe. That's primarily it. And three commissioners, I'm 3 sorry. 4 Q. And what was the nature of those discussions? 5 A. Just to what information they recalled occurring at 6 those different Executive Sessions, especially the April 9th 7 Executive Session because I was not present at that meeting. 8 Q. Okay. And you mention that you reviewed some documents. 9 Are all the documents you reviewed in this notebook here? 10 A. Yes, they are. 11 MR. KNUITSEN: I request that we have an opportunity to 12 look at that during a break instead of just putting it into 13 exhibits now, just to verify. 14 MR. MARKOWITZ: That's fine. 15 Q. (By Mr. Knutsen) Mr. Coleman, do you hold an 16 undergraduate degree? 17 A. Yes, I do. 18 Q. And from what university? 19 A. University of Washington. 20 Q. And what is the degree? 21 A. Bachelor's of Science in Civil Engineering. 22 Q. And when did you obtain that degree? 23 A. 1992. 24 Q. Do you hold any graduate degrees? 25 A. Yes, I have a Master's of Business Administration from</p>
<p style="text-align: right;">Page 7</p> <p>1 testify not just as to your personal knowledge but as to the 2 knowledge of the Port today? 3 A. Yes. 4 Q. And you also understand that under Rule 30(b)(6) you 5 have a duty to prepare yourself for this deposition so that 6 you can give complete and knowledgeable answers based on 7 information readily available to the Port? 8 A. Yes. 9 Q. And are you prepared today to testify on behalf of the 10 Port as to the topics identified? 11 A. Yes. 12 Q. And what did you do to prepare for today's deposition? 13 A. I had interviews with staff members at the Port of 14 Vancouver; I have had conversations with our legal counsel, 15 Lisa Lowe, at Schwabe, Williamson & Wyatt; I have reviewed 16 this notebook that was prepared which is mostly information 17 that has either been provided in their discovery requests 18 relative to this case or as part of the exhibits from prior 19 depositions. 20 Q. Can you identify the Port staff that you've had meetings 21 with? 22 A. It's been over a couple of months but generally I've had 23 conversations with mostly those that were in the Executive 24 Sessions that were in question. Those would include Julianna 25 Marler, Alastair Smith, Michelle Allan, Theresa Wagner, Katy</p>	<p style="text-align: right;">Page 9</p> <p>1 University -- Washington State University, Vancouver, and 2 that was 2011. 3 Q. Do you hold any professional licenses? 4 A. Yes. I am a Professional Licensed Engineer in the 5 states of Washington, Oregon, and Idaho. 6 Q. What are the requirements to maintain those licenses? 7 A. To get -- to obtain those licenses you have to take 8 tests and to have understudy for four years under a 9 Professional Engineer. And to maintain those you have to 10 maintain some continuing education in those fields. 11 Q. Is that the only obligation to maintain your licenses? 12 A. You also have to pay the annual fee -- or every other 13 year fees. 14 Q. And what is your current occupation? 15 A. I am the Chief Executive Officer for the Port of 16 Vancouver. 17 Q. And how long have you been employed in that capacity? 18 A. In that capacity of CEO I have been about -- coming up 19 on three years in April. 20 Q. And what was your prior occupation? 21 A. With the Port of Vancouver or -- 22 Q. What was your previous employment prior to being CEO? 23 A. Okay. So at the Port of Vancouver I started in 2001, so 24 I was the Facilities Manager for about six months and then 25 became the Director of Facilities. Was in that position for</p>



Page 94

1 because, as you said, it says 9:54, so that would be a little
2 bit longer than our typical meeting. There were other agenda
3 items on the meeting topic list though as well.

4 Q. Do you recall what those other topics were?

5 A. We were still dealing with another agreement for real
6 estate, at least two of those agreements; one of them I
7 believe was a delinquency and another one was a deal that we
8 were working on and we were working through what the cost was
9 to extend an Exclusivity Agreement.

10 Q. There was also an Executive Session on March 26th, 2013;
11 is that correct?

12 A. Again referring to my notes here. Yes, there was an
13 Executive Session.
14 (3-26-13 Board of Commissioners Regular Meeting Minutes,
15 Exhibit 48 Marked)

16 Q. You've been handed an exhibit labeled Exhibit 48. Are
17 you familiar with this document?

18 A. Yes.

19 Q. What is this document?

20 A. So these are the meeting minutes for the March 26th
21 Commission meeting.

22 Q. Was the Crude-By-Rail proposal or potential facility
23 discussed at the Executive Session portion of the March 26,
24 2013 meeting?

25 A. Yes, it was.

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1 Q. Do you know what the status of the project was at that
2 time?

3 A. So as of March 26th we would have still been negotiating
4 on the different rates. And by we I mean the Port staff and
5 the Tesoro-Savage joint venture. On -- it could be any of
6 those terms. We were also, I believe, negotiating on the
7 exclusivity option with them and working towards the lease --
8 creating of the draft lease document.
9 (Ms. Lowe's Notes from 3-26-13 Meeting, Exhibit 49 Marked)

10 Q. Mr. Coleman, you've been handed an exhibit labeled 49.
11 Are you familiar with this document?

12 A. Yes, I am.

13 Q. And what is this document?

14 A. So this document appears to be the notes from legal
15 counsel, Lisa Lowe, and on -- notes that she took during the
16 Executive Session on March 26th.

17 Q. Did you review these notes to prepare for today's
18 deposition?

19 A. Yes, I did.

20 Q. And did you discuss them with anybody?

21 A. Yes, I discussed them with Lisa Lowe.

22 Q. And these notes identify Tesoro-Savage, correct?

23 A. Yes. In addition to Tesoro-Savage there were a couple
24 of other -- one other that was a real estate related issue
25 with 4230.110(1)(c) and the other one was a litigation issue.

Page 96

1 Q. And next to Tesoro-Savage on these notes that are
2 labeled Exhibit 49 it references exclusivity. Is that a
3 reference to the Exclusivity Agreement?

4 A. Yes.

5 Q. Was that Exclusivity Agreement discussed during the
6 Executive Session?

7 A. So again, we were discussing with -- we were presenting
8 to the Commissioners the current status of the terms, and
9 again, related to that host of the lease rate, the wharfage,
10 dockage, the rail fees. And one of the next steps was that
11 Exclusivity Agreement, and within that Exclusivity Agreement
12 had some timing that was associated with that, so for how
13 long is that Exclusivity Agreement in place.

14 Q. Okay.

15 A. So the majority of the discussion around TSJD was
16 related to the actual price documents.

17 Q. Okay. Was the Exclusivity Agreement discussed during
18 the Executive Session?

19 A. Yes, the schedule component of how long should we allow
20 that exclusivity was discussed.

21 Q. Were any other topics related to the Exclusivity
22 Agreement discussed during the March 26, 2013 Executive
23 Session?

24 A. No.

25 Q. Below Exclusivity I believe it says options; is that

Page 97

1 correct?

2 A. I believe it says options, yes.

3 Q. Okay. What is that in reference to?

4 A. So sometimes these are either entered into as
5 Exclusivity Agreements, which is typically the case for a
6 marine facility or on the industrial facility might be
7 entered into as an option. It's just a term that gets
8 interchanged.

9 Q. Okay. Was this option, as you defined it, discussed
10 during the Executive Session on this date?

11 A. So as I mentioned before, it was discussed as that
12 exclusivity and how long should that exclusivity run, what
13 was the duration of that exclusivity.

14 Q. I see. And the final item listed below Tesoro-Savage on
15 these attorney notes is Access. Do you know what that refers
16 to?

17 A. So in these Exclusivity Agreements we also sometimes
18 refer to them as Access Agreements because it also provides
19 the potential tenants with an opportunity to access the site
20 for their due diligence, and so those are all interchangeably
21 used in our language between staff and legal counsel.

22 Q. Was the scope of access that would be provided to
23 Tesoro-Savage under the Exclusivity Agreement discussed
24 during the Executive Session?

25 A. No.



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1 (3-27-13 CES Control Points for TSJV Project,
2 Exhibit 50 Marked)

3 Q. Mr. Coleman, you've been handed an exhibit labeled
4 Exhibit 50. Are you familiar with this document?

5 A. No, I have not seen this document before.

6 Q. Okay. At the top of it it says March 27, 2013 CES.
7 What is that in reference to?

8 A. I would assume that that would be the date that it was
9 created and CES would be Curtis Shuck.

10 Q. Okay.

11 A. Who would probably be the author of it.

12 Q. Besides the Exclusivity Agreement were any other issues
13 or topics related to the Crude-By-Rail facility discussed
14 during the Executive Session held on March 26, 2013?

15 A. So as I mentioned before, the March 26 Executive Session
16 we discussed the -- those overall terms, so still the lease
17 rates, the wharfage rates, dockage rates, and rail
18 maintenance, and rail fees because those were still in
19 negotiation at that point, and then the timing related to the
20 Exclusivity Agreement, the -- how long the Exclusivity
21 Agreement would be in place.

22 Q. Anything else?

23 A. Not related to Tesoro-Savage Joint Venture.

24 Q. Okay. And what did you do to prepare to testify today
25 as to the content of this March 26, 2013 Executive Session?

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1 A. I again went through these documents that are in front
2 of me which included -- are all included in the discovery
3 request and the meeting minute notes from the March 26
4 Commission meeting, the notes from legal counsel, and spoke
5 with individuals that were in attendance at that meeting.

6 Q. Did you speak with any individuals specifically
7 regarding this Executive Session besides you mentioned Lisa
8 Lowe?

9 A. Yeah, I spoke with all the people on the list of
10 attendees or the normal attendees in general about all the
11 meetings. I didn't see anything specific about this one that
12 I had a conversation other than with Lisa on those particular
13 notes.

14 Q. Okay. The Board of Commissioners held an Executive
15 Session on April 9th, 2013, correct?

16 A. Correct.

17 Q. And you were in Korea?

18 A. Correct.

19 Q. Not present at that Executive Session?

20 A. Correct.

21 Q. Was that a special Executive Session or was that held
22 during the normal course of the -- in the normal meeting
23 schedule?

24 A. That was -- April 9th was a Tuesday so that was the
25 regular second Tuesday meeting, it just had an Executive

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1 Session attached to it. Now on this particular meeting on
2 April 9th there was no business to be taken in the public
3 meeting and so the public meeting, I believe, was canceled
4 and only the Executive Session was held.

5 Q. Okay. So there was a determination made that there were
6 no items to be discussed in the public meeting for that --
7 public portion of the meeting that date?

8 A. Correct. If we, as staff, don't have any action items
9 so -- that the Commission needs to deliberate and vote on,
10 many times we will cancel those meetings.

11 Q. What was the purpose of this Executive Session?

12 A. So in my -- again, I was not present at the meeting but
13 I did have lots of dialogue around this particular meeting
14 because it has been of interest after hearing the first --
15 the depositions of the Commissioners. There was a need to
16 have discussion with the Board of Commissioners or to inform
17 the Board of Commissioners around several of the elements of
18 the proposed lease. Those elements included some of the rate
19 structures, it included some of the amount of acreages that
20 they were using, it included the facilities that they were
21 using, the docks, and the rail infrastructure that was needed
22 to accommodate this all -- because all of those issues would
23 go back into determining the overall price for the facility.

24 Q. Could that exchange of information have been provided in
25 one-on-one meetings?

Page 101

1 A. So we typically will have one-on-one meetings with the
2 Commissioners to include some of those but it also is
3 sometimes advantageous when there's a lot of information to
4 present it at one time.

5 (4-9-13 BOC Regular Meeting/Executive Session Minutes,
6 Exhibit 51 Marked)

7 Q. Were there any other purposes of that meeting other than
8 to present the information on the specific topics you just
9 identified?

10 A. My understanding again from the investigation I'd done
11 is the only topic for that meeting was the TSJV lease.

12 Q. I understand. Was there any other purpose besides to
13 present the Commissioners with information on the various
14 specific issues you just mentioned?

15 A. No. The intent was to share with the Commissioners all
16 of those different components. I guess there would be other
17 pieces that would go into that as relative to the safety or
18 the operation facility and considerations that again would
19 have an effect on risk that may impact how we set those
20 prices. At this point we were still having some issues with
21 our negotiation with TSJV on the value that we were setting
22 as a minimum value, and this was trying to get an
23 understanding of more that -- the impacts to the overall
24 facilities, impacts in way of what properties were being
25 used, what rail facilities were being used, what docks were



Page 102

1 being used, and how the pipelines would be set up so that we
 2 could understand what we needed to charge for the various
 3 properties.
 4 Q. Okay. You've been handed an exhibit labeled Exhibit 51.
 5 Are you familiar with this document?
 6 A. Yes, I did review this document.
 7 Q. Okay. What is this document?
 8 A. So this document is the meeting minutes for the regular
 9 meeting or Executive Session of April 9th.
 10 Q. Okay. Does this accurately represent all of those in
 11 attendance at this Executive Session?
 12 A. No. From my investigation there were also members from
 13 TSJV and members from BNSF in attendance at the meeting in
 14 addition to those listed here.
 15 Q. Anybody else?
 16 A. Let me check my notes real quick, or the information
 17 here.
 18 No, that is all that were in attendance.
 19 Q. Okay. Can you describe to me how this meeting began,
 20 this Executive Session began?
 21 A. Could you explain to me what you mean by how it began?
 22 Q. What was the first thing that happened at the meeting
 23 once the meeting was called to order?
 24 A. So again I wasn't in attendance but, from the
 25 investigation I've done, unfortunately most people don't have

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1 a good recollection of this meeting. And that was consistent
 2 with all of the staff and legal counsel and Commissioners
 3 that I questioned in this.
 4 It appears from the notes that were available from both
 5 legal counsel and I believe it was Commissioner Wolfe that
 6 there were topics discussed around the terminal aspects of
 7 the facility, the vessels, where they would call the number
 8 of railcars, the area, number of barrels that would be stored
 9 onsite and in tanks, the number of crude cars that -- or
 10 number of cars per train, excuse me. Again, the underground
 11 pipes that I discussed before and their impacts and then how
 12 that would work together with the other facility that was
 13 proposed for Terminal 5 which was BHP Billiton, how those
 14 tracks would be shared so that we had a full understanding of
 15 what their dedicated service needed to be.
 16 Q. Okay. So I was asking you if you recall how the
 17 Executive Session began. Is that what you just provided or
 18 was that your description of what occurred entirely at that
 19 Executive Session?
 20 A. That's my -- investigation shows of the entire Executive
 21 Session.
 22 Q. Do you know how the Executive Session began?
 23 A. So I'm not sure if I understand your question. Most
 24 Executive Sessions would begin -- particularly this one had a
 25 public meeting so the Commissioners would open the public

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1 meeting, they would recess into Executive Session and quote
 2 the statute that -- from OFPA for the exemption and then
 3 would recess into Executive Session and then have the
 4 information presented to them.
 5 Q. Okay. And do you know what the first item discussed at
 6 this Executive Session was?
 7 A. No, nobody recalls.
 8 Q. In front of you is a binder with exhibits. Would you
 9 look at Exhibit 13?
 10 A. (Complied).
 11 Q. Are you familiar with this document?
 12 A. Yes, I am familiar with it.
 13 Q. Did you review this document to prepare for today's
 14 deposition?
 15 A. Yes, I did.
 16 Q. Did you discuss this document with anybody to prepare
 17 for today's deposition?
 18 A. Yes, this was part of my discussion with Curtis Shuck.
 19 Q. Anybody else?
 20 A. No.
 21 Q. When did that discussion with Curtis Shuck occur?
 22 A. Probably a month ago.
 23 Q. Drawing your attention to the E-mail starting a third of
 24 the way or so down on the first page of Exhibit 13 there's an
 25 E-mail from Curtis Shuck to you with others copied dated

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1 April 11th, 2013. Did you receive this E-mail?
 2 A. Yes.
 3 Q. Does this E-mail accurately describe those in attendance
 4 on behalf of the Tesoro folks?
 5 A. I believe I checked this and it appears to match with
 6 the notes that are -- that we have in the file.
 7 Q. Was that a yes?
 8 A. Yes.
 9 Q. And does this Exhibit 13 accurately document the people
 10 in attendance on behalf of the status team at the April 9th,
 11 2013 Executive Session?
 12 A. Yes, it appears to.
 13 Q. And does this exhibit accurately represent those in
 14 attendance on behalf of BNSF at the April 9th, 2013 Executive
 15 Session?
 16 A. Yes.
 17 Q. Let me back up for a second, and I apologize if I'm
 18 repeating myself, but what exactly was Curtis Shuck's role in
 19 the Crude-by-Rail project?
 20 A. So Curtis Shuck, as of April 12, 2013, was still in his
 21 capacity as Director of Economic Development and Facilities
 22 and he was the lead negotiator and project manager, if you
 23 will, in the negotiations with Tesoro-Savage.
 24 Q. And do you know what the purpose of this E-mail from
 25 Curtis Shuck to you was?



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1 A. So since I was out of town on April 9th, Curtis was
2 providing a recap as he saw it regarding the -- what
3 transpired at the meeting.
4 Q. And does this recap accurately represent what occurred
5 at the April 9, 2013 Executive Session?
6 A. I have to assume that it does, yes.
7 Q. Okay. The first bullet point on the second page states
8 that, "We started with a brief review of the PBR journey
9 which included the May 2012 Six Hats." Can you describe what
10 was included in the brief review of the PBR journey?
11 A. So again from my investigations there was a discussion
12 around the lease negotiations and of where we were to date at
13 that point in the negotiations on the lease. It was also in
14 determining what properties we were using or proposing to use
15 for the site and how that was evolving to fit the needs of
16 this particular potential customer.
17 Q. Okay, anything else?
18 A. Not that I'm aware of.
19 Q. And it references in May 2012 Six Hats. Can you
20 describe what that is?
21 A. So in May of 2012 the -- myself and the leadership team
22 went through a Six Hats process in looking at the potential
23 of a crude oil facility, handling facility, at the Port of
24 Vancouver. The Six Hats process was actually brought to us
25 from a leadership coach and was a process intended to help

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1 everybody think through and avoid group think and evaluate
2 these potential projects so that we were able to fully
3 analyze all of the pluses, minuses, mitigations and so forth
4 on a particular project.
5 Q. And in May of 2012 was there a Six Hats process specific
6 to the Crude-By-Rail proposal?
7 A. Yes, there was.
8 Q. And you participated in that?
9 A. Yes, I did.
10 Q. Do you know who presented some sort of explanation of
11 the May 2012 Six Hats at the April 9, 2013 Executive Session?
12 A. I don't other than I would have to assume that it was
13 Curtis because Curtis was the presenter based on the
14 investigation I've done for the -- on behalf of the Port of
15 Vancouver.
16 Q. And can you describe what information would be included
17 in a Six Hats process?
18 A. So most of the concerns that we had when we went through
19 the Six Hats, and we don't tend to focus too much on the
20 pluses, it's more on what are the concerns and how do we --
21 is that something that can be managed, would have been around
22 the safety aspects of Crude-By-Rail and around the
23 utilization of that in maximizing the use of our facilities.
24 Q. What other information would be in the May 2012 Six Hats
25 presentation?

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1 A. So not specific to the presentation on May 9th or on
2 May 12? Excuse me, April 9th or May 12th?
3 Q. What I'm wondering is what information would be included
4 in the May 2012 Six Hats presentation at the April 9th
5 Executive Session.
6 A. So at the presentation on April 9th?
7 Q. Correct.
8 A. The focus of that was on the safety risk issues and on
9 the specific -- how that would affect the utilization of our
10 underutilized facilities and any of the adjacent customers.
11 Q. No other components of the May 2012 Six Hats were
12 presented?
13 A. Not that anybody recalls.
14 Q. What other information would be in the May 2012 Six
15 Hats?
16 A. So the hats themselves, and I wish I could remember them
17 all, are basically you go through and you look at the facts
18 related to the project, you also look at your data gaps, so
19 the information that you need more information about in order
20 to be able to make an informed decision. You also look at
21 the emotional side of the project and what are the good and
22 bad reactions that may occur as a result of that both
23 internally and externally. And then you also try to identify
24 how could you put in place creative measures to overcome any
25 of the negative impacts.

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1 Q. Okay, anything else?
2 A. Off the top of my head, that's all I can remember. It's
3 a fun process.
4 Q. The next item described in this exhibit that we're
5 looking at is Customer Contacts. What does that include?
6 A. Which document are you referring to now?
7 Q. Exhibit 13 in the binder.
8 A. Which bullet?
9 Q. Still the first bullet on the second page.
10 A. Oh, okay. Yes. So what that would be referring to
11 would be the introduction of the people who were in the room
12 which was that list that we went through previously.
13 Q. Okay. The next item is a new look at the Terminal 5
14 Loop. What does that discussion entail?
15 A. So our -- as we were contemplating a Crude-By-Rail
16 facility we had certain assumptions in how the loop system at
17 Terminal 5 would be utilized. The volumes that Vancouver
18 Energy or TSJV were proposing would require some modification
19 of that loop, and that loop would also have some potential
20 impacts on the other customer in that area at that time which
21 was BHP Billiton which would have some financial impacts on
22 the lease with BHP Billiton.
23 Q. Okay. The next item is the Statement of Interest
24 Process. What did that discussion include?
25 A. So the conversation about -- that I had was that there



<p style="text-align: right;">Page 110</p> <p>1 was a brief overview of -- the reason that we were following 2 through with TSJV was based on the volumes that they were 3 presenting and the marketplace which was the fact that they 4 were feeding their own refineries and so this was volumes 5 that would not be sold on the open market. And this has a 6 direct impact on price because if there -- if there's a lot 7 of price or a lot of volume undulations because it's sold on 8 the open market, that would be something that we would need 9 to charge more for in order to make up for those peaks and 10 valleys. But because they were serving their own volumes on 11 the West Coast -- and part of this discussion was to -- for 12 Tesoro to share how that was working into their own PAD 5 13 refineries, then there was more stability in the market 14 because they were serving their own refining market. And so 15 that was what that discussion was with regards to. 16 Q. And so by Statement of Interest process it sounds like 17 it involved a discussion of why the decision was made to 18 narrow in on Tesoro-Savage? 19 A. Yes. 20 Q. Okay. The next item is the Last Workshop with the Board 21 of Commissioners on February 22nd. What did that discussion 22 entail? 23 A. Back to my notes. Too many dates. That is a very good 24 question because I know of no conversation on February 22nd 25 with the Board of Commissioners.</p>	<p style="text-align: right;">Page 112</p> <p>1 A. The presentations for the Port were done by Curtis 2 Shuck. 3 Q. Okay. The next bullet states that "The Tesoro-Savage 4 team did a very good job of delivering their presentation 5 (attached) and engaging with the Commissioners with a genuine 6 and open approach." Do you know who presented on behalf of 7 Tesoro-Savage? 8 A. I believe it was Curt Dowd that presented on behalf -- 9 let me check the notes, make sure that that is accurate. 10 That says as I recall, it was Curt Dowd who presented on 11 behalf of Tesoro. 12 Q. Okay. The next bullet states that "The Commissioners 13 had a number of questions following the presentations -- I'm 14 sorry, following the presentation and the Tesoro-Savage team 15 alone with BNSF were able to provide most of the 16 information." Do you have any information as to the 17 questions asked by the Commissioners? 18 A. So let me go back. So Phil Anderson was the one who 19 presented for Tesoro and Curt Dowd was the one that presented 20 for Savage. 21 Q. Thank you. 22 A. So, I'm sorry, your question again? 23 Q. Was jumping to the next bullet -- 24 A. Okay. 25 Q. -- where Mr. Shuck reports to you that the Commissioners</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Could it have been a mistake and could it have been a 2 reference to the February 21st Executive Session we were 3 discussing earlier? 4 A. It could have been. 5 Q. Do you know what was discussed at the April 9th, 2013 6 Executive Session in relationship to that Board of 7 Commissioners workshop as it's called here? 8 A. I do not. 9 Q. Okay. Did you inquire with Mr. Shuck as to what he was 10 referring to? 11 A. I did not with respect to that. 12 Q. Okay. The next bullet states that "We presented the 13 attached slides on the makeup of the project team, project 14 timeline, and project announcement control points." First, 15 do you know who presented the attached slides? 16 A. So again from my investigation it appears that during 17 that meeting there were three presentations, so one was done 18 by Tesoro, one was done by Savage, and one was done by the 19 Port of Vancouver. 20 Q. I understand. This is from Curtis Shuck so I assume 21 this would be in reference to the one on behalf of the Port, 22 correct? 23 A. Yes. 24 Q. Do you know who presented the slide presentation on 25 behalf of the Port?</p>	<p style="text-align: right;">Page 113</p> <p>1 had a number of questions. Do you have any information as to 2 what questions the Commissioners had? 3 A. Yes. So the questions that -- again, from my 4 investigation, as I understand it was around how they would 5 be serving the PAD 5 refineries, again relating back to 6 that -- the stability of the market which would again reflect 7 the price that we were willing to charge, the minimum price 8 we were willing to offer to TSJV. 9 Q. Do you know who asked questions on those topics? 10 A. I believe all three Commissioners. I think there were 11 also questions from, again, the investigation, that were 12 around the safety aspects and the -- trying to remember if 13 there was anything else. It was safety, the use of how this 14 is going to lay out in the marketplace. 15 Q. The next bullet on this exhibit, Exhibit 13, Mr. Shuck 16 reports back to you that, "We wrapped up by reminding the 17 Board of Commissioners, BOC, that this project was a heavy 18 lift and we would have a lot of work to do to talk about the 19 project with our stakeholders." Can you elaborate on this 20 discussion? 21 A. So the heavy lift and issue with stakeholders at that 22 point was around the potential impacts to BHP Billiton who 23 was also using a loop track and also within the Terminal 5 24 site. The -- obviously there was potential for concerns from 25 other tenants, too, on the number of unit trains coming</p>



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1 through the facility and whether or not that would create any
 2 adverse impact to their operations. And so we would have to
 3 work through that. That is all I know with regards to the
 4 heavy lift.

5 I know we had conversations, we, as staff, and the Board
 6 of Commissioners individually, with myself, about the
 7 potential issue at that point was our concern was around
 8 fossil fuels and whether or not this would be a concern as
 9 coal had been or whether it was different.

10 Q. And a discussion on those topics occurred at this
 11 Executive Session?

12 A. Not at the Executive Session, so those would have been
 13 the one-on-one conversations.

14 Q. The bullet goes on that, "We talked about the upcoming
 15 Tesoro-Savage project announcement as a way to take the cap
 16 off the project and allow it to breathe for a period of time,
 17 a chance to receive public input before any decisions needed
 18 to be made by the BOC, and a chance for them to ask more
 19 questions and acquire more due diligence, if necessary." Can
 20 you describe that discussion?

21 A. Yes. So at the April 9th meeting and in my one-on-one
 22 meetings with the Commissioners and I know this was a follow
 23 on to that. They were extremely concerned about having the
 24 opportunity to discuss this project with the public and to be
 25 able to get public input. The Commission and I believe very

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1 strongly in that getting multiple input from multiple
 2 stakeholders is extremely important in developing a project,
 3 that it has the greatest merits. And so the sooner we could
 4 do that, the better. And we were already growing a little
 5 bit frustrated in that we had not been able to announce to
 6 the public this project basically because of negotiations had
 7 taken -- up to that point had taken much longer and we did
 8 not have the Exclusivity Agreement in place yet. And without
 9 that Exclusivity Agreement we had a high potential of the --
 10 a competitor coming in and trying to work out a better deal
 11 with TSJV.

12 As I had mentioned, we had had a lot of -- we had had
 13 difficulty in reaching agreement with TSJV on what the
 14 minimum price would be for the different elements and so
 15 getting that exclusivity in place was important for us in
 16 order to not have other competitors come in. Because at that
 17 time the Port of Portland, Port of Longview, and Port of
 18 Grays Harbor who had a number of other projects all were
 19 fairly likely contenders for this business. And so we really
 20 wanted to make sure that we could start that public process
 21 as soon as possible.

22 So part of that conversation was occurring at that
 23 meeting that we were going to be able to do that as of
 24 April 19th which was ten days later.

25 Q. Okay. So when Mr. Shuck is reporting to you there was a

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1 discussion around allowing the project to breathe, it's your
 2 understanding that that discussion involved the desire for
 3 public input or to allow public input as soon as possible?

4 A. That's correct.

5 Q. Okay.

6 A. And remember at that point what was being projected, you
 7 can see it in some of the E-mails that you got through the
 8 discovery request, was that the team that was working on the
 9 negotiations, so the internal Port staff, had beliefs that
 10 they would get to a final lease sooner than July 23rd and so
 11 we wanted to make sure we had plenty of time to have
 12 discussions and to be able to modify any of the lease terms
 13 if we needed to in order to be able to make for a better
 14 project overall. And so we really felt that need to get that
 15 information out there quicker.

16 MR. KNUTSEN: Okay.

17 MR. MARKOWITZ: I'm going to need a short break when you
 18 get to a breaking point. Go ahead and --

19 MR. KNUTSEN: Okay. Let's do the last bullet here on
 20 the exhibit.

21 THE WITNESS: Sure.

22 MR. KNUTSEN: Exhibit 13 in front of you.

23 Q. The last bullet states that "The Tesoro-Savage team
 24 invited the BOC, Board of Commissioners, to visit their
 25 Anacortes facility." Can you describe those invitations or

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1 any discussion regarding those invitations that occurred at
 2 this April 13, 2009 meeting?

3 A. Yeah, my understanding is that once the meeting was over
 4 there was the -- as they were concluding or walking out,
 5 there was the offer for the Board of Commissioners to come
 6 and see the relatively newly finished crude oil transfer
 7 facility that's linked to the Anacortes refining facility.
 8 And so that offer was extended and all three of the
 9 Commissioners did take up TSJV on that opportunity to see
 10 that facility firsthand so that they had a better idea of
 11 what that facility would look like.

12 Q. Okay. And then this same bullet also states that Lisa
 13 Lowe, who I understand is the attorney for the Board of
 14 Commissioners, provided the Board of Commissioners with the
 15 parameters of how a special Executive Session would work for
 16 the Anacortes tour." Can you describe that discussion?

17 A. Yeah, so there was concerns on how they could have a
 18 tour of the facility and that -- they chose to, each of the
 19 Commissioners on their own will, to take that tour at
 20 different times. Commissioner Wolfe took it while he was up
 21 with a hunting buddy in the Sound, Commissioner Baker went
 22 through the tour with me while her and I were at La Comer at
 23 a Pacific Northwest Waterways Association meeting, and
 24 Commissioner Oliver took the tour of the facility on his own.

25 Q. Okay. And so this description of Lisa Lowe's



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1 explanation occurred at the end of the Executive Session on
 2 April 9, 2013?
 3 A. They -- so there was a concern brought up about if they
 4 took a tour how would they do that and do it in adherence
 5 with Open Public Meetings Act.
 6 Q. I understand. And it's your understanding that that
 7 concern and that discussion occurred at the end of the
 8 April 9, 2013 Executive Session?
 9 A. My understanding is it took place after it adjourned.
 10 Q. And it occurred with all three of the Board of
 11 Commissioners?
 12 A. It was a conversation between Curtis Shuck and Lisa Lowe
 13 as they overheard the invitations coming from the TSJV
 14 members.
 15 Q. So when Curtis Shuck reported to you that Lisa Lowe
 16 provided the Board of Commissioners with the parameters, it's
 17 your understanding that's not the way it happened?
 18 A. In a conversation I had with Curtis and Lisa it was a
 19 discussion between the two of them after the meeting.
 20 MR. KNUtSEN: Okay. Take a break.
 21 MR. MARKOWITZ: Thank you.
 22 (BRRAK)
 23 Q. (By Mr. Knutson) In the exhibit binder in front of you
 24 there's an exhibit labeled Exhibit 16?
 25 A. Yes.

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1 Q. Are you familiar with this document?
 2 A. Yes, I am.
 3 Q. And what is this document?
 4 A. So this is a PowerPoint presentation that was used by
 5 Curtis Shuck to -- in his presentation to the Commission.
 6 This was on the April 9th Executive Session. The document
 7 was presented in written form to the Commissioners and I
 8 believe portions of it were given at -- verbal, orally.
 9 Q. Okay. Did you discuss this exhibit with Mr. Shuck in
 10 preparing for today's deposition?
 11 A. Yes.
 12 Q. Did you discuss this document with anybody else to
 13 prepare for today's deposition?
 14 A. Not this one, no.
 15 Q. Okay. And you said this was handed out to the
 16 Commissioners. Was that at the Executive Session?
 17 A. I don't recall if it was handed out ahead of the
 18 Executive Session or after.
 19 Q. You didn't ask anybody?
 20 A. I did not.
 21 Q. You said that there were some slides that were discussed
 22 orally during the Executive Session and others that were not.
 23 Can you identify which ones were discussed orally?
 24 A. So yes, from my investigation it appears that the --
 25 generally the fact that they were supplying the PAD 5, so

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1 again this was going to refineries to establish that market
 2 and that vulnerability in the market which is what I call the
 3 top one of page 1, it's on the top of page 2. Page 3 was a
 4 brief overview of where the facilities would be located and
 5 what impacts that would have.
 6 Q. Was that presented?
 7 A. Yes.
 8 Q. Okay.
 9 A. It's my understanding. I do not believe that the next
 10 life of the facility concept was.
 11 Q. When you say it wasn't, was it still in the slide show
 12 as Mr. Shuck was going through it?
 13 A. It was still -- yes, from my understanding they didn't
 14 spend much time on it.
 15 Q. Did they spend some time on it but not much time?
 16 A. I don't believe they spent any time on it from what I
 17 can see in the notes and from my conversations.
 18 Q. From your inquiry with Mr. Shuck?
 19 A. Right.
 20 Q. And you didn't discuss this presentation with anybody
 21 other than Mr. Shuck?
 22 A. Correct.
 23 Q. And so for the ones that weren't explicitly discussed,
 24 they would just skip over them?
 25 A. So let me clarify. So again, most of the people that I

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1 interviewed or questioned about the -- in my investigation
 2 around this don't recall the slideshow being presented at
 3 all. Curtis Shuck seems to be the only one that has any
 4 memory of whether or not -- or what slides were shown. When
 5 I asked him which slides did he go through in detail, that
 6 was the one on page 2, page 3, the facility Petroleum By Rail
 7 equals maximization of the Field Access, that one, and the
 8 proposal highlights which essentially is the same information
 9 that was on the previous slide.
 10 Q. The maximizing investment performance?
 11 A. No. So the facility concept and the proposal highlights
 12 are essentially the same slide except that the proposal
 13 highlights is a closer up or a zoomed in version so that's
 14 why he said that they spent more time on that because that
 15 showed the location of the leaseholds and the pipelines and
 16 the dock facilities and the rail infrastructure and the
 17 storage bins.
 18 And I don't -- trying to remember. And the other slides
 19 I don't believe he said they spent any time on.
 20 Q. Do you know if Mr. Shuck still went through the slides
 21 without discussing them?
 22 A. I know that he gave it to them in written -- in hard
 23 copy format. I don't know if he went through them in detail,
 24 any detail at all.
 25 Q. So the first one that you said was discussed in detail



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1 was the second page which would be bate's stamp number 6304?
 2 A. That is correct.
 3 Q. What were the discussions around this slide?
 4 A. So this slide was around the location of the PAD 5, so
 5 the refineries that TSJV would be serving from this facility,
 6 and again, the relevance of that was back to the variability
 7 in the market, which again would go back to how we set the
 8 prices. If there were large swings we may need a higher
 9 price on the throughput volume but if they were -- if there
 10 was low variability then we could handle a lower price.
 11 I think it's important that we remember at this point we
 12 were still dealing with a published tariff rate of about 8
 13 cents per barrel, and at this point we were still negotiating
 14 at around 15 to -- cents per barrel up to I believe it was
 15 120,000 barrels per day, and then 25 cents above that to
 16 240,000, and over 240,000 at 35 cents. So we were
 17 significantly above the tariff rate which was what the
 18 competition was using.
 19 Q. Okay. The next slide that you said there was more
 20 substantial solution was the fee rate slides, bate's stamp
 21 number 6305?
 22 A. That is correct.
 23 Q. Can you describe those discussions?
 24 A. So this was just a pictorial overlook of the site and so
 25 he was explaining how this would take into use Berths 13 and

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1 14 which was an existing facility and what types of
 2 requirements would be placed on the Port or the investments
 3 by TSJV on that one, where the unloading facilities would be
 4 and how much acreage they would take up and the location of
 5 the tanks. This, according to the discussion I had with him,
 6 was gone over quite quickly, and again, the major time was
 7 spent -- not major time but most of the time was spent on his
 8 presentation on 6307 which was more detail of this.
 9 Q. Okay. Turning to bate's stamp number 6307, can you
 10 describe the discussion around this slide?
 11 A. So it was really that same discussion that I just gave
 12 you. This is where he spent most the time giving that
 13 discussion. So I didn't really separate those well but that
 14 same discussion occurred between those two slides.
 15 Q. Okay. In that binder there's an Exhibit 15. Are you
 16 familiar with this document?
 17 A. Yes, I reviewed this document in preparation.
 18 Q. What is this document?
 19 A. This is the PowerPoints again that were given to the
 20 Commissioners in written form in preparation for the
 21 April 9th meeting -- or at the April 9th meeting, and again,
 22 portions of this, from what I can tell from the
 23 investigations, were presented to the Commissioners by
 24 members of Tesoro and members of Savage.
 25 Q. And did you discuss this slideshow with anybody to

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1 prepare for today's deposition?
 2 A. Yes. I reviewed this -- or discussed this with the
 3 entire list of attendees from the Port and our legal counsel.
 4 Q. Okay. Did Tesoro and Savage go through this entire
 5 slideshow at the Executive Session on April 9, 2013?
 6 A. So from the investigation I've done no one recalls them
 7 going through the entire slideshow. Most people don't
 8 remember much of the slideshow at all. It does appear from
 9 my investigation of the notes that portions of this were gone
 10 through.
 11 Q. Do you have any reason to think that the entire document
 12 wasn't gone through at the Executive Session?
 13 MR. MARKOWITZ: Other than what he just testified to?
 14 MR. KNUITSEN: Can you answer the question?
 15 MR. MARKOWITZ: I would object, been asked and answered.
 16 A. I have reason to believe that the entire PowerPoint was
 17 not gone through just because of the notes that are
 18 available, it appears that only highlights or certain
 19 segments of this were gone through consistent with what I was
 20 talking about before related to the facilities, the PAD 5 and
 21 the throughput volumes.
 22 Q. (By Mr. Knutsen) Is the sole basis for your belief that
 23 the entire document wasn't gone through the fact that the
 24 notes don't document each slide?
 25 MR. MARKOWITZ: Objection, asked and answered. He

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1 interviewed people.
 2 A. So the investigation I did included not only the notes
 3 and going through the presentation but also the interviews
 4 that I had with the individuals that were in attendance. So
 5 it was a combination of both.
 6 Q. (By Mr. Knutsen) Yeah, I understand that, I appreciate
 7 your counsel's coaching you here how to answer the questions
 8 but the --
 9 MR. MARKOWITZ: He's already answered that. It's not
 10 coaching. He's answered it before.
 11 MR. KNUITSEN: Please don't interrupt.
 12 Q. You previously testified that nobody recalled very well
 13 which slides were and were not gone through, now you're
 14 testifying that it's your belief that not all the slides were
 15 gone through. My question is is that based on just the notes
 16 or did people recall that only portions -- that certain
 17 portions of this were not gone through?
 18 MR. MARKOWITZ: I'm going to object to the question.
 19 You have misstated his testimony yet again as you have
 20 misstated other witness's testimony. That was not an
 21 accurate statement of what he said.
 22 MR. KNUITSEN: Can you answer that question?
 23 A. So the interviews showed that people did not recall the
 24 presentations, not much about the presentations. Again, the
 25 recollection was mostly from Curtis and his own presentation.



