BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of: 
Application No. 2013-01
TESORO SAVAGE, LLC
VANCOUVER ENERGY DISTRIBUTION TERMINAL

CASE NO. 15-001
CITY OF VANCOUVER’S OPENING BRIEF
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LAW REVIEWS AND REPORTS


The City of Vancouver, Washington (“Vancouver”), a party to this matter pursuant to RCW 80.50.030(3) and WAC 463-30-060, submits this prehearing brief in accordance with the Order Summarizing Hearing Procedures issued March 31, 2016, in the above-captioned matter. For the following reasons, Vancouver opposes approval of the Application for Site Certification Agreement dated May 27, 20161 (“Application”) submitted herein by the Applicant Tesoro Savage, LLC (“Tesoro”). Vancouver urges the Energy Facility Site Evaluation Council (“EFSEC” or “Council”) to recommend that the Governor disapprove the oil terminal facility proposed in the Application (“Facility”) for location within the heart of Vancouver at the Port of Vancouver USA (“Port”).

1. INTRODUCTION

Vancouver, the host jurisdiction for the Facility, is staunchly opposed to approval of the Application. Tesoro’s proposal involves the construction of the largest oil terminal in the country, which will handle the equivalent of 1,667 tanker trucks per day of highly flammable Bakken and diluted bitumen crude oil. This proposal is directly counter to Vancouver’s vision for itself as a vibrant urban community and threatens the safety of its approximately 165,000 citizens. Tesoro cannot ensure the safety of children in schools, residents in Vancouver neighborhoods, or inmates in the Clark County Jail Work Center, which is surrounded by the Facility. Moreover, the rail route by which crude oil will be delivered to the Facility crosses portions of the state susceptible to wildfire during the dry season, runs over vulnerable aquifers and critical public works including water distribution and sewer facilities, and within the heart of Vancouver, runs adjacent to the new City Hall and numerous urban development and redevelopment projects supported with the investment of hundreds of millions of private and

1 Vancouver does not waive any of its arguments concerning the timeliness of the Application’s submission.
public dollars.

Tesoro can be expected to present algorithms on risk levels posed by the Facility and its
construction, operation, and decommissioning, including the likelihood of oil train fires and
explosions, but will not be able to guarantee that no accidents will occur. Time and again, they
have. In a ten-year period from 2006 to 2016, there were 25 reported accidents involving the
release of in excess of 6.5 million gallons of oil and ethanol. The worst event occurred in 2013,
when in the middle of the night, a runaway train in Lac-Mégantic, Canada took out an entire
downtown and killed 47 people. The following day, the city was eviscerated and still in flames.

(Ex. 3122-0010-VAN.)

Fortunately, EFSEC’s statutory criteria require EFSEC to consider the true cost of such
proposals. This entails consideration of: (1) threats to human health and safety, the protection of
which is paramount; (2) harms to environmental and cultural resources, which for the Facility
cannot fairly be characterized as “minimal”; (3) adverse land use impacts, including detrimental
effects upon Vancouver’s property values and long-term planning vision for its future; (4) total
societal costs, including accounting for the costs of maintaining necessary emergency response
preparedness and providing adequate public infrastructure; and (5) whether Tesoro has the ability
to maintain sufficient financial assurances to make whole those who may be injured by its
proposed operations. See generally ch. 463-60 WAC.

EFSEC was not established to blindly rubber stamp preselected energy facility locations
without considering the consequences of its siting decisions. EFSEC must carefully evaluate the
Facility’s adverse impacts, assess whether and how they are addressed adequately, consider the
Application in light of EFSEC’s statutory and regulatory decision making criteria, and ask
whether approval of the Application will promote the public interest. Because the Facility’s true
costs are unwarranted and the unreasonable risks of its operations will be borne not by Tesoro
but by Washington’s citizens and taxpayers, Vancouver requests that EFSEC recommend denial
of the Application.

2. ARGUMENT

2.1. Standard of Review: EFSEC Is Charged with Weighing all Societal Risks and
Adverse Impacts Caused by an Energy Facility to Determine Whether its Proposed
Siting Will Promote the Public Interest

EFSEC, as the state’s energy facility siting authority, is charged not with simply taking
out a ruler and measuring compliance with setbacks and engineering standards, as emphasized by
Tesoro’s witnesses, but with taking a hard look at a proposal’s impacts to evaluate whether
approving it truly serves the public interest. Residents Opposed to Kittitas Turbines v. EFSEC,
165 Wn.2d 275, 321-22, 197 P.3d 1153, 1176 (2008) (en banc). If not, then EFSEC must
recommend that the Governor deny approval of the application for site certification. The
legislature charged EFSEC with this duty to ensure the health and safety of Washington’s
citizens and environment. See RCW 80.50.010.

This paramount duty of safety is statutorily mandated. EFSEC is required to balance the
demand for energy facilities “with the broad interests of the public.” RCW 80.50.010; see also
WAC 463-14-020. A project must demonstrate it will have “operational safeguards” which “are technically sufficient” to “assure Washington state citizens” that the proposal benefits their welfare and that their protection and safety is assured. RCW 80.50.010(1). EFSEC “shall use all practicable means” to “assure” this safety. WAC 463-47-110(1)(b), (b)(ii). Both EFSEC and state law recognize that this right to a safe environment is a “fundamental and inalienable right” held by every citizen of Washington state.²

To ensure protection of this fundamental right, EFSEC must evaluate at least three aspects of Tesoro’s proposal. First, EFSEC is required “to ensure through available and reasonable methods, that the location and operation of [proposed] facilities will produce minimal adverse effects on the environment.”³ Second, the proposal must be consistent with the state’s policies to preserve and protect environmental quality, to enhance public enjoyment of healthful air, water and land resources, and “to pursue beneficial changes in the environment.”

RCW 80.50.010(2). Third, EFSEC must review the proposal’s financial cost and determine whether the proposal is consistent with the state’s policy to “provide abundant energy at reasonable cost.” RCW 80.50.010(3); WAC 463-14-020(3). If the Facility’s total societal cost, in terms of threats to public health and safety, risks of environmental degradation, and fiscal consequences (including costs of public infrastructure, emergency response, and financial assurance), outweighs its public benefits, EFSEC must recommend denial of the Application.

