

WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION / AGENDA WEDNESDAY, JANUARY 4, 2017
LOCATION: Wasco County Courthouse, Room #302
511 Washington Street, The Dalles, OR 97058

Public Comment: Individuals wishing to address the Commission on items not already listed on the Agenda may do so during the first half-hour and at other times throughout the meeting; please wait for the current speaker to conclude and raise your hand to be recognized by the Chair for direction. Speakers are required to give their name and address. Please limit comments from three to five minutes, unless extended by the Chair.

Departments: Are encouraged to have their issue added to the Agenda in advance. When that is not possible the Commission will attempt to make time to fit you in during the first half-hour or between listed Agenda items.

NOTE: With the exception of Public Hearings, the Agenda is subject to last minute changes; times are approximate – please arrive early. **Meetings are ADA accessible.** For special accommodations please contact the Commission Office in advance, (541) 506-2520. TDD 1-800-735-2900. If you require an interpreter, please contact the Commission Office at least 7 days in advance. **Las reuniones son ADA accesibles.** Por tipo de alojamiento especiales, por favor póngase en contacto con la Oficina de la Comisión de antemano, (541) 506-2520. TDD 1-800-735-2900.

Si necesita un intérprete por favor, póngase en contacto con la Oficina de la Comisión por lo menos siete días de antelación.

9:00 a.m.

CALL TO ORDER

Items without a designated appointment may be rearranged to make the best use of time. Other matters may be discussed as deemed appropriate by the Board.

- Corrections or Additions to the Agenda
- [Discussion Items](#) (Items of general Commission discussion, not otherwise listed on the Agenda: [Appointments](#)
- [Consent Agenda](#) (Items of a routine nature: minutes, documents, items previously discussed.): [Minutes-11.2.2016 Regular Session/Public Hearing; 11.10.2016 Continuation of Public Hearing; 12.21.2016 Regular Session](#)

9:30 a.m. [Open Funding Requests for Dial-a-Ride](#) – Rich Eberle

9:45 a.m. [Columbia Gorge Operational Systems Public Comment](#) – Angie Brewer

10:00 a.m. [VSAC Bylaws Revisions](#) – Matthew Larsell

10:10 a.m. [Wasco County Building Codes](#) – Tyler Stone

COMMISSION CALL/[ELECTION OF 2017 BOARD CHAIR](#)

NEW/OLD BUSINESS

ADJOURN

If necessary, an Executive Session may be held in accordance with: ORS 192.660(2)(a) – Employment of Public Officers, Employees & Agents, ORS 192.660(2)(b) – Discipline of Public Officers & Employees, ORS 192.660(2)(d) – Labor Negotiator Consultations, ORS 192.660(2)(e) – Real Property Transactions, ORS 192.660(2)(f) To consider information or records that are exempt by law from public inspection, ORS 192.660(2)(g) – Trade Negotiations, ORS 192.660(2)(h) - Conferring with Legal Counsel regarding litigation, ORS 192.660(2)(i) – Performance Evaluations of Public Officers & Employees, ORS 192.660(2)(j) – Public Investments, ORS 192.660(2)(m) – Security Programs, ORS 192.660(2)(n) – Labor Negotiations

WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
JANUARY 4, 2017

DISCUSSION LIST

ACTION AND DISCUSSION ITEMS:

1. [Appointments](#)

Discussion Item

Appointments

- [Kristin Dodd Application](#)
- [Order 17-001 Appointing Kristin Dodd to WCFCG Steering Committee](#)
- [Mike Middleton Application](#)
- [Order 17-002 Appointing Mike Middleton to QLife Budget Committee](#)

MEMORANDUM

TO: BOARD OF COUNTY COMMISSIONERS
FROM: KATHY WHITE
SUBJECT: FOREST COLLABORATIVE APPLICATION
DATE: 12/30/2016

The packet will be republished Tuesday with the addition of Ms. Dodd's application.

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF THE APPOINTMENT OF)
KRISTIN DODD TO THE WASCO COUNTY) ORDER
FOREST COLLABORATIVE GROUP STEERING) #17-001
COMMITTEE)

NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for the transaction of public business and a majority of the Board of Commissioners being present; and

IT APPEARING TO THE BOARD: That in August of 2015, the Wasco County Forest Collaborative Group was formed by Charter to provide the US Forest Service with proposals for management of the National Forest lands and to support the utilization of forest resources and related opportunities to strengthen local communities; and

IT FURTHER APPEARING TO THE BOARD: That Wasco County has agreed to be the appointing body for the Wasco County Forest Collaborative Group; and

IT FURTHER APPEARING TO THE BOARD: That David Jacobs has retired and his appointment expired on December 21, 2016; and

IT FURTHER APPEARING TO THE BOARD: That Kristin Dodd is willing and is qualified to be appointed to serve on the Wasco County Forest Collaborative Group Steering Committee.

NOW, THEREFORE, IT IS HEREBY ORDERED: That Kristin Dodd be and is hereby appointed to serve on the Wasco County Forest Collaborative Group Steering Committee as the Community Wildfire Protection Representative; said term to expire on December 31, 2019.

DATED this 4th day of June, 2017.

WASCO COUNTY
BOARD OF COMMISSIONERS

APPROVED AS TO FORM:

Rod L. Runyon, Commission Chair

Kristen Campbell
Wasco County Counsel

Scott C. Hege, County Commissioner

Steven D. Kramer, County Commissioner

INFORMATION AND QUALIFICATION FORM

QLife Budget Committee VOLUNTEER POSITIONS WASCO COUNTY, OREGON

BACKGROUND

The QLife Budget Committee meets each year to:

- Discuss and revise the budget as needed
- Approve the budget for recommendation to the QLife Board

APPLICATION

Provide personal qualifications to represent Wasco County on the QLife Budget Committee. Supplementary information may be attached. Do not provide confidential information.

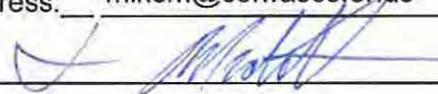
POSITION DESCRIPTION: Member Wasco County Budget Committee

Name: Mike Middleton

Address: 511 Washington Street, Suite 207, The Dalles, OR 97058

Phone (home) [REDACTED] Phone (work) 541.506.2770

E-mail address: mikem@co.wasco.or.us

Signature: 

Date: 12.30.2016

Number of years as a Wasco County resident: Less than 1

Why are you interested in being on the budget committee? _____

The QLife Budget Committee is an opportunity to use my skill set to assist in maintaining the financial integrity of an organization providing a valuable service to the County.

The cost of popular projects often outweigh the ability to fund them. Are you willing to make difficult funding decisions and communicate the results to the public?

Yes – transparency is the goal

Education (school, college, training, apprenticeships, degrees, etc.)

Boise State University – Bachelor Accountancy Date(s): [REDACTED]

Licensed CPA in Idaho Date(s): Since 2003

Licensed CPA in Alaska Date(s): Since 2013

Date(s):

Experience (work, volunteering, leadership roles, achievements etc.)

Finance Director Wasco County Date(s): June 2016 - current

Deputy Finance Director Sitka Alaska Date(s): August 2011 – June 2016

Controller, City of Boise, Idaho Date(s): December 2003 – July 2011

Date(s):

General Comments/Additional Relevant Information

I have been told the Financial tracking/reporting for Qlife will be moved to the County, so I will become responsible for that in my role as Finance Director and be involved in building future budgets fro Qlife. A role on the Committee for the current year will familiarize me with the current process allowing for a smoother transition in the next year.

Four horizontal lines for additional comments.

Send completed form to:

Wasco County
511 Washington Street, Suite 101
The Dalles OR 97058
(541) 506-2520
fax (541) 506-2551

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF THE APPOINTMENT OF)
MIKE MIDDLETON TO THE QUALITY) ORDER #17-002
LIFE BUDGET COMMITTEE.)

NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for the transaction of public business and a majority of the Board of Commissioners being present; and

IT APPEARING TO THE BOARD: That the governing body of Wasco County, Oregon, is required to appoint two representatives to the Quality Life Budget Committee; and

IT APPEARING TO THE BOARD: That there is a vacancy on the Committee on the Quality Life Budget Committee; and

IT FURTHER APPEARING TO THE BOARD: That Mike Middleton is willing and is qualified to be appointed to the Quality Life Budget Committee.

NOW, THEREFORE, IT IS HEREBY ORDERED: That Mike Middleton be and is hereby appointed to the Quality Life Budget Committee; said term to expire on December 31, 2020.

DATED this 4^h day of January, 2017.

WASCO COUNTY BOARD
OF COMMISSIONERS

Rod L. Runyon, Commission Chair

Scott C. Hege, County Commissioner

Steven D. Kramer, County Commissioner

APPROVED AS TO FORM:

Kristen Campbell
Wasco County Counsel

**WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
JANUARY 4, 2017**

CONSENT AGENDA

1. Minutes:
 - a. 11.2.2016 Regular Session/Public Hearing
 - b. 11.10.2016 Continuation of Public Hearing
 - c. 12.21.2016 Regular Session



WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
NOVEMBER 2, 2016

PRESENT: Scott Hege, County Commissioner
Steve Kramer, County Commissioner
Rod Runyon, Commission Chair

STAFF: Tyler Stone, Administrative Officer
Kathy White, Executive Assistant

At 9:00 a.m. Chair Runyon opened the Regular Session of the Board of Commissioners with the Pledge of Allegiance. Sheriff Lane Magill asked to add 9-1-1 staffing to the Discussion List.

Discussion List – 9-1-1 Staffing

Sheriff Magill reported that he is in the process of hiring a top 9-1-1 dispatcher who has eleven years of experience and is currently working in La Grande. He said that Krista Silver brings with her an advanced telecommunicator certificate. He stated that her pay should be commensurate to her skills and experience; he would like authorization to start her at Step 4A. Sheriff Magill pointed out that the County will not have to send her to the academy or put her with a trainer. He concluded by saying he has already discussed this proposal with Finance and Mr. Stone; the position is not new.