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1 The notes seem to show that there were only certain parts of
2 the information that were presented.

3 Q. (By Mr. Knutsen) Did anybody you interview represent to
4 you that they believed the entire document was not gone
5 through at the Executive Session?

6 A. Yes, there were many people that I discussed on that
7 attendance list that said that they don't believe that the
8 entire PowerPoint presentation was gone through orally.

9 Q. And who were those people?

10 A. So pretty much everybody on that list. I can go through
11 with you if you would like. Jerry Oliver, Brian Wolfe, Nancy
12 Baker, Alicia Lowe, Dave Hepler, Curtis Shuck, Patty Boyden,
13 Julianna Marler, Jeff Estueta, Michelle Allan, Theresa
14 Wagner, Katy Brooks, Monty Edberg, Craig Westrand, Mike
15 Schiller, Todd Krout, Mary Mattix. I asked all of them and
16 none of them recalled the presentation being gone through in
17 its entirety.

18 Q. It's a little different not remembering the presentation
19 being gone through in its entirety and explicitly remembering
20 that certain portions were gone through and others not. Do
21 you understand that distinction?

22 A. Yes. When I asked them the question their response to
23 me was that they believe that if it was gone through in its
24 entirety they would recall that, and they do not recall it
25 being gone through in its entirety.

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1 Q. Did you talk with the representatives of Tesoro-Savage
2 that gave the presentation?

3 A. I did not.

4 Q. Okay. Which of these slides is it your understanding
5 were gone through at the Executive Session?

6 A. I don't have a good understanding of which ones were
7 gone through. I can go through and guess by notes but that
8 would be the best I could do.

9 Q. Okay. In the binder in front of you is an exhibit
10 labeled Exhibit 19. Are you familiar with this document?

11 A. Yes.

12 Q. And what is this document?

13 A. So this is an E-mail dated April 9th from Jeff Estueta
14 to myself and it is Jeff Estueta's account of, at least
15 partially, of the discussion of the April 9th meeting.

16 Q. Okay. Did you review this document to prepare for
17 today's deposition?

18 A. Yes, I did.

19 Q. And did you discuss this document with the author of the
20 E-mail?

21 A. I did discuss it with him quite some time ago, yes.

22 Q. Does this E-mail accurately represent the April 9, 2013
23 Executive Session?

24 A. Yes. From the best of my information that I have gotten
25 back from the interviews and looking at the notes, this seems

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1 to be fairly consistent with that.

2 Q. Okay. It states that, "Discussions around rail capacity
3 and Bill and BNSF responded brilliantly." Can you describe
4 what that refers to?

5 A. So one of the concerns that we had in the negotiations,
6 and we being the Port staff with TSJV, was the number of unit
7 trains that would pass through our existing facilities and
8 BNSF provides the switching within our facilities. And so
9 one component that is important is to make sure that it will
10 not have adverse impacts to our other customers in our
11 ability for those customers to have an efficient service.

12 Q. Okay. Those issues were discussed at the Executive
13 Session?

14 A. It appears so, yes.

15 Q. The next sentence states, "Focused on job creation, both
16 ongoing and during construction. Also BNSF will need to hire
17 more yard staff." Can you describe those discussions at the
18 April 9, 2013 Executive Session?

19 A. There was a concern around how to maintain again the
20 operations during construction and whether or not that could
21 be efficiently done. And that BNSF would need to have more
22 people in the Vancouver yard in order to move that number of
23 trains in and out of the facility without adversely impacting
24 our other customers. As to the focus on job creation, I can
25 only assume that that was related to the yard folks that

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1 would be added to the BNSF.

2 Q. Did you ask the author of the E-mail what he meant by
3 job creation?

4 A. I did not ask specifically about job creation.

5 Q. The next paragraph begins, "Then all three Commissioners
6 walked away excited about moving forward and ready to handle
7 the Tesoro-Savage announcements." How did the author of this
8 E-mail get that impression?

9 A. So the author of this E-mail, Jeff Estueta, tends to be
10 fairly excited himself. From the conversations with the
11 Commissioners the excitement was more about the ability to
12 finally involve the public in the process and to start the
13 public workshops and be able to get information to the
14 Commissioners which was done between May and July on the
15 BNSF's role, the MSPA, Marine Fire and Safety
16 Administration's role, EFSEC's role to hear -- or have the
17 presentation be made to the public from TSJV on the proposed
18 facility and that public -- the public portion that we talked
19 about earlier that they were talking about finally getting
20 the time for that to be in the public to start receiving
21 input.

22 Q. And so the Commissioners expressed explicitly or
23 implicitly their excitement to move forward with the public
24 processes during this project during the April 9, 2013
25 session?



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1 A. So from the conversations I've had it appears that they
2 were just pleased that they were able to have that
3 information out in the public so we could start that public
4 process. When I asked the question about excited, all of
5 them, and you can see that in their deposition notes as well,
6 said that they would not describe it as excited. I think one
7 said that -- Commissioner Oliver said that -- in his
8 deposition that he was a proponent because of the market
9 interest. I think Commissioner Wolfe mentioned that he was
10 concerned; while he saw value in the revenue he was concerned
11 in the operations side of it. And I can't recall what
12 Commissioner Baker had said. But none of them described it
13 as excited.

14 Q. And then the final statement on this E-mail states that
15 Nancy was in an extra good mood with a lot of Oh's?

16 A. With a lot of Oh's.

17 Q. What do you think the author of this E-mail meant by
18 that?

19 A. So Commissioner Baker is very -- she is very much the
20 relational voice on the Port Commission, and I think for her
21 to be introduced to the folks at Tesoro-Savage was probably
22 a -- it was a relief for her to finally see who we were
23 talking about, so to make that connection between the face
24 and the negotiation.

25 Q. And how do you think she communicated that relief in the

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1 Executive Session?

2 A. She's usually smilier.
3 (4-9-13 Executive Session Meeting Notes by Commissioner
4 Wolfe, Exhibit 52 Marked)

5 Q. Mr. Coleman, you've been handed an exhibit labeled 52.
6 Have you seen this document before?

7 A. Yes.

8 Q. What is this document?

9 A. So this document is -- appears to be notes from
10 Commissioner Wolfe related to the April 9th meeting,
11 Executive Session meeting.

12 Q. Did you discuss these notes with Commissioner Wolfe
13 prior to today's deposition?

14 A. Yes.

15 Q. Towards the top of the document on page 1 it states
16 "Shuck overview of how process has played out thus far, SIR,
17 kickoff, working groups, et cetera." Does that correspond to
18 the way this meeting began as described in the E-mail from
19 Curtis Shuck to you?

20 A. Yes.

21 Q. Towards the bottom of page 1 it states that, "Anacortes
22 sold to TLLP for 180 million in November 2012." Was that
23 discussed at the April 9, 2013 Executive Session?

24 A. I would assume so based on these notes.

25 Q. And then below that it says five tanks at and then

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1 there's a redaction barrels each, one vessel each, and then
2 below that is approximately redaction trains per tank. Can
3 you describe what these notes refer to?

4 A. So these notes would refer to again, as I mentioned, the
5 number of tanks, so again defining what area they needed
6 within Parcel 1A, they would also refer to the number of
7 vessels and the number of trains that were needed to supply
8 those tanks.

9 Q. And was that discussed at the April 9, 2013 Executive
10 Session?

11 A. That is consistent with what I discovered in my
12 investigation, yes.

13 Q. And the next page bates's stamped 6230 at the top says
14 Baker and then there's three lines below Baker. We'll take
15 the first one, says jobs 50 over 80 or 50 slash 80. Can you
16 describe what that refers to?

17 A. So they were anticipating 50 to 80 jobs, permanent jobs,
18 being created on the site by the operations of the crude oil
19 facility.

20 Q. Was that discussed at this April 9, 2013 Executive
21 Session?

22 A. Yes, it appears so.

23 Q. Can you read what comes after 50 dash 80?

24 A. I believe it says the number of trains would be one to
25 four daily.

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1 Q. I'm still up in the line above that.

2 A. Oh, I'm sorry. Oh, I believe this is referring to the
3 type of jobs. I don't know exactly what it says but it's
4 something substantially above entry level, \$30 per hour, full
5 benefits.

6 MR. MARKOWITZ: 401K?

7 THE WITNESS: Yeah, might be that they're getting 401K.

8 Q. (By Mr. Knutsen) Were these issues discussed at the
9 April 9, 2013 Executive Session?

10 A. It appears so, yes.

11 Q. You decipher handwriting better than I do.

12 A. I've had some experience with these.

13 Q. Below that is what you were mentioning earlier, this is
14 still under the heading Baker, trains hyphen one to four
15 daily. Can you describe what that's in reference to?

16 A. Yeah, so the number of trains that would be moving
17 through the facility would range from one to four a day. And
18 again, that would reflect back on the capacity within our
19 system to handle that.

20 Q. Okay. And below that is I believe area or acres and
21 it's 30 plus. Can you describe what that's referring to?

22 A. Yes. So that was referring to the number of acres that
23 would be needed to be leased for the tanks on Parcel 1A,
24 again coming back to the number of acres that would be taken
25 up and whether it would use the entire site or whether there



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1 would be other revenue generating activities there.

2 Q. And these three topics are all under the heading Baker.

3 Is that because these were issues raised by Commissioner

4 Baker in the April 9, 2013 Executive Session?

5 A. Yes, it appears they were brought up by Commissioner

6 Baker.

7 Q. Okay. Going down the page again, we're still on

8 Exhibit 52, bate's stamp 6230, there's a heading Wolfe. Can

9 you read the first line under Wolfe?

10 A. I believe it says Canada crude, question mark. Phil may

11 be part of maximizing probably throughput.

12 Q. Can you describe what that is in reference to?

13 A. Yes, so there was Commissioner Wolfe again trying to

14 understand variability and also the potential risk, wanted to

15 understand whether or not Canadian crude would be included in

16 that mix or whether it would only be the Bakken crude that

17 was going to their own refineries, TSJV refineries.

18 Q. So this was an issue that was raised by Commissioner

19 Wolfe during the April 9, 2013 Executive Session?

20 A. Correct.

21 Q. And do you know if he received any answers to his

22 inquiries on this issue?

23 A. Yes. So Phil, who I think he's referred to there, Phil

24 Anderson, responded to him that it would depend -- it would

25 be part of -- maybe but it was part of the maximizing the

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1 throughput.

2 Q. Okay. And below that is -- looks like it says -- is it

3 third-party slash open terminal, question mark?

4 A. Right.

5 Q. What is that in reference to?

6 A. So again this came back to whether or not they were only

7 handling -- anticipating handling crude for their own

8 facilities, refineries, or if they were going to have it

9 open. And the key for Commissioner Wolfe in this was he

10 wanted -- if -- if they were only handling their product,

11 they could control the product -- we could help control the

12 product and the railcars that they were moving in. If it was

13 by third parties in an open terminal, there would be less

14 control over the cars and the destination of the crude.

15 Q. Okay. So these are questions that Commissioner Wolfe

16 raised at the April 9, 2013 Executive Session?

17 A. Right, because they had come directly back to the risk

18 associated with it.

19 Q. And then next to that it says maybe not everybody has

20 Jones Act vessels. Is that a response to Mr. Wolfe's

21 inquiry?

22 A. Yes, appears to be.

23 Q. Do you know who provided that response?

24 A. My guess is this would still be from Phil Anderson

25 because they're the ones that have the vessels that would

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1 move the crude oil, and the vessels are what they're

2 referring to in the Jones Act, they're American vessels.

3 Q. And Mr. Anderson, he's with Savage?

4 A. Yes -- no, he's with Tesoro.

5 Q. Okay. Below that still under the heading of Wolfe, is

6 that corrosiveness?

7 A. I believe so.

8 Q. It says an issue for refineries, where it is, that

9 heated up?

10 A. Yes.

11 Q. Not an issue for crude?

12 A. Correct.

13 Q. Can you describe what that refers to?

14 A. So corrosiveness would be a concern because then you

15 would have a higher likelihood of leaks or potential failures

16 in pipelines or tanks. And the response was that this was --

17 that the corrosiveness is an issue with the heavy crudes

18 which would be the Canadian crudes and not with the Bakken

19 crudes.

20 Q. So this was another issue raised by Commissioner Wolfe

21 at the April 2, 2013 Executive Session?

22 A. Correct.

23 Q. Do you know who provided the response?

24 A. Again I would guess that that was Phil Anderson just

25 because of the -- what the -- because it's about the crude

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1 itself.

2 Q. Okay. Below that is the heading Wolfe, spill response

3 plans. Can you describe what that's in reference to?

4 A. So at this point he was making his own notes on what he

5 wanted to see later on which would be the spill response

6 plans, the safety, and the health and safety plans, and that

7 was, as you can see in his questioning, was what his concerns

8 were, and this was -- would be how to address that.

9 Q. So these three items you just mentioned weren't issues

10 that he brought up at the Executive Session?

11 A. That's my understanding.

12 Q. Below that still on bate's stamp number 6230 --

13 A. Um-hum (affirmative response).

14 Q. -- under the heading Oliver?

15 A. Um-hum (affirmative response).

16 Q. There's some topics, cost of facility, and then it's

17 redacted?

18 A. Yes.

19 Q. Can you describe what that's in reference to?

20 A. So that would be understanding what would be the level

21 of commitment from TSJV and their private investment to the

22 facility.

23 Q. Okay. And this was an issue raised by Commissioner

24 Oliver at the April 9 Executive Session?

25 A. Right. Again, in setting the rates you need to



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1 understand what -- we need to understand what the customer is
 2 investing versus what they're expecting us to invest.
 3 Q. And then below that it says local contractors and labor;
 4 engineering slash -- is that supervision?
 5 A. Yes.
 6 Q. From maybe T-Savage managements, something close to
 7 that?
 8 A. Yeah, Savage management.
 9 Q. And then below that, I'm sorry, it says up to -- is that
 10 250 workers at peak?
 11 A. Yes.
 12 Q. Okay. Can you describe what that's in reference to?
 13 A. So Commissioner Oliver was asking about who would be
 14 responsible for the construction of the private investment
 15 and if it would be local contractors and laborers and
 16 engineers or whether they would be using folks from out of
 17 town. And who would be managing the facility and that was
 18 the Savage -- or the design and construction of the facility
 19 and that was Savage.
 20 Q. And so these were issues that Commissioner Oliver raised
 21 at the April 9 Executive Session?
 22 A. Yes, appears so.
 23 Q. Okay. And then below that it says existing partnerships
 24 between Tesoro and Savage, question mark, yes. What is that
 25 in reference to?

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1 A. He was trying to understand whether or not Tesoro and
 2 Savage had worked together on facilities in the past; in
 3 other words, did they already have a working partnership that
 4 would suggest that they could be successful in operating and
 5 managing this facility.
 6 Q. At the bottom of the page it says exportation of refined
 7 product, question mark, some diesel goes from Cali to Mexico
 8 and South America. Can you describe what that's in reference
 9 to?
 10 A. Yeah, he was trying to understand whether or not any of
 11 the product was being exported and what product was being
 12 exported. And the response was it was the diesel from
 13 California to Mexico or South America.
 14 Q. Do you know who that response came from?
 15 A. I would also imagine that was Phil Anderson because of
 16 the Tesoro refineries.
 17 Q. Okay. And the next page, bate's stamp number 6231, on
 18 the top of the page it says Oliver continued and then
 19 immediately below that is Detail on SF Facility. What is
 20 that in reference to?
 21 A. So one of their refineries is located in San Francisco
 22 and Commissioner Oliver was trying to get an understanding
 23 again to understand the variability of the volumes, how much
 24 of the volume was being fed to Tesoro's refineries and one of
 25 those refineries was a San Francisco refinery.

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1 Q. Okay. Do you know who he inquired on this topic during
 2 the Executive Session?
 3 A. Would have to guess it was Phil Anderson again.
 4 Q. Okay.
 5 A. Because again it's a Tesoro facility.
 6 Q. Okay, then below that there's a redaction, it's a
 7 number, then says Railcars on order for the facility. Is
 8 that your reading?
 9 A. Yes.
 10 Q. Okay. Can you describe what that's in reference to?
 11 A. Yes. So the question was whether or not they would have
 12 new railcars specific for this facility and how many of those
 13 would be new railcars, and again the concern was that these
 14 weren't going to be cars that were just coming off the system
 15 that may not be well maintained and so this was a response
 16 that there were a number of railcars on order specific for
 17 this facility.
 18 Q. Okay. Then below that are you able to read the words in
 19 the left margin?
 20 A. Yeah, it says Columbia Max. I don't know who uses that
 21 term, it's actually Panamax and that refers to the size
 22 vessels that you can handle in the Columbia River. I have
 23 heard this term in the past, it's not widely used, but it
 24 just basically means that they don't draft more than 43 feet.
 25 Q. Okay. Was this something that was discussed by

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1 Commissioner Oliver during the Executive Session?
 2 A. It appears so because it appears that it also then goes
 3 on to the construction of the vessels so these would be new
 4 vessels that will be entering the marketplace, again dealing
 5 with the risk associated with it.
 6 Q. Then moving on down, Bill Brown? Who's Bill Brown?
 7 A. He's with the BNSF Railroad.
 8 Q. Okay. And did Bill Brown present at the Executive
 9 Session?
 10 A. It appears so, yes.
 11 Q. Okay.
 12 A. Although there was no presentation so not sure what that
 13 was, other than these notes.
 14 Q. Okay. Did he discuss these various issues that are
 15 listed below his name on this document, page 6231?
 16 A. I would assume so, yes.
 17 MR. KNUITSEN: Okay.
 18 (Ms. Lowe's 4-9-13 Executive Session Notes,
 19 Exhibit 53 Marked)
 20 Q. You've been handed a document labeled Exhibit 53. Are
 21 you familiar with this document?
 22 A. Yes.
 23 Q. What is this document?
 24 A. So these appear to be the notes from legal counsel, Lisa
 25 Lowe, on April 9, 2013 for the Executive Session. There are



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1 also a business card for Kent Avery of the Savage company and
 2 then some information including a timeline and some facts
 3 about crude oil that were delivered to the Commissioners in
 4 hard copy at some point prior to the meeting. I don't recall
 5 exactly when.
 6 Q. Okay.
 7 A. And then also the note from the Six Hats thinking
 8 process that we talked about earlier.
 9 Q. Okay. Were these documents that are included with
 10 Exhibit 53 made available to the Commissioners at the
 11 April 9, 2013 Executive Session?
 12 A. These documents were all provided to the Commissioners
 13 ahead of that April 9th meeting. I don't believe that they
 14 were redistributed to them again at the meeting.
 15 Q. Okay. The facts about crude oil that she mentioned
 16 earlier, 6104?
 17 A. Yes.
 18 Q. This document looks like it's five pages or so, was this
 19 document discussed during Executive Session on April 9?
 20 A. I do not believe so. This document was created to help
 21 us understand some of the different crudes and some of the
 22 language about those crudes. This was provided to us at the
 23 request of the leadership team, actually prior to April 7.
 24 A. So we most likely gave those to Commissioners in written
 25 format sometime significantly before April 9th.

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1 Q. Okay. Bate's stamp number 6109, still in Exhibit 53, is
 2 the Six Hat Thinking. Is this the Six Hat Thinking document
 3 that -- the result of the Six Hat process that you mentioned
 4 earlier that occurred in May of 2012?
 5 A. Correct, yes.
 6 Q. Was this document made available during the Executive
 7 Session on April 9, 2013?
 8 A. I know this document was given to the Commissioners
 9 individually in written form prior to that. I don't believe
 10 it was given to them again at that meeting.
 11 Q. Was it made available to Tesoro-Savage and/or ENSF?
 12 A. I do not believe so.
 13 Q. And you said some items on this Six Hats thinking were
 14 presented by Mr. Shuck during Executive Session on April 9?
 15 A. Yes, we talked earlier about some of the items were
 16 discussed particular to the marketplace and to some of the
 17 risks associated around it.
 18 (Commissioner Wolfe's Typewritten Notes of 4-9-13 Executive
 19 Session Meeting, Exhibit 54 Marked)
 20 Q. Mr. Coleman, you've been handed an exhibit labeled 54.
 21 Are you familiar with this document?
 22 A. Yes.
 23 Q. And what is this document?
 24 A. So this document would have made the last one much
 25 easier for you and I to read. This is the typewritten --

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1 appears to be at least the typewritten notes from that
 2 exhibit that we were discussing earlier that were Brian
 3 Wolfe's handwritten notes.
 4 Q. Okay. So this is simply the exhibit we looked at
 5 earlier, Exhibit 52, just typed out by Commissioner Wolfe.
 6 Is that your understanding?
 7 A. I don't know who typed it up but yes, it is the same
 8 notes.
 9 Q. Okay. Okay, what was the status of the proposed
 10 Crude-By-Rail terminal during the April 9, 2013 session?
 11 This was before the Exclusivity Agreement; is that correct?
 12 A. Yes, the Exclusivity Agreement was -- I entered into
 13 under my authority with TSJV on April 19th. At this point we
 14 were still negotiating as staff with TSJ membership or
 15 members. We were still struggling to get to negotiated
 16 rates. TSJV along the way had figured out that the rates
 17 that were published in the tariffs were much lower than the
 18 rates that we were proposing and so we were still negotiating
 19 our way through those.
 20 Q. Okay. It was also before the public announcement; is
 21 that correct?
 22 A. That is correct.
 23 MR. KNUTSEN: Can we take a five-minute break? Keep it
 24 really short.
 25 MR. MARKOWITZ: Good idea.

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1 (BREAK)
 2 Q. (By Mr. Knutsen) Mr. Coleman, there was an Executive
 3 Session on April 23rd, 2013. Is that correct?
 4 A. I don't have an April 23rd note so...
 5 (4-23-13 Regular Meeting/Executive Session Minutes,
 6 Exhibit 55 Marked)
 7 Q. Mr. Coleman, you've been handed an exhibit labeled 55.
 8 Have you seen this document before?
 9 A. So I don't recall but yes, I'm sure I have seen this
 10 because I recall reviewing it.
 11 Q. Okay. These are the minutes from both the regular
 12 meeting and Executive Session held on April 23rd, 2013. Is
 13 it safe to assume, based upon your review of this document,
 14 that there was an Executive Session held on April 13?
 15 A. Yes, it looks like there was an Executive Session to
 16 talk about acquisition of real estate sale or lease and
 17 national security and a -- actually personnel and litigation
 18 so a lot of topics.
 19 (Ms. Lowe's Notes of 4-23-12 Executive Session Meeting,
 20 Exhibit 56 Marked)
 21 Q. Mr. Coleman, you've been handed an exhibit labeled
 22 Exhibit 56. Have you seen this document?
 23 A. I do not believe so.
 24 Q. Then you don't know what this document is?
 25 A. Judging from the handwriting it appears to be the notes



<p style="text-align: right;">Page 146</p> <p>1 from our legal counsel, Lisa Lowe, for a meeting on 2 April 23rd. 3 Q. On April 23rd it says 2012? 4 A. Yeah. 5 Q. I don't know if that's accurate. I guess we wouldn't 6 know, would we? Probably wouldn't be because it says Tesoro 7 announcement. Am I correct that the announcement of the 8 Tesoro project was April 22nd, 2013? 9 A. Yes, I believe that's correct. 10 Q. So is it safe to assume this was for the Executive 11 Session on April 23rd, 2013? 12 A. Given the topics, yes. 13 Q. You didn't discuss this document with anybody to prepare 14 for today's deposition? 15 A. I did not. 16 Q. It's safe to assume that the announcement of the Tesoro 17 project was discussed at the Executive Session on April 23rd, 18 2013? 19 A. Given that the announcement for the TSJV project was 20 April 23rd -- I wish I could see what was under the redacted 21 area. 22 Q. Me too. 23 A. I'm having troubles imagining what that conversation 24 would be. It is possible I have seen in Lisa Lowe's notes in 25 the past where she will at the beginning have notes that were</p>	<p style="text-align: right;">Page 148</p> <p>1 Session on April 23rd, 2013? 2 A. It is possible that it was. The note under that 3 basically refers to the question around the entity and at 4 that time TSJV was contemplating a separate entity that would 5 operate the facility, and it's always a concern for us when 6 we don't have the parent company or companies on the -- on 7 the lease itself and so there was just a concern as to making 8 sure that we weren't taking on risk by having an empty entity 9 that it could not respond financially to any issues or to be 10 able to fulfill the lease. 11 Q. And were those issues discussed during the Executive 12 Session of April 23rd, 2013? 13 A. I would believe so, yes. 14 Q. But you didn't discuss the April 23rd, 2013 Executive 15 Session with anybody to prepare for today's deposition? 16 A. I did not. It would just have to come from my memory. 17 Q. Okay. I want to talk for a minute about the Exclusivity 18 Agreement. And I apologize, I'm sure you've said this, do 19 you recall when the Exclusivity Agreement was executed? 20 A. I believe it was April 19th, 2013. 21 Q. Okay. And I believe there was one Executive Session, 22 maybe in February, that we were discussing earlier where the 23 Exclusivity Agreement was discussed in Executive Session? 24 A. Yes, I believe that was the February 21st Executive 25 Session, if I remember correctly.</p>
<p style="text-align: right;">Page 147</p> <p>1 a conversation that her and I had prior to the Commission 2 meeting. It's possible that that was the case. These other 3 discussions of GS Global, NuStar, BHP, Glovis and Labor would 4 be consistent with the Executive Session meeting. 5 Q. So it wouldn't be safe to assume, is what you're saying, 6 that the announcement of the Tesoro-Savage project was 7 discussed in Executive Session on April 23rd? 8 A. Not -- I would not know. 9 Q. Who would we need to talk to to figure that out? 10 A. I would need to see what's under the redacted which we 11 probably have. 12 MR. MARKOWITZ: Can you do that? 13 MR. FITE: (Nodding head). 14 Q. (By Mr. Knutsen) Ms. Lowe would probably know I assume; 15 is that correct? 16 A. Yeah, Ms. Lowe should know. 17 MR. MARKOWITZ: Hold on. Let's go off the record. 18 MR. KNUTSEN: Okay. 19 (Off-the-Record Discussion) 20 Q. (By Mr. Knutsen) Mr. Coleman, we went off record for a 21 minute and your counsel procured, I believe, an unredacted 22 Exhibit 56. Is that correct? 23 A. That is correct. 24 Q. Does this document help you determine whether or not the 25 Tesoro-Savage announcement was discussed during the Executive</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Was that the only Executive Session that the Exclusivity 2 Agreement was discussed in? 3 A. Yes, because the only issue around Exclusivity Agreement 4 that we were concerned with was how long we needed to have to 5 have this exclusive ability to negotiate. 6 Q. When were the Commissioners first presented with the 7 terms of the proposed lease? 8 A. So when -- can you repeat the question? 9 Q. When were the Commissioners first presented with the 10 terms of the proposed lease? 11 A. So I guess I will ask for a clarification. Are you 12 asking for when did the Commissioners first see the draft 13 lease or the terms that were going into the lease? 14 Q. I think we talked earlier about the initial one-on-one 15 conversations with Commissioners about the various terms or 16 aspects of the potential lease. What I'm getting at is the 17 actual terms of the draft of the proposed lease. 18 A. So the first draft lease was after the July 16th and 19 17th meetings. I remember because I was frustrated that we 20 didn't have a lease yet. And so we only at that point had 21 some of the proposed -- well, we only had the proposed terms 22 that we, as staff, negotiated with TSJV which was really the 23 first two pages of the lease. 24 Q. Okay. And were the proposed terms of the lease 25 presented to the Commissioners in Executive Session?</p>



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1 A. So the -- those -- yes, those terms on the first two
2 pages, which again come to the lease rate for the real estate
3 for the wharfage, for the dockage, the -- who was responsible
4 for which portions of the construction, the amount of
5 property that it was taking up, the -- and the insurance
6 would have been included in that.

7 Q. Do you know when those Executive Sessions occurred?
8 A. Those I believe were the Executive Sessions of July 16th
9 and 17th.

10 Q. Okay. Did the Board of Commissioners hold an Executive
11 Session on May 28, 2013?
12 A. Yes.

13 Q. And was the Crude-By-Rail facility discussed at that
14 meeting?
15 A. Yes, it appears that the facility was discussed -- TSJV
16 facility was discussed during the meeting. It must have been
17 brief because there are several items that were discussed
18 during that meeting and it was a fairly short meeting.
19 (Ms. Lowe's Notes from 5-28-13 Executive Session Meeting,
20 Exhibit 57 Marked)

21 Q. Mr. Coleman, you've been handed an Exhibit labeled 57.
22 Is that one of the documents you were just looking at in your
23 notebook?
24 A. Yes, it is.
25 Q. Okay. You've seen it before then?

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1 A. Yes.
2 Q. Okay. Did you review this document to prepare for
3 today's deposition?
4 A. Yes, I did.
5 Q. And did you discuss this document with anybody to
6 prepare for today's deposition?
7 A. Yes, I discussed it with Lisa Lowe.
8 Q. And is that because these are notes of Ms. Lowe's from
9 the Executive Session on May 28, 2013?
10 A. Yes, that is correct.
11 Q. On the second page, bate stamped 6116, there's some
12 notes under the heading Tesoro-Savage.
13 A. Um-hum (affirmative response).
14 Q. The first note is ground lease, is that still working?
15 A. Yes.
16 Q. Is that in reference to discussion about the fact that
17 they were still working on the ground lease terms?
18 A. Correct.
19 Q. Below that is July 9, still the plan for approval? Is
20 that because there was a discussion regarding a Board of
21 Commissioner approval hoping to happen on July 9?
22 A. We were hoping to have action to the Board of
23 Commissioners by July 9th, yes.
24 Q. So that was discussed at this Executive Session May 28,
25 2013?

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1 A. So there's an issue with these notes that we were
2 unable, and we discussed it to rectify, and that is the fact
3 that if you look at the sequence of the notes, it goes to
4 Tesoro-Savage on the second page but on the fourth page,
5 6118, it goes back to revenue.
6 Q. Correct.
7 A. And so from our discussion it was hard to tell which
8 discussion was in public session and which discussion was in
9 Executive Session.
10 Q. Okay.
11 A. Our belief is that the discussion around revenue on 6118
12 was in Executive Session but the discussion around the
13 Tesoro-Savage on 6116 was actually in public session.
14 Q. Okay. And so you don't need to get too specific but
15 what would the general topics that would have been discussed
16 in the Executive Session portion of the meeting under the
17 heading Tesoro-Savage Joint Venture revenue have been?
18 A. Those topics would have been the continued discussions
19 around the charges for lease rates, dockage, wharfage, and
20 the areas associated with those. And the rail fees.
21 Q. Let's go ahead and jump back to the pages we were
22 looking at earlier, the second page of this exhibit, bate's
23 stamp 6116.
24 A. Um-hum (affirmative response).
25 Q. Permitting, there's an issue under permitting, still

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1 something EIS. What would that be in reference to?
2 A. I believe what it says is they were still concluding
3 that they would go through an EIS and the EFSEC process, the
4 Energy Facility Siting Evaluation Council Process.
5 MR. KNUITSEN: Okay.
6 (5-28-13 Regular Meeting Minutes, Exhibit 58 Marked)
7 Q. Mr. Coleman, you've been handed an Exhibit labeled
8 Exhibit 58. These are the meeting minutes from the May 28,
9 2013 meeting that we've just been discussing.
10 A. Um-hum (affirmative response).
11 Q. Take a look through the minutes for a minute and see if
12 there's any mention of public discussions of the Tesoro-
13 Savage project in these minutes.
14 A. So there is mention that we were planning on having an
15 EFSEC workshop at that Commission meeting but that it was
16 being delayed.
17 Q. Can you refer me to what page?
18 A. Oh, I'm sorry, it is page 7 of 9 of Exhibit 58, it is
19 the final bullet at the end of the page, and that we were
20 expecting to reschedule that for June.
21 Q. Okay.
22 A. And there was also discussions by Commissioner Wolfe of
23 his tour of the Anacortes facility.
24 Q. Okay.
25 A. So again, as it relates to there's discussion on this



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1 page regarding EFSEC and that process, it's conceivable that
 2 it would be with regards to that. It would be easy to find
 3 out because all those meetings are televised and there are
 4 records on CTVV.

5 Q. Did you do anything to determine whether or not the
 6 items listed on Exhibit 57, bate's stamp number 6111, were
 7 discussed in the public session of the meeting?

8 A. No.

9 Q. Would you anticipate if that these items are not
 10 referenced in the minutes that they would have been discussed
 11 in the Executive Session portion of the meeting?

12 So, for example, the fact that July 9 was still the plan
 13 for approval, that's not mentioned in the meeting minutes,
 14 would we assume that that was discussed during the Executive
 15 Session?

16 A. The trouble with the notes is it could have also been a
 17 discussion that Lisa Lowe and I had after the meeting. But I
 18 don't recall.

19 Q. But you did discuss these notes with Ms. Lowe before
 20 today's deposition?

21 A. Yes, and her and I agreed that with the order here it
 22 did not make sense and that this would not be consistent with
 23 what we would talk about in Executive Session. And so it
 24 would be very odd for us to see this type of discussion in
 25 Executive Session.

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1 Q. Did Ms. Lowe have any idea of why she would write notes
 2 like this under the heading of Executive Session if they
 3 weren't discussed in Executive Session?