In considering this triumvirate of core considerations (public health and safety,
environmental risks, and total costs), EFSEC addresses numerous factors:

Risk of fire or explosion. The application shall describe any potential for fire or explosion during construction, operation, standby or nonuse, dismantling, or restoration of the facility and what measures will be made to mitigate any risk of fire or explosion. WAC 463-60-352(2).

Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials. The application shall describe any potential for release of toxic or hazardous materials to the environment …. WAC 463-60-352(3).

Proposal—Protection from natural hazards. The application shall describe the means to be employed for protection of the facility from earthquakes, volcanic eruption, flood, tsunami, storms, avalanche or landslides, and other major natural disruptive occurrences. WAC 463-60-265.

Proposal—Security concerns. The application shall describe the means employed for protection of the facility from sabotage, terrorism, vandalism and other security threats. WAC 463-60-275.

Traffic hazards. The application shall identify all hazards to traffic caused by construction or operation of the facility. Except where security restrictions are imposed by the federal government the applicant shall indicate the manner in which fuels and waste products are to be transported to and from the facility, including a designation of the specific routes to be utilized. WAC 463-60-372(6).

Waterborne, rail, and air traffic. The application shall describe existing railroads and other transportation facilities and indicate what additional access, if any, will be needed during planned construction and operation. The applicant shall indicate the applicable standards to be utilized in improving existing transportation facilities and in constructing new permanent or temporary access facilities, and shall indicate the final disposition of new access facilities and identify who will maintain them. WAC 463-60-372(3).

The wording of these considerations and factors—with their focus on safety, the environment, and public costs—was quite deliberate. EFSEC was originally established to site nuclear facilities.4 Those facilities are heavily regulated under federal law and while they have the potential to provide abundant energy, it is well understood that there also is the potential for a

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heavy public health and environmental safety cost. The closer to a major population base an
ergy facility is placed, the higher that cost becomes. For example, on June 10, 1999, a
petroleum products pipeline located upstream from a community park in the city of Bellingham,
Washington, ruptured and ignited into a fireball, resulting in the deaths of two children and one
adult and serious damage to salmon habitat. “Many Bellingham residents, particularly the
parents of the lost children, and government officials have questioned the propriety of placing
such a high-risk facility in an area where the potential impact on human life and environmental
well-being is so great.”

Given the history of catastrophic accidents stemming from the transportation and
handling of Bakken and diluted bitumen crude oil and the potential for additional serious
accidents, Tesoro’s proposal cannot meet EFSEC’s criteria. The Facility’s public cost is wholly
unreasonable. Even Tesoro is not standing behind its proposal financially, as demonstrated by its
failure to include any disclosures regarding its financial wherewithal in the Application, its
nonresponsiveness to Vancouver’s informal discovery requests for this information, and its
organizational structure as a Delaware limited liability company (“LLC”). In the event of a
worst case scenario in Vancouver, the public will not and cannot be made whole. Vancouver’s
environmental attributes, including the Columbia River running proximate to the proposal site,
(see infra Section 2.3.1), and Vancouver’s vision for its future of a vibrant urban environment,

\[\text{Hornbaker at 253.}\]
\[\text{(See Ex. 3046-0002-VAN (Vancouver’s first informal discovery requests to Tesoro requesting detailed}
\text{information regarding “insurance, bonding or other financial arrangements” to cover losses resulting from}
\text{construction, operation, and decommissioning of Facility); Ex. 3047-0005-VAN (Tesoro’s responses to Vancouver}
\text{objecting to first requests as “premature”); Ex. 3048-0003-VAN (Vancouver’s second informal discovery requests}
\text{to Tesoro requesting responses to first requests and to new requests for financial reporting information for all entities}
\text{that could be liable for said losses); Ex. 3049-0002-VAN (Tesoro’s responses to Vancouver objecting to second}
\text{requests on numerous grounds and stating only that legal requirements for financial assurance would be satisfied,}
\text{and continuing to object to the first requests as premature and stating information would be provided 90 days before}
\text{commencement of site preparations).}\]
Most significantly, Tesoro’s proposal constitutes a clear and present threat to human life and health. EFSEC simply has no ability to ensure the safety of Vancouver’s citizens while the equivalent of 1,667 tanker trucks of volatile crude oil per day move into and out of the heart of the fourth largest city in Washington. Likewise, Tesoro, the Port, and BNSF Railway Company (“BNSF”) cannot ensure public safety, particularly in light of the recent accident in Mosier, Oregon, which demonstrated that regular inspections are incapable of detecting certain rail line defects of sufficient magnitude to cause a derailment. \(\text{(See Ex. 3112-0001-VAN.)}\)

### 2.2. Human Safety: The Risk of Handling Bakken and Diluted Bitumen Crude Oil in Washington’s Fourth Largest City

Tesoro proposes handling the equivalent of 1,667 tanker trucks\(^7\) of highly flammable hazardous material\(^8\) every day of the year, in a city of 165,000. After their daily journey across southern Washington, four to five oil trains, each 1.5 miles long, would be routed through the urban core of Vancouver, then onto a mile length of Port rail tracks and into the Port.\(^9\) The crude oil would then be transferred into above-ground storage tanks for later transfer to vessels transporting it down the Columbia River and into the Pacific Ocean. Placing this huge oil terminal in the midst of a large population base and environmental “hot spot” brings with it significant and potentially catastrophic impacts to the entire community, including nearby residential and mixed-use neighborhoods, critical public works facilities (for example, schools, a

\(^7\) A standard gasoline cargo tanker truck holds 9,000 gallons. The proposal involves the handling of 15 million gallons per day.

\(^8\) “The properties of Bakken shale oil are highly variable, even within the same oil field. In general, however, Bakken crude oil is much more volatile than other types of crude. Its higher volatility may have important safety implications.” (Ex. 3002-0018-VAN (quoting John Frittelli, U.S. Rail Transportation of Crude Oil: Background and Issues for Congress 14 (CRS Dec. 4, 2014) (footnotes omitted), available at https://www.fas.org/sgp/crs/misc/R43390.pdf).) “[D]ilbit [diluted bitumen] may pose different hazards, and possibly different risks, than other forms of crude oil. … [A]ccording to EPA, the oil sands crude will not appreciably biodegrade.” Frittelli at 13 (quotation and footnote omitted).