*****The Board was in consensus to approve Step 4A for Krista Silver as a 9-1-1 dispatcher.*****

Commissioner Kramer asked if 9-1-1 is now fully staffed. Sheriff Magill replied that in addition to Ms. Silver, background checks are ongoing for two part-time position

candidates. He commented that they had great applicants and once this process is complete, the 9-1-1 center will be fully staffed.

Discussion List – VSAC Appointment

Commissioner Hege commented that Anita Iken is a great candidate for this appointment; he is glad that she is willing to volunteer. Chair Runyon concurred, saying that she started attending Veterans Services Advisory Committee meetings when Al Morrison passed away. He said she will be a great asset to the Committee.

{{{Commissioner Hege moved to approve Order 16-064 appointing Anita Iken to the Wasco County Veterans Services Advisory Committee. Commissioner Kramer seconded the motion which passed unanimously.}}}

Discussion List – Forest Management

Ms. White explained that the new AOC bylaws for this sub-committee, to which Wasco County pays dues, outlines the make-up of the sub-committee to be designated commissioners from each participating county.

Commissioner Kramer volunteered for the appointment based on his active involvement with the Wasco County Forest Collaborative.

{{{Commissioner Hege moved to approve Order 16-066 appointing Commissioner Steve Kramer as Wasco County's voting delegate on the Association of Oregon Counties Forest Management Subcommittee. Chair Runyon seconded the motion which passed unanimously.}}}

Commissioner Kramer reported that County Surveyors Dan Boldt and Bradley Cross have been to the County property on Ramsey Creek; they were able to designate the lines for the loggers. He said that there is a little time before the loggers will be available, but the project is moving forward.

Commissioner Hege asked if there will be any revenue from the project. Commissioner Kramer replied that there may be some revenue but he expects it will be a net zero project. He pointed out that there are benefits to the community in thinning the trees and it will probably not cost the taxpayers anything.

Discussion List – Property Line Adjustment

Mr. Stone explained that this is the final step in reconfiguring the lot once occupied by the old armory. He said that the armory lot did not encompass the whole of the level area that is at a lower grade than the adjoining ball field. He stated that we did a lot line adjustment to make it a three-acre parcel. He noted that the height difference between the ball field and armory and ballfield properties is 15-20 feet; it makes sense to have the lower level property be all one lot.

Commissioner Hege said he would like to have had a map to go with this. He asked if the zoning had been changed for the property. Mr. Stone confirmed, saying the zoning was the first step; it is all general commercial. Commissioner Hege commented that without the lot line adjustment, the old armory site is very narrow and would not have been useful

{{{Commissioner Kramer moved to accept the property line adjustment deed for the property at Kramer Field and the old armory site. Commissioner Hege seconded the motion which passed unanimously.}}}

Consent Agenda

Commissioner Hege noted that on page four of the Tygh Valley Town Hall minutes, it says USF property; it should be ODFW Property.

{{{Commissioner Hege moved to approve the Consent Agenda with the noted correction to the Tygh Valley Town Hall Minutes. Commissioner Kramer seconded the motion which passed unanimously.}}}

Agenda Item – Transportation Plan

Mid-Columbia Economic Development District Executive Director Amanda Hoey introduced Dan Hoyt who is replacing Michelle Spatz as the Mobility Manager. Ms. Hoey explained that the County Board of Commissioners has the ultimate authority to approve the Human Services Coordinated Transportation Plan. She stated that the County is required to have such a plan in order to accept Special Transportation funds.

Ms. Hoey went on to say that plans are reviewed and approved by the Special Transportation Fund Advisory Committee. She explained that extensive surveying and research was conducted to identify needs, barriers and gaps; strategies were then developed to meet those. She reported that the STF Advisory Committee would like to highlight the taxing district proposal to illicit Board feedback and determine if the

Board is interested in exploring the feasibility of a district. Ms. Hoey observed that in the five-county region, the only transportation taxing district is in Hood River where district funds are leveraged as matching funds for grants.

STF Advisory Committee member Dave Mason said that Ms. Spatz did a wonderful job; many plans were reviewed in the development of this plan. He reported that the taxing district proposal was not included in the first draft of the Plan but was revisited based on public comment. He stated that since the Board has a broader view of County needs, it is important to the STF Advisory Committee to get input as to whether or not the Board is interested in pursuing the idea of a taxing district.

Commissioner Kramer asked if the STF Advisory Committee had been unanimous in the decision to include the taxing district feasibility study in the Plan. Mr. Mason replied that they were. He added that it has been discussed many times over the years and was included this time in response to public comment.

Commissioner Hege stated that one of the challenges he sees with transit districts is the boundaries that are set. He said it seems like the idea of a regional district would be worth exploring. He went on to say that he would want it done in two steps – first a low-level exploration to determine if it would be reasonably feasible; then move forward in more depth. He stated that it shouldn't be necessary to replicate it county by county; we could possibly expand on what Hood River has. He said it is worth looking at the idea, noting that it will not commit us to anything. He stated that transit problems are not only within the County but cross county and state lines.

*****The Board was in consensus to leave the transit taxing district exploration language in the Transportation Plan as a low-level priority.*****

Ms. Hoey continued to review the Plan, pointing out that they expanded the limited English proficiency portion of the Plan. There have also been changes to the priority rankings and a piece added relating to employment and meeting the needs of people trying to get to and from work as well as those needing non-emergency medical transportation.

{{{Commissioner Hege moved to approve the 2016-2019 Wasco County Coordinated Transportation Plan with typographical error corrections. Commissioner Kramer seconded the motion which passed unanimously.}}}

Commissioner Hege thanked the Committee and MCEDD for their work on the plan and asked that the STF Advisory Committee be briefed on the Board's input. He added that he is glad to see the employment piece in the plan as he has seen first-hand how important public transportation has been for employees at Mt. Hood Meadows.

Mr. Hoyt reported that he has only been on the job for two days but has worked in transportation and community development for decades. He said he has always loved the Gorge and is happy to be living and working here.

Agenda Item – Transitional Housing

Community Corrections Director Fritz Osborne introduced Shelly Reed from Bridges to Change saying she is here to answer questions. He stated that the contract included in the Board Packet is based on the County's standard personal services contract with scope of work language borrowed from other counties. He explained that this is also an emergency procurement request as outlined in his memo.

Mr. Osborne explained that he has done a considerable amount of outreach to the housing community and interested community members including Wings, Columbia Cascade Housing, Community Action Council, Habitat for Humanity, Salvation Army, Grace House, Spruce Village and NORCOR. He reported that after meeting with each entity, they would do their own work to look at the possibilities for collaboration; the only one with any traction was Wings which is transitioning into The Dalles and willing to partner with us on housing concepts. He said he established a partnership with them and began work; in August concerns were raised about Wings being small and reliant on donations – we would be at risk and could put them at risk through a partnership. He then re-contacted NORCOR but that proved unfeasible.

Mr. Osborne went on to say that Juvenile Services Director Molly Rogers put him in touch with the Oregon Department of Housing and Human Services; they highly recommended Bridges to Change. Bridges to Change is dedicated to the same plan Mr. Osborne is interested in and they are expanding.

Mr. Osborne stated that he could not have foreseen the August fall-through of the Wings partnership. He went on to say that all of the transitional housing funds come from the State and are tied to the biennium which ends next June. He said that although Community Corrections uses the Solid Rock and Grace House and sometimes pays for hotels, those solutions do not represent stable housing.

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Mr. Osborne continued saying that the lack of transitional housing presents a threat to public safety, noting that one of the offenders for whom they have not been able to provide any stability has recently accosted County staff and had to be trespassed more than once. He said the offender needs management in a stable living situation which is what Bridges to Change can offer.

Mr. Osborne stated that the work he has done over the past nine months toward a resolution to this problem represents a reasonable effort at competition as required by statute. He drew the Board's attention to the cost comparison chart, pointing out that Bridges to Change is the most competitive and well within the Community Corrections budget. Bridges to Change would provide two on-site staff who understand the work and can offer peer support, plus a Monday through Friday case manager for communications, outreach, paperwork and connecting to other community resources. He added that winter is coming and it will be harder to be homeless in the colder weather.

Chair Runyon noted that this could relieve some bed space at NORCOR. Mr. Osborne concurred saying that the trespassed offender, off of his prescribed medications and self-medicating, had told him directly that if he could not find a place to sleep, he would commit a crime to get into NORCOR; that is not a unique coping strategy. He stated that he currently has about a dozen offenders that could use housing; two or three have acute crises events that make them problems.

Commissioner Hege reported that this was a big topic at the recent AOC meetings with one session exclusively about this and the work of Bridges to Change. He said that when this was presented at LPSCC, he thought it was a great idea. He stated it is clear that you cannot just house the offenders; services must be added to help them make a change. He said he is very excited about this; he did not think it would be possible for a small town like ours. He noted that the contract does not include a not-to-exceed clause and asked how we would control costs; we cannot house everyone forever.

Mr. Osborne replied that it would be naturally controlled by the size of the house but he is open to discussion about that.

Commissioner Hege asked if the program is sustainable. Mr. Osborne responded that the Department of Corrections grant and aid is sustainable for housing and can be augmented by Cognitive Behavioral program funds as those usually have a surplus. He went on to say that this expansion is really supported by the Justice Reinvestment

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Program which is intended to reduce or eliminate the need to expand jails.

Mr. Stone stated that he believes the funding stream will be sustained over the next few bienniums. He reported that they had talked about doing this with our own staff which created concern and inspired reassessment. He pointed out that one advantage to this approach is that through a service provider, it can be modified as needed.

Chair Runyon asked to hear from Ms. Reed. Ms. Reed stated that the program run in the tri-county and metro area focuses on stabilization – mental health and addiction; once stable, the focus shifts to recovery and transition back into the community. She explained that the duration varies; fixed times have not been established but it is generally three to six months. She reported that they have already begun to reach out to local providers for longer-term housing.

Mr. Osborne announced that Oxford House is interested in The Dalles; it is for people further along the path. He pointed out that it could be a place Bridges to Change could graduate people to; that will be the next need.