4 A. So the point of Lisa Lowe and my discussion was that we
 5 don't believe that these belong under the heading Executive
 6 Session, again because of the order. Our belief is that
 7 these are either taken out of order or there was some
 8 confusion as to how these were assembled in the discovery
 9 process.

10 Q. Okay. Why exactly would these not be the items that
 11 were discussed in Executive Session?

12 A. So these issues that are listed here are not specific to
 13 price.

14 Q. Okay.

15 A. These are simply updates that would tell -- inform the
 16 public or -- and/or the Commissioners on the schedule changes
 17 in order to make sure that people understood what -- that the
 18 schedule was changing.

19 Q. Okay. And did you talk with anybody else present at
 20 this Executive Session to prepare for today's deposition to
 21 testify specifically to the content of the May 28, 2013
 22 Executive Session?

23 A. No, because generally the conversations I had, unless
 24 people had -- there was only a couple specific meetings that
 25 people had any recollection at all about what transpired in

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1 those particular Executive Sessions.

2 MR. KNUTSEN: Okay.

3 (7-8-13 E-mail to POV Commissioners from Mr. Coleman,
 4 Exhibit 59 Marked)

5 Q. Did the Board of Commissioners hold an Executive Session
 6 on July 9, 2013?

7 A. Yes.

8 Q. And was the Crude-by-Rail Project discussed during that
 9 Executive Session?

10 A. It appears so, yes.

11 Q. And what components or issues surrounding the
 12 Crude-By-Rail facility were discussed at the July 9, 2013
 13 Executive Session?

14 A. So at the Executive Session there was a discussion --
 15 continued discussion around the formation of the new entity,
 16 the LLC that TSJV would operate under and the risks
 17 associated with that.

18 Q. Anything else?

19 A. There were other discussions but the notes don't define
 20 what those are, however you can see from the meeting minutes
 21 that there were also discussions around national security and
 22 potential litigation as well.

23 Q. Okay, you've been handed an exhibit labeled Exhibit 59.

24 A. Yes.

25 Q. This appears to be an E-mail from you to the

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1 Commissioners on July 8, 2013. You state that this is only
 2 section one. Can you describe what you were referring to?

3 A. Yes. So I mentioned earlier that at this point we were
 4 hoping that we would have a final draft lease available and,
 5 as of this July 8th, we still had no draft available to us.
 6 So the only section that was available was section one and
 7 this is the first two pages or so of terms that I've spoken
 8 about previously.

9 Q. Okay. And so those first two pages were discussed
 10 during the Executive Session held on July 9, 2013?

11 A. No. I recall that we shared this information but the
 12 lease was still in flux and being negotiated at that point so
 13 we did not end up speaking about that at this meeting. We
 14 waited until the July 16th and 17th meetings.

15 Q. Okay. Let's talk about the July 16 and 17 meetings.
 16 Those were also special meetings, they were outside of the
 17 normal Board of Commissioner meeting schedule?

18 A. Correct.

19 Q. Was the Crude-By-Rail facility the only topics discussed
 20 at those Executive Sessions or were there other topics
 21 discussed?

22 A. We also discussed at the July 16th and 17th meeting
 23 potential litigation and also the potential acquisition of
 24 property or the consideration of acquisition of property.

25 Q. Okay. And what issues related to the Crude-By-Rail



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1 facility were discussed at the July 16 and 17 Executive
 2 Sessions?
 3 A. There were discussions about a number of items. Those
 4 items included what types of crude would flow through the
 5 facility, again as it related back to the risk associated
 6 with some of those items that were addressed earlier; what
 7 the premises was for the facility; in other words, how many
 8 acres of land would the facility take up for its rail unload
 9 facility, for its storage tank facility, and for the marine
 10 terminal facility. It also discussed what were the timelines
 11 that we were willing to allow for TSJV to operate under, by
 12 what point they needed to have construction completed, and --
 13 or at least started and completed, and how long the operating
 14 term would be with TSJV, and whether or not there would be
 15 any extensions that would be allowed. We also discussed the
 16 prices per barrel for the wharfage fees and the dockage fees
 17 and the service and facilities fees as well as the lease
 18 fees, the insurance, property insurance, liability insurance,
 19 and pollution insurance, and the rail fees. We had some
 20 discussion around the risk associated with any of the
 21 potential crude oil that could be handled through the
 22 facility. And I believe that's about it.
 23 (7-12-13 E-mail to POV Commissioners from Ms. Allan,
 24 Exhibit 60 Marked)
 25 Q. Mr. Coleman, you've been handed a document labeled

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1 Exhibit 60. This appears to be an E-mail from Michelle Allan
 2 to the Commissioners dated Friday, July 12th, providing
 3 documents to be reviewed at the Executive Session. Is that
 4 correct?
 5 A. Yes, that is correct.
 6 Q. And it appears that Michelle Allan was forwarding an
 7 E-mail from Curtis Shuck that references several exhibits.
 8 They include a ground lease, clean version, a lease premises
 9 exhibit, Exhibits A through E3, Exhibit L, Savage HSSE Plan,
 10 and ground lease comparison to Port of Vancouver ground lease
 11 template. Is that correct?
 12 A. Yes, that is correct.
 13 Q. And were each of those documents forwarded to the
 14 Commissioners ahead of the July 16 and 17 Executive Sessions?
 15 A. I believe so, yes.
 16 Q. Were each of those documents discussed at the Executive
 17 Sessions held on July 16/17, 2013?
 18 A. No. So the documents, the ground lease, the clean
 19 version, the ground lease, the red line between our lease
 20 template and the proposed ground lease, were provided to the
 21 Commissioners for them to review. The Savage HSSE which is
 22 basically their health and safety plan was provided for them
 23 for them to review. We did go through the lease premises
 24 exhibits and we did go through the values associated with the
 25 terms, again those first two sheets that we did not get to on

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1 July 8 because they were not ready because they were still
 2 being negotiated, we did -- between the staff and TSJD, we
 3 went through them at this time on July 16th and 17th.
 4 MR. KNUTSEN: Okay.
 5 (Draft of Ground Lease between Port of Vancouver USA and
 6 Tesoro-Savage Petroleum Terminal, Exhibit 61 Marked)
 7 Q. Mr. Coleman, you've been handed an exhibit labeled 61.
 8 Have you seen this document before?
 9 A. Yes, I have.
 10 Q. And what is this document?
 11 A. So this was a document prepared by Curtis Shuck in
 12 advance of the meetings on July 16th and 17th to be used
 13 partially to -- for the most part to go through during the
 14 Executive Sessions and to provide some information to the
 15 Commissioners.
 16 Q. Okay. And did Mr. Shuck go through this exhibit with
 17 the Commissioners during the July 16 and 17 Executive
 18 Session?
 19 A. So this exhibit was used as sort of an agenda, if you
 20 will, for the discussions on July 16th, 17th and the majority
 21 of this information was gone through, yes.
 22 Q. Do you know which portions were not gone through?
 23 A. I don't recall and no one recalled exactly what
 24 information was gone through. We do know that a lot of the
 25 information, particularly again around the premises,

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1 around -- I listed out the whole list before, I don't know if
 2 you want me to go through it again, but the terms, the
 3 construction periods, the fees, the cargo to be handled, the
 4 volumes, the guarantees, the different charges, whether it's
 5 rail or wharfage, dockage, real estate, the insurance were
 6 all gone through.
 7 Q. Do you know which items were not gone through?
 8 A. I don't believe we went through the definition of
 9 petroleum products although we did talk about the risk
 10 associated, the difference between the heavy crudes and light
 11 crudes. We did not go through in general that discussion.
 12 We did not go through the -- actually we did go through the
 13 alterations by the Port because that was defining how much
 14 our investment would be into the facility.
 15 Yeah, the permitting overview I believe in the project
 16 outreach program were the only two areas that we did not
 17 specifically cover.
 18 Q. Okay. In the binder of exhibits in front of you there's
 19 an exhibit, Exhibit 7. Are you familiar with this document?
 20 I'm looking at just the first page and the second page
 21 actually has a much later date and it should not have been
 22 included, should have been a separate exhibit.
 23 A. Yes, I recognize Exhibit 7.
 24 Q. And what is Exhibit 7, first page of Exhibit 7?
 25 A. Yeah, first page of Exhibit 7 are notes that



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1 Commissioner Wolfe had typed up of questions that he had
 2 relative to the facility.
 3 Q. And did you go through these concerns during the July 16
 4 or 17 Executive Session?
 5 A. We went through some of these but not all of them were
 6 discussed in Executive Session.
 7 Q. Okay. Do you know which ones were discussed during the
 8 Executive Session?
 9 A. Yes, I recall that we talked about the size of the tanks
 10 and the risk associated with the tanks, I believe we talked
 11 about the gases, vapors, and fumes, and what we could require
 12 of TSJV to implement in order to minimize that. We did not
 13 go through the emergency response plans, we did not go
 14 through the L and G lease from Port of Astoria, we did not go
 15 through in this meeting the Tesoro and Savage safety record,
 16 we did not go through the aid to the rail or how its
 17 inspected. We did talk about whether or not we could require
 18 later generation railcars than the DOT 111s, we did not go
 19 over the BNSF emergency response plan. We did talk about
 20 whether or not there was any deficiencies in MSFA and if we
 21 needed to help generate revenue to supplement that. Sorry,
 22 we're not looking at the second page yet.
 23 Q. I believe Commissioner Wolfe testified that in relation
 24 to this exhibit that during Executive Session or during the
 25 meeting that he went through each of these and that you

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1 provided a response that satisfied him that the Port was in
 2 control of these concerns or these issues. Is that your
 3 recollection of the discussion during the Executive Session?
 4 A. Can I see the deposition quote?
 5 Q. You can or you can -- it's Exhibit -- is it your
 6 recollection that Commissioner Wolfe went through these
 7 concerns and that you were providing him with some sort of
 8 response to the concerns?
 9 A. I recall that he went through his list. I do recall
 10 that there were some items that we responded to and some
 11 items that we did not. And again, some of that's because I
 12 construe OPMA to be fairly narrow in perspective and tend to
 13 limit it as to what those discussions are.
 14 Q. Okay. What did you do to prepare for today's deposition
 15 to testify specifically as to the contents of these Executive
 16 Sessions that occurred on July 16 and 17, 2013?
 17 A. Again, I went through with those that were in attendance
 18 at those meetings which generally were our leadership and a
 19 few key managers that were at the other Executive Sessions
 20 and had discussions with them about their recollection and
 21 then reviewed the notes and the documents that we've been
 22 discussing.
 23 Q. Okay. Anything else?
 24 A. No.
 25 Q. Okay. There was an Executive Session on July 22nd,

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1 2013, wasn't there?
 2 A. Yes.
 3 Q. This Executive Session occurred after a public
 4 presentation and public comments; is that correct?
 5 A. So there was multiple things that occurred on July 22nd.
 6 So it started with a public meeting in which I had presented
 7 the Tesoro-Savage project from the Port's perspective, went
 8 through a number of different aspects of that project, an
 9 overview of the lease document, and then we received about
 10 two hours of public comment.
 11 Q. Okay. And then the Commission recessed into Executive
 12 Session?
 13 A. Correct, we recessed into Executive Session.
 14 Q. And what was the purpose of that Executive Session?
 15 A. The purpose of the Executive Session was to identify
 16 whether or not there were any additional terms that the
 17 Commissioners wanted us to modify that would affect the price
 18 that was negotiated with -- on the lease. Again, as of
 19 July 22nd the Commission had not approved the lease so there
 20 was still an opportunity to make last minute changes. And
 21 one change was made as a result of that meeting on July 22nd,
 22 or the Executive Session, and that was the Commission was
 23 very concerned about the safety aspect that they heard about
 24 in the public session and so that is when we added the
 25 requirement that the Port have the approval rights for the

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1 operation plan. That's an extraordinary right to have as an
 2 owner and could have caused some real changes in the lease.
 3 Fortunately TSJV accepted that change.
 4 Q. Okay. What specific topics were discussed during the
 5 Executive Session?
 6 A. The specific topic was I went just quickly over the
 7 general themes that we heard as far as concerns and then
 8 asked the Commissioners if there were any additional terms
 9 that they wanted to have changed.
 10 Q. By themes do you mean the general themes that were
 11 raised during the public comment portion of the July 22nd
 12 Executive Session?
 13 A. Correct, yes, and those general themes were around
 14 safety, fossil fuel, and emissions. And we really didn't go
 15 into any more detail than that and asked if there was any
 16 terms and then the discussion around making sure that we had
 17 language in the lease that required us to have that approval
 18 right prior to TSJV going into operations.
 19 Q. Okay. Were any other issues or topics discussed during
 20 the Executive Session portion of the July 22nd, 2013
 21 Executive Session?
 22 A. No.
 23 Q. Okay.
 24 A. So let me clarify. So the Executive Session on
 25 July 22nd was a bit of an anomaly. We typically do not have



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1 Commission meetings that late in the day. One of our
 2 Commissioners was -- who happened to be the President, quite
 3 fatigued, he had gotten up earlier that morning to pick up
 4 his daughter, I believe, from the airport in Seattle, and we
 5 also had received some fairly threatening E-mails and phone
 6 calls prior to that July 22nd meeting. So everybody was a
 7 little -- maybe stressed is the right term. And it was a big
 8 decision. And the meeting itself, while it took a while to
 9 get everybody from the public meeting to the room where the
 10 Executive Session was being held, the meeting was opened but
 11 the meeting didn't actually begin for nearly 20 minutes when
 12 everybody was actually assembled in the room. And so I just
 13 want to clarify that because while there may have been
 14 discussions, they were not discussions that were relative to
 15 the lease, they were not discussions that were -- that were
 16 amongst the three Commissioners, they would have -- I think
 17 one of the Commissioners or maybe two of the Commissioners
 18 suggested that there was some light banter, some of that was
 19 because we were still waiting for everybody to get into the
 20 room so we could have the actual Executive Session. The
 21 actual Executive Session discussion actually only took about
 22 20 out of the 40 or so minutes.

23 Q. Okay. You stated in a declaration submitted in this
 24 case that Commissioner Wolfe stated during the Executive
 25 Session that he would have to decide -- he would now have to

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1 decide how to vote. Do you recall that declaration?
 2 A. I remember it very well.
 3 Q. Okay.
 4 A. Because I mentioned earlier I feel that part of my role
 5 is to have at least some intuition as to how the Commission
 6 will lean in any particular issue, and I have to tell you
 7 that when I was riding my bike home after this meeting on
 8 July 22nd there were a lot of thoughts going through my mind
 9 of whether or not we were going to have a two/one or a one/
 10 two vote.
 11 Q. Okay. So you said that there was some discussion
 12 regarding the public comment portion that led to a proposal
 13 to include this additional requirement where the Port would
 14 retain some ability to approve a safety plan; is that
 15 correct?
 16 A. I think that that mischaracterizes it. So what I said
 17 was is that I basically pulled everybody together, I said,
 18 look, we've heard a lot of comments tonight that are
 19 concerned about safety relative to spills, explosions, and
 20 fossil fuels, are there any other terms that the Commission
 21 needs to have put into this agreement before we bring it
 22 before you tomorrow morning. And that's when the
 23 conversation ensued about making sure we have this clause
 24 about the operation of safety plan approval.
 25 Q. And who brought up this additional term? Was it

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1 proposed by one of the Commissioners?
 2 A. It was sort of a collective response, I would say, from
 3 the leadership team and the Commissioners. The comments by
 4 the Commissioners were still concerned over the recent
 5 incident in Quebec and how we could make sure that we felt
 6 comfortable that we had done everything we could within our
 7 facilities to minimize any potential risk. And the -- I
 8 believe it was actually Curtis Shuck who came up with the
 9 idea of adding this term, and there was a little bit of a
 10 discussion about if we added this term are we going to have
 11 to give something up in value because this means that
 12 Tesoro-Savage basically has to proceed through the EFSEC
 13 permitting process with the potential of us not approving the
 14 project later on which puts them in a much higher risk
 15 position.

16 Q. And what were the Commissioners' responses to this
 17 additional proposed term?
 18 A. The Commission -- so I would say that Commissioner Baker
 19 and Commissioner Oliver did not weigh in on the addition of
 20 the term, it was primarily Commissioner Wolfe, and that
 21 Commissioner Wolfe thought that it was a lease term that we
 22 needed to have in the lease.
 23 Q. Were there any other topics discussed during the
 24 Executive Session portion of the July 22nd, 2013 Executive
 25 Session?

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1 A. No.
 2 Q. And what did you do to prepare to testify today as to
 3 the specific content of that Executive Session?
 4 A. Spoke to everybody that was in attendance.
 5 Q. Okay.
 6 A. And reviewed the documents. Sorry.
 7 Q. And there was an Executive Session the following morning
 8 prior to the vote, the public vote on the lease; is that
 9 correct? That would be July 23rd, 2013?
 10 A. Yes, that is correct, there was an Executive Session on
 11 July 23rd.
 12 Q. And what was the purpose of that Executive Session?
 13 A. The purpose of that Executive Session was to discuss
 14 consideration of price as it relates to the sale or lease of
 15 property as public knowledge -- or public knowledge of that
 16 information would likely reduce the price and also potential
 17 litigation.
 18 Q. Okay. Commissioner Oliver testified that he was
 19 confident that the lease was discussed and that everybody
 20 went through it during this Executive Session line-by-line or
 21 clause-by-clause. Is that your understanding of this
 22 Executive Session?
 23 MR. MARKOWITZ: If you're going to ask him to comment on
 24 a deposition answer you should tell him where that answer
 25 appears.



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1 Q. (By Mr. Knutsen) Is that your recollection or your
2 understanding of the Executive Session?
3 A. Can I see the comment or the deposition?
4 Q. You have the deposition transcript in front of you.
5 A. Which exhibit was that? Oh, that was --
6 Q. The Oliver.
7 A. Right here, sorry.
8 Q. That would be in today's.
9 A. Is it in today's?
10 MR. FITE: 44.
11 MR. KNUTSEN: Exhibit 44 --
12 MR. MARKOWITZ: Page?
13 MR. KNUTSEN: -- page 131, beginning on line 8.
14 THE WITNESS: I am sorry, page what?
15 MR. KNUTSEN: Page 131, beginning on line 8.
16 A. So again, I can't speak particular to the context that
17 Commissioner Oliver is providing in the answer in his
18 deposition, but I can tell you that the -- in Executive
19 Session we reviewed one clause and the one clause was the
20 clause that we came up with on July 22nd that was added to
21 the lease that required us to have the approval -- that we
22 had to approve the operation and safety plan before TSJV
23 could go into operation. The rest of the time was discussing
24 the litigation aspect.
25 Q. (By Mr. Knutsen) So it's your position that that was

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1 the only clause -- that Commissioner Oliver's testimony was
2 inaccurate and the only clause discussed was the new clause?
3 A. So Commissioner Oliver's testimony in here suggests that
4 he did not recall but it looked like he was suggesting that
5 we may have gone through clause-by-clause. And so I would
6 say that his -- the fact that he's suggesting that he has a
7 foggy memory of this is probably accurate and that we only
8 discussed that one clause. I remember specifically because
9 we had gone through it the night before, and at that point
10 it's very difficult for us to change anything other than that
11 one clause. That was the only thing that was addressed with
12 the TSJV lease on that one.
13 Q. And what did you do to prepare to testify today as to
14 the content of this Executive Session of July 23rd, 2013?
15 A. Again, I've talked with everyone that was in attendance
16 at those meetings, this meeting included, and gone through
17 the notes, and on this particular one called back on my own
18 remembrance of the events.
19 Q. And did you discuss this particular Executive Session
20 particularly with Commissioner Oliver?
21 A. I did not speak with Commissioner Oliver about this
22 specific one, no.
23 Q. You think your recollection is clearer than his
24 recollection?
25 A. The others particularly on staff that I discussed with

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1 also recall that we did not speak in any length or detail on
2 the meeting on the morning of July 23rd about TSJV and that
3 the only clause that we discussed was the clause around the
4 review of the Operations and Safety Plan. And that was from
5 anybody who could recall anything from that meeting.
6 Q. Okay. Leaving the clauses of the potential lease aside,
7 were there any other topics related to the Crude-By-Rail
8 facility discussion at Executive Session portion of the
9 July 23rd, 2013 Executive Session?
10 A. No.
11 MR. KNUTSEN: Okay. I want to take a five-minute break
12 and we'll come back for our final session.
13 (BREAK)
14 Q. Earlier we had some discussion surrounding the April 9,
15 2013 Executive Session.
16 A. Yes.
17 Q. And there was some talk of a heavy lift, some sort of
18 discussion with the Commissioners that there remained to be a
19 heavy lift. Do you recall that discussion?
20 A. I remember the reference to it, yes.
21 Q. Okay. And I believe your testimony was that that was
22 surrounding some concerns of other tenants?
23 A. Yes.
24 Q. And is my recollection correct that those concerns dealt
25 with potential rail congestion issues?

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1 A. Yes, primarily, but also the April 9th reference to the
2 heavy lift also referred to the fact that BHP Billiton and
3 TSJV would be co-located within the Terminal 5 loop area and
4 whether or not that would be a concern for BHP Billiton
5 because they're a very large company and we needed to make
6 sure that both the operations were -- could go on
7 simultaneously but also that they were okay with all of the
8 safety provisions.
9 Q. Okay. Did the Port then have discussions with other
10 tenants regarding the potential Crude-By-Rail facility prior
11 to the public announcement?
12 A. Prior to the public announcement? I do not believe so.
13 Q. Okay. Has the Port made any changes to its Executive
14 Session procedures since January 2013?
15 A. Yes. We added a reference guide that the -- we, as
16 staff, prior to the Executive Session and usually when Lisa
17 Lowe and I meet on the Monday before the Commission meeting
18 will identify under which exemptions of OPMA we will be
19 holding that Executive Session, if we are holding one, and
20 what time that meeting will adjourn -- or the Executive
21 Session will adjourn. And that information is then read by
22 the Commissioners and it references the specific statute. So
23 the statute of 42.30.110, and also identifies -- or they also
24 speak the term -- or the language behind the ROW on why that
25 exemption applies, and also the time at which it either will



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1 adjourn or did adjourn.
 2 Q. You said there's an explanation of why the particular
 3 exemption applies?
 4 A. Well, which exemption applies.
 5 Q. Okay, there's no explanation of why a particular
 6 exemption applies?
 7 A. Correct.
 8 Q. Any other changes?
 9 A. Nope, those are the only changes.
 10 Q. Okay. Has the Port's position as to the scope of topics
 11 that may be discussed under the real estate exemption for
 12 OPMA changed since January 1, 2013 -- and do you know what I
 13 mean by the real estate exemption for OPMA?
 14 A. Yeah, I'm assuming that you're referring to RCW
 15 42.30.110 B and C which would be for acquisition or sale or
 16 lease of property. And no, there has not been any changes to
 17 how we actually apply that.
 18 Q. We've discussed a lot of topics today that were
 19 discussed in Executive Sessions through 2013. Is it the
 20 Port's position that each of those topics were lawfully
 21 within the real estate exemption?
 22 A. So I would say that I am confident that all of -- and
 23 I'm going to discuss separately the April 9th meeting, all of
 24 the Executive Sessions that we have conducted during that
 25 timeframe were conducted in accordance with the OEMA. The

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1 April 9th meeting, obviously there is a question around that
 2 presentation, the presentations that were available there.
 3 It again does not appear that those presentations were given
 4 in their entirety, but I will tell you that I generally
 5 construe -- I'm fairly conservative in my use of the OEMA and
 6 I do not allow the Commissioners or the staff to stray very
 7 far -- well, to stray at all. I very narrowly construe what
 8 that price is referencing. And while I don't think that
 9 there's any fault in what was done on April 9th it is
 10 potentially slightly broader than what I would normally
 11 allow.
 12 Q. And which topic specifically are you referring to?
 13 A. There was more background information and introductions
 14 than I believe that I would have allowed, and it's hard for
 15 me to know exactly because I was not present at those
 16 meetings but, from my investigation, I believe that I would
 17 have kept it a little tighter as it related to the background
 18 information.
 19 Q. Anything else?
 20 A. No.
 21 MR. KNUTSEN: Okay. I have nothing further.
 22 MR. MARKOWITZ: No questions.
 23 (The Deponent reserves his right to read and sign)
 24 (DEPOSITION ADJURNED: 4:30 p.m.)
 25

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CORRECTION & SIGNATURE PAGE

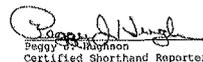
1 RE: COLUMBIA RIVERKEEPER, ET AL, vs. PORT OF VANCOUVER
 2 USA, ET AL
 3 SUPERIOR COURT OF THE STATE OF WASHINGTON/CLARK COUNTY
 4 CASE NO. 13-2-03431-3
 5 TODD M. COLEMAN, PE; February 27, 2015
 6 Reported By: Peggy J. Hughson

7 I, TODD M. COLEMAN, PE, have read the within transcript
 8 taken February 27, 2015, and the same is true and accurate
 9 except for any changes and/or corrections, if any, as
 10 follows:
 11 PAGE/LINE CORRECTION REASON
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
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 19 _____
 20 _____
 21 _____
 22 Signed at _____, _____,
 23 (City) (State)
 24 on this date: _____
 25 _____
 TODD M. COLEMAN, PE

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REPORTER'S CERTIFICATE

1 I, Peggy J. Hughson, the undersigned Certified
 2 Court Reporter and Notary Public, do hereby certify:
 3 That the sworn testimony and/or proceedings, a
 4 transcript of which is attached, was given before me at the
 5 time and place stated therein; that any and/or all
 6 witness(es) were duly sworn to testify to the truth; that the
 7 sworn testimony and/or proceedings were by me
 8 stenographically recorded and transcribed under my
 9 supervision, to the best of my ability; that the foregoing
 10 transcript contains a full, true, and accurate record of all
 11 the sworn testimony and/or proceedings given and occurring at
 12 the time and place stated in the transcript; that I am in no
 13 way related to any party to the matter, nor to any counsel,
 14 nor do I have any financial interest in the event of the
 15 cause.
 16 WITNESS MY HAND, SEAL, AND SIGNATURE this 13th day of
 17 March, 2015.
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HONORABLE DAVID E. GREGERSON (Dept. 2)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA CLUB; and NORTHWEST ENVIRONMENTAL DEFENSE CENTER,

Plaintiffs,

v.

PORT OF VANCOUVER USA; JERRY OLIVER, Port of Vancouver USA Board of Commissioners President; BRIAN WOLFE, Port of Vancouver USA Board of Commissioners Vice President; and NANCY I. BAKER, Port of Vancouver USA Board of Commissioners Secretary,

Defendants.

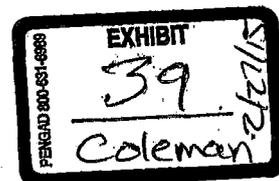
No. 13-2-03431-3

PLAINTIFFS' NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT PORT OF VANCOUVER USA

TO DEFENDANT PORT OF VANCOUVER USA and its ATTORNEYS;
AND TO: DEFENDANT JERRY OLIVER, Port of Vancouver USA Board of Commissioners Secretary; DEFENDANT BRIAN WOLFE, Port of Vancouver USA Board of Commissioners President; and DEFENDANT NANCY I. BAKER, Port of Vancouver USA Board of Commissioners Vice President, and their ATTORNEYS;

NOTICE OF DEPOSITION OF DEFENDANT PORT OF VANCOUVER USA- 1

SMITH & LONEY, P.L.L.C.
231 7 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883



1 Please take notice that a deposition of the Defendant Port of Vancouver USA ("Port")
2 will be taken on oral examination under Rule 30(b)(6) before a court reporter at the offices of
3 Smith and Lowney, PLLC, 917 S.W. Oak Street, Portland, Oregon 97205, commencing at 9:00
4 a.m. on Thursday, February 12, 2015. This oral examination will be subject to continuance or
5 adjournment from time to time or place to place until completed.
6

7 Demand is made that Defendant Port, not later than Thursday, January 29, 2015,
8 designate one or more persons who consent to testify on its behalf and who are the most
9 qualified to testify on the matters described below. The matters on which examination is
10 requested are:
11

12 1. Executive sessions held by the Port Commissioners since January 1, 2012, during
13 which any issue related to a potential oil-by-rail facility was discussed by any person. This
14 includes, for each such executive session, the specific topics discussed, what was said and by
15 who, any written materials distributed, discussed, and/or considered, the legal authority for
16 holding the session, the people present, the public notices provided, the reason for excluding the
17 public from those sessions, and any minutes taken during those sessions;
18

19 2. Efforts taken by the Port to implement and comply with the requirements of the
20 Open Public Meetings Act from January 1, 2013, to the present;
21

22 3. The Port's contentions as to the scope of matters that may be discussed in
23 executive session under RCW 42.30.110(1)(c);
24

25 4. The process and history of the Port's consideration of a proposed oil-by-rail
26 facility from the initial consideration of such a project, through the request for proposals and the
27 execution of an exclusivity agreement, to the execution of the lease with Tesoro-Savage. This
28

29 NOTICE OF DEPOSITION OF DEFENDANT
PORT OF VANCOUVER USA-2

SMITH & LOWNEY, P.L.L.C.
231 7 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

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includes any discussions Port staff had with the Port Commissioners related to this process and history;

5. The factual basis for the Port's affirmative defenses, including the Port's mootness defense; and

6. Other matters that may come before the Port Commissioners related to a potential oil-by-rail facility that have the potential to be discussed in executive session.

Dated this 8th day of January, 2015.

SMITH & LOWNEY, PLLC

By: 

Knoll Lowney, WSBA # 23457
Brian A. Knutsen, WSBA # 38806
Elizabeth H. Zultoski, WSBA # 44988
2317 E. John Street, Seattle, WA 98112
Tel: (206) 860-2883; Fax: (206) 860-4187
Email: knoll@igc.org; briank@igc.org
elizabethz@igc.org

*Attorneys for Plaintiffs Columbia Riverkeeper,
Sierra Club, and Northwest Environmental
Defense Center*

NOTICE OF DEPOSITION OF DEFENDANT
PORT OF VANCOUVER USA- 3

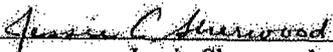
SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

CERTIFICATE OF SERVICE

I, Jessie Sherwood, declare under penalty of perjury of the laws of the State of Washington, that I am a citizen of the United States and a resident of King County, Washington, that I am over the age of eighteen, that I am not a party to this lawsuit, and that on January 8, 2015, I caused the foregoing Plaintiffs' Notice of Rule 30(b)(6) Deposition of Defendant Port of Vancouver USA to be served on the following by electronic service to the following email addresses:

David B. Markowitz
Lawson E. Fite
Kristin M. Asai
Markowitz, Herbold, Glade & Mehlfaf, P.C.
1211 S.W. Fifth Ave., Suite 3000
Portland, Oregon 97204-3730
Email: LawsonFite@MHGM.com
KristinAsai@MHGM.com
BrendaAnthony@MHGM.com
SaraPomerening@MHGM.com

Attorneys for Defendants



Jessie Sherwood

NOTICE OF DEPOSITION OF DEFENDANT
PORT OF VANCOUVER USA- 4

SMITH & LONEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2882

EXHIBIT B

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Hon. David E. Gregerson

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA CLUB; and NORTHWEST ENVIRONMENTAL DEFENSE CENTER,
Plaintiff,

vs.

PORT OF VANCOUVER USA; JERRY OLIVER, Port of Vancouver USA Board of Commissioners President; BRIAN WOLFE, Port of Vancouver USA Board of Commissioners Vice President; and NANCY I. BAKER, Port of Vancouver USA Board of Commissioners Secretary,
Defendant.

No. 13-2-03431-3

DEFENDANT PORT OF VANCOUVER USA'S SECOND AMENDED RESPONSE TO PLAINTIFFS' THIRD SET OF INTERROGATORIES

Defendant Port of Vancouver USA (the "Port") hereby amends its response to the below-designated plaintiffs' interrogatories as follows:

GENERAL OBJECTIONS

Defendant incorporates the following general objections into each of its responses to plaintiffs' requests:

1. Defendant objects to plaintiffs' interrogatories to the extent they exceed the requirements of CR 26 and 33.
2. Defendant objects to plaintiffs' requests to the extent that they seek information, documents, or communications subject to a claim of privilege, including without

1 - **DEFENDANT PORT OF VANCOUVER USA'S SECOND AMENDED RESPONSE TO PLAINTIFFS' THIRD SET OF INTERROGATORIES**

MARKOWITZ HERBOLD PC
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 295-3085
LawsonFite@MarkowitzHerbold.com

1 limitation the attorney-client privilege, the doctor-patient privilege, the work product
2 doctrine, and any other privilege or immunity.

3 3. Defendant objects to plaintiffs' requests to the extent that they seek
4 information, documents, or communications that are not in defendant's possession, custody,
5 or control.

6 4. Defendant objects to plaintiffs' requests seeking information that is authorized
7 to be maintained as confidential pursuant to applicable laws regarding public records and
8 meetings, including but not limited to confidentiality of executive sessions. Defendant's
9 production of information regarding certain executive sessions is not a waiver of the
10 confidentiality of the information, nor does it waive or otherwise affect the confidentiality of
11 any other executive sessions conducted by the Port's Board of Commissioners. Defendant
12 also objects to the production of any personal or corporate identity information, such as
13 social security numbers, tax ID numbers, passwords, account numbers, email addresses,
14 unlisted telephone numbers and addresses, and the like. Defendant objects to plaintiffs'
15 requests to the extent that they seek confidential, proprietary, trade secret, personal, financial,
16 or business information.

17 5. Defendant has made reasonable efforts to respond to these requests based on
18 its interpretation of each request. If plaintiffs subsequently assert an interpretation of any
19 request which differs from that of defendant, defendant reserves the right to supplement its
20 objections or responses.

21 6. The responses set forth below represent defendant's present knowledge, based
22 on discovery, investigation, and trial preparation to date. Defendant expressly reserves the
23 right to rely upon any further information adduced through discovery, investigation, and trial
24 preparation.

25 7. Defendant has made reasonable efforts to respond to these requests based on
26 the information available to it at this time. Discovery is ongoing and defendant reserves the

1 right to supplement these responses as additional information becomes available to it.

2 8. No incidental or implied admissions are intended by the responses set forth
3 below. The fact that defendant has responded or objected to any request shall not be deemed
4 an admission that defendant accepts or admits the existence of any fact set forth or assumed
5 by such request, or that such response or objection constitutes admissible evidence. The fact
6 that defendant has responded to any request is not intended to, and shall not be construed as,
7 a waiver by defendant of any part of any objection to any request.

8 9. In responding to these requests, defendant does not waive any objection,
9 privilege, or immunity set forth herein.

10 10. Defendant objects to plaintiffs' instructions, definitions, and requests to the
11 extent that they purport to impose any requirements or discovery obligations other than those
12 specified in the Washington Civil Rules and Local Superior Court Rules for Clark County,
13 including, but not limited to, plaintiffs' request to provide a privilege log.

14 11. Defendant objects to plaintiffs' requests to the extent that they go beyond the
15 scope of the parties' agreement regarding discovery on the Open Public Meetings Act
16 following entry of the Court's summary judgment order.

17 **INTERROGATORIES TO THE PORT**

18 **INTERROGATORY NO. 14:** Identify every executive session that occurred
19 between October 2, 2010, and the present during which any matter related to the lease was
20 discussed.