\(^9\) (Ex. 5902-000054-CRK at 10-11 (describing potential routes for trains to enter, circle through (sometimes making multiple loops), and exit downtown Vancouver and Port facility).)
wastewater treatment plant, a jail work center, and multiple city government facilities), major
public and private real estate investments described in Section 2.4 (including the new Vancouver
City Hall), and critical habitat for several endangered and threatened species (including
culturally and economically valuable lamprey and salmon).

Tesoro may assert that the risk of a serious or catastrophic Lac-Mégantic-type accident is
low, but even Tesoro must admit it cannot guarantee that such an event will not happen. The
inability of the industry to prevent accidents and assure human safety at the Facility and along
the transit route is evidenced by the fact that incidents involving derailed tanker cars with
ensuing oil releases, fires, fireballs, and explosions are not an anomaly. Over a 10-year period
from 2006 to 2016, accidents have occurred, on average, more than twice per year. Earlier this
month, 16 tanker cars derailed in the Columbia River Gorge near the town of Mosier, Oregon,
causing a release of crude oil and a fire.\(^{10}\) And, the year before, in 2015, six such accidents
occurred.

\(^{10}\) (See Exs. 3034-0002-VAN, 3035-0015-VAN, 3036-0008-VAN, 3037-0002-VAN, 3038-0003-VAN, 3039-
0000-VAN, 3040-0000-VAN, 3084-0002-VAN, 3112-0001-VAN.)
Table 1 - Crude Oil and Ethanol Train Derailments

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<th>Location</th>
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<th>Product</th>
<th>Speed (mph)</th>
<th>Release (gallons)</th>
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<td>3</td>
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<td>Gogama, Ontario</td>
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<td>Galena, IL</td>
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<td>LaSalle, CO</td>
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<td>MMA</td>
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<td>White River, Ontario</td>
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<td>12</td>
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<td>Tiskilwa, IL</td>
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<td>10/20/2006</td>
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<td>23</td>
<td>20</td>
<td>Ethanol</td>
<td>37</td>
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Totals 442 314 6,498,602

(Ex. 3002-0012-VAN.) Of the 442 tank cars that derailed in the above 24 accidents, 314 released cargo. (Ex. 3002-0013-VAN.) In one accident 31 tank cars derailed and all 31 tank cars breached. (Ex. 3002-0014-VAN.) Since 2011, the following significant accidents with spills have occurred:

- Lac-Mégantic – 59 tank cars breached and 1,580,000 gallons of crude oil were released;
- Arcadia – 31 tank cars breached and 834,840 gallons of ethanol were released;
- Aliceville – 25 tank cars breached and 630,000 gallons of crude oil were released;
- Gogama – 36 tank cars breached and more than 500,000 gallons of crude oil were released.

The statistics in Table 1 and the following discussion were prepared before the Mosier accident and thus do not include it.
released; and

- New Brighton – 20 tank cars breached and 485,278 gallons of ethanol were released. (
  Id.)

Many of the catastrophic crude oil and ethanol accidents involved trains operating below speed limits. For example, 17 of the 24 serious accidents happened at speeds of 40 miles per hour (“mph”) or less, and 8 of those accidents occurred at speeds of 25 mph or less. (Ex. 3002-0016-VAN.) The U.S. Department of Transportation allows crude oil trains to travel at 50 mph, with speed reduced to 40 mph in “high-threat urban areas,” even though derailments are happening at or below these speeds:

- **46 mph derailment:** Arcadia, OH – February 6, 2011 – 31 tank cars derailed and 31 tank cars failed – 834,840 gallons of ethanol were released (the equivalent of 93 tanker trucks);

- **43 mph derailment:** Gogama, Ontario – March 7, 2015 – 39 tank cars derailed and 36 tank cars failed – more than 500,000 gallons of crude oil were released (the equivalent of 56 tanker trunks);

- **42 mph derailment:** Casselton, ND – December 30, 2013 – 20 tank cars derailed and 18 tank cars failed – 436,437 gallons of crude oil were released (the equivalent of 48 tanker trucks);

- **39 mph derailment:** Aliceville, AL – November 8, 2013 – 26 tank cars derailed and 25 tank cars failed – 630,000 gallons of crude oil were released (the equivalent of 70 tanker trucks);

- **37 mph derailment:** New Brighton, PA – October 20, 2006 – 23 tank cars derailed and 20 tank cars failed – 485,278 gallons of ethanol were released (the equivalent of 54 tanker trucks);

- **36 mph derailment:** Cherry Valley, IL – June 19, 2011 – 19 tank cars derailed and 15 tank cars failed – 323,963 gallons of ethanol were released (the equivalent of 36 tanker trunks);

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tanker trucks);

- **33 mph derailment**: Mount Carbon, WV – February 16, 2015 – 27 tank cars derailed and 20 tank cars failed – 378,034 gallons of crude oil were released (the equivalent of 42 tanker trucks);

- **23 mph derailment**: Plevna, MT – August 5, 2012 – 17 tank cars derailed and 12 tank cars failed – 245,336 gallons of ethanol released (the equivalent of 27 tanker trucks);

- **19 mph derailment**: Luther, OK – August 22, 2008 – 8 tank cars derailed and 5 tank cars failed – 80,746 gallons of crude oil released (the equivalent of 9 tanker trucks); and

- **10 mph derailment**: Bon Homme County, SD – September 19, 2015 – 7 tank cars derailed and 3 tank cars failed – 49,748 gallons of ethanol released (the equivalent of 6 gasoline cargo tank trucks).

(Ex. 3002-0017-VAN to -0018-VAN.) In 20 of the 24 train derailments (83.3 percent), fire ensued. (Ex. 3002-0018-VAN.) This is not a surprise. It is what occurs when a volatile compound is moved and humans make mistakes. These mistakes are typically ones of neglect, including with regard to track maintenance. Meeting federal requirements has failed to ensure tracks are maintained and trains are slowed down to the necessary levels to carry this type of product safely. Every day, accidents happen.