Chair Runyon observed that the budget will require close monitoring. Mr. Osborne agreed, stating that the contract goes through June, 2017 and can be adjusted at that time.

Chair Runyon asked how many of those currently appropriate for this program have local community ties. Mr. Osborne replied that most do; they are being supervised here and are required to be a resident. He said that if the offender is too transient, they try to transfer them out; for transfers in, they examine local ties prior to accepting them. He stated that they may go out of the County now and then, but for the most part they are in The Dalles.

Commissioner Hege said it is important to understand that not many Portland organizations are willing to come here; He said he appreciates bridges to Change's willingness to expand to our area. He stated that he is willing to help facilitate good integration with existing local services; the more it is integrated, the more successful it will be.

Mr. Osborne stated the program not only reaches out but is open to reach-ins; other case workers can schedule time and have access to the house for space to meet with clients – the case manager will help coordinate. In addition, it is not entirely on the client to remember where they need to be; they will get help getting to appointments.

Commissioner Hege stated that the Commissioners are here to help; he wants to work together to get these people on their own and into the community. Mr. Osborne agreed, saying they don't want to get people off the streets without helping them move forward; we are seeking change and upward mobility.

Mr. Stone commented that this is really filling a service gap; Wings is the closest organization in our area and they are at capacity. Mr. Osborne concurred, noting that Wings is opening a new house for women so this will not overlap that service.

{{{Commissioner Hege moved to grant an emergency exemption for the Bridges to Change contract under section 21.3(a)(2) of the Wasco County Local Contracting Rules. Commissioner Kramer seconded the motions which passed unanimously.}}}

{{{Commissioner Hege moved to approve the Personal Services Contract for Transitional Housing. Commissioner Kramer seconded the motion which passed unanimously.}}}

The Board commended Mr. Osborne for the good work in finding solutions for this issue.

Chair Runyon called a recess at 11:00 a.m.

The Session reconvened at 1:03 p.m.

Agenda Item – Work Session

Chair Runyon stated that the purpose of this work session is to offer guidance to the Board on how to properly conduct this afternoon's appeals hearing.

Commissioner Kramer asked what the process would be should anyone raise an objection. Outside Counsel Dan Olsen replied that if there is an actual conflict, the commissioner should recuse himself. If there are ex parte communications, parties need the opportunity to ask question regarding those communications. He went on to describe instances that would and would not be considered ex parte. Mr. Olsen stated that the communication would have to have been substantive; a commissioner could declare contact and say that it will not affect his decision.

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Mr. Stone stated there had been a meeting with Representative Huffman where safety, railroad crossings, future plans, etc. were discussed – it was a chance for people to ask questions of Union Pacific Railroad. Planning Director Angie Brewer interjected that the merits and details of this project were not discussed at the meeting. Mr. Olsen stated that he does not believe that would rise to the level of ex parte but could be disclosed.

Commissioner Hege asked if meeting with Ms. Brewer to discuss the application is not ex parte. Mr. Olsen confirmed that it is not.

Chair Runyon asked about meetings where both sides were represented and made presentations. Mr. Olsen replied that it is not a conflict but should be disclosed; the parties are entitled to know all the facts that may be relied upon in making a decision. He added that the courts recognize that the commissioners' job is to be in the community.

Further discussion ensued around time limits imposed on various groups. Mr. Olsen noted that there are several ways to approach it.

Mr. Olsen explained that a lot of issues have been raised on appeal; the Wasco County code limits the Board to the issues on appeal. He stated that there will likely be testimony that goes beyond the appeal; the Board can note the testimony and move on to decide whether or not it applies and can be considered.

Mr. Olsen stated that at the original hearings, they called a speaker and had two more on deck to help keep it moving. Ms. Brewer suggested that the same process be followed at the appeals hearing. Chair Runyon agreed and said that the Board is usually fairly casual about time limits and will need help keeping track of speakers' time. Ms. Brewer responded that staff would help with that by displaying count-down signs.

Commissioner Hege noted that many of the suggested motions are tentative; he asked for the reason behind the tentative status. Mr. Olsen replied that if the Board is confident in a decision to support the Planning Commission's decision, they could make a final decision tonight. If, however, the Board decides to make modifications to the Planning Commission's decision, they will need to set the matter over for a period of time to allow staff to put those findings together for legal compliance and accuracy. He explained that the most common reason for getting a decision back is inadequate findings. When that work is complete, the Board can meet for review and final decision.

Further Discussion ensued regarding the meaning of each proposed motion. Mr. Stone pointed out that there are some timelines to be met. Ms. Brewer stated that statute requires a decision within 365 days of application completeness; the appeal hearings have been scheduled to meet that time frame.

Chair Runyon observed that there are 29 grounds for appeal and asked if a motion will be required for each. Mr. Olsen responded that it would not be necessary to have separate votes on each one; they can be addressed as units.

At 1:42 p.m. Chair Runyon recessed until the appeals hearing scheduled for 3:00 p.m. at the Columbia Gorge Discovery Center.

At 3:08 p.m. Chair Runyon opened the Appeals Hearing for File Number PLASAR-15-01-004. The attached transcript of the hearing was provided by Linda Odermott, a PACE Registered Paralegal. A complete record of the application and appeals, many thousands of pages, is available upon request and may have fees associated with its provision.

At 8:02 p.m., Chair Runyon continued the hearing to November 10, 2016 at 5:30 p.m. in the Wasco County Courthouse. The 11.2.2016 Session of the Board of County Commissioners was then adjourned.

Summary of Actions

Motions Passed

- **To approve Order 16-064 appointing Anita Iken to the Wasco County Veterans Services Advisory Committee.**
- **To approve Order 16-066 appointing Commissioner Steve Kramer as Wasco County's voting delegate on the Association of Oregon Counties Forest Management Subcommittee.**
- **To accept the property line adjustment deed for the property at Kramer Field and the old armory site.**
- **To approve the Consent Agenda with the noted correction to the Tygh Valley Town Hall Minutes.**
- **To approve the 2016-2019 Wasco County Coordinated Transportation Plan with typographical error corrections.**

- To grant an emergency exemption for the Bridges to Change contract under section 21.3(a)(2) of the Wasco County Local Contracting Rules.
- To approve the Personal Services Contract for Transitional Housing.
- To tentatively overt turn the Planning Commission decision on the basis that the proposal affects treaty rights, to add back in the stricken conditions of approval and affirm the Planning Commission decision on all other grounds and directed staff to return with findings for review and a final decision on November 10th.

Consensus

- To approve Step 4A for Krista Silver as a 9-1-1 dispatcher.
- To leave the transit taxing district exploration language in the Transportation Plan as a low-level priority.

Wasco County
Board of Commissioners

Rod L. Runyon, Board Chair

Scott C. Hege, County Commissioner

Steven D. Kramer, County Commissioner

LAND USE APPEALS HEARING

APPEALS OF PLANNING COMMISSION APPROVAL
OF APPLICATION NO. PLASAR 15-01-0004

Wednesday, November 2, 2016

3:00 p.m.

1 CHAIRMAN RUNYON: Well, good afternoon
2 everyone. Welcome. Glad to have you here. This is a
3 nice setting. Those seats are very comfortable.

4 I'm going to open the land use appeal
5 hearing. We'll be hearing three appeals of Planning
6 Commission Approval of Application No. PLASAR
7 15-01-0004.

8 This is an application for the Union Pacific
9 Railroad for conditional use approval and variance to
10 expand and existing railroad siding with 4.02 miles of
11 new second mainline track, realign existing track,
12 replace five equipment shelters and make related
13 improvements.

14 The three appeals are: No. 16-10-0001 from
15 Friends of the Gorge, Columbia Riverkeeper and
16 Physicians for Social Responsibility, No. 16-10-0002
17 from the Union Pacific Railroad, No. 16-10-0003 from the
18 Confederated Tribes and Bands of the Yakama Nation.

19 This is a quasi-judicial de novo hearing.
20 De novo means that we will accept new evidence and
21 arguments and are not limited to the Planning Commission
22 Record. It is important to stress, however, that our
23 review is limited to the grounds listed in the appeals
24 we received. Accordingly, you must limit your oral and
25 written testimony to those issues. Testimony on the

1 other issues will not be considered in reaching our
2 decision and may be ruled to be out of order.

3 The hearing will proceed as follows: County
4 staff will present the staff report, including
5 summarizing the Planning Commission decision and
6 outlining the issues that are on appeal. Each of the
7 staff will have 15 minutes to present their appeal and,
8 if desired, to address any of the other appeals should
9 be denied. The order will be:

10 The Union Pacific Railroad, The Confederated
11 Tribes, Friends of the Gorge, Columbia Riverkeepers and
12 Physicians For Social Responsibility, who are replying
13 as one unit.

14 We will then hear from the following,
15 regardless of whether you favor or oppose the
16 application that is on appeal: Tribal elders and
17 officials, elected officials other than tribal.

18 Although there is no set time limit for this
19 testimony, we do ask that you keep in mind that we want
20 to have time to hear from everyone who wants to speak.
21 And if you do have trouble hearing, we have lots of
22 empty chairs, please feel free to move forward.

23 After that section we will hear from anyone
24 else speaking in favor of the application. The time
25 limit is three minutes per person.

1 Next we'll hear from those opposed to the
2 application or who just have questions or other
3 comments. Again, that time limit is three minutes per
4 person.

5 Finally, we will hear ten minutes of
6 rebuttal from each of the appellants, with no new
7 evidence, in the following order: No. 1) The
8 Confederated Tribes; 2) the Columbia Gorge Riverkeepers
9 and Physicians; and 3) Union Pacific. Staff will then
10 have a final opportunity to comment but not to present
11 new evidence.

12 Regarding testimony, we want to the hear
13 from as many persons as possible today. Please listen
14 to the following rules for this hearing: Time spent
15 responding to questions from the Commission will not
16 count against your speaking time. You may not transfer
17 your time to another person.