21 **ANSWER:** The Port objects to this interrogatory as overbroad, as the request to
22 identify discussions of "any matter related to the lease" is vague, overbroad, and unduly
23 burdensome. Subject to, and without waiving, the foregoing general and specific objections,
24 the Port responds as follows:

25

Date and Time	Legal Authority	Topics discussed
2/11/13, 2:00 p.m.-5:12 p.m.	RCW 42.30.110(1)(c).	Real estate matters. The Port's Commissioners, personnel, and counsel

26

3 - **DEFENDANT PORT OF VANCOUVER USA'S SECOND
AMENDED RESPONSE TO PLAINTIFFS' THIRD SET OF
INTERROGATORIES**

MARKOWITZ HERBOLD PC
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 295-3085
LawsonFile@MarkowitzHerbold.com

Date and Time	Legal Authority	Topics discussed
		do not recall precisely what was discussed during this executive session. However, in the interest of full disclosure, cooperation, and transparency, the Port identifies this executive session because matters related to the lease with Tesoro Savage Joint Venture ("TSJV") may have been discussed. No final action was taken during the executive session.
2/21/13, 8:02 a.m.-9:54 a.m.	RCW 42.30.110(1)(c).	Real estate matters. The Port's Commissioners, personnel, and counsel do not recall precisely what was discussed during this executive session. However, in the interest of full disclosure, cooperation, and transparency, the Port identifies this executive session because an attendee's notes list "Tesoro lease." No final action was taken during the executive session.
3/26/13, 8:15 a.m.-9:17 a.m., 10:38 a.m.-11:34 a.m.	RCW 42.30.110(1)(b), 42.30.110(1)(c), and 42.30.110(1)(i).	Real estate matters and potential litigation. The Port's Commissioners, personnel, and counsel do not recall precisely what was discussed during this executive session. However, in the interest of full disclosure, cooperation, and transparency, the Port identifies this executive session because an attendee's notes list "Tesoro Savage." No final action was taken during the executive session.
4/9/13, 8:33 a.m.-11:05 a.m., 11:14 a.m.-11:31 a.m.	RCW 42.30.110(1)(c).	Real estate matters, including presentations by the Port, Tesoro, and Savage about matters related to the proposed lease with TSJV. No final action was taken during the executive session.
4/23/13	RCW 42.30.110(1)(b), 42.30.110(1)(c), 42.30.110(1)(a), 42.30.110(1)(g),	Real estate matters, national security, personnel matters, and potential litigation. The Port's Commissioners, personnel, and counsel do not recall

4 - DEFENDANT PORT OF VANCOUVER USA'S SECOND AMENDED RESPONSE TO PLAINTIFFS' THIRD SET OF INTERROGATORIES

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LawsonFire@MarkowitzHerbold.com

Date and Time	Legal Authority	Topics discussed
	42.30.110(1)(i)	precisely what was discussed during this executive session. However, in the interest of full disclosure, cooperation, and transparency, the Port identifies this executive session because an attendee's notes refer to "TSJV" and to the form of entity that TSJV was considering forming. No final action was taken during the executive session.
5/28/13, 8:00 a.m.-9:22 a.m.	RCW 42.30.110(1)(b), 42.30.110(1)(c), and 42.30.110(1)(i).	Real estate matters and potential litigation. The Port's Commissioners, personnel, and counsel do not recall precisely what was discussed during this executive session. However, in the interest of full disclosure, cooperation, and transparency, the Port identifies this executive session because matters related to the lease with TSJV may have been discussed. Specifically, the executive session discussed the revenue elements of the lease with TSJV, including lease rates and charges for dockage, wharfage, and rail. No final action was taken during the executive session.
6/11/13, 8:31 a.m.-9:13 a.m.	RCW 42.30.110(1)(b), 42.30.110(1)(c), 42.30.110(1)(g) and 42.30.110(1)(i).	Real estate matters, personnel matters, and potential litigation. The Port's Commissioners, personnel, and counsel do not recall precisely what was discussed during this executive session. However, in the interest of full disclosure, cooperation, and transparency, the Port identifies this executive session because matters related to the lease with TSJV may have been discussed. No final action was taken during the executive session.
6/27/13, 8:00 a.m.-9:19 a.m.	RCW 42.30.110(1)(b), 42.30.110(1)(c), and 42.30.110(1)(i).	Real estate matters and potential litigation. The Port's Commissioners, personnel, and counsel do not recall precisely what was discussed during this executive session. However, in the

5 - **DEFENDANT PORT OF VANCOUVER USA'S SECOND AMENDED RESPONSE TO PLAINTIFFS' THIRD SET OF INTERROGATORIES**

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Date and Time	Legal Authority	Topics discussed
		interest of full disclosure, cooperation, and transparency, the Port identifies this executive session because matters related to the lease with TSJV may have been discussed. No final action was taken during the executive session.
7/9/13, 8:00 a.m.-9:26 a.m.	RCW 42.30.110(1)(a), 42.30.110(1)(c), and 42.30.110(1)(i).	Real estate matters, potential litigation, and national security. The Port's Commissioners, personnel, and counsel do not recall precisely what was discussed during this executive session. However, in the interest of full disclosure, cooperation, and transparency, the Port identifies this executive session because matters related to the lease with TSJV may have been discussed. Specifically, the Port believes this executive session discussed the formation of a new corporate entity by TSJV and the associated risks. No final action was taken during the executive session.
7/16/13, 10:35 a.m.-12:28 p.m., 1:30 p.m.-1:51 p.m., 1:58 p.m.-4:05 p.m.	RCW 42.30.110(1)(c) and 42.30.110(1)(i).	Real estate matters and potential litigation, including consideration of terms of the proposed lease with TSJV. No final action was taken during the executive session.
7/17/13, 8:36 a.m.-10:38 a.m., 11:00 a.m.-12:20 p.m., 12:56 p.m.-2:09 p.m.	RCW 42.30.110(1)(c) and 42.30.110(1)(i).	Real estate matters and potential litigation, including consideration of terms of the proposed lease with TSJV. No final action was taken during the executive session.
7/22/13, 9:57 p.m.-10:41 p.m.	RCW 42.30.110(1)(c).	Real estate matters, including consideration of whether changes should be made to the proposed lease terms. The Port refers to the declarations filed in support of its motion for summary judgment and the Commissioners' Responses to Interrogatory No. 22 for additional detail about the substance of this executive session. No final action was

6 - DEFENDANT PORT OF VANCOUVER USA'S SECOND AMENDED RESPONSE TO PLAINTIFFS' THIRD SET OF INTERROGATORIES

MARKOWITZ HERBOLD PC
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 295-3085
LawsonPitt@MarkowitzHerbold.com

Date and Time	Legal Authority	Topics discussed
7/23/13, 8:13 a.m.-9:12 a.m.	RCW 42.30.110(1)(e) and 42.30.110(1)(i).	taken during the executive session. Real estate matters, including whether any proposed lease terms needed to be modified before the vote, and potential litigation. No final action was taken during the executive session.

Pursuant to CR 33(d), the Port refers plaintiffs to the notes and executive session materials for the referenced meetings from which information responsive to this Interrogatory may be ascertained.

Discovery is ongoing and the Port reserves the right to supplement or modify its response and/or production as appropriate.

INTERROGATORY NO. 15: For each executive session identified in your response to Interrogatory No. 14, identify the legal authority that you contend authorized you to exclude the public.

ANSWER: The Port objects to this interrogatory as vague and overbroad, as the terms "legal authority" are undefined. The Port further objects to this interrogatory to the extent it seeks the production of work product and attorney-client privileged information. The Port also objects as the interrogatory seeks a conclusion of law. Subject to, and without waiving, the foregoing general and specific objections, the Port responds as follows:

The Port incorporates by reference its response to Interrogatory No. 14.

INTERROGATORY NO. 16: For each executive session identified in your response to Interrogatory No. 14, identify the topics discussed.

ANSWER: The Port objects to this interrogatory to the extent it seeks the production of work product and attorney-client privileged information. Subject to, and without waiving, the foregoing general and specific objections, the Port responds as follows:

The Port incorporates by reference its response to Interrogatory No. 14.

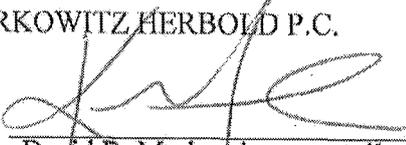
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CR 26(g) CERTIFICATION

The undersigned attorney for defendants has read the foregoing answers and objections to Plaintiffs' Third Set of Interrogatories to Defendant Port of Vancouver USA, and the answers and objections are in accordance with the Civil Rules.

DATED this 1st day of May, 2015.

MARKOWITZ HERBOLD P.C.

By: 
David B. Markowitz, *specially admitted*
Lawson E. Fite, WSBA No. 44707
Kristin M. Asai, *specially admitted*
Of Attorneys for Defendants

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DEFENDANT PORT OF VANCOUVER USA declares that:

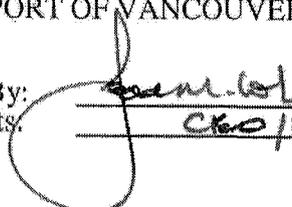
1. I have read the foregoing amended answers and objections to Plaintiffs' Third Set of Interrogatories to Defendant Port of Vancouver USA and know the contents thereof and believe the same to be true.

2. I have answered these interrogatories in good faith in accordance with the definitional section presented in the interrogatories.

I declare, under penalty of perjury according to the laws of the State of Washington, that the foregoing is true and correct.

DATED April 27, 2015, at Vancouver, Washington.

PORT OF VANCOUVER USA

By: 
Its: CEO / EXECUTIVE DIRECTOR

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2015, I have made service of the foregoing **DEFENDANT PORT OF VANCOUVER USA'S SECOND AMENDED RESPONSE TO PLAINTIFFS' THIRD SET OF INTERROGATORIES** on the party/ies listed below in the manner indicated:

Brian A. Knutsen
Smith & Lowney, PLLC
917 SW Oak Street, Suite 300
Portland, OR 97205

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email - briank@igc.org

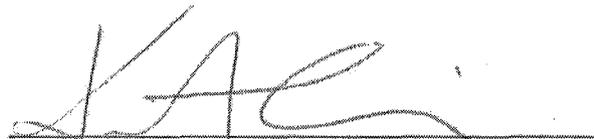
Elizabeth H. Zultoski / Eric D. Lowney
Smith & Lowney, PLLC
2317 E John Street
Seattle, WA 98112
Attorneys for Plaintiffs

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email - elizabethz@igc.org
knoll@igc.org

Miles B. Johnson
Clean Water Attorney
Columbia Riverkeeper
111 Third Street
Hood River, OR 97031

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email - miles@columbiariverkeeper.org

DATED this 1st day of May, 2015.


David B. Markowitz, *specially admitted*
Lawson E. Fite, WSBA No. 44707
Kristin M. Asai, *specially admitted*
Of Attorneys for Defendants

CERTIFICATE OF SERVICE

EXHIBIT E

**PORT OF VANCOUVER USA
BOARD OF COMMISSIONERS
SPECIAL MEETING/WORKSHOP/EXECUTIVE SESSION
Monday, July 22, 2013**

CALL TO ORDER PUBLIC MEETING

Commission President Jerry Oliver called a special meeting/workshop/executive session of the Port of Vancouver USA Board of Commissioners to order at 7:00 p.m., on Monday, July 22, 2013, at the Port of Vancouver USA Administrative Offices, 3103 NW Lower River, and Vancouver Washington. The special meeting/workshop/executive session was noticed appropriately, including the notice of an executive session to immediately follow the workshop for the purpose of discussing real estate matters under RCW 42.30.110(1)(c).

COMMISSION WORKSHOP

The special meeting was immediately recessed into a workshop session regarding the Tesoro-Savage Joint Venture Lease Overview with the Commission and staff at 7:00 p.m.

The following topics were discussed:

- Port of Vancouver's Vision and Mission
- Port of Vancouver's Goals
 - Marine
 - Industrial
 - Transportation
 - Diversification
- Port of Vancouver's Process
 - 2005 – West Vancouver Freight Access plan developed
 - 2008 – West Vancouver Freight Access construction begins
 - 2010 – BHP Billiton selects Terminal 5
 - 2011 – United Grain Corporation expansion begins
 - 2012 – U.S. crude oil market expands
 - 2012 – November – Statements of interest requested
 - 2013 – February – Tesoro-Savage Joint Venture announcement
 - 2013 – May through July – Workshop series
- Port of Vancouver Assets
 - Location, location, location
 - West Vancouver Freight Access
- Port Strategic Decision Making Process
 - Safety
 - Timing
 - Private Investment

- Impacts to other tenants
- Market
- Space
- Social responsibility
- Stability
- Statement of Interest Criteria
 - Safety
 - Environmental
 - Community
 - Financial
 - Market
 - Operations
- Port's Project Vision
 - Maximizes West Vancouver Freight Access asset
 - Makes use of underutilized berths
 - Revitalizes brownfield site
 - Creates jobs; economic benefit
- Tesoro-Savage Joint Venture Project Description
 - Port Investment: \$10.0 M - \$15.0 M
 - TSPT Investment: \$100.0 M+
- Project Benefits
 - Jobs
 - Tesoro-Savage Petroleum Terminals
 - 80 employees at 60,000 barrels per day
 - 120 employees at 120,000+ barrels per day
 - Approximately 250 construction jobs
- Community Benefits

Crude Oil Transport Facility Community Economic Benefits (ANNUAL)	Crude Oil Transport Facility Lease Term Benefits (10 YEARS)
JOBS	JOBS
Direct 1,008	Direct 1,008
Jobs influenced by the project 1,702	Jobs influenced by project 1,702
TOTAL JOBS 2,709	TOTAL JOBS 2,709 *ann
PERSONAL INCOME	PERSONAL INCOME
Direct employee income \$47M	Direct employee income \$470M
Income from influenced jobs \$36M	Income from influenced jobs \$360M
Re-spending \$117M	Re-spending \$1.17B
TOTAL INCOME & RESPENDING \$200M	TOTAL INCOME/RESPENDING \$2B
TOTAL LOCAL PURCHASES \$ 61.3M	TOTAL LOCAL PURCHASES \$613M
STATE & LOCAL TAX REVENUE \$18.8M	STATE & LOCAL TAX REVENUE \$188M

Based on Martin Associates Annual Forecasts 07/2013

- Project Description and Timeline
- Permitted Use
 - Standard of Care
 - Environmental Language
 - Insurance Coverage
 - Financial Security
- Safety Prevention
 - Organizations involved committed to preventing accidents
 - BNSF continuously upgrades infrastructure to prevent accidents
 - New railcars will incorporate improved safety features
 - Significant precautions will be built in to prevent spills
- Safety Planning
 - Response plans currently in place to address hazardous materials releases
 - NW Area Contingency Plan(NWACP)
 - Local Emergency Planning Committees
 - Industry
 - NWACP provides access to resources
 - Covers all spills
 - BNSF involved in local, state and federal planning and response
 - BNSF provides local community training throughout rail system
 - Local training scheduled for this area by early August
 - Annually up to 5,000 people trained nationally
 - Tesoro participates in local planning since becoming a port tenant
- Safety Response
 - BNSF has spill resources and oil spill response contractors located in region
 - Other agencies and contractors have spill resources in region
 - Tesoro-Savage will have both land and water resources at facility to contain spills which will supplement response from other agencies and contractors
- Accountability
 - Permitting
 - EFSEC
 - Local and state approvals
 - EIS
 - Public Input
 - Federal permits
 - Tenant Environmental Management
 - Site visits
 - Audits
 - Outreach/education
 - Tenant support
 - Operations
 - Review and approve rail and facilities specific operations and safety plans
 - Maintain industry leadership in all transloading operations

- Facilitate enhancements in regional transportation accident prevention programs and emergency response capabilities
- Ensure design, permitting, construction and operational compliance
- Port staff commitment and periodic reporting
- Financial Opportunity Over 10 Years
 - Minimum \$45M ground lease and marine agreement
 - \$30M available for reinvestment
 - 2,700 jobs created*
 - \$188M tax revenue generated*

*Martin Associates 7/2013

- Summary
 - Mission, Vision & Goals
 - Maximization of assets/diversification
 - Thoughtful, strategic process
 - Staff recommendation to move forward

Commissioner Oliver stated it is not normal practice for the Commission to invite public comment during a Commission workshop; however, he appreciated the number of individuals who came tonight. He recognized that many would like to speak and with time permitting indicated the board of commissioners would listen to what they had to say.

PUBLIC COMMENT

Chris Connolly

On behalf of the national group Climate Parents, Chris Connolly presented a petition, with more than 14,000 signatures asking the board of commissioners to vote no on the Tesoro-Savage Joint Venture project. She indicated oil addiction is detrimental to the environment and harmful for future generations and urged the board of commissioners to reject this proposal.

Teresa Lancaster

Ms. Lancaster stated big money is overpowering human speech and indicated in this situation everyone is listening to the big money. She stated she is working on changing corporate personhood in Washington State and in Vancouver and would appreciate any support people could give this movement.

Anita Thomas

Ms. Thomas stated she is aware some of the rail tracks the proposed project will use are not in the best of shape and is concerned it will cause delays, which could increase the chance of human error in an accident. She also shared concerns

about the Cascadia subduction zone and earthquakes which often accompany fire. She stated the movement of fossil fuels at the Port of Vancouver makes it vulnerable and asked the board of commissioners to reject the project.

Marla Nelson

Marla Nelson stated she was from the Northwest Environmental Defense Center (NEDC). She indicated despite Tesoro's "not one drop" policy and BNSF's claimed assurances the risk of an oil spill or accident at the terminal or along the rail line is a reality that cannot be eliminated by even the most stringent safety measures or preventative designs. She stated the price tag will never make up for the decades of dirty fossil fuels this lease will commit the Pacific Northwest to and is the reason the NEDC urges the commission to take more time to get the facts straight before approving this lease and to carefully consider the implications of this decision.

Michael Gary

Mr. Gary indicated he did not feel the port had addressed all of the issues involved in the process of transporting petroleum products by rail. He expressed concern about the venting of harmful Volatile Organic Compounds (VOCs) from newly designed tank cars and storage tanks that would be located a mile or less from Fruit Valley Elementary school.

Andy Melchling

Mr. Melchling stated he thinks the port is "blowing it" and questioned whether it knows what it is getting into. He indicated according to the Material Safety Data Sheet on this product and the National Fire Safety Administration, Bakken crude is extremely flammable and he does not want to see another explosion like the one in Quebec. He also expressed concern the insurance coverage of \$25 million would be enough in the event of an accident.

Sarah Wald

Dr. Wald urged the board of commissioners to vote no on the oil terminal. She stated it threatens the natural environment of the entire Columbia River Gorge, the public identity of Vancouver, Washington and is dangerous to the people who live here.

Ted Pyle

Mr. Pyle stated he was glad to see so many people at this meeting and indicated because of recent disasters corporations have earned this type of public recognition. He stated distrust for corporations has also grown and pointed out this proposal does not mention what kind of wages the projected jobs will produce.

Ron Morrison

Mr. Morrison indicated he is a regular attendee of the commission meetings and has had the benefit of seeing many of the presentations on the West Vancouver Freight Access (WVFA) Project. He stated one of the things he has often heard is that it allows for a great deal of flexibility in terms of the types of cargo and businesses it can support. Because of this, he thinks it is only fair to ask if there might be other more safe alternatives for the use of the land.

Bob Sallinger

Mr. Sallinger stated he is the Conservation Director of the Audubon Society for Portland and came to express opposition of this terminal on behalf of 13,000 members in the metro region. He indicated recent articles about the ports of Vancouver and Portland in the *Oregonian* provide perfect examples of what is wrong with the port system. He stated it is time for a regional port authority that will make efficient use of industrial lands, work together to create a sustainable healthy economy, serve the entire region and protects natural resources.

Den Mark Wichar

Mr. Wichar stated the port is advantageously located for extractive energy and related corporations to send their products through the port with little input from the community. He indicated these corporations emphasize jobs but never talk specifically about net jobs or the jobs that will be lost due to the movement of their products through the region. He stated it comes down to vision and explained the Pacific Northwest's vision is to move away from fossil fuels and toward solar and green technology which has far greater jobs potential than extractive energy corporations.

Dvija Michael Bertish

Dvija Michael Bertish stated this is an important topic and agrees with many of those who have already commented. He reiterated the insurance coverage amount is too low to cover a catastrophic oil spill. He also pointed out the source of the oil comes from fracking which causes earthquakes, aquifer contamination and damage to drinking water infrastructure. He asked the board of commissioners to hold another meeting so that others would have a chance to provide input and stated he opposes the project.

Dale McLain

Mr. McLain indicated the port staff gave a brilliant presentation on this project but stated it was based on what the port needs. He stated the board of commissioners needs to look at this from a different angle based on what the people need. He does not feel the people want these trains to come to the area and expressed additional concerns about global warming and safety.

Karen Axel

Ms. Axel spoke on behalf of the Rosemere Neighborhood Association. She indicated the presentation was good but she had some concerns about some of the elements. She noted that social responsibility was listed number seven on the strategic decision making process and felt this did not fit with the port's mission. She indicated the insurance amount is too low and the figures for the jobs in the models were misleading. She also pointed out safety is an issue and felt the only way to prevent a future tragedy would be for the board of commissioners to vote no on the lease.

Lehman Holder

Mr. Holder stated he serves as chair for the Loowit Group Sierra Club and would speak on behalf of the 1400 members in Southwest Washington. He indicated this situation can be looked at from two very different angles; a short view that involves economic benefit for a relative few or a longer term view that fits the needs and activities of people into what the earth's natural systems will tolerate over time. He asked the board of commissioners to consider the longer term view and not approve the lease.

Cathryn Chudy

Ms. Chudy stated she is on the Oregon Conservancy Foundation Board. She indicated a crude oil export terminal is clearly a gross contradiction of the port's environmental values. She also stated the board of commissioners should consider Tesoro's poor safety and environmental record and weigh this against the health and safety of the community. She commented a high risk tenant is not in the best interest of Vancouver or the region and asked the board of commissioners to say no to this lease.

Dan Serres

Mr. Serres spoke on behalf of the Columbia Riverkeeper group. He indicated he found the presentation alarming as it lacked specificity on the type of material coming in which he stated has been identified with high levels of hydrogen sulfide and is extremely explosive and flammable. He questioned the amount of trains coming in affecting carbon dioxide levels and brought up the poor safety record of Tesoro. He stated the port has had five months to consider this project and the public deserves more than a few hours to get their point across. He stressed signing the lease tomorrow would be the wrong decision and irresponsible.

Commissioner Wolfe asked Mr. Serres why he feels this lease is such a lynch-pin for him and Mr. Serres stated it is because he believes a safety plan will not be in place until after Tesoro builds the facility. He indicated this is unacceptable especially considering the tragedy in Quebec.

Brett Vandenneuvel

Mr. Vandenneuvel stated he is the Executive Director of Columbia Riverkeeper. He offered the board of commissioners new information about the oil that would come through the Port of Vancouver. He indicated it is the same type that was being transported in Quebec and was previously thought not to be explosive. He stated based on the incident that occurred there it is currently being tested. Mr. Vandenneuvel asked what the rush was and why the board of commissioners could not wait for the results of those tests before moving forward with this project. He urged the commission to take a stand and vote against approving this lease.

Jane Nicolai

Ms. Nicolai indicated the Port of Vancouver has invited Tesoro-Savage and BNSF to tell them a story they would like to hear but she does not feel it tells the whole story. She indicated it is common knowledge that oil causes many environmental and health issues. She also stressed the safety concerns especially in light of what took place in Quebec. She urged the board of commissioners to consider more forward looking opportunities.

Marion Ward

Ms. Ward stated she was surprised that she did not hear a single disadvantage from the project analysis. She indicated the insurance amount is inadequate and did not include physical damages or clean up. She also expressed concerns about safety and emergency response in the event of an accident or spill. She asked the board of commissioner to vote no on the proposal.

Don Steinke

Mr. Steinke expressed his opposition to the project and stated the economic harm it would cause would be much greater than the economic benefit. He stated it could interrupt the development of condos on the riverfront and would affect global warming. He also asked that people come to the hearing on October 9 at the fairgrounds concerning the coal terminal at the Port of Longview.

Jane Rather Thiebaud

Ms. Thiebaud expressed concern that the commissioners and port staff have not had time to rest and take the time to consider this proposal fully. She stated this is an important decision and she asked the board of commissioners to wait before moving forward so that more people would have a chance to speak.

Roben White

Mr. White stated economic benefit to the community is important and indicated the community consists of the workers. He pointed out Tesoro-Savage has a poor record with labor and this should be considered as well.

Cager Clabaugh

Mr. Clabaugh spoke on behalf of the ILWU Local #4. He stated the longshore is on record in their opposition to the project even though they might benefit from it in some way. He indicated even when companies or the railroad promise there will be no problems; his real life experience has shown him that is not always the case. He would like to see this board of commission's legacy be that it stood up against big oil.

Tedine Roos

Ms. Roos stated there is clear evidence of the harmful effects of extracting and use of fossil fuels. She indicated climate change is just one factor. She stated air, water and soil quality is involved as well as food production capacity.

Paul Smith

Mr. Smith asked the port to delay the vote on a lease for the oil terminal. He indicated he was glad the port was not handling coal but stated now was not the time to substitute one dirty fossil fuel for another just because one offers the potential for jobs. He pointed out any job is not a good job. He also expressed concern for safety, adequate insurance coverage, environmental risks and other issues. He stated there are just too many questions to make an informed decision.

Sharon Conser

Ms. Conser spoke mainly about the beauty and reputation of the community. She indicated she did not want to see that destroyed. She also expressed concern about the long-term effects of fossil fuels and stated the commissioners had a responsibility to protect the community.

Christian Steinbrecher

Mr. Steinbrecher stated all great civilizations need infrastructure and the board of commissioners has the potential to provide leadership for infrastructure to this area now. He indicated listening to the people to make sure issues are addressed and requirements and agreements are enforced is important. He pointed out if there are new facts and the clock needs to be reset he stated the board of commissioners should not hesitate to do so. He finished by stressing that above all they should find a way to approve and build this project.

Barry Cain

Barry Cain stated he is the President of Gramor Development and represents Columbia Waterfront, LLC that is in the process of developing the waterfront project that will contain about 15,000 residents and employees. He expressed concern about safety and the perceived safety of this project. He indicated if

people are concerned about safety issues it might make it difficult to finance the projects or insure them. He pointed out the economic benefit from these projects would likely be greater than the proposed oil terminal and noted it would be important to think about.

Micah

Micah stated 15 minutes would not be adequate to review all of the concerns that were voiced at this meeting. He indicated the focus should be on sustainability. He suggested the board of commissioners step back and take another look at the project as well.

No further comments were received at this time.

RECESS

At the conclusion of the workshop, Commissioner Oliver announced that the commissioners would be recessing into executive session for the purpose of discussing what the Commission had heard and advised that the commission would be in executive session for at least 15 minutes. Commissioner Oliver recessed the meeting/workshop at 9:42 p.m. and reconvened into executive session at 9:57 p.m.

EXECUTIVE SESSION

Executive session was held from 9:57 p.m. to 10:41 p.m. to discuss real estate matters pursuant to RCW 42.30.110(1)(c). The executive session ended at 10:41 p.m.

ADJOURNMENT

There being no further business to come before the Port of Vancouver USA Board of Commissioners, and upon the Commission learning that no members of the public were waiting for the Commission to come back into a public meeting, the special meeting/workshop/executive session was adjourned at 10:41 p.m. by Commission President Oliver.

PORT OF VANCOUVER USA
BOARD OF COMMISSIONERS

Michelle Allan, Executive Assistant,
July 22, 2013 Special Port of
Vancouver USA Board of
Commission Meeting/Workshop/
Executive Session



Jerry Oliver, President



Brian Wolfe, Vice President



Nancy Baker, Secretary

EXHIBIT I

Oliver 13
12-2-14 JLB

From: Addison Jacobs
Sent: Friday, April 12, 2013 8:47 AM
To: Julianna Marler
Cc: Curtis Shuck; Todd Coleman; POV-Directors; Theresa Wagner; Katy Brooks
Subject: Re: Tesoro Savage Presentation Follow Up

Have we considered inviting key T/S leadership to Port RePort? Might be a good way to provide visibility/availability in the week of the announcement.

Sent from my iPhone

On Apr 12, 2013, at 11:21 AM, "Julianna Marler" <JMarler@Portvanusa.com> wrote:

Curtis did an excellent job of organizing and facilitating the presentation. The commissioners appeared to feel informed and very comfortable moving forward with the process. Because the commissioners will be in several community settings over the next few months it will be critical to help them focus their talking points as we discussed in Monday's directors meeting.

Great work to the entire team for bringing it to this point so quickly!

From: Curtis Shuck
Sent: Thursday, April 11, 2013 8:42 PM
To: Todd Coleman
Cc: POV-Directors; Theresa Wagner; Katy Brooks
Subject: Tesoro Savage Presentation Follow Up
Importance: High

Todd,

Following up on Tuesday's Executive Session, I wanted to give you a quick recap of the highlights and next steps:

- In attendance for the Tesoro Team was:
 - Philip Anderson, President Tesoro Logistics
 - Rick Weyen, VP Logistics Tesoro
 - Mark Smith, VP Crude Supply

- In attendance for the Savage Team was:
 - Curt Dowd, EVP & CFO
 - Kelly Flint, SVP & General Counsel
 - Kent Avery, VP Petroleum Business Group
 - Boyd Draper, VP Engineering
 - David Corpron, Project Manager

- In attendance for the BNSF:
 - Bill Brown, General Director Industrial Products

- We started with a brief review of the PBR journey which included the May 2012 Six Hats, customer contacts, a new look at the Terminal 5 Loop, the Statement of Interest process and last workshop with the BOC on 2/22.
- We presented the attached slides on the makeup of the Project Team, Project Timeline and Project Announcement Control Points.
- The Tesoro/Savage Team did a very good job of delivering their presentation (attached) and engaging with the Commissioners with a genuine and open approach.
- The Commissioners had a number of questions following the presentation and the Tesoro/Savage Team, along with BNSF were able to provide most of the information however, a few items remain to be answered, as indicated on the attached notes that were captured during the presentation and BOC questions.
- We wrapped up by reminding the BOC that this project was a “heavy lift” and that we would have a lot of work to do to talk about the project with our stakeholders. We talked about the upcoming Tesoro/Savage Project Announcement as a way to take the cap off the project and allow it to “breathe” for a period of time, a chance to receive public input before any decisions needed to be made by the BOC and a chance for them ask more questions and require more due diligence if necessary.
- The Tesoro/Savage Team invited the BOC to visit their Anacortes Facility and we are working to arrange a time, most likely after the Tesoro/Savage Project Announcement, for that to happen. Lisa Lowe provided the BOC with the parameters of how a Special Executive Session would work for the Anacortes Tour.

Next Steps:

- Execute the Exclusivity Agreement with Tesoro and Savage to bridge until the Lease can be brought before the BOC
- Work through the Control Points (attached) and prepare for the Tesoro/Savage Project Announcement – Scheduled for April 22, 2013
- Work on the Ground Lease and associated Agreements
- Define the Project Permitting Timelines
- Define the Project Schedule
- Define the Project Budget

Directors, please add your thoughts as well!

Curtis Shuck

Director of Economic Development & Facilities

3103 NW Lower River Road, Vancouver, WA 98660

Direct: 360.992.1119 | Cell: 360.518.5376 | Fax: 360.735.1565

cshuck@portvanusa.com | www.portvanusa.com | [available port properties](#)

<image001.jpg>

EXHIBIT L

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12-2-14 JLS

From: Jeff Estuesta
Sent: Tuesday, April 09, 2013 1:40 PM
To: Todd Coleman
Subject: PBR

Good meeting, good questions from Commissioners...BNSF, Tesoro and Savage were able to present and talk to Commissioners. Discussions around rail capacity and Bill/BNSF responded brilliantly. Focused on jobs creation both ongoing and during construction also BNSF will need to hire more yard staff....

All three Commissioners walked away excited about moving forward and are ready to handle Tesoro/Savage announcement on the 22nd assuming we hit several more milestones. Commissioners will visit Anacortes on their own schedule and did not see the rush to travel before announcement.

FYI – Nancy was in an extra goooooood mood.

Jeff Estuesta

Director of Finance

3103 NW Lower River Road, Vancouver, WA 98660

POV: 360.693.3611 - Cell: 503.781.1899

jestuesta@portvanusa.com



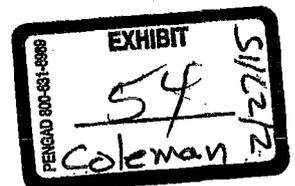
Port of Vancouver USA



EXHIBIT M

Port of Vancouver
Board of Commissioners
Executive Session – April 9, 2013
Tesoro/Savage – PBR

- Jobs – 50/80 – Living Wage (?)
- Trains – 4/day (/) **Red** bbls/day
 - 9 sets per each
- Area – 30 +/- Acres (?)
- Columbia Max Vessels (?)
 - **Redacted**
- Spill Response Capabilities (?)
- **Redacted** Investment
 - Local Contractors/Labor
 - 250 +/- people (?)
- TSJV Entity (?)
- Diesel Exports
- 500 Railcars for this facility ordered
- 1500 Railcar fleet TSO
- Vessel construction
 - US made/US Crew/US Parts
 - \$250m/each
- Glasgow 22-23/day Minot - Snowdov
 - 30+/day
- 14-20 trains/day US West
- 7.25 trains/day out Bakken w/107 sets (1/4 to west)
 - \$4.5 B Capital
 - \$800m Capacity improvements
- Directional Running 48/day 40W, 80E
- NW Triangle
- MCOM – GN Corridor
 - Fallbridge – 28-35 +/- day
- **Red** bbls/day Circle Processing - TSO
- Port Access @ 5 refineries on the west coast
- Operate in many sensitive waterways & environments
- 1-4 new build Jares get ships \$1B
 - \$250m per copy
- Execute every day!



- Diesel production increase 3% y:y
- 4 trains per day @ POV
- Trains - Mtn Pipeline is now competition
- 50-80 local jobs for cps
- Foreign crude displaced by 2017
- 8000 tank cars per quarter delivery from the car mtg. (sold out through 2015)

EXHIBIT N

Matt Oftedahl

From: Curtis Shuck
Sent: Thursday, March 28, 2013 1:29 AM
To: Smith, Mark D (Mark.D.Smith@tsocorp.com)
Cc: Kent Avery (kentavery@savageservices.com); Curtis Shuck
Subject: Tesoro Corporate Visit to POV

Importance: High

Mark,

I would like you to consider a visit to the POV by some of your key executive staff on **April 9, 2013** for an introduction with the Port Commissioners and discussion with them in Executive Session (which is closed to any public) regarding the project. I have made the same request of Savage.

April 9, 2013 is our next regularly scheduled Board of Port Commissioners Meeting where we have the Board assembled under a Public Notice and here at the port under one roof, in one place.

Given our tight timeline, I am asking that you give this some serious consideration and be prepared to discuss at tomorrow's Project Sponsor's Call.

Thanks!

Curtis Shuck
Director of Economic Development & Facilities
3103 NW Lower River Road, Vancouver, WA 98660
Direct: 360.992.1119 | Cell: 360.518.5376 | Fax: 360.735.1565
cshuck@portvanusa.com | www.portvanusa.com | [available port properties](#)

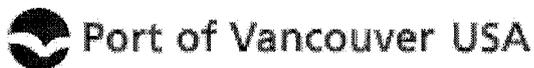


EXHIBIT O

Ground Lease between the Port of Vancouver USA and Tesoro Savage Petroleum Terminal, LLC

July 15, 2013

Ground Lease Highlights:

- **Permitted Use:** Tesoro Savage Petroleum Terminal, LLC (TSPT) to permit, construct and operate a state of the industry Rail Facility for Unit Trains at Terminal 5 to unload and load Petroleum Products (Crude Oil) which would be transferred via a pipeline that has both above and below ground sections, to liquid bulk storage facilities at Parcel 1 where the Crude Oil would be held in storage until it could be transferred via a pipeline, through both above and below ground sections, to the Marine Terminal facility where it will be loaded or unloaded onto or off of marine vessels for river/ocean transport.

The Rail Facility for Unit Trains will be capable of handling a minimum of one (1) unit train per day with 60,000 barrels of Crude Oil, up to a maximum of (4) unit trains per day with as many as **Reda** barrels of Crude Oil.

- **Ground Lease Premises:** As of the Effective Date of the Ground Lease, the port and TSPT have not determined the precise boundaries of the Ground Lease Premises. However, we believe it is approximately 41.99 acres in five (5) separate parcels and two (2) Pipeline Easements:

- Rail/Rack Area: 1.00 acres
- Support Area: 1.00 +/- acres
- Storage Area: 1.00 +/- acres
- Marine Terminal Area: 5.70 acres

- **Ground Lease Term:** Ten (10) Operating Years with two each Five (5) Year Extension Periods. During the initial lease term, there are three (3) distinct periods:

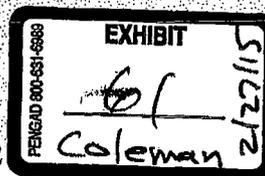
1) Contingency Period: Up to **Redac** following the Effective Date (date Lease is executed). There is an early Termination provision during the Contingency Period.

2) Construction Period: Up to 18 months and must start within 6 months following the end of the Contingency Period or sooner.

3) Operating Term: Rent Commencement is the date which the project is completed, tested and commissioned and Petroleum Products are moving through the port. In no circumstance would the Rent Commencement begin more than 18 months following the end of the contingency period, and no longer than 56 months after the Effective Date of the Lease. The Operating Term is Ten (10) years from Rent Commencement.