Federal Railroad Administration (“FRA”) data for Class 1 railroads (excluding AMTRAK) identifies 2,522 train derailments on main track from 2008 to 2015. Of those derailments 780 occurred on BNSF rail lines. (Ex. 3002-0019-VAN.) The FRA train derailment data identifies broken rails attributed to detail fractures (from shelling or head check), irregular track alignment (buckled/sun kink), and wide gage (including defective or missing cross ties, spikes, or other fasteners) as among the leading causes of derailments assigned to track, roadbed, and structure related causes. (Id.) That is the reality.

The National Transportation Safety Board (“NTSB”) has identified the failure to find defects in rail because of shelling or checks in several accidents. Poor rail surface condition can
cause ultrasonic testing to miss internal detail fractures that can grow under train loads and fail once they reach critical size. (Id.) This is not a new issue. After a 1992 train derailment in Superior, Wisconsin, which resulted in the evacuation of 40,000 people due to a hazardous materials release, the NTSB determined that the probable cause of the derailment was the failure of the rail from an undetected preexisting detail fracture that had initiated from shelling and had reached critical size. (Ex. 3002-0019-VAN to -0020-VAN.) The NTSB concluded that ultrasonic and induction inspection methods used to detect internal defects are inadequate when rail has severe shelling or other surface conditions. (Ex. 3002-0020-VAN.)

In a more recent 2006 accident in New Brighton, Pennsylvania, where 23 tank cars derailed and 20 failed, releasing 485,278 gallons of ethanol, the NTSB concluded that a detail fracture (fatigue crack), which originated from shelling on the rail head, reached critical size and caused a piece of rail to break out under the train. (Id.) The NTSB concluded that rail surface conditions prevented the effective transmission of the ultrasonic signals, and the defect (fatigue crack) that led to the derailment may not have been large enough at the time of inspection to be reliably detected. (Id.)

In 2014, 17 cars traveling at 23 mph derailed in Lynchburg, Virginia. One car breached and released 29,416 gallons of crude oil, which caught fire. (Ex. 3002-0021-VAN to -0022-VAN.) This derailment also was caused by a sudden break in a rail, which occurred even though a railroad contractor performed ultrasonic testing the day before the accident. Investigators confirmed that the testing equipment functioned properly and had detected all of the known rail features in the failed rail that normally should be detected by ultrasonic test probes. (Id.) In other words, the day before the rail failed, it complied with all applicable standards. Thus, the railroad’s full compliance with federal standards nonetheless failed to protect the public and
prevent the accident.

Track conditions are a particular concern in Vancouver. On October 6 and 7, 2015, Vancouver’s technical consultants reviewed approximately 25 public and private overpasses and highway at-grade crossings, as well as adjacent exposures and drainage, along the BNSF Fallbridge Subdivision’s main line track within Vancouver. (Ex. 3002-0022-VAN.) Most of the at-grade crossings were private crossings with no active crossing protection devices. A derailment can occur as a result of a train collision with a vehicle at an at-grade crossing, and the lack of active warning devices at a crossing enhances that risk. (Ex. 3002-0023-VAN.) While conducting a review at one at-grade crossing location, the consultants observed that some crossties in the track had splits and showed signs of deterioration that allowed spikes to lift upward from the ties. (Id.) Photographs taken that day documented this deterioration. (Ex. 3003-0002-VAN to -0004-VAN.)

Tesoro will have to admit derailments happen, but may argue the risk of serious or catastrophic consequences is low, in part because federal laws require improved tank cars. However, there is a dearth of the new tank cars, (Ex. 3002-0025-VAN), and federal law allows continued use of the older versions, (see supra n.12). In fact, tank cars not meeting current specifications can continue to be used “regardless of train composition” to transport crude oil until:

- Jan. 2018, for non-jacketed DOT-111 tank cars;
- March 2018, for jacketed DOT-111 tank cars;
- April 2020, for non-jacketed CPC-1232 tank cars; and

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13 Federal railroad track safety standards for track structure, including crossties, are located at 49 C.F.R. pt. 213.
• May 2025, for jacketed CPC-1232 tank cars.\(^{14}\)

Moreover, the Secretary of Transportation may extend deadlines for the use of older tank cars to transport crude oil for up to two years if the Secretary determines that insufficient retrofitting shop capacity will prevent the phase-out of tank cars not meeting the DOT-117, DOT-117P, or DOT-117R specifications by these deadlines. FAST, § 7304(c). And the DOT-117P has not even been built yet. (Ex. 3002-0025-VAN.)

The final rule identifying the DOT-117 as the standard for unit trains, also called High Hazard Flammable Trains (“HHFTs”), was adopted on May 8, 2015. (See supra n.12.) There are some DOT-117 tank cars in service now, but it is unknown when a sufficient supply will be available to allow Tesoro to use only those cars to transport crude oil to the Facility. (Ex. 3002-0025-VAN.) As of the second quarter 2015, the manufacturer of the new DOT-117 tank cars had a backlog of 46,375 orders, and it appears likely that there will be an insufficient supply of the new cars in time to meet the new standards. (Id.)

At this point, there is an accident history available about the performance of DOT-111 tank cars and CPC-1232 tank cars in HHFT derailments. That history has shown that DOT-111 and CPC-1232 tank cars have poor crashworthiness records. Tank car breaches have resulted from head and sidewall punctures and tears, damaged valves and fittings, and thermal rupture tears after being exposed to large fires. (Ex. 3002-0025-VAN.)

The CPC-1232 tank car has failed on multiple occasions in 2015—in Gogama, Ontario; in Galena, Montana; and in Mount Carbon, West Virginia. In the Mount Carbon, West Virginia accident on February 16, 2015, 27 CPC-1232 tank cars derailed, 20 of those tank cars failed and released 378,034 gallons of crude oil (the equivalent of 42 gasoline cargo tank trucks).