18 Abusive or disruptive testimony,
19 demonstrations, applause, questions or comments from the
20 audience are not permitted, as these take up valuable
21 time from persons waiting to be heard.

22 The testimony must relate to the Wasco
23 County Code standards applicable to the issues on
24 appeal. If a party wishes to object to testimony or
25 evidence as being beyond the scope of issues on appeal,

1 please raise your hand, rather than interrupting the
2 testimony. We will address those objections at an
3 appropriate time.

4 Please avoid repetitive testimony. If your
5 testimony is basically the same as a prior speaker, you
6 may just indicate that you agree with that testimony.
7 You may submit written testimony, rather than speak.

8 If you wish to testify, you must sign the
9 sign-in sheet and state your name for the record. If
10 you have written materials to submit, please hand them
11 to the clerk, right over that way, so they can be
12 entered into the record.

13 We reserve the right to change the time
14 limits or end testimony at such time as we deem
15 appropriate. Failure to raise an issue with sufficient
16 specificity to permit us or the appellants to address it
17 may preclude you from raising that issue on appeal.

18 Failure to raise constitutional or other
19 issues related to proposed conditions of approval with
20 sufficient specificity to allow the local government or
21 its designee to respond to the issue, may preclude an
22 action for damages in Circuit Court.

23 All persons who sign in will receive notice
24 of the decision, even if you do not testify orally or in
25 writing.

1 So before proceeding, do any commissioners
2 have any conflicts of interest to disclose?

3 COMMISSIONER KRAMER: No.

4 COMMISSIONER HEGE: No.

5 CHAIRMAN RUNYON: Does any commissioner have
6 any ex parte context to disclose, other than a site
7 visit?

8 COMMISSIONER KRAMER: No.

9 COMMISSIONER HEGE: Sure. Yeah. So there's
10 obviously lots of information in this case, been many
11 articles in the newspaper. I've read many things on
12 Facebook. I've had individual emails sent to me. I've
13 had conversations with citizens and I've attended other
14 public meetings that this issue has been discussed in
15 public meetings. So there's been -- has been lots of
16 information around this that -- that hasn't been at a
17 prior hearing or whatever.

18 CHAIRMAN RUNYON: I would say the same
19 thing. In the course of my job as a county
20 commissioner, I go to lots of meetings. I've attended
21 meetings in Mosier, the city council and the planning
22 group, but only when both sides were there. And that's
23 been my rule. When one side has been only there on the
24 docket, I have not attended.

25 So, but as far as emails, seeing things on

1 Facebook, newspaper, et cetera, those things come at us
2 daily on many issues, including this, and constantly.

3 For the record, we are all familiar with the
4 site from our daily travels in the community. Did
5 anyone make any visit to the site with this application
6 in mind?

7 COMMISSIONER KRAMER: No.

8 COMMISSIONER HEGE: Not specifically.

9 CHAIRMAN RUNYON: Neither did I.

10 Objections. Does anyone have an objection
11 to the jurisdiction of the commission, the procedures
12 I've described or to the participation by any
13 commissioner?

14 Okay. So we are ready to rock and roll
15 here. And I will remind you again that we do have a
16 recorder working over there. She does like 250 words a
17 minute. But if you're reading -- and I know everyone
18 gets nervous or whatnot -- make sure you are audible,
19 speak up, because if you're going too fast, we may have
20 to stop you and slow you down a little bit so she can be
21 sure to catch up. She's a professional and I don't
22 think she'll have too much problem, but in the event
23 there is the only thing I would say just to -- know that
24 we're trying to be polite for her benefit to make sure
25 she gets it in the record, okay?

1 And with that, we'll move to the staff
2 report. Angie Brewer.

3 MS. BREWER: Thank you, Commissioner. For
4 the record, I am Angie Brewer. I'm planning director
5 for Wasco County. Let me apologize in advance for
6 what's going to be a lengthy staff presentation. I
7 hope -- it should be on. Is that better?

8 All right. So it's going to be a lengthy
9 presentation. I apologize in advance for that. My goal
10 is to give you all as much information as possible as we
11 move forward with this hearing. It's complicated and
12 has a very large scope, so there's a lot of information
13 to share.

14 There's three parts to my presentation. The
15 first is to share with the commissioners the information
16 that staff shared with the planning commissioners and
17 the planning commissioners' records, the information
18 that was used by them to make their decision.

19 The second part will include an overview of
20 what their decision included. And the third part is the
21 appeal -- describes the appeals in response to that
22 decision and staff's response to those grounds for
23 appeal. And then I will turn it over to you all for
24 public testimony and deliberation.

25 So let me skip through some of these. We

1 already talked about hearing format. But staff
2 presentation, part one, is an overview of the
3 application. I'm going to spend a little more time on
4 the first few slides, and then I will go a little bit
5 faster through the others.

6 But, Commissioners, please stop me or we can
7 always go back if you have questions about any of these
8 slides.

9 Let me start by explaining what exactly has
10 been proposed by the applicant. They have proposed
11 expanding and existing railroad site to create an
12 additional 4.02 miles of mainline track, replace five
13 equipment buildings and associated equipment, install
14 drainage structure, fill wetlands and remove vegetation
15 for new ballast, blast out a rock wall; pretty
16 significant concrete retaining wall to hold up some of
17 the new blasted areas, 12 new signal lights, required
18 safety signage, remove telephone poles, five new
19 monopole wireless communication poles, modify existing
20 utilities and clearing of construction zones -- landing
21 zones for construction purposes -- improving access
22 gravel roads, which includes grading and graveling
23 existing roads.

24 And we would like to point out at the
25 Planning Commission hearing, that the application

1 describes them as new roads. They're not new. They're
2 just grading and graveling of existing roads that aren't
3 currently used very much. And some off-site wetland
4 mitigation that is located east of the project site,
5 closer to The Dalles.

6 The location in zoning is also very
7 important. We are only able to regulate those portions
8 of the project located outside the designated urban area
9 of Mosier. So those areas that are subject to National
10 Scenic Area rules and regulations are the areas that we
11 are specifically looking at. So if there are any
12 questions about items of the proposal occurring inside
13 the City of Mosier, we won't be able to address that
14 specifically through this hearing process.

15 There are several zones affected by this
16 proposed development, including, in the General
17 Management Area, large-scale and small-scale
18 agriculture, open space and water. And in the Special
19 Management Area, we have public recreation, agriculture
20 and open space.

21 This is a vicinity map for you all just to
22 wrap your head around where we're talking and -- okay.
23 Well, so, I'm hoping my staff is up there and can see
24 me. I broke the clicker. It doesn't let me navigate.

25 So you can segment -- there's Segment 1 and

1 Segment 2 on either side of the City of Mosier. The
2 part we're not able to regulate, of course, is the piece
3 inside -- oh, I did it again. One more time. I'm
4 sorry. I'm looking for the pointer.

5 So the area inside the urban area, we are
6 not able to regulate this piece. But there is a segment
7 of the project occurring from the County line to the
8 edge of the urban area in Mosier. And then from the
9 east end of Mosier to -- to about halfway through
10 Memaloose State Park on the west end -- or excuse me --
11 on the east end.

12 Let me point out one more thing. So within
13 a portion of the project, there's an existing double
14 track siding in here. And the proposal is to expand
15 that existing double track into second mainline. So a
16 longer segment where there are two tracks. So most of
17 this area in here, in particular, already has two tracks
18 in parallel.

19 The applicable rules that the Planning
20 Commission apply to this include -- include our Scenic
21 Area Ordinance and also the management plan for the
22 Columbia Gorge National Scenic area.

23 Our ordinance is -- is -- was constructed
24 and adopted with the intent of implementing the Scenic
25 Area Act and Management Plan. Our ordinance was

1 reviewed by the Columbia River Gorge Commission and the
2 Forest Service and the Secretary of Agriculture to
3 confirm that it does, indeed, implement the Management
4 Plan as it exists today.

5 We prepared a staff summary recommendation
6 for the Planning Commission's consideration. Those are
7 online and available as part of the record. And the
8 chapters that apply, I've got on the slide here, include
9 Chapters 1, 2, 3, 4, 5, 6, 11 and 14.

10 Specifically, for the planning commissioner
11 and the (indiscernible) commissioner, Chapter 23 is not
12 up there and you'll note in my staff summary that there
13 was an error in the original staff report referencing
14 Chapter 23, which has to do with some provisions that
15 has been removed. So just a heads up for a later
16 discussion.

17 So my next slide has to do with each of
18 those chapters. Chapter 3 includes language for basic
19 zoning, which gives us the authority to allow or deny
20 proposed uses, based on the allowed uses in each of
21 those underlying land use designations or zones.

22 The zone -- you can't see very well. The
23 green does not allow you to read it very well on this
24 screen. But again, this is available online.

25 Each of the zones are highlighted on the far

1 left and staff's evaluation as to whether or not those
2 uses are allowed in that zone, is in the center column.
3 And then the applicable regulations is on the far right.

4 The conclusion of staff's analysis is the
5 proposed development is allowed in each of the
6 underlying land use designations, subject to compliance,
7 with the resource protections in Chapter 14, Chapter 5
8 and Fire Standards Provision.

9 So conditional use criteria is in Chapter 5.
10 I could read through this, but it's a little lengthy.
11 What I want to make sure we all note is that the
12 conditional use provisions specifically are, in effect,
13 to protect the public health and safety of our residents
14 in the County from new development and changes in
15 existing uses or intensity of uses from new development.

16 So as you can see, this has a lot to do with
17 being compatible with the surrounding area; not
18 significantly burdening public services, including fire
19 and EMS. Impairing traffic law, safety, minimizing
20 noise, dust and odor.

21 Impairing -- let's see -- may not reduce or
22 impair any sensitive areas or cause erosion. Must not
23 adversely affect air, water and land. Must not detract
24 from the visual character. Must preserve historic value
25 and cultural significance. Must be compatible with

1 agriculture. Must not significantly increase fire
2 hazard, suppression costs and any risk to fire
3 personnel.