4) Extension Period(s): The Two Extension Terms, each a Five (5) Year Term, are subject to proper notification by TSPT to the port, TSPT being in good standing with the conditions of the

1



Lease and is subject to the assent of the port, which is not to be unreasonably withheld. There is a provision that if the port elects not to renew the Ground Lease with TSPT or grant the Extension, that there would be a "Non-Compete" requirement where the port would be prohibited from terminating the Ground Lease with TSPT and entering into a new Ground Lease with a third party for a similar use on the property without the port compensating TSPT for the improvements which they constructed, based on the improvements then current Fair Market Value. Additionally, if the port does not approve the requested extension and all requirements were complied with by TSPT, then the port is not able to require TSPT to remove their improvements at termination and any demolition costs would be the responsibility of the port.

- **Ground Lease Fees:** Each lease period has a separate rate structure associated therewith:

1) Contingency Period Fee: [Redacted] per month for the first [Redacted] months and thereafter [Redacted] per month thereafter for up to an additional [Redacted] months. This fee is considered as "Pre Paid" by TSJV because during the first 12 months of the Contingency Period and longer if agreed, the port can utilize the TSPT Premises and generate additional revenues therefrom. As a result, the port has agreed to credit back to TSPT [Redacted] revenue dollar for any barrel delivered to the port above their Minimum Guaranteed Amount (MGA) [Redacted] per day [Redacted] per day) until such time as the "Pre Paid" amount is completely repaid. The port's total exposure on this ranges from [Redacted] if TSPT pays the Contingency Period and goes to the Construction Period within the [Redacted] months, to [Redacted] if TSPT takes the entire [Redacted] month contingency period. In any event, the port would benefit from [Redacted] revenue. This would produce revenue of between [Redacted] during the repayment period, above and beyond the MGA amount of [Redacted].

2) Construction Period Fee: [Redacted] per month that is non-refundable because the Lessee has possession of the Premises while they are altering the condition of the property. In addition, the port's normal and customary Additional Charges, such as Common Area Maintenance (CAM), and Rail Fees (if any), begin during this Construction Period.

3) Rent Period Fee: [Redacted] per square foot per month [Redacted] with annual CPI adjustments from the Effective Date. Rent begins on the Rent Commencement Date and runs until the end of year Ten (10) of the Operating Term. If Lessee agrees to a mutually acceptable MGA for the next Extension Term, with the assent of the port, then Rent will increase by the regular annual CPI adjustment for the Extension Term. If Lessee does not agree to a mutually acceptable MGA, Rent will be adjusted to a Fair Market Value per the port's standard process, and thereafter increase with annual CPI adjustments. TSPT will be responsible for paying the Leasehold Excise Tax to the State of Washington.

4) Payments for Cargo Handled: Based on the Proposal Dated January 23, 2013 tendered by Tesoro and Savage, the rates for Crude Oil unloaded at the port would be as follows, measured and paid to the port based on rail deliveries, calculated per the volumes of each railcar unloaded or possibly loaded at the port:

Rate Tier	Volume (in barrels per day - bpd)	Wharfage Fee (in barrels - bbl)	Service and Facilities Fee (S&F) (in barrels - bbl)
Tier 1	From [Redacted] bpd	[Redacted] per bbl	[Redacted] per bbl
Tier 2	From [Redacted] bpd	[Redacted] per bbl	[Redacted] per bbl
Tier 3	Over [Redacted] bpd	[Redacted] per bbl	[Redacted] per bbl

5) Minimum Annual Guarantee: Beginning at the Rent Commencement Date for a period of [Redacted] Years, TSPT will pay the port a fixed Minimum Guaranteed Amount that is initially set at [Redacted] per day and shall thereafter be escalated on an annual CPI basis, which shall be bracketed to minimum of [Redacted] and a maximum of [Redacted]. At the end of the Tenth Operating Year, a new MGA is anticipated to be put in place in order to extend the Ground Lease beyond the initial Operating Term with only an annual CPI Rent adjustment (foregoing a Fair Market Value Increase in Rent).

6) Rail Access Fee: TSPT will be responsible for paying [Redacted] per BNSF loaded railcar and [Redacted] per non BNSF loaded railcar to the port.

7) Rail Maintenance Fee: TSPT will be responsible for paying a per loaded railcar fee, based on the port's Rail Tariff, which at the time of the Effective Date will be [Redacted] per railcar.

8) Terminal Tariff Fees: Terminal Tariff fees invoiced to the vessel shall be paid to and collected by the port from the vessel or its agent. The port shall receive all dockage, vessel security fees and MFSA safety fees, per the Terminal Tariff. To the extent that TSPT receives such fees from any vessel, Lessee shall promptly remit such fees to the port.

- Lease Security: The Ground Lease shall be secured by a Bond, Letter of Credit or Cash in the amount of [Redacted].
- MGA Security: Additionally, the MGA Agreement (Exhibit "O") shall be secured by Deed of Trust that provides the port with first security position on the improvements and alterations that constitute the TSPT Facility in the amount of [Redacted].
- Lease Guaranty: There shall be no requirement for TSPT to provide the port with a Lease Guaranty, however, if applicable one may be required if there is an assignment of the Ground Lease.
- Property Insurance: \$ 1,000,000.00 Maximum Deductible.
- Liability Insurance: \$10,000,000.00 Per Occurrence/\$15,000,000.00 Aggregate/\$1,000,000.00 Employer Liability/\$1,000,000.00 Auto.
- Pollution Legal Liability Insurance: \$25,000,000

- **Contractor's Pollution Legal Liability Insurance:** \$5,000,000
- **Alterations by Port:**
 - ✓ A connection to "The Trench" connecting the BNSF Fall Bridge Subdivision to the Port of Vancouver.
 - ✓ One common arrival track estimated at 7684 feet between the two (2) innermost switches (identified as Track 4002).
 - ✓ A connection to the Terminal 5 loop track facility.
 - ✓ Two dedicated loop tracks for arrivals, each estimated at 7684 feet. These tracks will be identified as Tracks 4106 and 4107.
 - ✓ A connection with cross-over switches capable of departing any of two departure tracks listed below.
 - ✓ Two departure tracks, each estimated at 7684 feet. These tracks are identified as Tracks 4841 and 4842.
 - ✓ A connection from the departure tracks to the trench for departure.
 - ✓ Two Bad Order tracks located off the loop tracks designated as Track 4109 and Track 4110. Track 4109 shall be approximately 200 feet and Track 4110 shall be 600 feet. Lessor will make additional space available for Bad Order repair and processing.

At such time as Lessee has: (i) on a continuing basis, sustained a volume of 120,000 bpd, (ii) reasonably demonstrated that additional customer volume is likely to be achieved (e.g., through customer expressions of interest, letters of intent, memoranda of understanding or the like), and (iii) Lessee has requested in writing that Lessor proceed, then Lessor shall, within one hundred twenty (120) days, make the following available to:

- ✓ Two dedicated large tracks, consisting of one loop track for arrivals and one departure track in the main yard (the permits for which shall be obtained by Lessee) with connection to the trench for departure.

- **Definition of Petroleum Products:** Any mixture of hydrocarbons that exist in the liquid phase at atmospheric pressure, including but not limited to crude oils, diluents, topped crude oils, partially or incompletely refined crude oils, distillates, biofuels, condensates, intermediates, derivatives, blends, mixtures and finished products (including motor fuels, but excluding any chlorinated hydrocarbons or solvents).

The port is providing consent approval to TSPT to handle Petroleum Products as cargo through the facility. The definition of Petroleum Products shall not be used to designate the Exclusive Use provided under the lease, only to designate what is approved as a cargo through the facility.

- **Exclusivity:** Provided that after a period of 24 months TSPT achieves an average daily throughput volume of **Redact** barrels per day and continually maintains it AND has an MGA in place, they will have the exclusive right to operate a Rail Unit Train Facility for crude oil above **Redact** barrels per day.

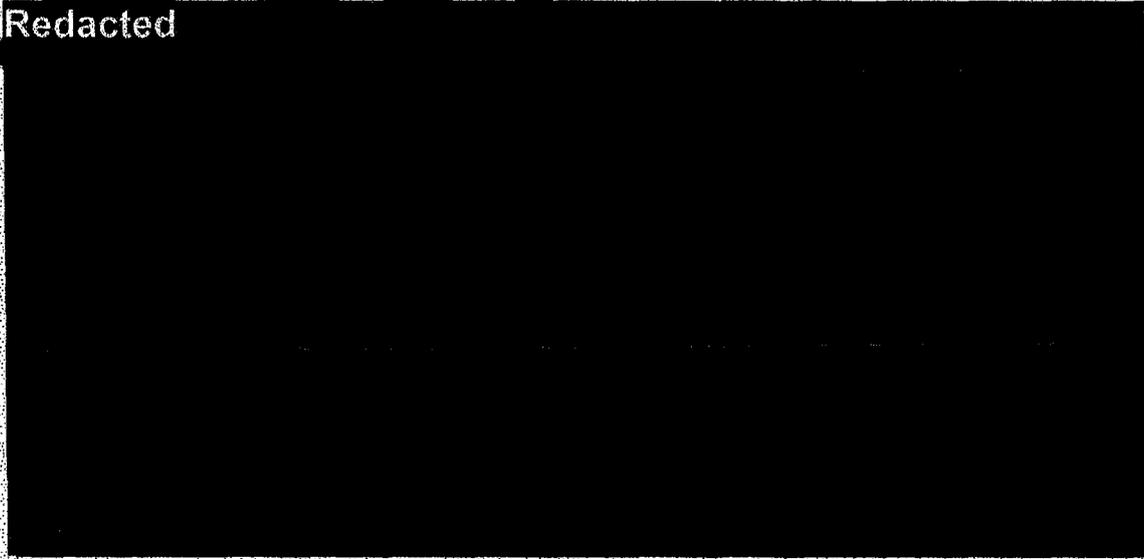
- **M&P Sixty Day Averaging:** Barrels actually delivered to the Facility are to be calculated on a monthly average for a daily total and a formula is in place for shortfalls of the MGA, barrels paid for under the MGA but not actually delivered, to be carried for the period of two months and could receive credit if a surplus of barrels actually delivered exceeds the shortfall amount.

All barrels actually delivered are to be paid at the appropriate Rate Tier as referenced above.

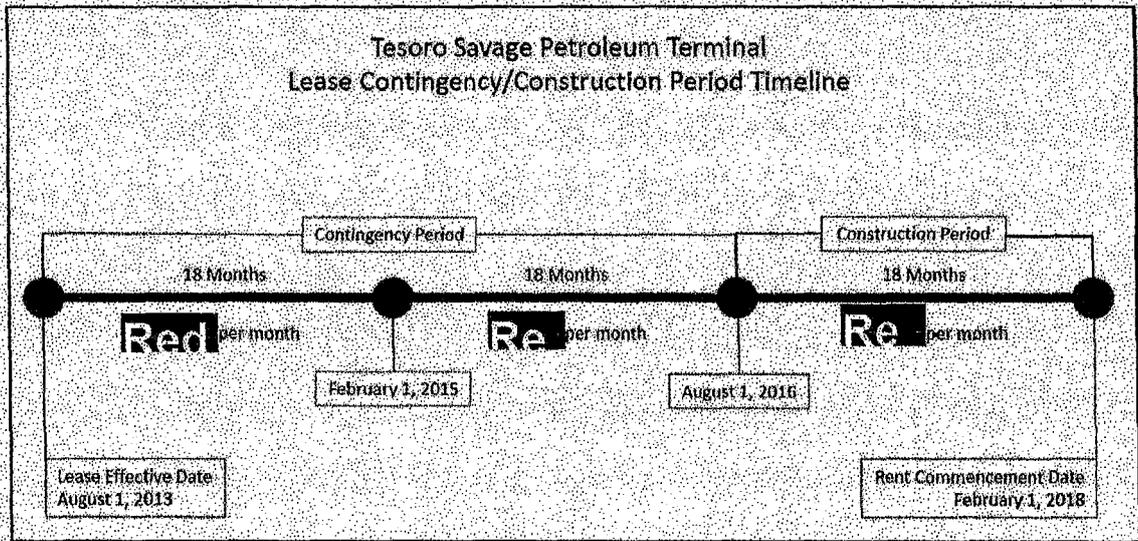
- **Dredging Responsibility:**
 - Initial Dredging is POV responsibility
 - Maintenance Dredging is POV responsibility
- **Assignments and Sub Lease:**
 - 1) **Third Party Assignments** - All third-party assignments require the prior written consent of the port, which shall not be unreasonable withheld or delayed, as long as Lessee demonstrates to the port's sole satisfaction that the proposed assignee is (1) financially able to uphold the responsibilities of the Lease and (2) has the ability and experience to perform the obligations of the Lease.
 - 2) **Non-Third Party Assignments** - Lessee is allowed to complete an internal merger, consolidation or transfer to another entity of Tesoro or its affiliate without the consent of the port.
 - 3) **Lessee Remains Responsible** - Lessee remains obligated for the Lease upon any assignment or sublease.
- **Environmental Provisions:** In addition to standard template language concepts:
 1. While it remains the Lessee's responsibility to address releases of hazardous substances from the Premises as provided by Lessee, this lease requires Lessee to perform a baseline investigation of environmental conditions prior to Lessee's use of the Premises and another investigation prior to violation of Premises in order to provide information on the condition of the property necessary to assess if clean up is necessary or if there are any violations or exacerbation of existing conditions.
 2. Hazardous Substances will go through the port's standard pre-approval process prior to use at the facility. However, due to variations in the commodity resulting from the unrefined nature of crude oil, Petroleum Products, as defined, will receive up-front approval as well as go through the facility. Hazardous Substances generally would include Petroleum Products, but Petroleum Products are specifically excluded from the definition because of the inherent variations in the cargo composition, resulting in a different process of approval and notification. The port will receive notice of cargo specifications through the facility.
- **Maintenance & Repair:** Standard template language and TSPT will be maintaining their exclusive rail tracks.

- **Alterations:** Standard template language except for:
 - 1) Alterations do not require the prior written consent of port if:
 - a. The alteration is immaterial, insubstantial or ordinary non-structural that does not require a building permit; and
 - b. The alteration will not affect or impact the environmental covenant areas, adjacent tenants or property owners, or any other obligations of Lessee under the Lease.
 - 2) A Project Team will be formed consisting of TSPT and port staff to facilitate coordination and communication for the development and construction of the TSPT Facility and any port construction projects.
 - 3) The port has the right to require Lessee to remove the Alterations at Lessee's expense at termination or expiration of the Lease, provided however, that:
 - a. The port must choose to have all or none of the improvements or Alterations removed by Lessee, unless both parties agree otherwise; and
 - b. If the improvements or Alterations are economically and operationally viable (as determined by a third-party expert) then Lessee does not have to remove the Alterations.
- **Surrender of the Premises at Termination or Expiration** is the responsibility of the Lessee but will be subject to the alterations being removed as an "all or none" deal.
- **Safety:** TSPT has submitted their HSS Plan that essentially covers Construction and Commissioning. Lessee is required to have an O&M Operations and Safety Plan in place that is subject to the port's approval prior to the commencement of Operations.
- **Economic Statement**

Redacted



- **Project Timeline:**



- **Project Permitting Overview:** In addition to the federal approvals that may be necessary, the project's local and state approvals will be coordinated through the Energy Facility Site Evaluation Council (EFSEC). EFSEC is a Washington State agency created in 1970 to provide 'one stop' licensing for large energy projects for the siting, construction and operation of an energy project. The council is comprised of a chair appointed by the Governor and representatives from five state agencies (Commerce, Economic and Workforce, Natural Resources, and Transportation Commission). The council is augmented by representatives from particular cities, counties, or political districts potentially affected by the project. The council provides recommendations to the Governor for approval of the project.
- **Project Outreach Program:** Continued to be a significant focus of the TSPT and the POV.

EXHIBIT U

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

COLUMBIA RIVERKEEPER, SIERRA)
CLUB, and NORTHWEST)
ENVIRONMENTAL DEFENSE CENTER,)

Plaintiffs,)

vs.)

No. 13-2-3431-3

PORT OF VANCOUVER USA; JERRY)
OLIVER, Port of Vancouver USA)
Board of Commissioners)
President; BRIAN WOLFE, Port)
of Vancouver USA Board of)
Commissioners Vice President;)
and NANCY I. BAKER, Port of)
Vancouver USA Board of)
Commissioners Secretary,)

Defendants.)



DEPOSITION UPON ORAL EXAMINATION

OF

COMMISSIONER GERALD THOMAS OLIVER

9:30 a.m.
December 2, 2014

700 Washington Street 701
Vancouver, Washington 98660

REPORTED BY: JACQUELINE L. BELLOWS, CCR 2297



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APPEARANCES		Page 2
1		
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	kristinasai@markowitzherbold.com	
	Also Present:	
	Todd Coleman, PE	
	Julianna M. Marler	
	Port of Vancouver	

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Vancouver, Washington; December 2, 2014

9:30 a.m.

--OO--

COMMISSIONER GERALD THOMAS OLIVER,

sworn as a witness by the certified court reporter,

testified as follows:

EXAMINATION

BY MS. ZULTOSKI:

Q. Great. My name is Elizabeth Zultoski. I'm representing Columbia Riverkeeper, Northwest Environmental Defense Center, and the Sierra Club in this matter.

Please state your full name for the record.

A. Gerald Thomas Oliver.

Q. Have you ever been deposed before Mr. Oliver?

A. I have not.

Q. Okay. I'd like to go over a few basic ground rules for you.

A. Okay.

Q. Please let me know if you have any questions about them.

A. Sure.

Q. Please answer with yes or no, not uh-huh or a nod of the head. Make sure you state clearly yes or no for the record. Please ask that I repeat or clarify any questions that you have about my questions for you. We want to make sure you



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1 But as to what it was, I can't speak to it.

2 Q (By Ms. Zultoski) Okay. So you still -- actually, let's

3 stop. Is there anything else about the executive session

4 from July 22nd that you recall that we haven't covered?

5 A. No. No. I feel it was limited in its purview, and I think

6 we discussed it. I've shared with you what my recollection

7 is of that session.

8 MR. KNUTSEN: Can we take a four-minute break and

9 maybe see if we can possibly focus to finish up?

10 MS. ZULTOSKI: Yup.

11 MR. KNUTSEN: I'm not guaranteeing we can. But

12 maybe.

13 MR. MARKOWITZ: Excellent.

14 THE WITNESS: Okay.

15 (Recess taken.)

16 MS. ZULTOSKI: Back on the record.

17 Q (By Ms. Zultoski) I'd like you to discuss the executive

18 session that occurred on July 23rd, 2013. It appears on

19 page 5 of your third set of discovery responses, if you'd

20 like to refer to that to refresh your memory . . .

21 A. That's this one?

22 Q. Yes.

23 A. Exhibit 8, got it. I'm with you.

24 Q. Do you recall this executive session?

25 A. Again, as to specifics, I do not.

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1 Q. Do you recall that this executive session occurred?

2 A. I'm certain that it did. Although, again, my specific

3 recollection, I don't have one.

4 Q. This was -- July 23rd, 2013, this was the day that the Board

5 of Commissioners voted on the lease with Tesoro Savage;

6 correct?

7 A. That's correct.

8 Q. Great. And so does that provide any context for maybe what

9 was discussed that morning?

10 A. Well, I can assure you that we did discuss the lease that

11 morning. The lease was now in its complete form after the

12 addition that I'd referred to that we had discussed the

13 previous evening. So now the lease was complete. We went

14 through it, I'm sure, if not line by line, then certainly

15 clause by clause. And I'm sure that staff solicited

16 inquiry. And, if there was any, that was dealt with. And

17 then -- and questions were asked and answered, I presume.

18 And although I would have no recollection of what

19 specifically might have been questioned, just assuming it

20 did occur. Then when the lease was brought up in public

21 session, it was approved.

22 Q. Okay.

23 A. As an action item on the agenda.

24 Q. So to clarify the items that you just referenced in response

25 to my last question, the questions and the line-by-line

Page 132

1 lease reading -- let me know if I'm mischaracterizing any of

2 your testimony. That occurred, to the best of your

3 recollection, in an executive session on July 23rd?

4 MR. MARKOWITZ: I'm going to object. I think it

5 misstates his testimony. He says he doesn't recall.

6 He was speculating as to what might have happened.

7 A. Again, I'm sure we reviewed the lease.

8 Q (By Ms. Zultoski) During the executive session?

9 A. During the executive session.

10 Q. Okay.

11 A. I'm reasonably sure of that.

12 Q. Okay. Do you recall when the port decided that the July --

13 that the vote on July 23rd was no longer valid? Or stated

14 alternatively, that the lease that the port entered into on

15 July 23rd through the Board of Commissioners' vote was no

16 longer valid?

17 A. I would characterize my recollection as to the fact that

18 counsel suggested that it might be appropriate, that it

19 would be appropriate to review -- not review, to reconsider

20 and reapprove the lease to quiet the legal concerns that it

21 may have been done inappropriately in the first instance.

22 Q. Do you recall, was that shortly after the July 23rd meeting

23 or on another date?

24 A. My recollection was that it was done sometime in the

25 following month of August. That it was done in August is my

Page 133

1 recollection. I'm sorry. I can't give you a specific date.

2 Q. Were there any changes to the lease made after the July 23rd

3 vote?

4 A. No. The lease we approved the second time is the same lease

5 we approved the first time.

6 Q. Were there any discussions between you and the other

7 commissioners about the lease between those, the first and

8 the second vote?

9 A. No. No. We understood that it was desirable to reapprove

10 the lease, and we did so.

11 Q. When you say "it was desirable to reapprove the lease," what

12 do you mean by that?

13 A. To ensure that the lease was valid and would be recognized

14 in a court of law.

15 Q. So if I understand you correctly, you and the other

16 commissioners did not discuss the lease between the first

17 and the second vote; is that correct?

18 A. We did not. We discussed with -- again, my recollection is

19 we discussed with counsel why we should, if you will,

20 reapprove the lease. But as to the elements of the lease,

21 we did not discuss that.

22 Q. Was there -- do you recall if there was a public

23 announcement that the lease had been invalidated?

24 A. Because the reapproval, if I can characterize it . . .

25 Q. Sure.



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1 number of how many executive sessions the Board of
 2 Commissioners deliberated about the Tesoro Savage lease.
 3 MR. MARKOWITZ: I'm going to object as asked and
 4 answered. He already started that testimony by giving
 5 you a number of what he could remember. And I'm also
 6 going to object to your assumption within the question
 7 that there was any deliberation at any executive
 8 session.
 9 But as to the number, tell her again.
 10 A. I suggested earlier that I think I can reasonably estimate
 11 that there were four or five times, just because the number
 12 of times I know that we reviewed the lease in its final and
 13 near final form and approved it. And there may have been --
 14 there probably were one or two sessions beyond that. But as
 15 to a more definitive number, I can't give you, 'cause I have
 16 no recollection.
 17 Q (By Ms. Zultoski) Okay. And other than the July 22nd, 2013,
 18 executive session that you were able to recall the
 19 discussion about the lease term, you couldn't really
 20 remember --
 21 A. Right. The gist of it.
 22 Q. Can you think of one specific issue that was discussed in
 23 all of those executive sessions about the Tesoro Savage
 24 lease?
 25 A. There were, I'm sure, a great many that we considered. I

Page 143

1 know that my personal concerns and -- at various times I
 2 queried staff on this: Safety, financial impact to the
 3 port, economic development potential, actual number of jobs,
 4 all things that were concerns of mine. And there were
 5 others, I'm sure. But those are things that readily come to
 6 mind and that I would have asked questions of staff
 7 regarding those.
 8 Q. In executive session?
 9 A. Yes. Yes.
 10 MS. ZULTOSKI: Okay.
 11 MR. MARKOWITZ: Thank you very much.
 12 MS. ZULTOSKI: That concludes our day.
 13 (Signature was reserved.)
 14 (Deposition concluded at 3:48 p.m.)
 15
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CORRECTION & SIGNATURE PAGE

1 Re: Columbia Riverkeepers, et al., v. Port of Vancouver, et al.
 2 Superior Court of the State of Washington for Clark County;
 3 No. 13-2-3431-3
 4 COMMISSIONER GERALD OLIVER; December 2, 2014

REPORTED BY: JACQUELINE L. BELLOWS, CCR 2297

5 I, COMMISSIONER GERALD OLIVER, have read the within
 6 transcript taken December 2, 2014, and the same is true
 7 and accurate except for any changes and/or corrections,
 8 if any, as follows:

PAGE/LINE	CORRECTION	REASON
9		
10		
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Signed at _____, Washington,
 on this date: _____.

COMMISSIONER GERALD OLIVER

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REPORTER'S CERTIFICATE

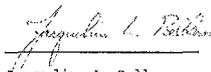
1 I, JACQUELINE L. BELLOWS, the undersigned Certified
 2 Court Reporter pursuant to RCW 5.28.010 authorized to
 3 administer oaths and affirmations in and for the State of
 4 Washington, do hereby certify that the sworn testimony
 5 and/or proceedings, a transcript of which is attached, was
 6 given before me at the time and place stated therein; that
 7 any and/or all witness(es) were duly sworn to testify to the
 8 truth; that the sworn testimony and/or proceedings were by
 9 me stenographically recorded and transcribed under my
 10 supervision, to the best of my ability; that the foregoing
 11 transcript contains a full, true, and accurate record of all
 12 the sworn testimony and/or proceedings given and occurring
 13 at the time and place stated in the transcript; that a
 14 review of which was requested; that I am in no way related
 15 to any party to the matter, nor to any counsel, nor do I
 16 have any financial interest in the event of the cause.
 17 WITNESS MY HAND AND DIGITAL SIGNATURE this 10th
 18 day of December, 2014.
 19
 20
 21 
 22 Jacqueline L. Bellows
 23 Washington State Certified Court Reporter, No. 2297
 24 jbellows@yomreporting.com
 25



EXHIBIT W

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

4	COLUMBIA RIVERKEEPER, SIERRA)	
5	CLUB, and NORTHWEST)	
6	ENVIRONMENTAL DEFENSE CENTER,)	
)	
	Plaintiffs,)	
7)	
	vs.)	No. 13-2-3431-3
8)	
9	PORT OF VANCOUVER USA; JERRY)	
10	OLIVER, Port of Vancouver USA)	
	Board of Commissioners)	
11	President; BRIAN WOLFE, Port)	
12	of Vancouver USA Board of)	
	Commissioners Vice President;)	
13	and NANCY I. BAKER, Port of)	
	Vancouver USA Board of)	
	Commissioners Secretary,)	
14)	
	Defendants.)	



DEPOSITION UPON ORAL EXAMINATION
OF
COMMISSIONER BRIAN WOLFE, J.D.

9:40 a.m.
December 3, 2014

700 Washington Street 701
Vancouver, Washington 98660

REPORTED BY: JACQUELINE L. BELLOWS, CCR 2297



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JULIANNA M. MARLER
Port of Vancouver
BRETT VANDENHEUVEL
Columbia Riverkeeper

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Vancouver, Washington; December 3, 2014

9:40 a.m.

--OO--

C O M M I S S I O N E R B R I A N W O L F E , J . D . ,

sworn as a witness by the certified court reporter,
testified as follows:

E X A M I N A T I O N

BY MS. ZULTOSKI:

Q. Hello. My name is Elizabeth Zultoski, and, as I said
before, I'm representing Columbia Riverkeeper, the Northwest
Environmental Center, and the Sierra Club.

Could you please state your name for the record.

A. Brian H. Wolfe, W-O-L-F-E.

Q. Have you ever been deposed before?

A. Yes.

Q. How many times?

A. Four or five.

Q. Okay. I'd still like to go over a few ground rules.

A. I've done a lot of depositions where I'm sitting in
Mr. Markowitz's seat.

Q. Ah. Well, I'd still like to go over a few ground rules
today. Please answer with yes or no as opposed to a nod of

Page 5

the head or uh-uh. We want to make sure we get a good
transcript here today.

A. Yes, ma'am.

Q. Please speak clearly. Let me know if you have any questions
or if you need to take a break. I'd be more than happy to
clarify any of the questions that I am asking, to make sure
you understand what I'm actually asking.

My first question is what you did to prepare for your
deposition today.

A. I looked at this notebook you have in front of you and spent
a couple hours with Mr. Markowitz and Kristin.

Q. Did you speak with anyone else about this deposition?

A. Briefly with Mr. Coleman and Julianna.

Q. Did you discuss the -- with any of those individuals, the
deposition of Commissioner Oliver that occurred yesterday?

A. Yes.

Q. Did you review any of the exhibits from Commissioner
Oliver's deposition yesterday?

A. Not as exhibits.

Q. All right. Did you attend college?

A. Yes.

Q. Where did you go to college?

A. Whitworth University, then known as Whitworth College, in
Spokane, Washington.

Q. Did you go to law school?



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1 Kalama would like our grain elevators. So to go public with
 2 our prices of wharfage and dockage and things like that
 3 would be dangerous.
 4 Q. Anything else other than those fees that you just referred
 5 to?
 6 A. Nothing comes to mind.
 7 Q. Has the Board of Commissioners ever rejected a lease that
 8 was presented by staff?
 9 A. Yes.
 10 Q. How many times?
 11 A. Once that I'm thinking of in my tenure.
 12 Q. Can you share that instance?
 13 A. Years ago -- I'm going to say 2007 or '8 -- we were
 14 approached to lease a building to a company that's now
 15 become a tenant, by the name of Sapa. And at that time the
 16 way it was presented by the broker, it just didn't seem like
 17 a good fit. So we said, We don't want to pursue that.
 18 Q. Has the Board of Commissioners ever rejected specific lease
 19 terms presented by the port staff?
 20 A. By the staff? "Rejected" would not be the right conclusion.
 21 There are times when the terms have been refined by comments
 22 that the various port commissioners have made.
 23 Q. So the Board of Commissioners has the ability to tell the
 24 port staff that a specific lease term is unacceptable?
 25 A. I don't think we say it's "unacceptable." It's just that we

Page 15

1 would like to have it said better.
 2 Q. So trying it a different way, does the Board of
 3 Commissioners have the authority to require that the lease
 4 staff -- or that the port staff negotiate a different lease
 5 term --
 6 A. Yes.
 7 Q. -- than one presented?
 8 A. Yes. They have the authority to do that.
 9 Q. How often do the commissioners meet?
 10 A. In general session?
 11 Q. In general.
 12 A. Twice a month on the second and fourth Tuesdays.
 13 Q. Are those regular meetings?
 14 A. Those are regular meetings.
 15 Q. How often does the Board of Commissioners meet in executive
 16 session?
 17 A. About 95 percent of the time.
 18 Q. About 95 percent of the time?
 19 A. Uh-huh.
 20 Q. Okay. For what reasons do the commissioners meet?
 21 A. To discuss terms of potential tenants. Sometimes there is
 22 litigation. Sometimes there's personnel matters.
 23 MR. MARKOWITZ: Is your -- are you answering the
 24 question as to executive session or all meetings?
 25 THE WITNESS: Executive session is what I

Page 16

1 understood it to be.
 2 Q (By Ms. Zultowski) Okay. Thank you. Do the commissioners
 3 regularly meet in executive session before regular meetings?
 4 A. Yes.
 5 Q. Would you say the majority of the time?
 6 A. Yes.
 7 Q. All the time?
 8 A. No.
 9 Q. And what causes the Board of Commissioners to meet in
 10 executive session, sometimes but not always before regular
 11 meetings?
 12 A. Well, the cause is because staff believes that there are
 13 things that need to be discussed that qualify under the Open
 14 Meetings Act for executive session discussion.
 15 Q. And do the commissioners ever decide on their own that an
 16 executive session should be called?
 17 A. I can only think of once what that happened in my tenure.
 18 We were discussing a personnel matter.
 19 Q. Okay. Before executive sessions, do -- does anyone on the
 20 port staff provide the Board of Commissioners with a written
 21 agenda?
 22 A. No.
 23 Q. Ever?
 24 A. Not for executive sessions.
 25 Q. Do the commissioner -- do the -- sorry. Strike that.

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1 Do the port staff ever provide the Board of
 2 Commissioners with written materials ahead of time?
 3 A. For executive session?
 4 Q. For executive session.
 5 A. On occasion.
 6 Q. On occasion. Who decides who may attend executive sessions?
 7 A. Who decides? Frankly, I don't know that I can answer that.
 8 I don't know who decides.
 9 Q. Okay. Is there anyone that's responsible for determining if
 10 there are certain people who shouldn't attend an executive
 11 session?
 12 A. Same answer, I don't know who would decide who couldn't be
 13 there. The commission could be uncomfortable with people
 14 being there and ask to be excused. That's -- those kind of
 15 decisions are generally made at the staff level. And I
 16 don't know how Mr. Coleman sets his agenda. We're not
 17 involved in that.
 18 Q. Have there been any instances where the Board of
 19 Commissioners has asked for a certain individual to be
 20 excluded from an executive session?
 21 A. Not someone who's come in and been invited to sit there that
 22 I'm remembering. Occasionally someone will come through the
 23 door that came into the executive session prematurely,
 24 expecting there to be the general meeting going on. We have
 25 to stop and make sure he, he or she are ushered back out the



Page 66

1 Q. Does that make sense?

2 A. Yes. That's an accurate representation of what goes on.

3 Q. Great. If there's more confusion about terms that I'm

4 using, such as "discuss," in future questions, please let me

5 know.

6 A. Okay.

7 Q. So repeating my question with this understanding now, did

8 you and the other commissioners talk about any other

9 concerns beyond environmental and safety at commission

10 meetings?

11 A. If I say yes, you're going to ask what were they. But, yes,

12 there were some other concerns.

13 Q. Can you recall what those were?

14 A. The only one I'm remembering, counsel, is whether or not

15 this TS-JV joint venture was merely a shell without adequate

16 assets to do the cleanup and things that we were concerned

17 about.

18 Q. Do you recall when you discussed that or talked about that?

19 A. I don't recall. I think we talked about it on more than one

20 occasion. I don't remember who-when.

21 Q. Did the commissioners get an answer to that question?

22 A. Yes.

23 Q. Do you remember what that answer is?

24 A. Insurance.

25 Q. Can you expand on --

Page 67

1 A. Well, we have this \$25-million policy they have to put up

2 when they start operations. So that's supposed to cover the

3 lease.

4 Q. Okay. So with this understanding now of what I mean by

5 "discussed," I'd like to go back to maybe a couple of the

6 questions that I posed to see if your answers would change.

7 Did you talk about the disaster in Canada in meetings

8 where other commissioners were present?

9 A. Yes.

10 Q. Do you recall when those were?

11 A. No.

12 Q. Do you recall what was said?

13 A. No.

14 Q. Do you recall anything about the discussions?

15 A. There was -- not really. I mean not really.

16 Q. Do you recall if any of those discussion happened in

17 executive session?

18 A. Some.

19 Q. Is that the type of issue that the commissioners would

20 regularly talk about in executive session?

21 MR. MARKOWITZ: I'm going to object to the

22 vagueness and ambiguity of what is meant by the phrase

23 "type of issue."

24 A. And I was going ask you to clarify that because do you mean

25 the disaster in Lac-Megantic or explosion of crude oil?

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1 Q (By Ms. Zultoski) I'll rephrase. Would -- strike that.

2 Do the commissioners discuss issues of that type,

3 meaning explosions of crude, in executive sessions?

4 A. This is the only type of explosion that's ever occurred in

5 my tenure. So no, we don't usually discuss them.

6 Q. Is, is that -- are safety issues related to the Tesoro

7 Savage project a topic that the commissioners -- strike

8 that.

9 Under OPMA, do you understand safety concerns related

10 to the Tesoro Savage project as being an acceptable topic

11 for executive sessions?

12 A. By itself, it's not. It's not on the list.

13 Q. When would it be an acceptable topic in your understanding?

14 A. If we were trying to put conditions into a lease that might

15 be raising -- or not raising necessarily but affecting the

16 price.

17 Q. Do you know if that occurred?

18 A. No, it did not.

19 Q. It did not?

20 A. I don't believe so.

21 Q. Those discussions?

22 A. Oh, the discussions occurred. But I can't tell you when.

23 Q. Do you know --

24 A. I mean there were lots of discussions. Mister -- Brett was

25 at several meetings where we discussed Lac-Megantic.

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1 Q. Right.

2 A. Okay? And those were public meetings.

3 Q. Right. Do you recall if any of those happened in executive

4 sessions?

5 A. I don't believe so. But I don't recall specifically. Like

6 I said before, it all blends together.

7 Q. Great. Okay. Now I'd like to turn back to Exhibit No. 29,

8 I believe, which are your discovery responses. Yes, 29.

9 Do you recall the February 11, 2013, executive session?

10 A. No. I see we went all afternoon. I have no memory of that

11 at all. That would be a very unusual meeting. I have no

12 idea what kind of went on there.