In summary, 13 accidents occurred that involved DOT-111 and CPC-1232 tank cars releasing more than 92,000 gallons of cargo in the nine-year period from 2006 to 2015. Cargo release in these 13 accidents totaled 6,048,693 gallons of cargo, an average of 465,284 gallons per accident. If the Lac-Mégantic accident is not considered, the remaining 12 accidents had a total release of 4,468,693 gallons of cargo, an average of 372,391 gallons of product per accident. (Id.) Four of these accidents involved CPC-1232 tank cars: two accidents in Gogama, Ontario and one accident each in Mount Carbon, West Virginia and Galena, Illinois. (Id.) In other words, the risk of a serious or catastrophic accident is real.

2.3. Human Safety: Vancouver and Clark County Lack Essential Emergency Response Resources Necessary to Respond to an Incident Caused by the Facility and Tesoro Has Not Committed to Provide These Resources

2.3.1. Local Geographic Features Increase the Risk of Fire Spreading from the Accident Site

Bakken and diluted bitumen crude oil typically have relatively low flash points and relatively high vapor densities, which means that at ambient temperatures they vaporize readily and are highly flammable. (See supra n.8 at 7.) If crude oil is released into the environment, these flammable vapors, which are heavier than air, (Ex. 3016-0004-VAN n.2), would tend to spread along the ground and collect in confined areas such as storm sewers, potentially causing secondary fires to erupt unpredictably, even hours later, when the vapors come into contact with an ignition source, (id.). Secondary fires from flammable vapors are particularly dangerous because they may occur at a distance from the main incident, in an area that is considered safe, and they may occur later in time. (Id.) These migrating vapors also can create a pathway for fire to spread from an ignition source at a distance back to the accident site, where any pooled oil could suddenly ignite in an intense flash fire. (Id.)
The local natural features of the route through Vancouver by which the Facility would receive oil shipments combine with these known characteristics of the crude oil being shipped to increase the risk of flammable vapors and fires spreading. A fire next to an upward slope will generally intensify local winds, which makes the fire more likely to spread uphill. (Ex. 3016-0004-VAN; see Ex. 3007-0020-VAN to -0021-VAN (hypothetical including description of winds causing fire to spread uphill).) The dynamics of these local winds also affect the spread of flammable vapors. (Ex. 3016-0004-VAN.) This tendency increases the chances of a fire spreading to surrounding vegetation and improvements and is particularly relevant to planning emergency response for the portion of the BNSF rail line running along the northern bank of the Columbia River. (Id.) Moreover, wind effects and weather events unique to the Columbia River Gorge may significantly affect the progression and spread of a fire. (Id.)

These local geographic features compound the already unacceptable fire risk posed by HHFT traffic through Vancouver, as discussed in Section 2.2. Nonetheless, Tesoro makes it clear throughout the Application that Vancouver Fire Department (“VFD”) and other public emergency response resources will be the first line of defense in the event of a fire or explosion and that Tesoro will take hours or days to mobilize its response resources. (See Ex. 0352-000049-TSS ¶ 108 at 39.) Tesoro will not maintain trained firefighters on staff at the Facility. (DEIS § 4.6.3.2 at 4-45.) Instead, the Facility’s staff would evacuate in an emergency and leave VFD responsible for assessing and responding to a fire or explosion at the Facility or involving HHFTs or oil tankers. (Id.) Additionally Tesoro assumes that its mobilization of additional resources will not be hindered by the emergency situation itself, an assumption which is patently unrealistic given the near certainty of road, bridge and rail closures in all but the smallest of
incidents.\textsuperscript{15} The reality is that Vancouver and its citizens will be solely responsible for first
response to emergencies caused by Tesoro’s operations and that supplemental resources may not
arrive in time to make a difference.

2.3.2. Fire Response Resources Are Inadequate

Tesoro acknowledges that thorough emergency response planning and preparedness are
necessary to ensure the public’s safety against the risks posed by the Facility. (\textit{See}, \textit{e.g.}, Ex. 0352-000049-TSS ¶ 95 at 3.) However, the VFD lacks the necessary resources, including
personnel and equipment, to ensure the safety of Vancouver’s residents in the event of a
moderate or large incident involving the Facility or its related rail or vessel operations. In
addition, VFD’s resources are already stretched thin, and responding to an incident related to
Tesoro’s operations would adversely affect VFD’s ability to meet Vancouver’s other needs for
emergency and fire services. Other firefighting resources in Clark County and surrounding areas
are limited, and they cannot be relied upon to provide sufficient assistance, under mutual aid
agreements and regional response systems, to fill in the gaps in VFD’s capabilities. Despite
these limitations, Tesoro repeatedly states that it will rely solely on VFD and other local
resources to provide emergency response during the critically important first hours of a crisis
situation.\textsuperscript{16}

VFD maintains minimum staffing of 40 on-duty personnel to handle an average of 70
calls per day for a population of approximately 255,000 people in a service territory extending

\textsuperscript{15} (\textit{See}, \textit{e.g.}, Ex. 0352-000049-TSS ¶ 124 at 45 (recommending “staging of key response resources like foam,
foam application equipment, and booming equipment” at specific locations rather than distributing equipment in
advance of emergency); Ex. 0303-000021-TSS ¶ 28 at 15 (assuming “specialty contractors … could be quickly
mobilized”); \textit{id.} ¶ 30 at 15-16 (discussing hazmat “response equipment strategically located along [BNSF’s] rail
system” and “pre-loaded on a high rail flat for a rapid deployment”).\textsuperscript{16}

\textsuperscript{16} “Feeding, sheltering, and support[ing] evacuated residents is a local level activity for the first 12 hours of the
event until railroad claims personnel can being to provide individual assistance.” (Ex. 0352-000049-TSS ¶ 108 at
39; see Ex. 0303-000021-TSS ¶ 18 at 9.)
beyond Vancouver’s boundaries. (See Ex. 3018-0001-VAN (map of VFD’s service territory).)

VFD would treat any fire incident involving Tesoro’s operations, whether at the Facility, the Port, or the rail lines servicing these facilities, as a commercial fire call and would dispatch the following resources, exclusive of hazardous materials response (“hazmat”):

- First Alarm: 2 Battalion Chiefs; 4 Engines (12 personnel); 2 Trucks (8 personnel)
- Second Alarm: 4 Engines; 2 Trucks

(Ex. 3016-0005-VAN.) Thus a two-alarm commercial fire, not involving hazmat, would require 42 firefighters, which exceeds VFD’s minimum on-duty staffing. As a practical matter, anything larger than a single alarm commercial fire would require VFD to call other local fire departments for mutual aid, to allow VFD to continue responding to other emergency calls. (Id. at 5-6.)