4 So as a result of those requirements, staff
5 included a handful of conditional use recommended
6 conditions. Many of these were adopted by the Planning
7 Commission. Some of them were not. We'll go into more
8 detail on that later.

9 Chapter 6 includes variances. The applicant
10 requested variance to the Columbia River Development
11 setback, Scenic Travel Corridor setback, wetland
12 buffers, and sensitive plant buffer zone.

13 I'll go into more about this a little bit
14 later. But the important part of staff's evaluation
15 here was that even the location of the railroad
16 corridors, being sort of trapped, physically trapped
17 between the Columbia River and a designated scenic
18 travel corridor, Interstate 74, and in some areas the
19 Historic Columbia River Highway.

20 It's very difficult for them to comply with
21 any of these setbacks, for any reason, even things for
22 repair and maintenance. So keep that in mind; the
23 physical limitations of the location of the corridor in
24 all instances through the Gorge.

25 Chapter 11 is fire safety standards. This

1 is a self-certification process, however, compliance is
2 required. Early on in staff's review, no concerns were
3 expressed by local fire departments or any state or
4 regional fire department.

5 However, information was received at the
6 Planning Commission hearings. And following the
7 Planning Commission hearings, expressing some concern
8 about the potential increased risk of the proposed
9 development in the community.

10 Several conditions of approval were required
11 by the Planning Commission's final decision, including
12 the development of a spill response plan, regular
13 training to fire departments and to solicit feedback
14 about the local needs for combating such events.

15 Chapter 14 is a -- is a large chapter, as
16 you all know, that includes scenic, cultural, natural,
17 recreation and treaty rights regulations and protection
18 requirements.

19 It includes the General Management Area and
20 a Special Management Area rules. And those are applied
21 throughout the staff report with the Planning
22 Commission, as well as Planning Commission's final
23 decision because the project occurs in both
24 designations.

25 So I will go through these quickly, unless

1 you guys have questions because I know you've had a
2 chance to review this.

3 But the key viewing areas affected will be
4 State Route 14, Columbia River, Interstate 84, the
5 Historic Columbia River Highway. There will be impacts
6 to foreground, middle ground, and background views. The
7 scenic standards for these for the affected designations
8 include visually subordinate and visually not evident.

9 Visually subordinate means you can see it,
10 but it is not highly contrasting with your views and it
11 does not detract from the scenic quality of your view.

12 Not visually evident, essentially means that
13 you should not be able to see it and it should
14 definitely not detract from the visual quality of your
15 view.

16 Landscape settings affected, are again, in
17 the GMA and the SMA include the pastoral landscape
18 setting, the Oak Pine Woodland landscape setting,
19 Riverbottomlands landscape setting and the Gorge Walls
20 and Canyonlands and Wildlands landscape setting.

21 The project is a long linear piece of
22 infrastructure that cuts through quite diverse --
23 diverse system of different kind of terrain and
24 different ecosystems. And so there are quite a few
25 different landscapes, different natural resources,

1 different visual resources. And that's reflected in the
2 length of the staff report, as I'm sure you all noticed.

3 There's also a Scenic Travel Corridor that
4 are designated by the Scenic Area Rules, including
5 Interstate 84 and the Historic Columbia River Highway.

6 SR14 is also a designated Scenic Travel
7 Corridor, but the project is not proposed within 100
8 feet of that -- of that corridor, so the rules do not --
9 are not implemented in the same way.

10 So, I'm not sure if you can see,
11 Commissioners, but I have tried to highlight the areas
12 on a photo that the applicant provided in their
13 application materials.

14 There's two red circles. I'm going to use
15 the very -- the very generous donated pointer here. The
16 area that they're proposing that the railroad is
17 proposing to blast out to make room is that
18 Canyonland -- canyon area. It's sort of an open tunnel,
19 rock mesa face here. There's big basalt rock in here
20 that they want to blast out that is topographically
21 screened from many locations by this other existing rock
22 in front of it, but will be visible from SR14, the
23 Columbia River, and potentially other locations along
24 those TBA areas I mentioned previously when viewing from
25 the east.

1 This large circle here indicates one of the
2 proposed clearings that were requested for
3 construction-related landing zones. This is the
4 6.62-acre area that the Planning Commission specifically
5 prohibited from moving forward. So I just wanted to
6 make sure you knew where that was at.

7 This is a view heading east from near the
8 County line, the west side of Mosier. Just to give you
9 a sense of what the existing railroad infrastructure
10 looks like today in the landscape in the immediate
11 foreground of the key viewing areas. Staff concluded in
12 its analysis that it would appear very similar in these
13 kinds of areas than it does today. It will have two
14 tracks instead of one, but there is no blasting or
15 vegetation -- no significant vegetation clearing
16 proposed in this part of the project.

17 There are a handful of recommended
18 conditions of approval, most of which were included in
19 the Planning Commission's final decision. And, again,
20 we'll get into that a little bit later. A lot of them
21 have to do with retaining existing vegetation, using
22 dark, earth tone colors and non-reflective or
23 low-reflective materials.

24 Requirements for the concrete retaining wall
25 to be stamped and colored to be naturally appearing in

1 the landscape, the portions of it that are
2 topographically visible. And then any new structures,
3 buildings and signage comply with the requirements of
4 the plan. And then you see right up at the top there,
5 prohibiting the clearing of the open space site.

6 Cultural resources. There are three types
7 of cultural resources protected in the National Scenic
8 Area. The three are: Archeological, traditional
9 cultural properties and historic resources.

10 A significant amount of the work went into
11 preparing an extensive archeological and historic
12 resource preview was prepared by a qualified
13 professional. And the methodology was confirmed by the
14 Scenic Area Heritage program manager and State Historic
15 Preservation officer prior to being implemented.

16 The survey was prepared, shared and amended
17 based on feedback to the State Historic Preservation
18 officer and the four treaty tribes. As a result of
19 those surveys, there are no anticipated impacts. And
20 the conclusions were that there would be no adverse
21 effects to cultural resources.

22 There are conditions of approval included to
23 make sure that anything discovered during construction
24 is immediately dealt with appropriately, as required by
25 the Scenic Area Act and the Management Plan, as well as

1 our ordinance. There are other conditions of approval
2 out -- inadvertent discovery and disturbance.

3 Chapter 14 is for natural resources. Our
4 rules regulate waterbodies -- I should say impacts to
5 waterbodies, wildlife habitat, rare plants and Special
6 Management Area priority habitat.

7 There are -- each of these topic areas are
8 affected by this proposal. There are quite a few
9 wetlands and lakes. Because many of them are created by
10 the railroad ballast itself, being that it's located
11 between the Columbia River and the shoreline there.

12 The wetland impacts required extensive
13 surveys, as well. The -- the applicant provided a
14 professionally prepared and well-vetted survey,
15 indicating that the magnitude of impact of any impacts
16 that were anticipated. Mitigation proposals that were
17 vetted with federal, state and local natural resource
18 officers and agencies and the Corps of Engineers
19 process, simultaneously in conjunction with ours.

20 Wildlife habitat; those surveys were done in
21 tandem with the wetland surveys that were submitted at
22 the same time.

23 The mitigation plan was approved by Oregon
24 Department of Fish and Wildlife and was also vetted by
25 the agencies you see listed above.

1 Rare plants population. There are three
2 plant species that will be affected. And again, the
3 state agencies, that our ordinance asked us to
4 coordinate with for resource protection, approved the
5 plan, did not voice any concerns.

6 And ultimately, our partner agencies and
7 technical assistance agencies all concluded there will
8 be no adverse effects, as long as the mitigation plans
9 were implemented as proposed.

10 SMA priority habitat; the Forest Service
11 expressed some concerns regarding Oregon White Oak
12 habitat impacts and the high quality of that habitat
13 that was to be affected. This is that 6.62 acres of
14 open space.

15 We -- staff concurred with their
16 recommendations and concerns regarding prohibiting that
17 impact, due to the fact that the landscape is so
18 sensitive there, it is unlikely that mitigation will be
19 able to take effect within a reasonable time frame.

20 There are other areas near that 6.62-acre
21 site that were approved for construction and clearing.
22 But there is a specific area that's been deemed off
23 limits.

24 This is a table of wetland impacts. Let me
25 know if you want me to come back to that.

1 The wetland impacts and mitigation proposal.
2 This is -- the upper picture is an example of one of the
3 larger lakes to be impacted. You can see the railroad
4 ballast on one side and the lake created in between the
5 Columbia River, the railroad ballast and the shoreline.

6 And then below and to the right, you can see
7 the mitigation proposal, which is known as Tooley Lake.
8 And it's farther east. And it is a much larger -- you
9 can't really see it here. I'm sorry, guys. I'm
10 pointing at your faces.

11 There is a -- this is Interstate 84. This
12 is the Historic Columbia River Highway. There are two
13 agricultural properties in between those two roads. And
14 one of them is where the proposed wetland mitigation
15 site will be.

16 Several recommended conditions of approval
17 for natural resources, including the prohibition of that
18 6.62-acre open space clearing, implementing the
19 mitigation plans that were proposed, and removing
20 blasted materials for off-site crushing, as opposed to
21 doing it onsite.

22 There are several others in there that are
23 reflected in the Planning Commission's final decision.
24 I don't believe any of those were modified.

25 Chapter 14 is recreation resources. The

1 rules allow us to protect established recreation sites
2 within the vicinity of the development. In this
3 particular case, includes the Memaloose State Park and
4 Historic Columbia River Highway State Trail.

5 We received comments from Oregon State Parks
6 regarding noise, disconnection from existing park
7 properties and resource impact concerns at Memaloose, as
8 well as the Gorge region of the state parks' property.

9 We include a couple conditions of approval
10 there. One was modified. The first one was modified by
11 the Planning Commission to adhere a few timelines to
12 make sure that it was implemented in a timely manner.

13 The recreation proximity, if you can see on
14 this map -- this is Memaloose State Park right here.
15 This -- and this is the railroad corridor coming into
16 the park. This is the area where some rock blasting
17 will be occurring. This is the area of that prohibited
18 larger clearing. And this is a smaller clearing that
19 was not prohibited where some of the construction
20 landing zones may occur.