13 Q. What would have been very unusual about it?

14 A. The afternoon and the length of time. We have these kind of

15 meetings when we're discussing the budget. But this is not

16 a budget meeting. This is February. I have no memory of

17 it.

18 Q. So this is Exhibit No. 9 (handing). I'm wondering if you

19 can take a minute to review that.

20 A. (Witness complies.)

21 Q. Does this help jog your memory about what was potentially

22 discussed during that executive session?

23 A. Give me a minute, counsel. I didn't see the back page.

24 Q. Okay.

25 A. No, it really doesn't help me.



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1 A. Yes.

2 Q. When?

3 A. Various times, particularly when Burlington Northern people
4 were present.

5 Q. Did any of those discussions occur in executive sessions?

6 A. I don't believe so. But I don't remember. It all blends
7 together.

8 Q. Was rail capacity an issue that the public raised to the
9 Board of Commissioners throughout the lease negotiation
10 process?

11 A. You used the word "capacity." Are you sure you know what
12 you're asking there?

13 Q. What do you mean by "capacity"?

14 A. Well, "capacity" is how many trains can the rail between
15 Pasco and Vancouver support in a given day.

16 Q. Did the public raise concerns to the Board of Commissioners
17 about the quantity and frequency of trains?

18 A. Yes.

19 Q. How often?

20 A. Every time there's a public hearing.

21 Q. And did the Board of Commissioners consider those?

22 A. Yes.

23 Q. In executive sessions?

24 A. I don't remember if it was executive sessions or when
25 Burlington Northern folks were with us. There were a number

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1 of them. We've had decent answers from them. We know -- we
2 knew then what their capacity is. They've thrown a lot of
3 money at improving their capacity and their safety. But at
4 that time it was a fairly limited number of cars per day.
5 Trains per day, excuse me.

6 Q. Is that not the case now?

7 A. I don't know what it is today. And I don't know that it
8 would have changed in that one-year period. What I do know
9 is that they are throwing money at improving the rail from
10 North Dakota to Washington state and points north. And
11 whether that increases capacity, I haven't read.

12 Q. Is that it?

13 A. I think that's it. I think that's where I need to stop.

14 Q. Is that part of the basis of the City of Vancouver's
15 concerns?

16 A. Well, I don't know what the City of Vancouver's councilors'
17 concerns are. I thought I did. I thought they were
18 concerned about safety, about, about explosions that they
19 read about, and about their grade crossings. But it appears
20 that their resolution, at least, transcends that.

21 Q. In what way?

22 A. They don't talk about safety. They talk about killing the
23 deal. What -- what people don't seem to understand --

24 MR. MARKOWITZ: You can stop. This is beyond the
25 scope of what I think is appropriate. Let it go

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1 because we were talking about April 13. Now this
2 questioned has morphed into the recent resolution from
3 the city. But I will return to my instruction that
4 this is beyond the scope of the case.

5 Q (By Ms. Zultoski) Did the Board of Commissioners discuss
6 those issues in executive session?

7 A. What issues?

8 Q. The issues that we were just -- you were discussing before
9 your counsel --

10 A. Well, we talked about capacity.

11 Q. Right.

12 A. Then we've talked about safety. And they're two separate
13 things.

14 Q. Right. And before you were cut off, you were talking about
15 the City of Vancouver's resolution and the basis for that.

16 MR. MARKOWITZ: We're not going to get into that.

17 A. I actually can't talk about that.

18 Q (By Ms. Zultoski) So earlier you were discussing -- earlier
19 this morning, I believe, you were discussing -- I'm sorry.
20 Strike that.

21 During the July 22nd, 2013, executive session, the
22 night before the vote on the lease, there was discussion at
23 the meeting about public comments; is that correct?

24 A. In the executive session?

25 Q. Yes.

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1 A. Well, your question, this question is general. Remember
2 that the focal point of the whole meeting was Did we learn
3 anything in the public discussion that would cause us to
4 want to revisit some or all of the lease and its pricing or
5 any conditions that might affect pricing.

6 This morning or whenever it was you asked me about
7 specific comments that were made, I don't have any
8 recollection of specific comments.

9 Q. Right. But given -- there was discussion about public
10 comments at the July 22nd executive session on some level;
11 correct?

12 A. Correct.

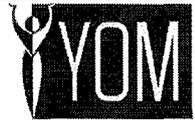
13 MR. MARKOWITZ: He's just answered that three
14 times now.

15 Q (By Ms. Zultoski) So there were public comments during the
16 public workshop that day about the level of concern and
17 opposition to the project; correct?

18 A. Correct.

19 Q. Given the level of public concern and opposition to the
20 project, did the Board of Commissioners in that meeting
21 consider postponing a vote on the lease?

22 MR. MARKOWITZ: "That" meaning the --
23 MS. ZULTOSKI: The executive session.
24 MR. MARKOWITZ: On the 22nd?
25 MS. ZULTOSKI: On the 22nd.



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1 A. We considered it. I think each of with us in tum said we
 2 were -- had enough information. We were ready to go
 3 forward.
 4 Q (By Ms. Zultoski) So the level of public opposition and
 5 concern was not -- did not impact your consideration of the
 6 lease?
 7 A. Oh, it absolutely impacted it.
 8 MR. MARKOWITZ: Hold it; hold it; hold it. You've
 9 gotta wait.
 10 THE WITNESS: I'm sorry.
 11 MR. MARKOWITZ: I'm going to instruct him not to
 12 answer.
 13 Q (By Ms. Zultoski) So earlier we were talking about the
 14 public's -- when the commissioners knew about -- when the
 15 port staff presented the lease to the Board of
 16 Commissioners. And you didn't recall when exactly that had
 17 occurred; is that correct?
 18 A. Yes.
 19 Q. Do you remember when the public first learned about the
 20 port's consideration of a lease with Tesoro Savage?
 21 A. Not specifically.
 22 Q. Do you know if -- can you recall if the --
 23 A. It's whenever Tesoro made its public announcement, which I
 24 believe was in April or early May.
 25 Q. Is it your understanding -- or given everything that you

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1 know generally, do you believe that the Board of
 2 Commissioners knew about the Tesoro Savage lease before the
 3 public knew?
 4 A. Sure. Yes.
 5 Q. Do you believe that the public has a right to know about
 6 projects that the port is pursuing?
 7 A. The public does know about projects the port is pursuing
 8 before we conclude the project.
 9 Q. Right. But at the -- before the port spends substantial
 10 resources pursuing a potential project . . .
 11 A. What is your question?
 12 Q. Does the public have a right to know about those projects at
 13 that point?
 14 MR. MARKOWITZ: I'm going to object as vague and
 15 argumentative.
 16 A. I don't know that I would phrase it in terms of right to
 17 know. Remember that, that even a port is a representative
 18 form of government, just like congress and the legislature
 19 and city council. So part of our role is that we are
 20 supposed to be the eyes and ears of that very public in our
 21 deliberative processes.
 22 Q (By Ms. Zultoski) Is that your full answer?
 23 A. Yes.
 24 Q. How does the port commission work to balance the need to
 25 keep certain information from the public for pursuing these

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1 projects and with the public's interest in knowing what the
 2 port is doing?
 3 A. It's a difficult balancing act, frankly. We believe we are
 4 as transparent as we can be. We -- all of our policies, all
 5 of our budgets, all of our tenants are made -- they're
 6 made -- the public's made aware of them. We haven't done
 7 any deals outside of the public responsibility. That's not
 8 the right word -- purview.
 9 We do a lot of vetting at the staff level and some at
 10 the commission level to determine whether those are the
 11 right things to move forward. And then we take public
 12 testimony when needed. I mean the public very seldom shows
 13 up to these things. This one and the IDD levy are the two
 14 that I think anybody's cared about. They don't show up to
 15 our budget meetings where we have \$98 million forecasted for
 16 next year.
 17 So when you say -- when you infer that there's a public
 18 right to know, yeah, there is. We believe we are as
 19 transparent as we need to be.
 20 MS. ZULTOSKI: Okay. I think that concludes my
 21 questions.
 22 MR. MARKOWITZ: All righty. Kristin will be
 23 responsible on our behalf for talking to you folk about
 24 the protective order, either trying to negotiate limits
 25 on the scope of the questioning that has been the

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1 subject of my instructions not to answer. Or, if we
 2 cannot come to an agreement on it, then we'll do a
 3 motion for a protective order.
 4 She'll chat with you. If we could do -- if you
 5 have the time to do it tonight, that would be
 6 beneficial, before the Baker deposition. If you don't
 7 have time, I'm going to give the same instructions
 8 tomorrow with the Baker deposition. It's up to you.
 9 MS. ZULTOSKI: Okay.
 10 (Signature reserved.)
 11 (Deposition concluded at 4:27 p.m.)



EXHIBIT X

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

COLUMBIA RIVERKEEPER, SIERRA)	
CLUB, and NORTHWEST)	
ENVIRONMENTAL DEFENSE CENTER,)	
)	
Plaintiffs,)	
)	
vs.)	No. 13-2-3431-3
)	
PORT OF VANCOUVER USA; JERRY)	
OLIVER, Port of Vancouver USA)	
Board of Commissioners)	
President; BRIAN WOLFE, Port)	
of Vancouver USA Board of)	
Commissioners Vice President;)	
and NANCY I. BAKER, Port of)	
Vancouver USA Board of)	
Commissioners Secretary,)	
)	
Defendants.)	



DEPOSITION UPON ORAL EXAMINATION
OF
COMMISSIONER NANCY I. BAKER

9:08 a.m.
December 4, 2014

700 Washington Street 701
Vancouver, Washington 98660

REPORTED BY: JACQUELINE L. BELLOWS, CCR 2297



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TODD COLEMAN, PE
JULIANNA M. MARLER
Port of Vancouver

Page 4

Vancouver, Washington; December 4, 2014
9:08 a.m.
--oO--
COMMISSIONER NANCY I. BAKER,
sworn as a witness by the certified court reporter,
testified as follows:
E X A M I N A T I O N
BY MS. ZULTOSKI:
Q. Good morning, Commissioner Baker.
A. Good morning.
Q. My name is Elizabeth Zultoski. And I represent Columbia Riverkeeper, the Northwest Environmental Defense Center, and the Sierra Club in this matter.
Can you please state your full name for the record.
A. Nancy Baker.
Q. Have you ever been deposed before, Commissioner Baker?
A. I don't think so.
Q. Well, I'd like to go over a few ground rules. It's important that you answer questions clearly so that the court reporter can understand you and that you use yes-or-no answers instead uh-uh or a nod of the head, things like that, to make sure that the court reporter understands your answers.

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I N D E X

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Page 5

Your counsel may object to questions. But if there's a question and you're able to answer it, please answer it. If you have any questions about my questions, please let me know. I want to make sure you understand what I'm asking of you. I can always repeat a question if you don't hear it or would like to hear it again.
Before we get started, I'm wondering if you spoke with anyone about this deposition before today.
A. From what regard?
Q. Did you speak with anyone in preparation for your deposition today?
A. Not other than what I would ordinarily do, no.
Q. Did you speak with your counsel?
A. I don't recall that we talked about it.
Q. Did you speak with anyone at the port?
A. Other than Julianna and Todd and Michelle, with scheduling, no.
Q. Did you review any documents in preparation for today?
A. Yes, I did.
Q. What documents did you review?
A. The documents in this book.
Q. Is that binder the same as Exhibit 1?
A. Yes. I'm assuming so, yes.
Q. May we look at that at a break?
A. Oh, sure.



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Appx. 114

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1 to do was get out of there and go home. We had been
 2 threatened. So I couldn't even drive myself to the meeting.
 3 It was too stressful. I'm just a plain and ordinary human
 4 being. And I just -- if there was discussion -- there must
 5 have been. But I did not participate in it.
 6 Q (By Ms. Zultoski) Were you aware that the discussion was
 7 happening?
 8 A. I don't remember that.
 9 Q. So you don't know whether the discussion included talk of
 10 the merits about the lease?
 11 A. I don't remember. I don't know that I even listened.
 12 Q. So if you don't remember, then you don't know whether the
 13 merits of the lease were discussed at that session?
 14 MR. MARKOWITZ: Objection; argumentative; asked
 15 and answered. She said she does not remember.
 16 A. I don't remember.
 17 Q (By Ms. Zultoski) In paragraph 6 you state: "Prior to the
 18 October 22nd commission meeting, I understood that the
 19 commission would redo its consideration of and deliberations
 20 on the TSJV lease." How did you understand that?
 21 A. We -- I had numerous conversations with Mr. Coleman. I
 22 believe -- and I don't recall for sure -- I don't know who
 23 else I discussed it with. But because Commissioner Oliver
 24 admitted that he had mispoke -- I don't even recall hearing
 25 him say that -- it was necessary for us to redo the lease.

Page 59

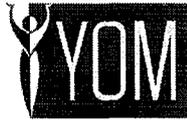
1 Q. When did -- when was the lease voided by the port?
 2 A. I don't remember the date.
 3 Q. Was the lease voided by the port?
 4 A. I don't remember specifically what happened.
 5 Q. Why did the -- strike that.
 6 What did the Board of Commissioners do to reconsider
 7 the lease before voting on it in October?
 8 A. We agreed that there was an error in the way that it was
 9 handled. We corrected those errors in those procedures and
 10 felt that it was necessary to go back and do it correctly.
 11 Q. Did the board engage in new deliberations before voting on
 12 that lease?
 13 A. I don't remember.
 14 Q. Was there pressure from port staff to reapprove the lease?
 15 A. No.
 16 Q. Was there ever pressure from the port staff that the board
 17 vote unanimously to approve the lease?
 18 A. No.
 19 Q. Were there ever discussions about what would happen if the
 20 Board of Commissioners voted to disapprove the lease?
 21 A. No.
 22 Q. Did the commissioners consider if there would be any
 23 repercussions from voting against the lease in October 2013?
 24 A. I don't recall any.
 25 Q. Would the port have suffered financial losses from voting

Page 60

1 against the lease in October 2013?
 2 MR. MARKOWITZ: I'm going to object; no
 3 foundation.
 4 A. I have no idea.
 5 Q (By Ms. Zultoski) Did the port staff inform you about
 6 whether there would be penalties for voting to disapprove
 7 the lease in October 2013?
 8 A. I don't remember any.
 9 Q. Do you know whether there would have been penalties as a
 10 result of breaking the lease in October 2013?
 11 MR. MARKOWITZ: Objection; assumes facts not in
 12 evidence and no foundation.
 13 A. I don't know.
 14 MS. ZULTOSKI: Do you need a break?
 15 THE WITNESS: Yes, please.
 16 (Recess taken.)
 17 Q (By Ms. Zultoski) So before the break, we were talking -- I
 18 guess earlier this morning, we were talking about the
 19 frequency of executive sessions that the port commission
 20 holds. I don't want to mischaracterize your testimony. So
 21 correct me if I'm wrong. But it sounds like the port
 22 frequently meets in executive sessions before or after
 23 regular sessions. Is that correct?
 24 A. Yes.
 25 Q. And does the -- are real estate matters discussed at

Page 61

1 executive sessions frequently?
 2 A. Yes.
 3 Q. And what can the -- what do the board of Commissioners
 4 believe are inappropriate topics to discuss at executive
 5 sessions regarding a real estate matter?
 6 MR. MARKOWITZ: I'm going to object based on no
 7 foundation.
 8 But you can go ahead.
 9 A. Oh, I would -- you know, I don't know. Issues regarding
 10 perhaps what somebody was going to do. If somebody had a
 11 garbage dump, that would be something we would not be
 12 interested in.
 13 Q (By Ms. Zultoski) Let me rephrase. If -- are there topics
 14 about real estate matters that are off limits to the Board
 15 of Commissioners for questions at executive sessions?
 16 MR. MARKOWITZ: Objection, lack of foundation.
 17 A. No.
 18 Q (By Ms. Zultoski) So can the commissioners ask any questions
 19 about real estate matters during executive sessions that
 20 come to their mind?
 21 A. As far as -- I don't know. As far as I know. Because they
 22 would make -- they will make an effect on the price.
 23 Q. Can you think of any topics about a potential lease that
 24 couldn't affect price?
 25 A. No, I cannot.



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA
CLUB; and NORTHWEST
ENVIRONMENTAL DEFENSE CENTER,

Plaintiffs,

vs.

PORT OF VANCOUVER USA; JERRY
OLIVER, Port of Vancouver USA Board of
Commissioners President; BRIAN WOLFE,
Port of Vancouver USA Board of
Commissioners Vice President; and NANCY
I. BAKER, Port of Vancouver USA Board of
Commissioners Secretary,

Defendants.

No. 13-2-03431-3

**DECLARATION OF
TODD COLEMAN IN SUPPORT
OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

I, Todd Coleman, declare:

1. I am the Executive Director/CEO of the Port of Vancouver, a position I have held since May 2012. Prior to that, I was the Port's deputy executive director for seven years.

2. I attended each of the Port Commission's sessions relating to the ground lease to the Tesoro Savage Joint Venture ("TSJV"), including five public workshops and the July 23 and October 22 Commission meetings. I also attended the July 22 executive session. At each of the sessions, my responsibility was in general to ensure that the meeting proceeded through its agenda.

1 - **DECLARATION OF TODD COLEMAN IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
No. 13-2-03431-3

MARKOWITZ, HERBOLD,
GLADE & MEHLHAF, P.C.
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 285-3085

1 3. The July 22 executive session discussed whether changes should be made to
2 the proposed lease terms as a result of any information, including public comment, received
3 by the Commission during the workshop period.

4 4. Any change in terms could have affected the value of the project, and
5 discussing potential changes publicly would likely have led to potential decreases in the price
6 the Port obtained for the lease.

7 5. Attached as Exhibit A is a true and correct copy of the Port's presentation
8 made to the Board of Commissioners during the July 22 workshop.

9 6. The July 22 executive session did not include any deliberation, any decision,
10 or any vote by the Commission on the merits of the TSJV lease.

11 7. At the conclusion of the July 22 executive session, I did not know how the
12 Commission would vote on the lease on July 23. I recall Commissioner Wolfe stating that he
13 now would have to decide how to vote.

14 8. Prior to the October 22 Commission meeting, I understood that the purpose of
15 a new vote was to undo the lease and to get a fresh start on the process. I understood that if
16 the Commission voted "no," then the lease and the project would not move forward.

17 9. I did not know, prior to the October 22 meeting, how the Commission would
18 vote on the lease.

19 10. Attached hereto as Exhibit B is a true and correct copy of the presentation
20 I made to the Commission at its October 22 public meeting. In describing the new vote to
21 the Commissioners, I stated that "at this point, we do not have a lease."

22 ///
23 ///
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2 - **DECLARATION OF TODD COLEMAN IN SUPPORT OF**
 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
 No. 13-2-03431-3

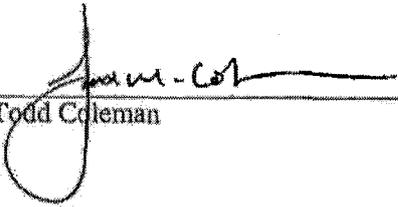
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11. Attached hereto as Exhibit C is a true and correct copy of the Port's Strategic Plan 2022.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and are subject to penalty for perjury.

DATED this 27 day of November, 2013.



Todd Coleman

COLUPV958487_2

3 - **DECLARATION OF TODD COLEMAN IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
No. 13-2-03431-3

MARKOWITZ, HERROLD,
GLADE & MEHLHAF, P.C.
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3720
(503) 285-3085

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2013, I have made service of the foregoing **DECLARATION OF TODD COLEMAN IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the parties listed below in the manner indicated:

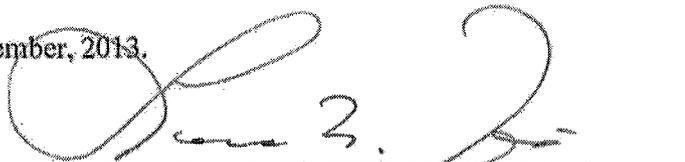
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Elizabeth H. Zultoski / Eric D. Lowney
Smith & Lowney, PLLC
2317 E John Street
Seattle, WA 98112
Attorneys for Plaintiffs

- U.S. Mail
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- Overnight Courier
- Email - elizabethz@igc.org
briank@igc.org

DATED this 6th day of December, 2013.



Lawson E. Fite, WSBA #44707
Attorney for Defendants



Board of Commissioners Workshop

*Tesoro-Savage
Joint Venture
Lease Overview*

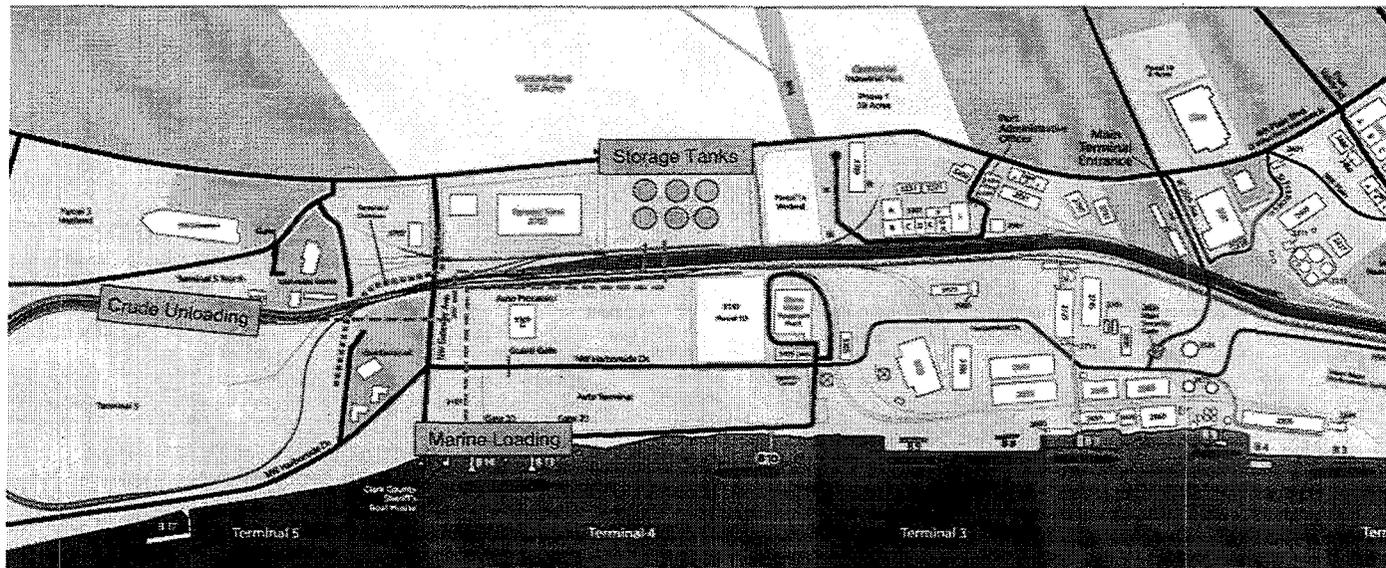
July 22, 2013

 Port of Vancouver USA

THE PORT OF / *Possibility*

PROJECT DESCRIPTION

Terminal Layout and Design



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA CLUB; and NORTHWEST ENVIRONMENTAL DEFENSE CENTER,
Plaintiffs,

No. 13-2-03431-3

DECLARATION OF ALICIA LOWE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

vs.

PORT OF VANCOUVER USA; JERRY OLIVER, Port of Vancouver USA Board of Commissioners President; BRIAN WOLFE, Port of Vancouver USA Board of Commissioners Vice President; and NANCY I. BAKER, Port of Vancouver USA Board of Commissioners Secretary,
Defendants.

I, Lisa Lowe, declare:

1. I am an attorney at the firm of Schwabe, Williamson & Wyatt, P.C., and serve as the general counsel to the Port of Vancouver USA.
2. I attended the five workshops leading to the July 23 public meeting of the Port's Board of Commissioners, including the July 22 workshop and executive session.
3. The July 22 executive session discussed whether changes should be made to the proposed lease terms as a result of any information, including public comment, received by the Commission during the workshop period.

1 - **DECLARATION OF ALICIA LOWE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
13-2-03431-3

MARKOWITZ, HERBOLD, GLADE & MEHLHAF, P.C.
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4. The July 22 executive session did not include any deliberation, any decision, or any vote by the Commission on the merits of the TSJV lease.

5. When I left the July 22 executive session, I did not know how the Commission would vote on the lease on July 23.

6. Based generally on my experience in negotiating leases, I believe public discussion of potential changes to the lease terms would likely have led to terms less favorable to the Port.

7. I also attended the Commission's October 22 public meeting. I did not know, prior to the October 22 meeting, how the Commission would vote on the lease.

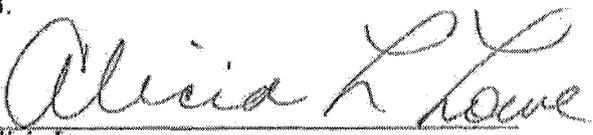
8. Attached as Exhibit A hereto is a true and correct copy of the cover sheet and table of contents for the application by TSJV to the Washington Energy Facility Site Evaluation Council ("EFSEC").

9. Attached as Exhibit B hereto is a true and correct copy of the cover letter accompanying the above EFSEC application.

10. Attached as Exhibit C hereto is a true and correct copy of the October 3, 2013 Determination of Significance and Scoping Notice issued by EFSEC.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and are subject to penalty for perjury.

DATED this 4th day of December, 2013.


Alicia Lowe

COLUPV1358224_2

2 - **DECLARATION OF ALICIA LOWE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
13-2-03431-3

**MARKOWITZ, HERBOLD,
GLADE & MEHLHAF, P.C.**
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 295-3085

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2013, I have made service of the foregoing **DECLARATION OF ALICIA LOWE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the parties listed below in the manner indicated:

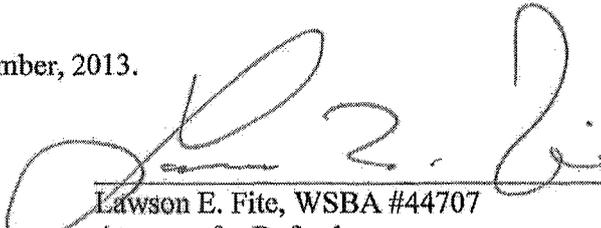
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Elizabeth H. Zultoski / Eric D. Lowney
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2317 E John Street
Seattle, WA 98112
Attorneys for Plaintiffs

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email - elizabethz@igc.org
briank@igc.org

DATED this 6th day of December, 2013.



Lawson E. Fite, WSBA #44707
Attorney for Defendants

CERTIFICATE OF SERVICE

 **TESORO SAVAGE**
Vancouver Energy Distribution Terminal

Mr. Stephen Posner
Interim EFSEC Manager
Washington State Energy Facility Site Evaluation Council
1300 S. Evergreen Park Drive SW
Olympia WA 98504-3172

Dear Mr. Posner:

Tesoro Savage Petroleum Terminal LLC (the Applicant) seeks a Site Certificate Agreement (SCA) to construct and operate the Tesoro Savage Vancouver Energy Distribution Terminal (the Facility) at the Port of Vancouver USA (the Port). At full build-out, the Facility will be able to receive up to an average of 360,000 barrels of crude oil per day by rail, store the oil on site, and load the oil onto marine vessels primarily for delivery to refineries located on the United States' West Coast (the USWC). The Facility will be entirely located within the Port of Vancouver. Washington State Energy Facility Site Evaluation Council (EFSEC) jurisdiction will begin at the time of delivery from the class 1 railroads transferring control of the unit trains to the Applicant at the project site boundary within the Port, and will end upon the return of the trains back to the receiving class 1 railroads from the Applicant.

The Facility's principal purpose is to provide North American crude oil to U.S. refineries to offset or replace declining Alaska North Slope crude reserves, California crude production, and more expensive foreign crude-oil imports. The crude oil handled by and shipped through the Facility will largely offset other sources of crude oil used by U.S. refineries that choose to source a portion of their crude through the Facility. In accordance with current federal law, crude oil extracted in the United States generally cannot be exported to foreign countries.

The Facility will increase the stability of energy supply for the USWC and advance the nation's movement toward energy independence. In accordance with the Merchant Marine Act of 1920 (better known as the "Jones Act") the oil, transported by water between United States ports, will only be carried in United States-flag ships, constructed in the United States, and owned and crewed by United States citizens and permanent residents. The economic impact directly and indirectly spurred by the Facility, through investment in energy exploration and development, manufacturing, and construction and facility operation jobs, will be significant. This benefit will extend both into the State of Washington, and to other areas of the United States. The applicant's analysis of the economic benefit the Facility shows that once in operation, the Facility will bring to the State of Washington and the City of Vancouver significant revenue through taxation of the Facility's capital improvements and annual property taxes. In total, construction of the terminal is expected to generate \$9.76 million in non-recurring taxes, of which Washington State can be expected to receive \$7.67 million and local government \$2.09 million. Based on the value of the project, the annual property tax generated is estimated to be \$1,552,951 in current (2013) dollars.

Facility Location: Oil production in portions of the United States and Canada is growing, resulting in the increased availability of crude oil to serve the U.S. domestic market. Transportation of the crude oil from the well sites, primarily in North Dakota, Montana, Colorado, Wyoming, and Texas, is limited by the lack of pipelines to the USWC. At the same time, production in California and Alaska is declining. USWC refineries have typically relied upon the receipt of crude oil from domestic and foreign sources for supply of refinery operations by marine vessels. These new sources of supply from Midwest North America will primarily replace crude oil from the Alaska North Slope and foreign sources all currently transported to the USWC by marine vessel.

The Port is an economic engine for the entire southwest Washington region. The Port has been in continuous operation since 1912, and provides quality jobs, international trade connections, a strong industrial land base and economic stability by generating revenue for our state and local services. Through the Columbia River and efficient national rail and road systems, the Port connects Southwest Washington to the national and global marketplace, a key factor in bringing community prosperity to Clark County. The Port represents the closest deep water port to the primary sources of the increased domestic production of petroleum, and is already served by the Class 1 railroads providing service from the source regions, thereby already providing the necessary transportation infrastructure for transportation of crude oil to United States West Coast refineries.

Among the many advantages of the Facility's location, are the Port's position on the Columbia River, a water way that has a comprehensively-developed infrastructure to serve large vessels of the type that will berth at the Facility. In addition, the Port has an existing, mature spill contingency planning system that is already serving the transportation of crude oil, petroleum products, and other materials. The Port's spill contingency planning, and other workplace and environmental plans and protocols, have been developed collaboratively with existing tenants and operators, local, state and federal agencies, and the environmental community.

The Port has existing deep draft berths to accommodate current and future marine vessels. It has programmatically developed the necessary rail infrastructure to handle the proposed rail traffic resulting from this and other projects, fully planned and constructed for unit train configuration; and it has the associated requisite marine infrastructure. The project is proposed in a fully developed industrial location, and will not require the filling of wetlands or the removal of long established native vegetation. With the exception of project-specific rail loops, no additional rail lines need to be constructed to service the facility's operations. The project will be constructed in an area that consists of modern fill, and direct impacts to cultural resources will be minimal to non-existent.

The Site; Heavy Industrial Zoning and Compatible Use: Much of the project will be located in northern portion of the Port that is the former site of aluminum processing facilities. The site has an intensive history of industrial use, dating back to 1940, when Alcoa first developed the site for aluminum smelting operations, and continuing until the early 2000's. When aluminum processing activities on the property ended, the Port completed the purchase of the Evergreen and Alcoa properties, with the exception of the on-site water tower and the dock structure in the Columbia River. All structures of the defunct aluminum processing plants have since been removed. The City of Vancouver's zoning allows all operations of the Facility within this heavy industrial-zoned area.

Transportation of Domestic Crude Oil: The Applicant proposes to bring unit trains of up to 120 cars with crude oil from Midwest North America into the Port, transported via Class I railroad lines. The oil will be received at the Port's existing West Vancouver Freight Access ("WVFA") rail facility, a facility built to accommodate unit trains for transport of materials on the Columbia River. The WVFA facility is considered by the State of Washington to be an "essential public facility," which has been subject to extensive prior land use planning and prior environmental review. The WVFA facility needs little enhancement to accommodate the project, and is operated and controlled by a Washington governmental agency (the Port), subject to rigorous environmental and safety standards.

Up to four unit trains per day (on average) will be delivered onto the Port's rail network for staging on the rail loops serving the Facility. Trains will arrive at Terminal 5 from the east and travel to the rail unloading building located on the north side of the Terminal 5 rail loop. The design of the rail access will accommodate complete unit trains, eliminating the need to break trains into smaller segments during the unloading process. Transportation of products via unit trains is more efficient and economical, while also

avoiding the potential safety risks inherent in breaking down and dispatching train cars within the transportation chain.

To support the staging of unit trains, two new rail lines will be added to the Terminal 5 rail infrastructure. These additional lines will form two complete loops inside the existing rail loops and will begin and end near the Gateway Avenue grade separation. The rail car unloading facility is composed of a covered structure through which the trains will be pulled and safely secured where the unloading will occur. Once delivered by rail, the crude oil will be transferred by pipeline into storage tanks, and then delivered by pipelines to the dock facility, where it will be loaded onto vessels.

The Marine Terminal: Impacts to critical areas have been avoided, to a large degree, by locating the Facility at an existing marine terminal, thus avoiding many of the direct environmental effects that could be expected from a new in-water facility. To obtain an optimal mooring configuration and to meet current, rigorous structural and seismic standards, a number of modifications will be required at the existing dock. These modifications include the removal of existing mooring dolphins and existing over-water solid and grated walkways, and the installation of new mooring dolphins and piles, along with new grated walkways. To mitigate the impacts of this in-water work the Applicant proposes to remove a substantial number of existing shallow water pilings, with a net benefit for the surrounding river habitat.

Air Quality and Greenhouse Gas: The applicant has designed the project to meet all applicable air emission standards, and is proposing measures to reduce emissions including handling crude oil in a fully closed system throughout the Facility to reduce VOC emissions, firing Facility boilers with pipeline quality natural gas, and installing a floating roof in each of the storage tanks. The applicant has conducted a comprehensive Best Available Control Technology (BACT) analysis, and has selected the most feasible, effective and economically viable emission controls.

Safety: The safe construction and operation of the Facility is the Applicant's top priority. Due to its location within the Port of Vancouver, the Facility is proposed to be within an area of the Port of Vancouver that has managed the transportation of many materials, including petroleum products, for many years. The Port and its tenants have long-established protocols, plans and operational strategies to respond to safety concerns, including a collaborative system to avoid and respond in the unlikely event of unintentional releases.

The Facility will receive crude oil in FRA and DOT approved rail tank cars. Beginning October 2011, all new DOT rail tank cars in crude oil service have included additional protective safety measures as compared to previous versions of these cars, including increased head and shell thickness, the use of normalized steel, incorporation of a ½-inch thick head shield, and a more robust housing or rollover skid for protection of top fittings. The Facility will incorporate industry standard secondary containment systems and will implement operating procedures, monitoring and inspection systems to ensure all unloading, storage, conveyance and vessel loading activities are conducted with the highest standard of care. These systems will include the capability to collect unintentional releases from the unloading operation with a capacity to secure the contents of an entire railcar; a fully lined storage area containment berm designed to capture 110% of the contents of the largest tank, in addition to storm water resulting from a 24-hour 100-year storm event, fully welded transfer pipelines, and a vessel loading facility designed to meet USCG spill prevention and safety regulations. The Facility will not handle Group 5 persistent oils which sink in water in the event of unintentional releases. The Facility will have at hand state-of-the-art booming and skimming equipment to recover materials should there be any releases to water; the Facility will also participate in the comprehensive spill contingency plan cooperatively implemented by local, state and federal regulators and marine shipping related industries. The Facility will incorporate a comprehensive fire protection system, and will work cooperative with local emergency responders to ensure they are equipped and trained to respond if needed.

Public and Agency Outreach: The Applicant has conferred with local, state and federal agencies, and will continue to do so in order to achieve compliance with all applicable regulatory standards. We have engaged in formal pre-application consultation with the City of Vancouver, and we anticipate fully meeting all applicable local land use, environmental and safety standards. We have conferred extensively with EFSEC staff, and anticipate achieving compliance with all regulatory standards, including assurance of safe, environmentally sound operation of the Facility. Consultation with local Native American Tribes is proceeding, and will continue throughout the EFSEC process. We have participated in public forums conducted by the Port, and have met individually with members of the local neighborhood association, along with local business and civic organizations. We will continue this outreach and consultation, including an upcoming public meeting to be held in Vancouver.