VFD maintains a hazmat team, but it is not staffed. Consequently, when hazmat is needed, off-duty firefighters trained in hazmat are called back to active duty. The performance response standard for hazmat services is 60 minutes. Consequently, hazmat personnel would not be available during the first phase of an HHFT fire, when their expertise is most needed to evaluate and select among the response alternatives. (See, e.g., Ex. 0352-000049-TSS ¶ 74 at 27.) Similarly, firefighting tools such as foam and foam deployment equipment must be rapidly mobilized. (Ex. 3007-0014-VAN.) However, very few of these tools are distributed among local firefighting organizations; most are stored at refineries and in periodic caches along the rail lines. (Supra n.15 at 17.) Consequently, even though the first hour of an HHFT train derailment incident is critical, and a successful outcome requires a commensurate level of response resources to be available during this early stage, (Ex. 3007-0014-VAN), Vancouver completely lacks the ability to rapidly deploy and utilize the necessary specialized response resources.

2.3.3. Police Emergency Response Resources Are Inadequate

In the event of an emergency involving the Facility, the Vancouver Police Department
(“VPD”) would be responsible for evacuating people from the hazard zone, which in the case of an HHFT incident is one-half mile in all directions. (Ex. 3012-0006-VAN.) VPD also would be responsible for securing a perimeter around the hazard area and directing traffic flow to facilitate the evacuation and emergency response efforts. (Id.) VPD can field officers to perform these functions, but that would come at a cost of failing to serve Vancouver’s other policing needs. VPD nearly always is operating at minimum staffing, which depending on the time of day fluctuates between 10 and 24 on-duty officers for the entire city. (Ex. 3012-0004-VAN.) VPD is so short staffed that, just to meet the community’s ordinary needs for police services, it requires mandatory overtime and spends about half of its annual overtime budget to backfill positions. (Ex. 3012-0007-VAN.)

As with VFD, VPD would call in off-duty officers in the event of an emergency, but these officers would take at least one hour to mobilize. (Id.) Moreover, simply securing more officers often does not address the particular policing needs, as different police officers have specialized skills that are not necessarily fungible or readily replaceable by calling in more officers. Differing skill sets are required to address the variety of policing needs Vancouver is likely to have in the event of a large-scale evacuation, for example: a citizen who refuses to evacuate and is barricaded in at home; citizens who cannot evacuate using their personal transportation, either because they lack such transportation or because their egress routes are blocked by an accident’s aftermath; inmates at a correctional facility who must remain in secure custody during evacuation; criminals who would loot evacuated homes and businesses; and hospital patients and residents of medical-care facilities, who might require both assistance evacuating and special medical attention during the evacuation period. (Ex. 3012-0008-VAN.)

While VPD can assist in evacuating residents, it lacks even basic resources needed to
support an evacuation. VPD and VFD rely on the Clark Regional Emergency Services Agency (known as CRESA) for 9-1-1 dispatch, emergency management and associated technology services. (Ex. 3010-0001-VAN.) Vancouver does not have buildings or tents to provide shelter to evacuees, it cannot provide transportation to large numbers of people, and it lacks equipment such as blankets, cots, and portable toilets. (See Ex. 3012-0008-VAN.) For these resources, Vancouver would be completely dependent upon volunteers, donations, and any support provided by a responsible party, such as Tesoro. In the Application, however, Tesoro fails to evaluate and quantify shortfalls in local response capabilities and does not even mention how it would make up the difference between local capabilities and the community’s estimated needs in the event of an incident involving the Facility or its operations. (See Ex. 3056-0020-VAN to 3056-0026-VAN.)

Planning to police an emergency like an HHFT derailment is inherently difficult. A wide variety of policing needs could arise during an emergency event, and there is a high degree of uncertainty regarding the extent to which these different potential needs will in fact be required. Subject to these uncertainties, VPD estimates that an evacuation of 7,000 to 13,000 people could be required if an HHFT derailed in Vancouver, and that a police staff of 75 to 105 might be required. (See Ex. 3012-0006-VAN to 3012-0007-VAN.) Despite the uncertainty in these estimates, one thing is clear: An incident of this size would require far more police personnel than VPD has on duty at any given time, and it could require roughly half of VPD’s current total police force of 190 officers. (See Ex. 3012-0003-VAN.) In addition, during an evacuation incident, Vancouver will still have to address the community’s ordinary policing needs.

2.3.4. Mutual Aid Resources Cannot Fill the Gaps

Vancouver has reciprocal agreements with other jurisdictions in the vicinity to provide
firefighting and policing mutual aid in the event of a larger-scale and/or longer-duration emergency. Providing mutual aid is voluntary, so for emergency planning purposes Vancouver cannot assume that these resources will be available. In addition, some of the mutual aid agreements contain restrictions. For example, the Portland Fire Department will not provide mutual aid to VFD for marine fires. Mutual aid also takes several hours to deploy, and if the emergency has caused road or bridge closures, it may be completely unavailable. Consequently, mutual aid cannot provide assistance for first-response activities and is often used instead for responding to ongoing community needs during an emergency.

When multiple agencies or jurisdictions respond to an emergency, an Incident Command System (“ICS”) is used, which establishes standardized on-scene incident management specifically designed to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries. In addition to coordinating cross-jurisdictionally, ICS coordinates all of the different types of responders, such as fire fighters, police officers, humanitarian aid providers (such as volunteer and religious organizations), hospitals, and emergency medical transporters. All of these responders should have basic ICS training, and a number of VFD and VPD personnel have received higher-level ICS training.