21 There is a shared access road that starts on
22 parks' property and becomes railroad ownership as you
23 get down in there. There are some conditions of
24 approval about when large and heavy equipment can be
25 running in and out of there and basically some

1 good-neighbor behaviors that the parks and recs officer
2 requested in order to minimize conflicts and impacts to
3 existing recreation uses.

4 It's also worth noting that the Historic
5 Highway is just right here. And there is the Memaloose
6 overlook in that area that looks down into there. Those
7 are key viewing areas, as is 84, Interstate 84 and the
8 Columbia River.

9 Chapter 14 is treaty rights. We received at
10 the time that this initial presentation was created for
11 the Planning Commission, because this is the information
12 shared with the Planning Commission, we have received
13 comments from the Confederated Tribes of the Umatilla
14 Indian Reservation. They had concerns about river
15 access and fisherman safety while crossing the tracks,
16 significant natural resource impacts and cultural
17 resource impacts.

18 There was some government-to-government
19 consultation through the Corps of Engineers' process and
20 the -- essentially highlighted a few anticipated
21 impacts, being primarily decreased safety in crossing
22 those tracks.

23 And, ultimately, staff ended up putting
24 together a couple of conditions of approval to do our
25 best to address those concerns. And that's what you see

1 in the Planning Commission's -- well, that's what you
2 see in the staff's recommendation to the Planning
3 Commission. And those were the ones that were modified
4 by the Planning Commission in their final decision.

5 This final point at the bottom of the screen
6 was included in my original presentation for the
7 Planning Commission. And it's worth noting that failure
8 to implement those conditions should equate to denial of
9 the development request because of our requirements to
10 uphold treaty rights regulations.

11 New information was provided by the Yakama
12 Nation following the creation of this presentation and
13 following the creation or the development of the staff
14 report.

15 They echoed similar concerns. And I would
16 encourage you to spend some time reviewing those because
17 that is new information that can be considered for the
18 Board's decision.

19 Chapter 23, again, is sign provisions. And
20 this is the same note that we gave to the Planning
21 Commission. I'm giving it to you again because I made a
22 mistake and did not remove it after they approved me to
23 remove it. But staff accidentally included Chapter 23,
24 because there's quite a bit of signage proposed by the
25 applicant.

1 When they put in the new railroad, they'll
2 have to put in quite a bit of required safety signage to
3 comply with the Federal Rail Administration's
4 requirements for things like speed and -- I have a whole
5 list of it in my staff summary. But speed, milage, no
6 trespassing, safety concerns, things like that.

7 As it turns out, those kinds of signage are
8 allowed without review, because they are for safety and
9 public information and they're required by a government
10 agency.

11 So we recommend, again, removing that --
12 that error from the staff report. It is literally
13 striking one sentence on the top of page 2 of the final
14 report that references it, because we never went through
15 and made a finding later in the staff report.

16 This is a list of new information received
17 after the original staff summary and recommendation were
18 prepared. It includes more comments expressed by email
19 from residents and -- and other members of the public,
20 letters from the Mosier Volunteer Fire Department,
21 citing capacity concerns and requesting clarification of
22 risks and fire mitigation plans, letters from the Mosier
23 City Council opposing the project for public health and
24 safety reasons, letters from ODOT requesting structural
25 analysis for a seismic stability requirement, which

1 happens to be inside the Mosier urban area.

2 So you'll note the last condition of
3 approval, included in the Planning Commission's final
4 decision is a recommendation, but not a requirement,
5 that they conduct a seismic stability analysis for the
6 bridge in Mosier as a result of this project.

7 There's also a new letter from Oregon State
8 Parks describing the regional context of recreation
9 disconnection, noise and resource impact, letters from
10 the Columbia Gorge Windsurfing Association and
11 additional letters from the Confederated Tribes of the
12 Umatilla. We also received some from the Yakama Nation.
13 And then quite a few additional documents from Friends
14 of the Gorge.

15 New information has been submitted since
16 this time. You have seen that in your packet. You have
17 it all completely, but it includes in the additional
18 testimony from the Yakama Nation, Sierra Club, Hood
19 River, Valley Residents Committee and a handful of
20 others. But overall, we received several thousand
21 comments, in total, for this project.

22 All right. So part two of this presentation
23 is a summary of the Planning Commission's decision in
24 response to the information I just shared with you.

25 The Planning Commission voted 5 to 2 to

1 approve the development with modified conditions of
2 approval. They did approve the correction to Chapter
3 23; sign provisions. They also voted to eliminate
4 conditions of approval 13, 15, 16 and 20. I'll go
5 through those in a minute. They also elected to modify
6 conditions 14, 17, 21, 23, 33 and 44.

7 They also advised staff to only modify
8 findings where necessary to reflect the modified
9 conditions. That should say "conditions." My
10 apologies.

11 So there are very few revisions to the
12 findings in the staff report. And, essentially, what is
13 now the Planning Commission's final decision, there are
14 very few changes.

15 So what we did do for the sake of
16 readability was keep those changes as strikes and
17 underlines, so it was obvious to you all what exactly
18 changed as a result of their decision.

19 So just, briefly, numbers 13, 15, 16 and 20
20 are -- let me get there -- are the conditions that
21 require coal cars to be covered, that require the
22 existing range of trains to stay between 20 and 30
23 trains per day, as stated in the application materials.

24 The requirement for Union Pacific to adhere
25 to all Federal Rail Administration safety standards,

1 including any of those that might be optional.

2 And 20 was that the proposed development
3 shall not directly result in significant increased net
4 volume of real traffic, including the number of
5 individual trains, length of trains and speed of trains.

6 The modified conditions -- I remember I
7 might have these spelled out a little bit better down
8 below. I'll come back.

9 The modified conditions. Many of the
10 modifications are improvements and they add
11 clarification and timelines. And one example would be
12 condition No. 21, where they elected to expand the
13 tribes listed in here, specifically from one tribe that
14 we had heard from at the time of the staff report being
15 prepared to all four treaty tribes for consultation to
16 access point to ensure that there was an inclusive
17 process.

18 Another example would be No. 14. They added
19 language to ensure that the spill response plans were
20 specifically for derailments and other railroad-related
21 accidents, instead of being an open-ended requirement.

22 So I'll get into those in a little bit more
23 detail in a moment. But, ultimately, the Planning
24 Commission's decision was to approve the development
25 with modifications to a handful of conditions and

1 elimination of a handful of others.

2 Information received after the Planning
3 Commission record closed, which would have been a few
4 days -- a week before they had their final hearing -- I
5 think I mentioned this earlier, but we did receive
6 additional letters from the Yakama Nation stating that
7 the recommended conditions were not sufficient and the
8 project should be denied.

9 We received an additional letter from the
10 City of Mosier and letters of support from Greenbrier
11 and the Port of Portland, and additional letters from
12 the general public in opposition of the project.

13 Okay. So part three, going into the summary
14 of the appeals. There are 33 points of appeals, so this
15 is also going to be long. I apologize.

16 I will try to summarize them into
17 categories. And if anyone has any questions -- Board,
18 if you would like me to go into any more detail that I
19 go into, please let me know and then I can certainly do
20 that.

21 Staff prepared a summary of each of these
22 and a response to each of the grounds of appeals. They
23 are available on our website.

24 All right. So we received three timely
25 appeals. The first are -- is the first of the year;

1 PLAAPL-16-10-0001, which includes three parties from the
2 Columbia Gorge. The Columbia Riverkeeper and Physicians
3 for Social Responsibility.

4 The second appeal is PLAAPL-16-10-0002 from
5 Union Pacific Railroad. And the third is
6 PLAAPL-16-10-0003 from Confederated Tribes and Bands of
7 the Yakama Nation.

8 The Friends of the Gorge, Riverkeeper and
9 Physicians For Social Responsibility provided 29 grounds
10 for appeal that are generally -- I have generally
11 summarized them here to include grounds that express
12 concerns about uses not being allowed in the underlying
13 zones, the granting of unlawful variances, the
14 alteration of conditions of approval violating our
15 ordinance and the findings of staff analysis were
16 inadequate.

17 The Union Pacific appeal includes,
18 generally, three grounds, which include concerns with
19 the -- with conditions of approval 21 and 47, which as
20 we'll note in a bit have to do with providing access for
21 recreation and access for treaty rights.

22 They also had some concerns with the
23 applicability of our rules and federal preemption. And
24 the third is lack of connection between impacts and the
25 conditions of approval included in the final decision.

1 The Yakama Nation's ground of appeal
2 consists of a statement that the final decision violates
3 treaty rights and final decision is inconsistent with
4 the National Scenic Area ordinance.

5 So I've listed them here. We'll work from
6 the slide for a little bit as I toggle through them.
7 But the first is uses not allowed in underlying zones.
8 And I go back to this slide and elaborate quite a bit in
9 my staff analysis, which there were a stack of them by
10 the front door. If anyone would like to see them,
11 they're on our website as well.

12 But as I noted earlier each of the proposed
13 development types and uses are listed specifically in
14 the underlying land use designation as a use allowed
15 with review. And I can get into that more if there's
16 any questions.

17 There -- there were some concerns about the
18 GMA water designation and not being able to conduct
19 development in GMA water. There's quite a bit in my
20 staff summary about that.

21 The GMA water designation is not referenced.
22 It's referenced on our zoning map. By default, it is
23 not referenced in the Management Plan. And there are no
24 instances in which a list of allowed uses is
25 specifically called out.

1 However, things like docks and boathouses
2 and recreation, developments and things that extend out
3 to the water, they do happen. They are proposed there.
4 They are specifically listed. And past policy direction
5 from the Gorge Commission and the Forest Service has
6 been to review those proposed developments in
7 conjunction with all of the Chapter 14 and Scenic Area
8 ordinance requirements to confirm that they will not
9 have any adverse effects or adverse cumulative effects
10 to the resources that are protected by those rules.