The Applicant requests that EFSEC make a determination under WAC 463-47-060(1) that an Environmental Impact Statement is required.

We are looking forward to working with EFSEC on this site certification permit. We feel that our core values of safety and environmental stewardship will be a positive contribution to the area. Further, we feel the project fits within historical use for this site and the Facility will bring many jobs to the area. We are committed to educating the community and interested parties about our proposed project through the EFSEC process. Please feel free to contact me at 801-944-6600 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly J. Flint". The signature is stylized and cursive.

Kelly J. Flint



STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL
PO Box 43172 • Olympia, Washington 98504-3172

**Tesoro Savage Vancouver Energy Distribution Terminal
Application No. 2013-01
Docket No. EF-131590**

DETERMINATION OF SIGNIFICANCE SCOPING NOTICE

**NOTICE OF INITIAL PUBLIC MEETING
and
NOTICE OF PUBLIC SCOPING MEETING**

Public Meeting October 28, 2013 6 to 9 p.m.	Clark College The Gaiser Student Center 1933 Fort Vancouver Way Vancouver, WA 98663
Scoping Meeting October 29, 2013 6 to 9 p.m.	Clark College The Gaiser Student Center 1933 Fort Vancouver Way Vancouver, WA 98663

Description of Proposal: Tesoro Savage Vancouver Energy Distribution Terminal Project, Application No. 2013-01, Docket No. EF-131590. Tesoro Savage Petroleum Terminal LLC (Applicant) is proposing to construct and operate the Tesoro Savage Vancouver Energy Distribution Terminal (Project). The proposed Project, at full operation, will receive up to an average of 360,000 barrels of crude oil per day from Midwest North America at the Port of Vancouver, WA (Port) in Clark County. Crude oil received by rail will be unloaded on site, stored temporarily, then loaded onto marine vessels at the Project site, primarily for delivery to refineries located on the United States West Coast.

The Project area spans 41.5 acres and includes approximately 38,500 linear feet of pipeline for conveying crude oil between three main Project areas: rail unloading facility, storage area, and the marine terminal. The Applicant proposes two additional rail lines be added to the existing rail loops at the Port's existing West Vancouver Freight Access (WVFA) rail facility, allowing accommodations for an average of 4 unit trains per day at the Project unloading facility. The Project storage area will contain six individual, double-bottom, aboveground, steel storage tanks. Each tank will be approximately 48 feet tall and 240 feet in diameter, with a shell capacity of 380,000 bbl¹ and a working capacity of approximately 340,000 bbl. Stored crude oil will be transferred by pipeline from storage tanks to the marine terminal for vessel loading at the Port's existing berths 13 and 14. The Applicant proposes the existing marine terminal undergo in- and

¹ bbl = Oil barrel

overwater construction modifications to accommodate Project operations for marine vessel loading.

The Applicant also proposes a 3,400 square-foot office building for administrative functions and two additional buildings to house other employee support facilities, each consisting of approximately 3,400 square feet. These buildings will be located on the north side of the rail unloading facility (Terminal 5), south of Old Lower River Road.

Proponent: Tesoro Savage Petroleum Terminal LLC, 101 Columbia Boulevard, Suite 108 & 110, Vancouver, WA, 98660.

Location of Proposal: The proposed Project will be constructed in south-west Washington on a 41.5 acre site located at the Port within the City of Vancouver in Clark County. The proposed Project will be located on the north shore of the Columbia River, approximately 103 to 106 river miles from the Pacific Ocean. The land for the proposed Project is currently zoned by the City of Vancouver as heavy industrial. The rail unloading facility (Terminal 5) has existing rail infrastructure, where the Applicant proposes construction of two additional rail loops and 3 administrative office buildings. The Columbia River waterway is in the Project area and two offsite wetlands are in the vicinity of the Project areas, one immediately east of the Project storage area (Parcel 1A), and the other located north of the rail unloading facility (Terminal 5).

Lead Agency: Washington State Energy Facility Site Evaluation Council (EFSEC).

EIS Required: The lead agency has determined that this proposal is likely to have a significant adverse impact on the environment. An Environmental Impact Statement (EIS) is required under RCW 43.21C.030(2)(c) and will be prepared.

An Application for Site Certification is available for review at the EFSEC office. Copies have also been provided to the Washington State Library and local libraries. The Application and other materials are available on EFSEC's website at www.efsec.wa.gov.

The lead agency has identified the following areas that will likely be discussed in the EIS: Geology and Soils; Vegetation, Fish, and Wildlife; Water Quality, Runoff/Absorption; Air Quality, Climate; Energy and Natural Resources; Environmental Health, Noise, Risk of Fire or Explosion, Releases or Potential Releases of Toxic or Hazardous Materials; Land and Shoreline Use, Population, Housing, and Employment; Historic and Cultural Preservation; Aesthetics; Transportation: Vehicular, Waterborne, and Rail Traffic; Public Services and Utilities.

Scoping and Scoping Meeting: The proposed Project triggers environmental review and public notice requirements of the State Environmental Policy Act (SEPA). EFSEC intends to conduct a SEPA scoping meeting at the time and location described above.

Agencies, affected Tribes, and members of the public are invited to comment on the scope of the EIS. Interested persons or organizations may comment on alternatives, mitigation measures, probable significant adverse impacts, and licenses or other approvals that may be required.

Initial Public Meeting: As required by RCW 80.50.090(1), EFSEC will hold a Public Informational Meeting where the EFSEC process will be explained. The Applicant will make a presentation regarding the proposed Project and the public will have the opportunity to present written or oral comments at the meeting regarding the Project, as required under WAC 463-26-025 (1) and (2). The Counsel for the Environment will also be introduced and will explain his statutory duties.

Written comments may be submitted via mail or email at:

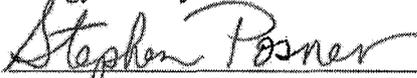
Stephen Posner,
Interim EFSEC Manager
Energy Facility Site Evaluation Council
P.O. Box 43172
1300 S Evergreen Park Dr. SW
Olympia, WA 98504-3172

Via e-mail to efsec@utc.wa.gov

Scoping Comment Period: October 3 – November 18, 2013. All scoping comments must be received in the EFSEC office no later than 5 pm on November 18, 2013. Written comments may also be submitted at the October 29 meeting.

Open House: The October 28 meeting will start with an Open House from 6:00 to approximately 6:30 p.m., where the public will have an opportunity to interact informally with the Applicant and EFSEC staff.

Responsible Official
Energy Facility Site Evaluation Council



Date: 10/1/2013

Stephen Posner, Interim EFSEC Manager
EFSEC, P.O. Box 43172, Olympia, WA, 98504-3172

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA
CLUB; and NORTHWEST
ENVIRONMENTAL DEFENSE CENTER,

Plaintiffs,

vs.

PORT OF VANCOUVER USA; JERRY
OLIVER, Port of Vancouver USA Board of
Commissioners President; BRIAN WOLFE,
Port of Vancouver USA Board of
Commissioners Vice President; and NANCY
I. BAKER, Port of Vancouver USA Board of
Commissioners Secretary,

Defendants.

No. 13-2-03431-3

**DECLARATION OF
THERESA WAGNER IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

I, Theresa Wagner, declare:

1. I am the Communications Manager for the Port of Vancouver USA. I have
been employed at the Port for 3-½ years.

2. I attended each of the Port Commission's sessions relating to the ground lease
to the Tesoro Savage Joint Venture ("TSJV"), including five public workshops and the
July 23 and October 22 Commission meetings. I also attended the July 22 executive session,
though I entered the session about 20 minutes after it began due to press obligations in
connection with the workshop.

1 - **DECLARATION OF THERESA WAGNER IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
13-2-03431-3

MARKOWITZ, HERBOLD,
GLADE & MEHLHAF, P.C.
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 295-3085

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3. As I observed it, the July 22 executive session discussed whether changes should be made to the proposed lease terms as a result of any information, including public comment, received by the Commission during the workshop period.

4. I did not observe, during the July 22 executive session, any deliberation, any decision, or any vote by the Commission on the merits of the TSJV lease.

5. I left the July 22 executive session not knowing how the vote the next day would turn out.

6. I attended the October 22 public meeting where the Commission approved the TSJV lease. I did not know how that vote would turn out before it occurred.

7. Attached hereto as Exhibit A is a true and correct copy of a July 3, 2013 press release issued by the Port regarding the July 22 workshop.

8. Attached hereto as Exhibit B is a true and correct copy of the October 17, 2013 press release regarding the Commission's October 22 meeting.

9. Attached hereto as Exhibit C is a true and correct copy of the June 20, 2013 press release regarding the June 27, 2013 workshop held by the Commission.

10. Attached hereto as Exhibit D is a true and correct copy of a fact sheet on the TSJV project prepared by Port staff.

11. Attached hereto as Exhibit E is a true and correct copy of a press release issued by Tesoro and Savage on April 22, 2013.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and are subject to penalty for perjury.

DATED

12/5/2013

Theresa Wagner

DocuSigned by:
Theresa Wagner
DDE3026762E047A...

COLUPV358225_2

2 - **DECLARATION OF THERESA WAGNER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
13-2-03431-3

MARKOWITZ, HERBOLD,
GLADE & MEHLHAF, P.C.
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 296-3085

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2013, I have made service of the foregoing **DECLARATION OF THERESA WAGNER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the parties listed below in the manner indicated:

Brian A. Knutsen
Smith & Lowney, PLLC
917 SW Oak Street, Suite 300
Portland, OR 97205

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email - briank@igc.org

Elizabeth H. Zultoski / Eric D. Lowney
Smith & Lowney, PLLC
2317 E John Street
Seattle, WA 98112
Attorneys for Plaintiffs

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email - elizabethz@igc.org
briank@igc.org

DATED this 6th day of December, 2013.



Lawson E. Fite, WSBA #44707
Attorney for Defendants

INFORMATION SHEET

Tesoro-Savage Petroleum Terminal

The Tesoro-Savage Petroleum Terminal (TSPT) is the latest addition to a growing list of new businesses, customers and jobs that are coming to the Port of Vancouver USA.



WHY POV?

- The Port of Vancouver USA is in the logistics business. It's what we do; and we're good at it.
- We handle a wide variety of cargoes, which includes the movement of liquid bulks, such as jet fuel and diesel, through the Port of Vancouver.
- Adding North American crude oil to our already diverse list of cargoes makes the port more robust and resilient – more stable in uncertain economic times – and able to continue to provide economic benefit to Southwest Washington.
- We believe the TSPT project will benefit the port and the community.

COMMUNITY BENEFITS

- Between 80 and 120 people will be directly employed by TSPT and those jobs will be family-wage jobs with good benefits.
- Over 1,000 people will have direct, fulltime jobs in the transport, handling and servicing of the facility.*
- Total jobs created or related to supporting the TSPT facility and its employees tops 2,700, and will bring \$61 million in annual local purchases.*
- The facility will generate nearly \$19 million in tax revenue annually that will go to state and local coffers for public facilities and services.*

PROJECT BASICS

- Approximately 42 acres of port property will be leased by TSPT.
- The lease will be for a period of 10 years.
- North American crude oil will be transported by rail from the Bakken Formation to the port where it will be unloaded, stored and then shipped by marine vessel to refineries in California, Washington and Alaska.
- The state-of-the-industry handling facility will include rail unloading at Terminal 5, storage at Parcel 1A, and vessel loading at Terminal 4.
- The anticipated initial volume is 120,000 barrels per day (bpd) with near-term expansion to 280,000 bpd; however, TSPT will permit for up to 360,000 barrels per day.
- 120,000 bpd equates to two unit trains per day; 280,000 equates to four unit trains per day.
- Unit trains are made up of approximately 110 rail cars and are about a mile-and-a-half in length.



Port of Vancouver USA

3103 NW Lower River Road, Vancouver, WA 98660 T: 360.693.3611 F: 360.735.1565 E: info@portvanusa.com www.portvanusa.com



**TESORO AND SAVAGE ANNOUNCE JOINT VENTURE
TO CONSTRUCT AND OPERATE CRUDE-BY-RAIL UNLOADING
AND MARINE LOADING FACILITY AT PORT OF VANCOUVER USA**

**Provides substantial economic benefits to the local community*

**Supports energy independence by facilitating transportation of North American crude to West Coast refineries*

**Combines capabilities, experience and resources of partners with strong safety and environmental commitments*

**Advances Port of Vancouver's strategic diversification and development goals*

Vancouver, Wash. – April 22, 2013 – Tesoro Corporation (“Tesoro”) and Savage Companies (“Savage”) today announced the formation of a joint venture between Tesoro Refining & Marketing Company LLC (a subsidiary of Tesoro) and Savage to develop and operate a new 120,000 barrel-per-day (bpd) crude-by-rail unloading and marine loading facility at the Port of Vancouver, Wash., subject to approval by regulatory agencies and Port Commissioners.

With access to rail and existing marine infrastructure, the Port of Vancouver is uniquely positioned to serve as a hub for the distribution of North American crude oil to West Coast refining centers. Tesoro and Savage are ideal partners for this project, having already operated in close partnership for almost ten years on the West Coast. The Tesoro-Savage Joint Venture’s combined capabilities, experience and resources are expected to create substantial benefits for the Port and the Vancouver community in the form of sustainable revenue to the Port and local jobs associated with the facility’s construction and operation.

“This is an exciting project, and we are pleased to be partnering again with Savage,” said Greg Goff, President and CEO of Tesoro. “Building upon the recent success of the rail unloading facility at our Anacortes, Wash., refinery, where we have been delivering Mid-Continent crude oil via unit train in an environmentally sound and cost-effective manner, this project is the ideal next step for Tesoro as we drive additional feedstock cost advantage to the remaining refineries in our West Coast system.”

“We are looking forward to bringing crude oil destination services to the Port of Vancouver,” said Kirk Aubry, President and COO of Savage. “This partnership solidifies Savage’s position as a leading provider of services in the crude-by-rail market to refiners, producers and marketers. More importantly, our collaboration with Tesoro will ensure that the facility is safe, productive and environmentally responsible.”

“The Tesoro-Savage Joint Venture is an ideal fit for what’s necessary to execute this project,” said Todd Coleman, Chief Executive Officer of the Port of Vancouver. “This project aligns with our strategic goals and our mission to provide economic benefits to our community through leadership, stewardship and partnership in marine and industrial development. The Port will benefit from Tesoro’s and Savage’s shared expertise, and we look forward to working with them to help support the local economy by further diversifying our cargo handling capabilities.”

The Tesoro-Savage Joint Venture will own the crude unloading and marine loading facilities and will enter into a land lease agreement with the Port for an initial period of ten years. Savage will oversee and manage the design, construction and operation of the facility on the Joint Venture’s behalf. The facility is expected to be operational in 2014 and will represent an investment of approximately \$75 to \$100 million, and will be designed to handle an estimated initial volume of 120,000 bpd with potential near-term expansion capability to 280,000 bpd.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA
CLUB; and NORTHWEST
ENVIRONMENTAL DEFENSE CENTER,

Plaintiffs,

vs.

PORT OF VANCOUVER USA; JERRY
OLIVER, Port of Vancouver USA Board of
Commissioners President; BRIAN WOLFE,
Port of Vancouver USA Board of
Commissioners Vice President; and NANCY
I. BAKER, Port of Vancouver USA Board of
Commissioners Secretary.

Defendants.

No. 13-2-03431-3

**DECLARATION OF
MICHELLE ALLAN IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

I, Michelle Allan, declare:

1. I am the Executive Assistant at the Port of Vancouver. I attended the five workshop sessions regarding the Tesoro Savage Joint Venture ("TSJV") lease, including the July 22 executive session, as well as the July 23 and October 22 meetings of the Board of Commissioners.
2. Attached as Exhibit A is a true and correct copy of the minutes of the Commission's June 27, 2013 public meeting and workshops.
3. Attached as Exhibit B is a true and correct copy of the public notice for the July 22 workshop and executive session.

1 - **DECLARATION OF MICHELLE ALLAN IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
13-2-03431-3

MARKOWITZ, HERBOLD,
GLADE & MENHAF, P.C.
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 295-3085

1 4. The following people were in attendance at the Commission's July 22
2 executive session: Commissioner Jerry Oliver, Commissioner Brian Wolfe, Commissioner
3 Nancy I. Baker, Todd Coleman, Julianna Marler, Alastair Smith, Patty Boyden, Jeff Estueta,
4 Curtis Shuck, Mary Mattix, Theresa Wagner, Alicia Lowe, Mike Schiller, Addison Jacobs,
5 and me.

6 5. The July 22 executive session discussed whether changes should be made to
7 the proposed lease terms as a result of any information, including public comment, received
8 by the Commission during the workshop period.

9 6. The July 22 executive session did not include any deliberation, any decision,
10 or any vote by the Commission on the merits of the TSJV lease.

11 7. Commissioner Oliver asked staff to determine, at the end of the executive
12 session, whether there were any members of the public still in the building. As there were
13 none left, he adjourned the public meeting in the same conference room as the executive
14 session.

15 8. When I left the July 22 executive session, I did not know how the
16 Commission would vote on the lease on July 23.

17 9. Attached as Exhibit C is a true and correct copy of the minutes of the
18 Commission's July 22, 2013 workshop and executive session.

19 10. Attached as Exhibit D is a true and correct copy of the minutes of the
20 Commission's July 23 public meeting.

21 11. I did not know, prior to the October 22 meeting, how the Commission would
22 vote on the lease.

23 12. Attached as Exhibit E is a true and correct copy of the agenda and meeting
24 materials for the Commission's October 22, 2013 public meeting.

25 13. Attached as Exhibit F is a true and correct copy of the minutes of the
26 Commission's October 22, 2013 public meeting.

2 - **DECLARATION OF MICHELLE ALLAN IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
13-2-03431-3

MARKOWITZ, HERBOLD,
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14. Attached as Exhibit G is a true and correct copy of the lease between the Port of Vancouver USA and Tesoro Savage Petroleum Terminal, LLC, which the Port executed on October 22, 2013. Portions of the document have been redacted to protect confidential business information of the Port and of the lessee.

15. Attached as Exhibit H is a true and correct copy of the advance-circulated Agenda for the July 23, 2013 meeting of the Board of Commissioners.

16. Attached as Exhibit I is a true and correct copy of the presentation made by Jim Luce, chair of the Energy Facility Site Evaluation Council, at the June 27, 2013 workshop held by the Commission.

17. In addition to public comment received orally at meetings and workshops of the Board of Commissioners, the Port received substantial amounts of written comment, including from the plaintiff organizations. Attached as Exhibit J are true and correct copies of comment letters dated July 8, 15, and 22 from one or more of the plaintiffs.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and are subject to penalty for perjury.

DATED this 5th day of December, 2013.

Michelle Allan
Michelle Allan

GOLUPVA358486_2

3 - **DECLARATION OF MICHELLE ALLAN IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
13-2-03431-3

**MARKOWITZ, HERBOLD,
GLADE & MEHLHAF, P.C.**
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 296-3085

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2013, I have made service of the foregoing **DECLARATION OF MICHELLE ALLAN IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the parties listed below in the manner indicated:

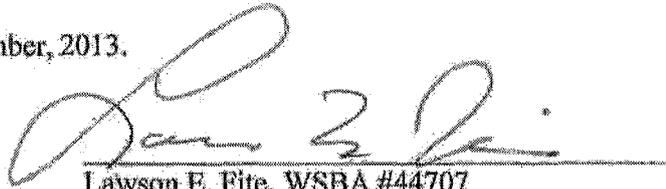
Brian A. Knutsen
Smith & Lowney, PLLC
917 SW Oak Street, Suite 300
Portland, OR 97205

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- Overnight Courier
- Email - briank@igc.org

Elizabeth H. Zultowski / Eric D. Lowney
Smith & Lowney, PLLC
2317 E John Street
Seattle, WA 98112
Attorneys for Plaintiffs

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email - elizabethz@igc.org
briank@igc.org

DATED this 6th day of December, 2013.



Lawson E. Fite, WSBA #44707
Attorney for Defendants

**PORT OF VANCOUVER USA
BOARD OF COMMISSIONERS
REGULAR MEETING
Tuesday, October 22, 2013**

CALL TO ORDER

Commission President Jerry Oliver called a regular meeting of the Port of Vancouver Board of Commissioners to order at 9:30 a.m., Tuesday, October 22, 2013 at the Port of Vancouver USA Administrative Office, 3103 NW Lower River Road, Vancouver, Washington 98660.

OPENING REMARKS BY PRESIDENT AND EXECUTIVE DIRECTOR

The regular meeting was opened to the public at 9:30 a.m. by Commissioner Oliver. He then invited guests to participate in the Pledge of Allegiance.

Staff and guests in attendance included the following:

Jerry Oliver	Port Commission President
Brian Wolfe	Port Commission Vice President
Nancy Baker	Port Commission Secretary
Todd Coleman	Port Executive Director
Julianna Marler	Port Administrative Services Director
Patty Boyden	Port Director of Environmental Services
Curtis Shuck	Port Economic Development & Facilities Director
Alastair Smith	Port Senior Director of Marketing & Operations
Jeff Estuesta	Port Finance Director
Michelle Allan	Port Executive Assistant
Alicia Lowe	Port Legal Counsel
Lawson Fite	Port Legal Counsel
Theresa Wagner	Port Communication Manager
Scott Goodrich	Port Accounting Manager
Mike Schiller	Port General Manager of Operations
Katy Brooks	Port Community Planning & Outreach Manager
Dawn Egbert	Port Contracts Manager
Mackenzie Field	Port Communications Coordinator
Katie Odem	Port Communications Specialist
Kris Tonn	Port Administrative Assistant
Pat Doncaster	Community Member
Carol Panfilio	Community Member
Barry Cain	Columbia Waterfront LLC
Terry Finn	BNSF Railway
Al H. Gillespie	Community Member
Wilford J. Hudson	Community Member

Dave Seabrook	Community Member
Don Steinike	Community Member
Pat Kiely	H. Tech Metal Fab
Steve Lennon	Community Member
Miles Johnson	Columbia Riverkeeper
Jim Eversaul	Sierra Club
Michael Moore	Thompson Metal Fab
Lehman Holder	Sierra Club
Paul Montague	Community Member
Tedine Roos	Community Member
Jim Maul	Community Member
Erskine Wood	Community Member
John B. Rudi	Thompson Metal Fab
Paul Furth	Community Member
Tim Schauer	CREDC/Mackay & Sposito
Dan Serres	Columbia Riverkeeper
Ron Morrison	Community Member
Den Mark Wichar	Community Member
Marla Nelson	Northwest Environmental Defense Center
Marion Ward	Community Member
Larry Snyder	Community Member
Cager Clabaugh	ILWU Local 4
Gretchen Starke	Vancouver Audubon Society
Greg Martin	Community Member
Eric LaBrant	Community Member
Rob Rich	Shaver Transportation
Kelly Flint	Savage/Tesoro
Sydney Reisbick	Friends of Clark County
Larry Dykier	Alliance Individual Group
Heather Tischbein	Community Member
Stephen Hulick	Community Member
Doug Mourer	Honeywell
Steve Oliva	HSP/Waterfront
George Vaughan	Community Member
Mike Alleyn	
Pierre Danowski	Gramor Development
Pat Freiberg	
Mark Smith	Tesoro
Larry Purchase	Community Member
Randy Clisk	ACGI
Arwen Bird	Community Member
Sharon Pesut	Partners in Careers
Diana L. Gordon	Community Member
Andy Stone	Community Member
Courtney Wallace	BNSF
Justin Piper	BNSF
Alona Steinke	Community Member

Judy Edwards	Community Member
Cynthia Exton	Community Member
Ken Rone	Community Member
Aaron Corvin	The Columbian
Trixie Stowell	Community Member
Matt Gill	Tesoro
Jane Jacobsen	Community Member
Bob Rowe	Community Member
Jeff Arrowsmith	HDJ Design Group
Cassandra Profita	OPB News
Bonnie Cross	HDJ Design Group
Lyndee Cunningham	Community Member
David Macko	Community Member
William Curtis	Community Member
Raymond L. Witter	Community Member
Denise McCarthy	CREDC
Wilbur Wood	Community Member
Pat Christensen	UA Local 290
Katlin Hulick	Community Member

APPROVAL OF MINUTES

Regular Meeting of October 8, 2013

On motion by Commissioner Baker, seconded by Commissioner Wolfe and carried unanimously, the Port of Vancouver USA Board of Commissioners approved the minutes of the October 8, 2013, regular meeting.

OPEN FORUM

Commission President Oliver invited comments from the audience.

Cager Clabaugh, ILWU Local 4

Mr. Clabaugh expressed concerns regarding safety due to helicopters landing at United Grain Corporation. He asked the port to have this stopped.

Ron Morrison

Mr. Morrison asked the commission about hiring Lawrance Paulson for the Energy Facility Site Evaluation Council (EFSEC), how much he would be compensated and who will pay. Commissioner Oliver replied the state will reimburse Mr. Paulson, which is paid through EFSEC. Mr. Oliver deferred to Executive Director Coleman who stated the port could provide Mr. Morrison more information on the matter. Commissioner Oliver indicated it is equivalent to a consultant's compensation. Commissioner Wolfe

added Mr. Paulson does not vote on the council; he is a representative for the port with advisory capacity.

No other comments were received.

ACTION ITEMS

Approve the Ground Lease Agreement Between the Port of Vancouver USA and Tesoro Savage Petroleum Terminal LLC

Executive Director Coleman introduced the action item as contained in the agenda packet and stated the board of commissioners has already heard a great deal about this item.

Executive Director Coleman stated the port received statements of concern about the announcement of executive session following the July 22nd public meeting. He stated the port discussed these issues immediately and has identified steps to correct the procedural issues. He stated this commission and staff has always taken very seriously the Port of Vancouver's values and mission. Values including professionalism, integrity and respect are extremely important and are core to what we do, who we are as people and who we are as employees. He stated based on that, staff felt it appropriate to correct any procedural issues.

While we are confident the use of executive session on July 22, 2013 was appropriate, Executive Director Coleman stated. The port has the authority under the Revised Code of Washington to discuss terms of an agreement which affect the value of the agreement. This authority is consistent with the Port's use of executive session on July 22nd. He indicated the port acknowledges there were shortcomings in our process; those shortcomings include quoting the RCW, a clear reason for using executive session and a concluding time. He added this is relatively simple for us to cure. The port can take a new vote on the Tesoro Savage lease.

Mr. Coleman stated on July 22, 2013 in executive session there was no action taken. The deliberation and action was taken on July 23, 2013 during a regular open meeting. He indicated to make sure the use of executive session is clear and the procedures are consistent, the port has created an Executive Session Reference Guide. He added we did not have an executive session this morning, but would we have, there would have been a citing of the RCW on a specific reason why we were in executive session and what time we would have concluded.

Executive Director Coleman specified the port did also speak immediately with the State Auditor's Office, again, because we take professionalism very seriously. We like to do things professionally and in this case we fell short and we had the opportunity to correct it and for that he apologized. The State Auditor's Office indicated the port had taken the appropriate corrective steps by creating the Executive Session Reference Guide.

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Honorable David E. Gregerson (Dept. 2)
Set: July 24, 2015 at 1:30 p.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA) No. 13-2-03431-3
CLUB; and NORTHWEST)
ENVIRONMENTAL DEFENSE CENTER)

Plaintiffs,

PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

v.

PORT OF VANCOUVER USA; JERRY)
OLIVER, Port of Vancouver USA Board)
of Commissioners President; BRIAN)
WOLFE, Port of Vancouver USA Board of)
Commissioners Vice President; and)
NANCY I. BAKER, Port of Vancouver)
USA Board of Commissioners Secretary,)

Defendants.

PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

KAMPMEIER & KNUTSEN, PLLC
833 S.E. Main St., Suite 327; Mail Box 318
Portland, OR 97214
(503) 841-6515

1 **I. MOTION.**

2 Plaintiffs Columbia Riverkeeper, the Northwest Environmental Defense Center, and
3 the Sierra Club (collectively “Riverkeeper”) hereby move the Court under CR 56 for summary
4 judgment on their First, Third, and Fourth Causes of Action—each of which alleges violations
5 of the Open Public Meetings Act (“OPMA”). *See Riverkeeper’s Second Am. Compl.* (“Sec.
6 Am. Compl.”), ¶¶ 53-55; ¶¶ 58-63.¹ Riverkeeper requests that the Court enter declaratory
7 relief determining that Defendants Port of Vancouver USA and its Board of Commissioners—
8 Jerry Oliver, Nancy Baker, and Brian Wolfe—(collectively “Defendants”) violated OPMA by
9 repeatedly excluding the public from Board meetings where deliberations on a proposed lease
10 for a petroleum storage and transport facility occurred. Given the pervasive nature of these
11 violations throughout the development of the project, Riverkeeper further requests the Court
12 declare the Defendants’ approval of the lease null and void.² Finally, Riverkeeper requests the
13 Court enter declaratory relief determining that Defendant Jerry Oliver violated OPMA by
14 failing to publically announce the time a July 22, 2013, executive session would conclude and
15 by failing to publically announce a valid purpose and each actual purpose for which members
16 of the public were excluded from that executive session.

17 **II. INTRODUCTION.**

18
19
20 The right of the public to be present and to be heard during all phases of enactments by
21 boards and commissions [sic] is a source of strength in our country.... [T]hese specified
22 boards and commissions, through devious ways, should not be allowed to deprive the
23 public of this inalienable right to be present and to be heard at all deliberations wherein
24 decisions affecting the public are being made.

25 ¹ Riverkeeper does not intend to pursue its Second Cause of Action.

26 ² The Court previously ruled that Riverkeeper’s request for injunctive relief on the OPMA
27 claims was rendered moot by Defendants’ second vote to approve the lease. As explained
28 below, Riverkeeper respectfully requests the Court reconsider that decision in light of
subsequently discovered evidence of much more extensive OPMA violations.

1 OPMA's exception for an executive session allowed them to exclude the public from Board
2 meetings.

3 **B. Defendants Violated OPMA by Excluding the Public from Seven Meetings.**

4 Defendants are prohibited from excluding the public from Board meetings when any
5 communications, deliberations, discussions, considerations, reviews, or similar transactions of
6 official business related to the proposed Tesoro-Savage facility occur. *See supra* § III.C
7 (OPMA applicability). Defendants may lawfully exclude the public from such meetings only
8 if one of the narrow statutory exceptions applies. *See* RCW 42.30.110; *and see Miller*, 138
9 Wn.2d at 327.
10

11 Throughout the six months that the Port negotiated the lease with Tesoro-Savage,
12 Defendants excluded the public from at least seven Board meetings that involved key reviews,
13 deliberations, considerations, and communications about the proposed lease under the guise of
14 OPMA's "minimum price" exception.⁵ *See supra* § IV.B; *Third Knutsen Decl.*, Ex. B, pp. 4-6
15 (claiming RCW 42.30.110(1)(c) as the legal authority for all seven executive sessions at issue).
16 Defendants justify these private meetings with an egregiously expansive interpretation of the
17 "minimum price" exception that conflicts with the plain language of OPMA and numerous
18 court rulings interpreting the statute. The Court should reject such an interpretation.
19

20 **1. OPMA only allows executive sessions to discuss the "minimum**
21 **price" at which real estate will be offered.**

22 Under RCW 42.30.110(1)(c), Defendants may hold an executive session "[t]o consider
23 the minimum price at which real estate will be offered for sale or lease when public knowledge
24 regarding such consideration would cause a likelihood of decreased price." This narrowly
25

26 ⁵ Riverkeeper is moving for summary judgment on seven of the several executive sessions held
27 in 2013 that included discussions about the crude-by-rail facility. Riverkeeper reserves the
right to conduct additional discovery and establish additional violations at trial.

1 its members are within the OPMA's zone of interests because the Legislature enacted the
2 OPMA to ensure public access to government deliberations like those preceding the Port's
3 lease. See RCW 42.30.010 (declaring purposes of OPMA). Riverkeeper has standing on
4 behalf of its members who are injured and on behalf of itself. See, e.g., *Save a Valuable*
5 *Environment v. City of Bothell*, 89 Wn.2d 862, 866-7 (1978). Further, this case involves
6 matters of serious public importance, so the Court should exercise its jurisdiction accordingly.
7 See, e.g., *Wash. Natural Gas Co. v. Public Utility District No. 1*, 77 Wn.2d 94, 96 (1969).
8

9 **VIII. CONCLUSION.**

10 For the foregoing reasons, Plaintiffs Columbia Riverkeeper, Sierra Club, and
11 Northwest Environmental Defense Center respectfully request that the Court grant summary
12 judgment as described herein.

13 RESPECTFULLY SUBMITTED this 12th day of June, 2015.

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Hon. David E. Gregerson (Dept. 2)
Set: July 24, 2015
Time: 1:30 p.m.

E-FILED
07-10-2015, 16:28
Scott G. Weber, Clerk
Clark County

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA
CLUB; and NORTHWEST
ENVIRONMENTAL DEFENSE CENTER,

Plaintiffs,

vs.

PORT OF VANCOUVER USA; JERRY
OLIVER, Port of Vancouver USA Board of
Commissioners President; BRIAN WOLFE,
Port of Vancouver USA Board of
Commissioners Vice President; and NANCY
I. BAKER, Port of Vancouver USA Board of
Commissioners Secretary,

Defendants.

No. 13-2-03431-3

**DEFENDANTS' OPPOSITION
TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

**i - DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT
NO. 13-2-03431-3**

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1 Typically, the Port provides information in written form to the Commission that it
2 does not discuss orally with the Commission. For example, the leadership team may provide
3 documents to the Commissioners to give them an update on negotiations, but those
4 documents are not discussed with the Commission in public meeting or executive session.
5 (*Id.* 75:1-20, 77:20-25.) Also, the Port often provides background written material to the
6 Commission to read in advance of executive session, but the Port and Commission limit the
7 discussion in executive session to the portions of the material that fall within a designated
8 topic under OPMA. (*Id.* 39:11-40:18.) Thus, the existence of a written document associated
9 with a Commission meeting is not conclusive or necessarily indicative of what was discussed
10 during the meeting.

11 In determining whether to bring a topic to executive session under RCW
12 42.30.110(1)(c), the team discusses whether competitive sensitivities exist and the likelihood
13 the Port would obtain a decreased price if the topic were discussed publicly. (*Id.* 44:22-
14 46:1.) Then the Port's CEO and legal counsel go through the proposed topics for executive
15 session to determine whether they fall within the OPMA. (*Id.* 35:2-9, 38:14-39:3.) The
16 Commissioners rely on counsel to advise them and ensure their discussions comply with the
17 OPMA. (Oliver Dep. 39:2-40:7, 40:24-41:2, 54:14-55:5; Wolfe Dep. 120:22-121:13; Baker
18 Dep. 21:2-7, 21:18-22:7; Asai Exs. 6-7.)

19 The Port interprets the OPMA's executive session topics narrowly. (Coleman Dep.
20 24:15-25:4, 50:17-25.) For the "minimum price" provision, the Port views two categories of
21 information as appropriate: (1) information that would give the customer an advantage in
22 negotiating a lower price; and (2) information that would give a competitor an opportunity to
23 negotiate with the Port's customer, thus creating a bidding process that would decrease the
24 Port's price. (*Id.* 50:17-25.) Public disclosure of the lowest price could give a competitor an
25 opportunity to steal an entire project from the Port. (*See id.* 114:14-115:24.)
26

1 The Port provides public notice that it will hold any meeting, public or executive
2 session, usually the week before the meeting. (Coleman Dep. 43:19-25; Allan Ex. A.) If the
3 Commission plans to hold an executive session, the Port will give the President of the Board
4 the topic and statutory provision under the OPMA that will be discussed in executive session
5 so he or she can make the appropriate announcement. (Coleman Dep. 41:6-21.)

6 **IV. The Port held executive sessions relating to the proposed lease terms that could**
7 **affect price.**

8 The Port conducted all of its executive sessions in accordance with its narrow
9 interpretation of the “minimum price” provision under the OPMA. (*Id.* 174:18-175:11.) The
10 Port is confident that all of the executive sessions at issue complied with the OPMA. (*Id.*
11 174:18-175:20.)

12 **A. March 26, 2013.**

13 The Port held an executive session on March 26, 2013. (Knutsen Ex. G.) At the time
14 of the March 26 executive session, the Port staff was negotiating rates with TSJV,
15 negotiating an exclusive dealing agreement with TSJV, and creating a draft lease. (Coleman
16 Dep. 95:1-8.)