While mutual aid and ICS help to coordinate and address shortfalls in emergency response services, they cannot substitute for maintenance of sufficient emergency response preparedness by the local jurisdiction. Maintaining preparedness is critical for VFD and VPD to assure the health and safety of Vancouver’s citizens. Yet Tesoro utterly fails in the Application to address this critically important community need. Instead Tesoro would impose substantial new risks on the community without assessing the demands these risks would place upon local
2.4. Financial Impacts: Tesoro Downplays the Substantial Harms to Vancouver’s Long-Term Urban Growth and Development as a Vibrant River-Front City, its Land Use Planning Vision for the Future, and its Ongoing Public and Private Investments and Land Values

Vancouver has been pursuing a path of urban redevelopment for decades. The focus of redevelopment in the downtown and waterfront areas has consistently emphasized the overriding importance of fostering connectivity between these areas. (See, e.g., Ex. 3097-0011-VAN.) Another major objective is the clustering of compatible land uses, which improves the efficiency of municipal service delivery. (See Ex. 3097-0139-VAN.) The result is an area of intensive urban development and redevelopment along the waterfront, particularly in the downtown area, but also in nearshore areas east of downtown. Vancouver is Washington State’s largest city on the Columbia River and is committed to encouraging sustainable economic growth centered on its waterfront. (See Ex. 0254-000005-TSS (recognizing Vancouver’s commitment to overcoming “the barrier-like feeling of the BNSF railroad berm between downtown and the waterfront.”)).

Beginning on the far eastern side of Vancouver, the Riverview Gateway Plan envisions future development “with a vibrant and urban mix of residential, commercial, office and employment uses, linked by a network of parks, trails, and open spaces with connections to surrounding neighborhoods.” (Ex. 3096-0005-VAN.) “This subarea and its intended mix of uses will be critical to [Vancouver’s] long-term economic health and development.” (Ex. 3096-0008-VAN.) Currently, there are two quarries in this area located between the railroad tracks and the river. One of the quarries is served by a single, private at-grade crossing. (See Ex. 3114-0001-VAN.) “Semitrailers have been known to have difficulty making the crossing, which raises concerns about the risk of an [oil train] collision with a semitrailer, with potentially...
disastrous results.” (Ex. 3009-0006-VAN.)

The BNSF rail line continues west through the Old Evergreen Highway Neighborhood, which is 3.4 miles long, extending north one-half mile from the river. (Ex. 3117-0006-VAN.) As of the 2000 Clark County Census, this neighborhood contained approximately 2,300 homes and had a resident population of approximately 5,700. (Id.) Two significant redevelopment areas are farther west. To the north of the rail line is the Lower Grand Employment Area, where 173 acres of older industrial land are being redeveloped and which provides employment to approximately 1,600 workers. (Ex. 3055-0003-VAN.) The Columbia Shores mixed-use waterfront development and the Columbia Business Center industrial area are south of the railroad tracks, (Ex. 3055-0003-VAN, -0005-VAN), and are served by only two crossings, one of which is a grade-separated crossing that is restricted in height and only a single lane with single-direction access, (Ex. 3009-0012-VAN.)

Continuing west along the BNSF rail line leads to downtown Vancouver and the Port, where the Facility would be located. Hundreds of millions of dollars have already been spent on downtown and waterfront redevelopment. Reconnecting downtown Vancouver with the Columbia River has been and will continue to be a central feature of Vancouver’s redevelopment vision. For example, the Vancouver Waterfront Access Project is an ongoing public works project involving investments of $44.6 million in infrastructure improvements to roads, utilities and the BNSF railway berm. The direct connection of downtown with a major redevelopment of a former waterfront industrial site is expected to spur an estimated $1.3 billion in new private investment. (Ex. 3009-0005-VAN to -0006-VAN.)

Tesoro understates both the importance to Vancouver of reconnecting downtown with the waterfront and the probable impacts caused by such a large increase in HHFT traffic on this
central feature of Vancouver’s urban planning vision. Tesoro acknowledges that four to five
HHFTs per day will deliver crude oil to the Terminal. However, Tesoro does not discuss that
this could result in as many as 15 HHFT transits of the downtown area every day. Each HHFT
will arrive in Vancouver heading west on the BNSF rail line running alongside and parallel to the
Columbia River. HHFTs will have two options for leaving Vancouver after unloading. Either
they could exit heading east the same way they came, or they could leave by heading north from
the Terminal out of Vancouver to head through the Cascade Mountains. If they take the former
route and leave Vancouver by heading east, they will make two passes of the downtown area.
(Ex. 5902-000054-CRK at 10-11.) However, if they head north, as Tesoro states most of them
will do, they will make a total of three passes through downtown, because of the need to
maneuver to switch tracks near the Columbia Street rail overpass. (Id.) Thus, on any given day,
if the maximum of five HHFTs came to Vancouver, and all existed to the north, there would be
15 HHFT passes through the heart of Vancouver directly between the downtown area and
the waterfront development area. This would equal 22.5 miles of trains in a single day.

The Facility and its resultant impacts are wholly incompatible with this vision of
Vancouver’s future. Siting an oil terminal facility of this magnitude within the heart of a densely
populated urban environment makes no sense. The unmitigatable risks and adverse impacts
resulting from a decision to site the Facility in Vancouver would be extensive and far reaching.
Foremost are threats to public safety, including releases of oil, fires or both, occurring from
collisions or malfunctions of HHFTs, during transloading activities at the Facility, and aboard
marine vessels at the Port. Tesoro’s own experts admit that it is difficult to plan for a rail or
marine accident, due to the high number of possible scenarios, (see Ex. 0352-000049-TSS ¶¶ 84-
90 at 32-33; Ex. 0303-000021-TSS ¶ 18 at 9), and Tesoro has not even analyzed the potential
public safety threats posed by sabotage or terrorism. Moreover, Tesoro has not analyzed the financial assurance and indemnity insurance requirements for the Facility, (see infra Section 2.5), so taxpayers have no way of knowing whether they will be forced to foot the bill in the event of a disaster. Approval of the Application would be bad public policy.