11 The second point was variances. I mentioned
12 this earlier, but given the physical location and
13 constraints of the railroad corridor itself, there will
14 be encroachment onto all four of these setbacks and
15 buffer types. The applicant requested a Planning
16 Commission variance, which means that they've asked for
17 more than 50 percent variance, and in some cases it is
18 more than that.

19 The variance language is written with
20 anticipation that there is a way possible to -- there is
21 enough space to allow you to manipulate one buffer for
22 the other, in order to best protect resources on the
23 whole.

24 In the particular case of the railroad,
25 they're going to be within the buffer of something in

1 every single instance. And the complicated piece about
2 that is that the rules specifically call out and allow
3 for railroad development in every single zone.

4 So for us to be able to apply that
5 development, you know, allow that development in almost
6 every instance, you are going to run into a conflict
7 with the buffers and the variance language. Staff feels
8 like this was an oversight in the development of the
9 ordinance language and is an unanticipated consequence
10 of that language, and recommended to the Planning
11 Commission that that variance be allowed. The variance
12 was granted by the Planning Commission in their final
13 decision.

14 We do not feel like that is in conflict with
15 the ordinance or the policy direction we've been given
16 in the past. The Planning Commission's conditions that
17 were eliminated, I just read through these a few moments
18 ago, but there are some concerns about use and they're
19 limited on the grounds of appeal.

20 If they are eliminated, then we are out of
21 the compliance with our ordinance. So I've listed them
22 up here again. These conditions are directly -- they
23 are -- they are -- they were included in response to the
24 development, specifically for the conditional use
25 provision and the Chapter 14 scenic, natural, cultural,

1 recreation and treaty right provision.

2 Staff included them because we felt they
3 were necessary to become compliant with our ordinance.
4 And the elimination of those conditions without more
5 information as to why they were excluded to sort of
6 justify how we're still complying, staff is still --
7 still believes that these conditions are necessary in
8 order to comply with the ordinance.

9 As I noted before, the modified conditions
10 of approval in many instances are improvement. I have
11 them each listed here so you can read them if you'd
12 like. But, essentially, it's to add clarification and
13 to make sure that the language is direct enough that it
14 can be implemented.

15 This one, I would like to -- if you ask
16 staff to make changes to this report moving forward at
17 the end of this hearing process, one thing I'd like to
18 go back and check -- and I will note at the bottom of
19 the page, there's a potentially typo -- the Planning
20 Commission wants to make sure that both of the crossings
21 were in Wasco County.

22 The previous language was that -- the staff
23 recommendation was that there was one crossing east of
24 the project area and one crossing west of the project
25 area. When we added this language in, I should have

1 also cut -- I should have also struck this one, "east of
2 project area," and this "within Wasco County" should be
3 underlined because that is a new planning addition that
4 I did not capture accurately in this draft. So my
5 apologies. That is a correction that would need to be
6 made.

7 But, again, this opens up that process to
8 all four treaty tribes, as opposed to just one, which
9 was the original language of that condition.

10 Chapter 23 -- or excuse me -- condition 23
11 is the rock blasting condition to make sure that any
12 blasting of the rock mesa appears natural -- as natural
13 as possible after it's completed.

14 And rock blasting is not new to the Gorge.
15 We see it for many infrastructure projects along
16 Interstate 84 and SR14. But this condition ensures that
17 when it is blasted, it will -- it will blend the
18 landscape as much as it can.

19 The addition here, one of our commissioners
20 had the floor for ODOT and was familiar with the
21 specific terminology they use. So half-caste is
22 specific terminology for them to make sure that it's
23 implemented correctly.

24 Condition 33 has to do with the signal
25 lights. Staff had already found in the original staff

1 analysis and report that the lights were compliant with
2 Scenic Area requirements. The condition of approval we
3 had in the recommended decision -- the recommended final
4 decision was pretty standard, typical lighting
5 requirements. We included most of our Scenic Area land
6 review.

7 But there was some concern that if it at all
8 interfered with existing standards that would cause a
9 safety concern, they -- they wouldn't want to move
10 forward with that. So they added some language up front
11 to make sure it did not interfere with their existing
12 signal system and standard to ensure safety.

13 Again, I think staff continued to agree that
14 the proposed lighting shown in their application and the
15 typical elevation drawings that were shown already
16 complied with scenic area lighting requirements.

17 Condition 44 has to do with the Oregon State
18 Parks and Recreation Department to develop an improved
19 access and feasibility study to ensure the long-term
20 impacts of the railroad do not impact recreation uses at
21 the site.

22 The Planning Commission added language to
23 make sure that this was initiated within 45 days of the
24 following decision, following the appeal period, and
25 that any -- any study should be completed within two

1 years of that timeline and extensions could be requested
2 by state parks if they needed them.

3 So there was a ground -- there was a ground
4 provided saying that the staff report lacked adequate
5 analysis in the findings. Staff's analysis -- we feel
6 strongly the staff's analysis reviewed the proposed
7 development, reviewed the resource impacts caused by --
8 related to the proposed development. We conferred with
9 all of our federal and state and local partner agencies
10 for technical assistance and we drew conclusions based
11 on the best available information.

12 Due to the scope of the proposal and how
13 large the application and staff report was required to
14 be to address all of that -- I think I heard someone say
15 the Planning Commission hearing, you know, my solar
16 panels on my house require ten pages of analysis.

17 It was not feasible to include ten pages on
18 every little single piece in the staff report itself.
19 But the analysis was done on every single piece of the
20 project. It just was not feasible to capture it in the
21 staff report itself. So some of it might read as though
22 it's summarized, but the analysis was done, and staff
23 found that based on the best available information and
24 the information provided by applicant and our federal
25 and state partner agencies, that the project proposals

1 complied and where they needed some assistance to
2 comply, conditions of approval were included to make
3 sure that they did.

4 The railroad expressed concerns over
5 condition 21 and 47. They are wordy, so I apologize.
6 But, essentially, they are -- are seeking some
7 flexibility on how conditions 21 and 47 are implemented.
8 There is a statement that it would be best done through
9 a voluntary process. And some suggestions that it
10 should be done as a comprehensive process that includes
11 the City of Mosier, the recreation -- Oregon State Parks
12 and Recreation and the tribes to a comprehensive
13 discussion about the kinds of access needed and where
14 those sites needed to be.

15 And condition 47 is the tribal access piece.
16 So they were essentially saying that these two things
17 should be addressed together.

18 As staff put in the staff report and
19 analysis for the Planning Commission -- and you see it
20 again in the Planning Commission's final staff -- or
21 excuse me -- final report and decision, it is not easy
22 to combine recreation and treaty rights access into
23 singular points or even a singular discussion.

24 So we feel strongly that our original
25 response and information in the staff report that if

1 conditions need to remain separate because they are
2 separate items -- separate concerns, treaty rights being
3 one of them and recreation being another, they are
4 different parties that will be (indiscernible) different
5 stakeholders.

6 And making that process voluntary instead of
7 required, actually brings up further out of compliance
8 with our ordinance because we have to be able to confirm
9 that we have, in fact, required this as a result of the
10 decision to make sure that we are indeed 100 percent
11 absolute that we have a condition of approval that will
12 be implemented in the way it needs to address the
13 impacts of concern.

14 There are elements of the railroad's appeal
15 about federal preemption and whether or not the Wasco
16 County Scenic Area ordinances have the authority to
17 apply to the proposed development.

18 I'm not going to attempt to summarize the
19 legal -- legal response in our staff summary.

20 Kristen, if you want to chime in on that,
21 please feel free to do so.

22 But, essentially, staff's analysis and
23 conclusion is that the National Scenic Area is an act of
24 Congress, signed by the President, carrying federal
25 authority. It is implemented by the -- created a

1 regional body, the Columbia River Gorge National Scenic
2 Area, Columbia Gorge Commission.

3 It also has the federal arm of the Columbia
4 River National Scenic Area office on the other side of
5 the river. Those two bodies, together, create that
6 federal policy and that regional plan that is then
7 implemented by local ordinances. It has been tested
8 before in other ways, not by the railroad, specifically.
9 But we feel strongly that the Scenic Area rules carry
10 federal authority, even when they're implemented at the
11 local level.

12 Do you have anything to add to that,
13 Kristen? No? Okay.

14 Another aspect of the railroad's appeal is
15 that there's a lack of connection between the impact and
16 the conditions of approval in the final decision. Let
17 me get to that so I don't misspeak.

18 But essentially -- essentially -- let me see
19 here. Let me just read this to you. Staff's response
20 was: "The potential increase in market-driven rail
21 traffic afforded by the physical improvements to an
22 existing bottleneck is difficult, at best, to predict.
23 However, it is clear from the application materials and
24 testimony provided by Union Pacific Railroad staff at
25 the Planning Commission hearing, and -- and -- and that

1 the project will allow for potential increase in traffic
2 if the market demanded it.

3 The potential increase is a known factor and
4 has a direct nexus to potential impacts associated with
5 the physical development proposed by Union Pacific
6 Railroad. This confirms the nexus of the physical
7 development of the treaty rights impacts and the
8 concerns expressed by the Umatilla and the Yakama."

9 So, essentially, it's difficult to predict,
10 but we know that it has the potential to allow an
11 increase if the market demanded it. So some of the
12 concerns about risks, again, you can't know one way or
13 the other. But if it allows it, then eventually, it
14 could happen. And our job is to look for all possible
15 outcomes, including worst possible outcome and regulate
16 from there.

17 So the conditions of approval, we had
18 recommended the Planning Commission specifically address
19 a potential increase and the kinds of risks and concerns
20 associated with the potential increase, which is why we
21 had conditions on there that specifically address
22 increases to rail traffic.

23 The last two are the treaty rights rules in
24 the National Scenic Area. And I'm sorry, again. This
25 is another wordy slide. But it is the language in our

1 ordinance that explains how treaty rights protection
2 processes may conclude.