17 During the executive session, the Port discussed the proposed project, as well as
18 another real estate matter and litigation issue. (*Id.* 94:22-25, 95:14-25.) As relevant to TSJV,
19 the Port staff presented information to the Commission about the current status of the price-
20 related lease terms, such as the base rate, wharfage fees, dockage fees, and rail fees. (*Id.*
21 96:5-16, 96:21-24, 98:12-23.) The Port staff also discussed the proposed schedule for the
22 exclusivity agreement (e.g. how long exclusivity should exist). (*Id.* 96:17-20, 97:9-25.) All
23 these topics related to the price at which the real estate would be offered for lease because if
24 made public, the disclosure would lead to a likelihood of decreased price. (*Id.* 114:14-
25 115:24, 144:9-19; Coleman Decl. ¶ 4.)
26

1 **B. April 9, 2013**

2 The Port held an executive session on April 9, 2013 while CEO Coleman was in
3 Korea. (Knutson Ex. H; Coleman Dep. 99:14-20.) The Port cancelled the public portion of
4 the Commission meeting that day, with proper notice, because the Port had no business to be
5 taken in public. (Coleman Dep. 99:21-100:10; Allan Ex. A at 4.) Eleven members of the
6 Port staff attended the meeting, plus the three Commissioners, two of the Port's attorneys,
7 and representatives from TSJV and BNSF. (Coleman Dep. 102:4-18.) The attendees,
8 including legal counsel, believed the executive session comported with the minimum price
9 topic. (Coleman Dep. 174:18-175:11; Krout Decl. ¶ 3; Lowe Decl. ¶¶ 5-7; *see also* Marler
10 Decl. ¶ 2; Schiller Decl. ¶¶ 8-9.)

11 The Port held the April 9 executive session to inform the Commission of several key
12 elements of the lease that determine the price of the facility, such as the rate structures,
13 acreages, facilities, and rail infrastructure. (Coleman Dep. 100:11-23, 101:12-102:3.) The
14 Commissioners were very interested in discussing the project with the public and in giving
15 the public an opportunity to comment. (*Id.* 114:14-115:24, 115:25-116:15, 129:5-130:13.)
16 However, at that time, the Port was negotiating with TSJV about the minimum price for
17 several elements of the lease and had not yet agreed to exclusivity. (*Id.* 114:14-115:24,
18 144:9-19.) Several other ports were interested in the project and would have likely competed
19 for TSJV's business if the project had been disclosed publicly prior to the exclusive dealing
20 agreement being executed. (*Id.* 114:14-115:24.) Such competition would have, at minimum,
21 led to decreased price for the real estate.

22 Some April 9 attendees have limited recollection of what occurred during the
23 meeting. (*Id.* 102:22-103:3, 104:5-7; Allan Decl. ¶ 2; Boyden Decl. ¶ 3; Hepler Decl. ¶ 3;
24 Lowe Decl. ¶¶ 7-8; Marler Decl. ¶ 5; Krout Decl. ¶ 4; Schiller Decl. ¶ 10.) But interviews of
25 the attendees, as well as notes taken by two Port attorneys in attendance, demonstrate that the
26 April 9 executive session discussed the economic terms of the proposed project, including the

1 size of vessels, the number of barrels stored onsite and in tanks, the number of cars per train,
2 the impacts and coordination of underground pipes with other terminals, and the use of rail
3 tracks. (Coleman Dep. 102:22-103:21; Krout Decl. ¶ 5; Hepler Decl. ¶ 4, Ex. M; Lowe Ex.
4 N.)³

5 The April 9 session began with a presentation by Curtis Shuck, then Senior Sales
6 Director for the Port, on the status of lease negotiations. (Coleman Dep. 105:9-106:18;
7 Shuck Decl. ¶ 2-3.) Shuck then presented on the safety risk issues and how that would affect
8 the utilization of the Port's facilities as part of the brief review of the elements of the "May
9 2012 Six Hats" document, which highlighted the factors going into the Port's consideration
10 of the lease and its terms. (Coleman Dep. 106:19-108:13.) Shuck introduced everyone in the
11 room. (*Id.* 109:4-12; Shuck Decl. ¶ 3.)

12 Shuck also explained the volumes of oil transport proposed and how it would affect
13 the Terminal 5 railtrack loop, and that the Port had selected TSJV based on its ability to feed
14 its own refinery rather than sell crude oil on the open market, which directly impacts the
15 price TSJV was willing to pay for the lease. (Coleman Dep. 109:13-110:19, 121:25-123:14;
16 Shuck Decl. ¶ 3; *see also* Hepler Ex. M.) As part of his presentation, Shuck handed out a
17 PowerPoint to the Commissioners and discussed some of the slides orally. (Coleman Dep.
18 111:12-112:2, 118:23-119:11, 119:21-120:17.) Shuck did not discuss all of the slides. (*Id.*
19 120:23-121:24.) The Port also provided other documents to the Commissioners that were not
20 discussed. (*Id.* 141:20-143:10.)

21 Next, TSJV gave a presentation, with Phil Anderson presenting for Tesoro and Curt
22 Dowd presenting for Savage. (*Id.* 112:3-20.) As best the Port can determine, the TSJV
23 representatives discussed information with the Commission regarding: insurance needs;
24 capacity, including the number of barrels, tanks, trains, and vessels; TSJV's oil through-puts
25

26 ³ Exhibits M and N will be filed separately under seal.

1 and volumes; anticipated number of jobs; number of acres to be leased. (*Id.* 131:21-134:1;
2 Shuck Decl. ¶ 4; Hepler Ex. M.)

3 TSJV provided a written copy of a PowerPoint presentation to the Port. Coleman
4 Dep. 123:15-24, 124:4-21,126:3-25; *see* Knutsen Ex. K.) Riverkeeper’s challenge to the
5 April 9 session rests on the presumption that the entire presentation was discussed in
6 executive session. However, there is evidence that TSJV did *not* give the entire presentation.
7 (Coleman Dep. 123:15-24, 124:4-21,126:3-25.) For example, Riverkeeper relies on an email
8 from Curtis Shuck providing a “recap of the highlights and next steps” following the April 9
9 meeting. (Knutsen Ex. I.) But Mr. Shuck, as a good salesman, typically provides his
10 subjective opinions, rather than an objective summary of meetings. (Coleman Decl. ¶ 10; *see*
11 Shuck Decl. ¶ 7.)

12 Indeed, many of the attendees do not recall seeing a PowerPoint presentation. (Oliver
13 Dep. 97:6-24, 100:7-101:15; Wolfe Dep. 80:7-14, 82:9-83:3, 85:17-86:14; Baker Dep. 38:18-
14 24, 42:10-43:1; Allan Decl. ¶ 3; Boyden Decl. ¶ 4; Brooks Decl. ¶ 5; Lowe Decl. ¶ 8; Marler
15 Decl. ¶ 6; Westrand Decl. ¶ 4; Shuck Decl. ¶ 5.) Others recall that representatives from
16 TSJV gave a presentation, but do not recall TSJV discussing the entire PowerPoint in
17 executive session, or believe that the presentation they recall is from the public workshop on
18 June 27, where TSJV gave a similar presentation. (Mattix Decl. ¶¶ 2-3; Schiller Decl. ¶ 11;
19 Hepler Decl. ¶ 5.) Other attendees have a written copy of the presentation, which indicates it
20 was only handed out. (Krout Decl. ¶ 6; Allan Decl. ¶ 4.)

21 The Port’s attorneys also took contemporaneous notes during the proceedings on
22 April 9 and those notes do not reflect all of the information in the PowerPoint. (Hepler Ex.
23 M; Lowe Ex. N.) The attorneys’ notes only reflect economic terms that would be
24 permissible to discuss in executive session. (*Id.*)

25 The session ended with Shuck reminding the Commission of the potential impact on
26 other tenants on the Terminal 5 loop track and discussing whether it would adversely affect

1 those tenants' operations. (Coleman Dep. 113:15-114:13, 172:14-173:8.) After the session
2 ended, TSJV invited the Commissioners to tour Tesoro's crude oil transfer facility attached
3 to the Anacortes refinery. (*Id.* 116:23-117:11.) The Port's counsel spoke to Shuck about
4 how to conduct the tours in compliance with the OPMA. (*Id.* 117:25-118:19.) The
5 Commissioners toured the facility separately. (*Id.* 117:12-24.)

6 Each of the topics discussed in this session, including topics discussed with TSJV,
7 related to the Commissioners' consideration of the price at which property would be leased to
8 TSJV. The attendees believed the executive session comported with the minimum price
9 requirement. (*See, e.g., id.* 174:18-175:11; Krout Decl. ¶ 3; Lowe Decl. ¶ 2-7; Marler Decl. ¶
10 2.) Two attorneys were present during the executive session, and the Commissioners relied
11 on their attorneys' judgment in conducting the session. (Knutsen Ex. H; Asai Ex. 6-7.)

12 **C. July 9, 2013**

13 The Port held an executive session on July 9, 2013 for real estate, national security,
14 and potential litigation matters. (Knutsen Ex. P; Coleman Dep. 156:5-10.) As relevant to the
15 TSJV lease, the only discussion was TSJV's formation of a limited liability company (Tesoro
16 Savage Petroleum Terminal, LLC) to operate the facility and the associated financial risks
17 with that kind of entity. (Coleman Dep. 156:11-22.) A new entity's financial risks affect the
18 Commissioners' consideration of the price for the lease to TSJV because a tenant with higher
19 financial risk may require a higher lease rate or other conditions to mitigate the risk. (*Id.*
20 25:5-17, 47:23-48:20, 50:3-16; Holtby Decl. ¶ 3.)

21 **D. July 16-17, 2013**

22 The Port held executive sessions on July 16 and 17, 2013 to discuss real estate
23 matters and potential litigation. (Knutsen Ex. Q; Coleman Dep. 157:15-24.) During these
24 executive sessions, the Port presented some of the specific proposed TSJV lease terms to the
25 Commissioners, namely, the base rent, prices per barrel, wharfage fees, dockage fees,
26 insurance, responsibility for portions of the construction, and the acreage of the facility.

1 discuss how variables specific to the market, customer, or project could affect the proposed
2 price. Presumably, Riverkeeper wants to restrain the Port to only state monetary numbers in
3 executive session, but no explanation or discussion of the factors that drove the price. That is
4 not how real estate transactions function. In practice, the Commission needs to know the
5 proposed tenant's requirements and associated costs, the tenant's financial or environmental
6 risks, and whether the tenant brings value (such as highly sought after jobs) that increases its
7 desirability and effectively lowers the minimum price. (*See, e.g.,* Coleman Dep. 47:23-
8 48:20, 49:9-15, 50:3-16, 91:7-21.) Thus, the Port's interpretation of the statute is consistent
9 with the statutory text, OPMA's purposes, and the practical realities of real estate
10 negotiations. In contrast, Riverkeeper's definition would lead to absurd or strained results
11 and should be rejected.

12 **II. Summary judgment should be denied because the Port has evidence showing the**
13 **executive sessions complied with the OPMA.**

14 To obtain summary judgment, Riverkeeper must establish as a matter of law that the
15 Commission held a meeting "where that body took action in violation of the OPMA[.]"
16 *Eugster v. City of Spokane*, 118 Wn. App. 383, 424, 76 P.3d 741, 763 (2003) ("*Eugster II*").
17 Riverkeeper cannot meet its burden because there is evidence showing the seven executive
18 sessions at issue complied with the OPMA. This evidence precludes summary judgment in
19 Riverkeeper's favor.

20 Here, the deposition testimony of all three Commissioners, the Port's CR 30(b)(6)
21 designee, and declarations from the attendees of the Port's executive sessions tend to show
22 that the discussions in executive session were limited to their announced purpose, the
23 discussion of real estate matters under RCW 42.30.110(1)(c). (*See, e.g.,* Asai Ex. 17 at 3, 5,
24 12-15, 22-23, 25; Allan Decl. ¶¶ 2-15; Boyden Decl. ¶ 6; Brooks Decl. ¶¶ 3-8; Coleman
25 Decl. ¶¶ 9-10, 13-14, Exs. K & L; Krout Decl. ¶ 3; Lowe Decl. ¶¶ 2-7; Marler Decl. ¶¶ 2, 5-
26 8; Mattix Decl. ¶ 4; *see also* Knutsen Ex. B.) The Port conducted all of its executive sessions

1 in accordance with its narrow interpretation of the “minimum price” provision of the OPMA.
2 (Coleman Dep. 174:18-175:11.) And the Port’s staff and counsel confirm that if the Port
3 discussed publicly the information it provided to the Commission during executive session,
4 the value obtained by the public for the lease would have been lowered, either from
5 competitive offers from other ports or through its customer learning confidential information.
6 (*Id.*; Lowe Decl. ¶ 5.) At minimum, Riverkeeper’s motion should be denied because it fails
7 to establish the absence of disputed material facts.

8 **A. Riverkeeper has not shown any OPMA violation on March 26, July 9,
9 July 16, July 17, or July 23.**

10 For five of the seven executive sessions at issue, the record is entirely absent of any
11 facts, let alone undisputed facts, showing that the Port violated the OPMA. Riverkeeper
12 concedes as much by resting its challenge to these sessions solely on its strained reading of
13 the statute. Riverkeeper’s purported support for establishing OPMA violations during five
14 executive sessions is that: (1) on March 26, the Port allegedly discussed “various details
15 about an exclusivity agreement with Tesoro-Savage”; (2) on July 9, the Port discussed
16 TSJV’s new entity; and (3) on July 16, July 17, and July 23, the Port discussed the proposed
17 lease terms. (Pls.’ Mot. 20, 24-26, 28-29.) Record evidence, however, shows that all of the
18 discussions during these executive sessions were limited to issues that, if made public, would
19 have likely caused a decrease in the lease price terms.

20 During the March 26 executive session, the Port staff presented information to the
21 Commission about the current status of the price-related lease terms, such as the lease rate,
22 wharfage fees, dockage fees, and rail fees. (Coleman Dep. 96:5-16, 96:21-24, 98:12-23.)
23 Riverkeeper concedes “these issues arguably could be within the scope of the OPMA
24 exception.” (Pls.’ Mot. 20.) Port staff also discussed the proposed duration for the
25 exclusivity agreement it planned to enter with its tenant. (Coleman Decl. 96:17-20, 97:9-25.)
26 The exclusivity agreement was necessary to ensure that a competing port did not offer a

1 Administration that the Port needed to require revenue to supplement. (Coleman Dep. 162:3-
2 22.) These risks would all affect the minimum price the Port would offer on the lease. (*Id.*
3 47:23-48:20, 49:9-15, 50:3-16.)

4 As to July 23, Riverkeeper relies on an isolated snippet of Commissioner Oliver's
5 testimony to claim that the session was much more extensive. (Pls.' Mot at 29.) The record
6 shows, however, that Commissioner Oliver could not remember the July 23 executive session
7 except that the lease was discussed. (Oliver Dep. 131:1-132:11.) Commissioner Oliver also
8 speculated that the executive session included a complete review of all the clauses, but the
9 Port clarified that it only discussed the new clause regarding the approval of the safety plan
10 proposed on July 22. (*Id.*; Coleman Dep. 170:25-171:12, 171:19-172:5.)

11 Riverkeeper has not met its burden to show any violation of the OPMA on March 26,
12 July 9, July 16, July 17, or July 23.

13 **B. Material factual disputes regarding what occurred on April 9 preclude**
14 **summary judgment regarding this meeting.**

15 The April 9 executive session was different from the other sessions, but the evidence
16 does not compel a finding that it violated the OPMA. During this meeting, while the Port's
17 CEO was out of the country, representatives from TSJV handed out a PowerPoint
18 presentation to the Commissioners providing background on their companies and the
19 proposed project. TSJV discussed the potential project with the Commissioners, but
20 substantial evidence indicates that TSJV did not present its entire PowerPoint. (Coleman
21 Dep. 126:1-25.) Riverkeeper, however, relies on emails and other documents to speculate
22 about the discussions in executive session, and asks this Court to assume from this second-
23 hand evidence that the discussions violated the OPMA. That is insufficient to establish
24 Riverkeeper's version of the facts is undisputed. To the contrary, record evidence shows that
25 the attendees are confident the meeting complied with the OPMA and that the PowerPoint
26

1 was not discussed in its entirety. Riverkeeper is therefore not entitled to summary judgment
2 as to the April 9 meeting.

3 At the outset, the mere presence of TSJV and BNSF representatives at the Port's
4 executive session is not a violation of the OPMA. The definition of a non-public meeting is
5 one that does not permit "all persons" to attend. RCW 42.30.030. Many of the exceptions
6 for executive session reflect areas where it is reasonable for the governing body to involve
7 third parties and rely on their confidential input, such as national security, contract
8 negotiations, employee evaluations, or potential litigation. RCW 42.30.110(1)(a),(d), (g), (i);
9 see Municipal Research and Services Center, *The Open Public Meetings Act* (June 2014),
10 available at [http://mrsc.org/getmedia/275E74FC-9D43-4868-8987-](http://mrsc.org/getmedia/275E74FC-9D43-4868-8987-A626AD2CEA9F/opma14.aspx)
11 [A626AD2CEA9F/opma14.aspx](http://mrsc.org/getmedia/275E74FC-9D43-4868-8987-A626AD2CEA9F/opma14.aspx) ("Persons other than the members of the governing body
12 may attend the executive session at the invitation of that body. Those invited should have
13 some relationship to the matter being addressed in the closed session, or they should be
14 attending to otherwise provide assistance to the governing body."); State of Oregon,
15 Department of Justice, *Attorney General's Public Records and Meetings Manual* § 2.E.5, at
16 174 (2014) ("[N]othing prohibits the governing body from permitting other specified persons
17 to attend" an executive session). Accordingly, in *Port Townsend Pub. Co. v. Brown*, 18 Wn.
18 App. 80, 83-85, 567 P.2d 664, 666-67 (1977), Division II found no OPMA violation when
19 the Jefferson County Commission met in executive session with a federal funding official to
20 discuss the appointment or dismissal of a public employee.

21 Moreover, evidence shows that the contents of the executive session complied with
22 the "minimum price" exemption for considering the lease of public property. The April 9
23 executive session discussed lease terms that would directly affect price, such as the number
24 of barrels stored onsite or in tanks, the number of cars per train, the impacts and coordination
25 of underground pipes with other terminals, the use of rail tracks, and key elements of the
26 lease that determine the price of the facility, such as the rate structures, acreages, facilities,

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DATED this 10th day of July, 2015.

MARKOWITZ HERBOLD PC

By: /s/ Kristin M. Asai

David B. Markowitz, specially admitted
Lawson E. Fite, WSBA No. 44707
Kristin M. Asai, specially admitted
Of Attorneys for Defendants

459363

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2015, I have made service of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT NO. 13-2-03431-3** on the party/ies listed below in the manner indicated:

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DATED this 10th day of July, 2015.

/s/ Kristin M. Asai
Kristin M. Asai, *pecially admitted*
Of Attorneys for Defendants

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA) No. 13-2-03431-3
CLUB; and NORTHWEST)
ENVIRONMENTAL DEFENSE CENTER)

Plaintiffs,

v.

PORT OF VANCOUVER USA; JERRY)
OLIVER, Port of Vancouver USA Board)
of Commissioners President; BRIAN)
WOLFE, Port of Vancouver USA Board of)
Commissioners Vice President; and)
NANCY I. BAKER, Port of Vancouver)
USA Board of Commissioners Secretary,)

Defendants.)

) DECLARATION OF BRETT
) VANDENHEUVEL IN SUPPORT OF
) PLAINTIFFS' RESPONSE TO
) DEFENDANTS' MOTION FOR
) SUMMARY JUDGMENT

I, Brett VandenHeuvel, declare the following on the basis of personal knowledge to
which I am competent to testify:

1. I am the executive director and Riverkeeper of plaintiff Columbia Riverkeeper,
and have held those positions since 2008. I was a staff attorney with Columbia Riverkeeper

DECLARATION OF BRETT
VANDENHEUVEL - 1

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2317 E. JOHN ST.
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1 from 2007 to 2008;

2 2. I attended the Port of Vancouver USA's ("Port") public meeting on the evening
3 of July 22, 2013, held on the proposed petroleum product storage and transport facility. I have
4 also since watched parts of a video recording of that public meeting made publicly available by
5 Clark County Television at the following web address:

6 <http://old.cityofvancouver.us/cvtv/cvtvindex.asp?section=25437&folderID=3734>;

7
8 3. The Port's July 22, 2013, meeting was well-attended by members of the public.
9 Approximately thirty to forty people provided testimony during the public portion of that
10 meeting, the overwhelming majority of which was in opposition to the proposed petroleum
11 product facility. I provided public testimony during that meeting on behalf of Columbia
12 Riverkeeper, as did Daniel Serres, Columbia Riverkeeper's Conservation Director;

13 4. To the best of my recollection, Commissioner Jerry Oliver announced prior to
14 excluding the public from the July 22, 2013, meeting that the purported executive session
15 would last "a minimum of fifteen minutes." To the best of my recollection, Commissioner
16 Oliver and the other Board members did not publically announce during that meeting the time
17 at which the purported executive session would conclude or provide any more definitive
18 estimate of the duration of the purported executive session. To the best of my recollection,
19 Commissioner Oliver and the other Board members did not publicly announce during the July
20 22, 2013, meeting whether the Board of Commissioners intended to reconvene the public
21 meeting at the conclusion of the purported executive session;

22
23 5. To the best of my recollection, Commissioner Oliver announced prior to taking
24 public comments at the July 22, 2013, meeting that the Commissioners intended to hold an
25 executive session after the comments to discuss what they had heard during public testimony
26
27

28 DECLARATION OF BRETT
VANDENHEUVEL - 2

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1 and how that impacts their deliberations. To the best of my recollection, Commissioner Oliver
2 announced prior to excluding the public from the July 22, 2013, meeting that the
3 Commissioners were going into executive session to review the comments and discuss them.
4 To the best of my recollection, Commissioner Oliver and the other Board members did not
5 announce any other reasons for going into the purported executive session during that meeting;

6 6. After being excluded from the July 22, 2013, meeting for the purported
7 executive session, I stayed at the location of the meeting for approximately thirty minutes. I
8 assumed at that point that the Board of Commissioners was not going to reconvene the public
9 meeting that evening, and I therefore left. Had I known that the Board of Commissioners was
10 going to reconvene the public meeting, I most likely would have waited longer to be present
11 for the remainder of that meeting;

12 I declare under penalty of perjury under the laws of the United States of America and
13 the State of Washington that the foregoing is true and correct.
14

15 Executed this 30th day of December, 2013.

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Brett VandenHeuvel

DECLARATION OF BRETT
VANDENHEUVEL - 3

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Seattle, WA 98112
206-860-2883
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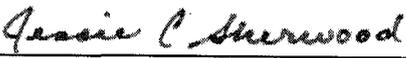
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CERTIFICATE OF SERVICE

I, Jessie Sherwood, declare under penalty of perjury of the laws of the United States, that I am a citizen of the United States and a resident of King County, Washington, that I am over the age of eighteen, that I am not a party to this lawsuit, and that on December 31, 2013, I caused the foregoing Declaration of Brett VandenHeuvel in Support of Plaintiffs' Response to Defendants' Motion for Summary Judgment to be served on the following by having it hand delivered to the following address and by electronic service to the following email addresses:

David B. Markowitz
Lawson E. Fite
Kristin M. Asai
Markowitz, Herbold, Glade & Mehlhaf, P.C.
1211 S.W. Fifth Ave., Suite 3000
Portland, Oregon 97204-3730
Email: LawsonFite@MHGM.com
KristinAsai@MHGM.com
BrendaAnthony@MHGM.com
SaraPomerening@MHGM.com

Attorneys for Defendants



Jessie Sherwood

COLUMBIA
CAG

RECEIVED

COPY
Original Filed

MAR 28 2014

MAR 27 2014

MARKOWITZ, HERBOLD,
GLADE & MEHLHAF, P.C.

Scott G. Weber, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

COLUMBIA RIVERKEEPER; SIERRA
CLUB; and NORTHWEST
ENVIRONMENTAL DEFENSE CENTER,

Plaintiffs,

vs.

PORT OF VANCOUVER USA; JERRY
OLIVER, Port of Vancouver USA Board of
Commissioners President; BRIAN WOLFE,
Port of Vancouver USA Board of
Commissioners Vice President; and NANCY
I. BAKER, Port of Vancouver USA Board of
Commissioners Secretary,

Defendants.

No. 13-2-03431-3

~~PROPOSED~~ ORDER ON
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND
MOTION FOR PARTIAL STAY
OF DISCOVERY

THIS MATTER came for hearing on January 10, 2014 before the Court, the
Honorable David E. Gregerson, on defendants' Motion for Summary Judgment pursuant to
CR 56(c) as to plaintiffs' claims arising under Washington's Open Public Meetings Act
("OPMA") and State Environmental Policy Act ("SEPA"), and on defendants' Motion for
Partial Stay of Discovery. Plaintiffs were represented by Brian A. Knutsen, Miles Johnson,
and Elizabeth Zultoski, and defendants were represented by David Markowitz and Lawson
Fite. The Court heard oral argument of counsel and considered the following documents and
other evidence:

1 - ~~PROPOSED~~ ORDER ON DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND MOTION FOR PARTIAL
STAY OF DISCOVERY

MARKOWITZ, HERBOLD,
GLADE & MEHLHAF, P.C.
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 295-3085

- 1 1. Defendants' Motion for Summary Judgment;
- 2 2. Declaration of Michelle Allan;
- 3 3. Declaration of Commissioner Nancy I. Baker;
- 4 4. Declaration of Patty Boyden;
- 5 5. Declaration of Katy Brooks;
- 6 6. Declaration of Todd Coleman;
- 7 7. Declaration of Jeff Estueta;
- 8 8. Declaration of Addison Jacobs;
- 9 9. Declaration of Alicia Lowe;
- 10 10. Declaration of Julianna Marler;
- 11 11. Declaration of Mary Mattix;
- 12 12. Declaration of Commissioner Jerry Oliver;
- 13 13. Declaration of Mike Schiller;
- 14 14. Declaration of Curtis Shuck;
- 15 15. Declaration of Alastair Smith;
- 16 16. Declaration of Theresa Wagner;
- 17 17. Declaration of Commissioner Brian Wolfe;
- 18 18. Plaintiffs' Response to Defendants' Motion for Summary Judgment;
- 19 19. Declaration of Brian A. Knutsen;
- 20 20. Declaration of Brent Vandenheuvel;
- 21 21. Defendants' Reply in Support of Motion for Summary Judgment;
- 22 22. Supplemental Declaration of Todd Coleman;
- 23 23. Defendants' Motion for Partial Stay of Discovery;
- 24 24. Declaration of Lawson Fite; and
- 25 25. Plaintiffs' Response to Defendants' Motion for Partial Stay of Discovery.

26 The Court, being fully advised, hereby enters the following ORDER:

2 - **[PROPOSED] ORDER ON DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND MOTION FOR PARTIAL
STAY OF DISCOVERY**

MARKOWITZ, HEIGOLD,
GLADY & MEHLER, P.C.
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1. The Court finds that the Energy Facilities Site Locations Act, RCW 80.50.180, exempts the execution of the lease at issue in this action from procedures under SEPA. The Court further finds that the contingencies contained in the lease ensure that the execution of the lease does not limit the reasonable range of alternatives to be considered in SEPA review of the project. Accordingly, Defendants' Motion for Summary Judgment is GRANTED as to plaintiffs' Fifth and Sixth Causes of Action;
 2. The Court finds that the corrective actions taken by defendants, including the public votes on July 23 and October 22, 2013, and adoption of a revised executive session announcement procedure beginning on August 13, 2013, render moot plaintiffs' requests for injunctive relief under the OPMA. Defendants' Motion for Summary Judgment is GRANTED as to plaintiffs' requests for injunctive relief on their First, Second, Third, and Fourth Causes of Action pertaining to any OPMA violations;
 3. Defendants' Motion for Summary Judgment is GRANTED as to plaintiffs' request for a declaratory judgment that defendants' decision to approve the lease for a petroleum products facility at the Port of Vancouver USA is null and void;
 4. The Court finds, with respect to the remainder of plaintiffs' First, Second, Third, and Fourth Causes of Action, that the present record does not demonstrate that discovery would be inappropriate or fruitless. The Court therefore declines ruling on defendants' Motion for Summary Judgment on these claims and GRANTS plaintiffs' CR 56(f) request for continuance;
 5. Defendants' Motion for Partial Stay of Discovery is DENIED WITHOUT PREJUDICE.

23 IT IS SO ORDERED.

24 DATED this 26 day of March, 2014.

25 /s/ David E. Gregerson

26

Hon. David E. Gregerson

3 - [PROPOSED] ORDER ON DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND MOTION FOR PARTIAL
STAY OF DISCOVERY

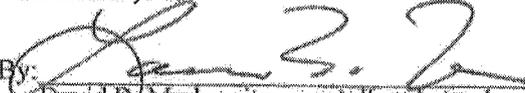
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Superior Court Judge
Clark County Superior Court

Presented by:

MARKOWITZ, HERBOLD, GLADE &
MEHLHAF, P.C.

By: 
David B. Markowitz, *specially admitted*
Lawson E. Fite, WSBA #44707
Kristin M. Asai, *specially admitted*

Of Attorneys for Defendants

Approved as to form, notice of presentation waived:

SMITH & LOWNEY, PLLC

By: 
Brian A. Knutsen, WSBA #38806
Elizabeth H. Zultoski, WSBA #44988

COLUMBIA RIVERKEEPER
Miles Johnson, *specially admitted*

Of Attorneys for Plaintiffs

COLUPV366380

4 - [PROPOSED] ORDER ON DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND MOTION FOR PARTIAL
STAY OF DISCOVERY

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**Scott G. Weber, Clerk
Clark County**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY**

**COLUMBIA RIVERKEEPER; SIERRA
CLUB; and NORTHWEST
ENVIRONMENTAL DEFENSE CENTER,**

Plaintiffs,

vs.

**PORT OF VANCOUVER USA; JERRY
OLIVER, Port of Vancouver USA Board of
Commissioners President; BRIAN WOLFE,
Port of Vancouver USA Board of
Commissioners Vice President; and NANCY
I. BAKER, Port of Vancouver USA Board of
Commissioners Secretary,**

Defendants.

No. 13-2-03431-3

**DECLARATION OF
ALICIA LOWE IN SUPPORT OF
DEFENDANTS' OPPOSITION
TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

I, Alicia ("Lisa") Lowe, declare:

1. I am a shareholder at the firm of Schwabe, Williamson & Wyatt, P.C. I have worked as an attorney in Washington since 1985, and focus my practice on estate planning and representing Washington Port Districts.

2. I am currently general counsel for the Port of Vancouver USA ("Port") and have served in this role since at least 2001. I regularly advise the Port and other Washington Port Districts in many areas, including the Open Public Meetings Act ("OPMA").

///

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**1 - DECLARATION OF ALICIA LOWE IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

**MARKOWITZ HERBOLD PC
SUITE 3000 PACWEST CENTER
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204-3730
(503) 295-3065**

1 3. I currently serve as Chair of the Washington Public Ports Association
2 (“WPPA”) Legal Committee. I have taught courses for the WPPA on the OPMA, including
3 teaming with WPPA staff to present a required training course under the OPMA for
4 Commissioners of Port Districts throughout Washington.

5 4. As general counsel, I attend all of the Port’s executive sessions unless I am
6 unavailable. If I am unavailable, another attorney from my firm attends the executive
7 sessions. I view my role as a monitor of discussions in executive session and listen actively
8 to ensure that the discussions comport with the OPMA and the announced purpose of the
9 executive session. The Port Staff and Board of Commissioners listen to and follow my
10 advice about the executive session.

11 5. My practice and policy, in construing the scope of the “minimum price”
12 exemption under RCW 42.30.110(1)(c), is that an executive session may include discussion
13 of many factors that drive the minimum price of a lease, some of which are an increase in the
14 number of jobs in exchange for reduced rent, safety records that affect insurance and bond
15 requirements, financial viability and credit history of the proposed tenant, and the length of
16 the lease term. My interpretation is consistent with the interpretation of the Municipal
17 Research and Services Center and counsel for other Ports in Washington. It is the Port
18 Staff’s practice to give the Commissioners documents prior to an executive session for them
19 to review on their own, but most of the time those documents are not discussed in their
20 entirety during the executive session. Our discussion during executive session is limited to
21 considerations that drive price.

22 6. Based on my legal knowledge and experience, I believe any exchange of
23 pleasantries between the Commissioners prior to the start of an executive session is
24 acceptable under the OPMA. Such conversations are not related to the Port’s business and
25 are probably not subject to the OPMA.

26 ///

1 7. I was present at the executive sessions held by the Port on March 26, April 9,
2 July 9, July 16, July 17, July 22, and July 23, 2013. According to my notes and memory of
3 each executive session, none of the discussions went beyond my interpretation of the scope
4 of the "minimum price" exemption. Attached as Exhibit N is a true and correct copy of notes
5 that I took during or following the April 9 executive session.

6 8. I have no recollection that the PowerPoint attached as Exhibit K to Brian
7 Knutsen's Declaration was given during the executive session on April 9, 2013. It is my
8 practice to put any presentations that are given in executive session into my file, but I do not
9 have a file copy of the presentation marked as Exhibit K.

10 9. The July 22 executive session discussed whether changes that would impact
11 price should be made to the proposed lease terms as a result of any information, including
12 public comment, received by the Commission during the workshop period. The July 22
13 executive session did not include any deliberation, any decision, or any vote by the
14 Commission on the merits of the TSJV lease.

15 10. When I left the July 22 executive session, I did not know how the
16 Commission would vote on the lease on July 23.

17 11. Following the controversy regarding the July 22 announcement, Port Staff and
18 I have instituted changes that help ensure more consistent compliance with the OPMA.
19 I have taken a more aggressive role in monitoring announcements, agendas, and discussions
20 in executive session. I also meet with Port Staff the Wednesday prior to Commission
21 meetings to review and approve (i) what may be discussed in executive session and (ii) all
22 presentations that are proposed for executive sessions.

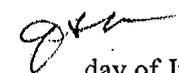
23 12. I attended the Commission's October 22 public meeting. I did not know, prior
24 to the October 22 meeting, how the Commission would vote on the lease.

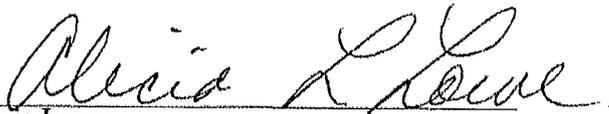
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I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and are subject to penalty for perjury.

DATED this  day of July, 2015.


Alicia Lowe

458007

EXHIBITS FILED UNDERSEAL

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2015, I have made service of the foregoing **DECLARATION OF ALICIA LOWE IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** on the party/ies listed below in the manner indicated:

Brian A. Knutsen
Kampmeier & Knutsen PLLC
833 SE Main Street, Suite 327
Mail Box No. 318
Portland, OR 97214

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email - brian@kampmeierknutsen.com

Eric D. Lowney
Smith & Lowney, PLLC
2317 E John Street
Seattle, WA 98112
Attorneys for Plaintiffs

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email - knoll@igc.org

Miles B. Johnson
Clean Water Attorney
Columbia Riverkeeper
111 Third Street
Hood River, OR 97031

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email - miles@columbiariverkeeper.org

DATED this 10th day of July, 2015.

s/ Kristin M. Asai

Kristin M. Asai, *pecially admitted*
Of Attorneys for Defendants

COLUPVA

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of the State of Washington, that I am co-counsel for Plaintiffs-Petitioners Columbia Riverkeeper, Sierra Club, and Northwest Environmental Defense Center and that on November 6, 2015, I caused the enclosed Combined Appendix to Statement of Grounds for Direct Review and Motion for Discretionary Review to be served on the following in the manner indicated:

David Markowitz Kristin Asai Lynn Gutbezahl 1211 SW Fifth Ave., Suite 3000 Portland, OR 97204 davidmarkowitz@markowitzherbold.com kristinasai@markowitzherbold.com lynngutbezahl@markowitzherbold.com	<input type="checkbox"/> Messenger (hand delivery) <input type="checkbox"/> U.S. Mail (postage prepaid) <input checked="" type="checkbox"/> E-mail (per agreement with counsel)
Lawson Fite Attorney at Law 5100 SW Macadam, Suite 350 Portland, OR 97239 lawsonfite@gmail.com	<input type="checkbox"/> Messenger (hand delivery) <input type="checkbox"/> U.S. Mail (postage prepaid) <input checked="" type="checkbox"/> E-mail (per agreement with counsel)



Brian A. Knutsen, WSBA # 38806