2.5. Financial Assurances: Tesoro’s Corporate Parents Are Not Backing Their Views of “Low Risk” with Their Own Money and Instead Would Shift the Risk of a Worst-Case Accident to the Public

Tesoro is not in a position to make Vancouver fiscally whole should a Maximum Foreseeable Loss (“MFL”) occur. An MFL estimate is an estimate of a worst-case operational risk scenario, in other words, the financial risk or total dollar amount associated with a worst-case incident. An MFL is not limited to one type of cost, but includes costs associated with loss of life, injury to persons, destruction of property, loss of use of property, first responder costs, and cleanup expenses. (Ex. 3119-0004-VAN to -0005-VAN.) EFSEC requires the applicant to address this issue.

The application shall set forth insurance, bonding or other arrangements proposed in order to mitigate for damage or loss to the physical or human environment caused by project construction, operation, abandonment, termination, or when operations cease at the completion of a project’s life. The application shall describe the applicant’s commitment to the requirements of chapter 463-72 WAC, Site restoration and preservation.

WAC 463-60-075. If an applicant cannot pay for an energy project’s true costs and instead asks the public to bear the financial risks the project would create, then EFSEC must recommend denial of the application for site certification. With respect to the Facility, Tesoro provides no assurances that it will not shift to the public costs that it cannot cover itself or through insurance.

The financial risks associated with this project are unacceptable. It is reasonable to estimate an expected MFL for a catastrophic accident associated with this project at roughly $5-$6 billion. (Ex. 3119-0006-VAN to -0007-VAN.) This estimate is derived from considering
costs associated with other major accidents and insurance reports. As an example, the Lac-Mégantic incident, involving a small town of roughly 6,000 in Quebec Province, Canada, was a catastrophic accident. It occurred in 2013, killed 47 people, and destroyed the downtown. According to recent media reports, damage estimates are now at about $3 billion. Compensation has been a major problem associated with that incident. In fact, the railroad hauling the crude oil filed for bankruptcy because it lacked sufficient insurance to pay the claims. (Ex. 3119-0006-VAN.)

That the total risk values are into the billions is not surprising. With respect to railroad incidents, BNSF has been up front that even available railroad liability insurance (apart from Tesoro) tops out at “about $1.0 Billion” and “[i]nsurance is not commercially available to sufficiently protect us against catastrophic loss.” (Ex. 3119-0006-VAN; see also Ex. 3119-0022-VAN.) In a U.S. Department of Transportation report, this level of insurance was documented as:

well short of the $5-$6 billion that Class I railroads estimate would be necessary in a “nightmare scenario,” e.g., an accidental release of TIH [toxic-inhalation-hazard] gas in close proximity to a large number of people. Once their primary insurance has been exhausted, carriers would be held liable for the balance, forcing even the largest railroad into bankruptcy.17

Vancouver, with its considerably larger population than Lac-Mégantic, has higher risks for loss of human life and physical injury, along with considerably higher infrastructure values. However, there is no market to cover this risk. (Ex. 3119-0007-VAN to -0008-VAN.) Tesoro certainly has not proposed financial security to cover an MFL. Tesoro—a Delaware LLC—effectively concedes it will only provide what the markets have available, and

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there is no evidence it will be providing financial guaranties from its parent company. For example, it states it will obtain “environmental impairment liability insurance” but only to the extent such coverage is available on a commercially viable basis. (Ex. 3119-00011-VAN; see generally Ex. 3119-0009-16.)

More specifically, the lease with the property owner requires the tenant to have $10 million per occurrence and $15 million aggregate liability insurance, coupled with $25 million in environmental pollution coverage. Tesoro indicates it will obtain property insurance ($1 million and five percent of values per location). (Ex. 3119-0013-VAN to -0014-VAN.) Also, the Application states Tesoro will obtain standard insurance on the Facility, and provide financial security in accordance with RCW 88.40.025 for a “reasonable worst case oil spill” to navigable waters of the state. (Ex. 3119-0012-VAN.) However, Tesoro has declined to provide details on any of this insurance, including coverage amounts and exclusions.\(^{18}\) In theory, Tesoro could purchase insurance of up to $1 billion to cover potential accidents, but has provided no indication that it will do so. And, intentional acts of sabotage would be excluded from most, if not all, insurance policies. Thus, a shortfall of at least $4-$5 billion toward the estimated MFL is anticipated. (Ex. 3119-0008-VAN.)

As a result, Tesoro cannot fully remedy (from a financial perspective) impacts resulting in injury and casualties, natural resource and property damage, emergency responder resource impacts, and infrastructure damage. Recognizing the risk the project presents, Tesoro appears to have erected protective shields should the MFL occur.

Tesoro is a Delaware limited liability company. Its members are Savage Companies and

\(^{18}\) *See supra* n.6. Tesoro’s latest reason for refusing to disclose financial information is that it is not required to do so until 90 days before site preparations commence. This makes no sense. Among other things, accepting Tesoro’s position would leave EFSEC no time to analyze and evaluate the proposed financial assurance to determine whether it is adequate.
Tesoro Refining & Marketing Company LLC. Tesoro Refining and Marketing Company LLC
(also a Delaware LLC) is a subsidiary of Tesoro Corporation. Savage Companies is a privately
held operator. (Ex. 3119-0014-VAN to -0015-VAN.) Tesoro has not provided financial data on
its Delaware LLC, Tesoro Refining and Marketing Company, LLC, or Savage Companies.

Tesoro Corporation financial information is available from the U.S. Securities and Exchange
Commission (SEC) EDGAR System. However, even if its assets were reachable in the event of
an MFL, an MFL does have the potential to bankrupt even the Tesoro Corporation. (Ex. 3119-
0015-VAN to -0016-VAN.) By utilizing the Delaware LLC structure, and without evidence of
contractual indemnifications, it appears Tesoro has shielded its parent from this risk. In doing
so, it has elected to protect its financial interests, but not Vancouver’s. (Ex. 3119-0017-VAN.)

Given EFSEC’s statutory duties to protect the public interest, denial is required.
3. CONCLUSION

As explained in this opening brief, the evidence adduced at the hearing will demonstrate that Tesoro has failed to meet its burden to show that construction and operation of the Facility will advance the public interest. Consequently, Vancouver requests EFSEC to recommend that the Governor deny approval of the Application.

Respectfully submitted, this 20th day of June, 2016.

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

EXECUTED this 20th day of June, 2016, in Vancouver, Washington.

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