3 And it states that: "The County will decide
4 whether the proposed uses would affect or modify any
5 treaty or other rights of any Indian tribe. The final
6 decision shall integrate findings of fact that address
7 any substantiative comments, recommendations or concerns
8 expressed by Indian Tribal Government.

9 If the final decision contradicts the
10 comments, recommendations or concerns of Indian Tribal
11 Government, the County must justify how it reached an
12 opposing conclusion.

13 The treaty rights protection process may
14 conclude if the County determines that the proposed uses
15 would not affect or modify treaty rights or other rights
16 of any Indian tribe. Uses that would affect or modify
17 such rights shall be prohibited. A finding of the
18 condition of the proposed uses would not affect or
19 modify treaty or other rights or a failure of any Indian
20 tribe to comment or consult on the proposed
21 development." -- Sorry. I'm reading from the screen.

22 "As provided, these guidelines shall in no
23 way be interpreted as -- as -- the tribe not" -- I have
24 to get my notes. I'm sorry. I can't read through your
25 heads.

1 COMMISSIONER KRAMER: "As a waiver by the
2 Indian tribe of the claim that such uses adversely
3 affect or modify treaty or other tribal rights."

4 MS. BREWER: Thank you.

5 So just because we have not heard from them
6 does not mean they have waived their rights.

7 So in response to that, we have heard from
8 two tribes; the Umatilla and the Yakama Nation. They
9 have expressed concerns. You have letters in your
10 packets to that effect. And the Yakama Nation has added
11 clarification post Planning Commission, saying that the
12 conditions of approval were not enough to address the
13 concerns. So you may hear more this evening, but just
14 note that's where we're at.

15 Staff recommendations to you, the Board, is
16 that if, based on evidence provided at the hearing, the
17 Board is able to find that the proposed development
18 would not adversely affect treaty rights protected by
19 Chapter 14, Scenic Area Review, then the staff
20 recommends affirming the Planning Commission's decision
21 to approve the requests with modified conditions,
22 including the conditions removed by the Planning
23 Commission to make sure that we are in compliance with
24 our ordinance.

25 If the Board is not able to find that the

1 proposed development would not adversely affect treaty
2 rights, then staff finds that the Board should reverse
3 the Planning Commission's decision and deny the
4 development.

5 With that, that concludes staff
6 presentation, unless you have any questions for me
7 before you go into your next phase.

8 CHAIRMAN RUNYON: Thank you, Angie. Any
9 questions by the Commission at this time?

10 COMMISSIONER HEGE: Yeah, Angie, I just had
11 a quick question. And I think if I heard you correctly,
12 you were talking about these crossings. And I think you
13 said that they would both be outside the project area;
14 is that correct?

15 And if that's the case, why could they not
16 be in the project area?

17 MS. BREWER: So the two crossings that we
18 identified for treaty rights access -- I don't recall
19 saying they needed to be within the project area. If I
20 did, that was an error. I apologize.

21 So what the Planning Commission did is they
22 wanted to make sure the crossings were within Wasco
23 County. The previous staff recommendations for that
24 condition language was that it was left open ended,
25 because we have no idea where those crossings might go.

1 We need to consult with the tribes to confirm what's
2 appropriate for them and what is possible through the
3 railroad. And that will be a bit of a push-and-pull
4 conversation before the final locations can be
5 confirmed.

6 COMMISSIONER HEGE: Okay. I guess I just
7 wanted clarification. So -- but they cannot be within
8 the project area?

9 MS. BREWER: I don't know that yet.

10 COMMISSIONER HEGE: Okay.

11 MS. BREWER: Yeah.

12 COMMISSIONER HEGE: I thought you said there
13 would be one to the east and one to the west or
14 something.

15 MS. BREWER: Well, my original proposal was
16 one to the east, one to the west.

17 COMMISSIONER HEGE: But not necessarily
18 outside the project area?

19 MS. BREWER: Correct. Wherever it made
20 sense and wherever deemed appropriate through that
21 consultation process.

22 COMMISSIONER HEGE: Okay. Thank you.

23 CHAIRMAN RUNYON: Commissioner Kramer, do
24 you have anything at this time?

25 COMMISSIONER KRAMER: Not at this time.

1 CHAIRMAN RUNYON: Okay.

2 Does that conclude staff report?

3 MS. BREWER: Yup.

4 CHAIRMAN RUNYON: Are you available for
5 rebuttal?

6 So at this time we will now take testimony.
7 Each appellant is limited to 15 minutes.

8 Tribal Elders and officials present in the
9 audience will be called on, following the appellate
10 parties.

11 We will hear from the applicant first. The
12 time limit is 15 minutes.

13 MR. WYMAN: Chair Runyon, members of the
14 Board, Ty Wyman here as attorney for the applicant,
15 Union Pacific Railroad. And we absolutely appreciate
16 your time and consideration today.

17 But I'd also like to express our
18 consideration to your staff. This process started years
19 ago. And they have spent many hours to reach this
20 point. As you can tell, we do not find ourselves in
21 complete agreement. We can get to that later. We
22 certainly do appreciate the work that they put in and we
23 were grateful for their recommendation approval for the
24 recommendations to the Planning Commission of approval.

25 We're also very grateful to your Planning

1 Commission -- excuse me. We're also grateful to your
2 Planning Commission, naturally for its decision
3 approving the project. These were volunteers, spent
4 many hours right in the seats that you're in right now,
5 a hearing that lasted many hours. They came back for
6 deliberation. It was truly yeoman's work and we respect
7 it greatly.

8 Now, as you have seen, we -- out of the 44
9 conditions that they attached to their approval, we have
10 challenged two of them to you. And, essentially, those
11 conditions overlap significantly. They are -- they deal
12 with the river access issue.

13 And I note as I look back on our appeal and
14 their decision that I don't see a disagreement between
15 Union Pacific and the Planning Commission to the overall
16 goal here.

17 There is to be additional access to the
18 river. It's simply has to be safe from everyone's
19 perspective. We all share that goal.

20 The difference between us is simply in the
21 means of getting that done. You deal with mandates, I
22 think, very frequently, from federal, state governments.
23 Mandates tend to work -- tend to make us feel better up
24 front, very difficult, though, at the back end. The
25 devil is inherently in the details.

1 We have an -- first of all, we have made a
2 commitment from the highest level of the company to
3 address the access issue. We have shown you that we
4 have successfully provided such access, right up the
5 freeway at the Umatilla tribe, which I note did not file
6 an appeal here. We also provided evidence of access
7 that we have worked out and in a multiparty setting
8 elsewhere in the country.

9 So that is the base -- that is the primary
10 basis, then, for our appeal. We simply don't think that
11 a mandate will work. And we believe that the
12 application warrants approval on the terms of conditions
13 set forth in our appeal.

14 Our main job here today, because the record
15 before you is so lengthy is to address your questions.
16 And beyond that, we do also want to address some of the
17 points that were raised in the other appeals.

18 To do that, I've got some help here. I want
19 to introduce the full team very quickly. Bob Belt, vice
20 president of law, he visits the Gorge frequently. We'll
21 be headed up to Umatilla tomorrow, in fact. I have a
22 meeting there.

23 Wes Lujan, vice president of public affairs,
24 made many visits in the immediate aftermath of the
25 derailment.

1 You're going to hear in a few minutes from
2 Clint Schelbitzki. He's networked development and he
3 will simply explain the need for the project.

4 We also have Luke Baatz of project design.
5 He is the manager for the project and he estimates has
6 made 10 to 15 visits to the Gorge.

7 Last but certainly not least we have Linnea
8 Eng, who is our resident expert in terms of being an EE.
9 And she is the -- with CHT2M Hill and has been the lead
10 project consultant.

11 My last comments really go to context. And
12 the question came up frequently at the Planning
13 Commission during five-plus hours of testimony as to
14 why. Why now? Why proceed in light of the derailment?

15 We own the derailment. We continue to own
16 the derailment. We apologize sincerely for it and for
17 the effects that it had on your community.

18 More importantly, we have responded. And
19 Mr. Lujan, I think, has been out in these Gorge
20 communities explaining many, many times the -- the
21 on-the-ground responses that we made in terms of
22 approving safety of the trackage through the Gorge.

23 In fact, he continues -- he and his team
24 continue to work with Team Mosier to address any impacts
25 coming out of the derailment.

1 Quite simply, nothing about the derailment
2 lessens the need for the project. Mr. Schelbitzki is
3 going to explain to you that need. And as I say, the
4 need will continue to exist.

5 We have been a part of your community for
6 many years. We will be for many years. And we simply
7 need to enhance the fluidity of -- of the line in this
8 area.

9 Vice Chair Ashley had a very interesting and
10 I think informative note, I think, during the Planning
11 Commission deliberations. She noted, quite pointedly,
12 that this is a land use process. I have been through
13 hundreds of land use processes. And -- are we at
14 14 minutes? Okay. Thank you very much. I thought you
15 were flashing me the Cubs score there for a minute.

16 This is a land use issue. And I, like your
17 legal counsel, been through hundreds of land use
18 processes and our land use system is basically about
19 mitigating the effects of land development. And there's
20 simply no better person in this room to address the
21 effects of this project than Linnea.

22 MS. ENG: Hi. I'm not sure that there is no
23 better person here. That's because I think Angie did a
24 fantastic job of describing the project. And a lot of
25 the work that has gone into it.

1 It's been my pleasure to spend time working
2 with dozens of expert scientists and engineers who have
3 spent literally thousands of hours doing the studies and
4 analyses that have resulted in the application. This
5 half of the application does not include all of the
6 supplemental information that was provided later.

7 There's been a lot of work that's gone into
8 this analysis, both on the part of Union Pacific's team
9 and certainly on the part of the Planning Commission
10 staff and Planning Commission.

11 The project, as Angie just described it,
12 consists of expansion of the existing siding, addition
13 of four miles of new track, replacement and improvement
14 of some existing utilities and structures, along with
15 implementation of fish habitat enhancement and creation
16 of new wetlands.

17 A tremendous amount of effort has gone into
18 preparing that fish habitat enhancement plan and wetland
19 creation plan.

20 The -- the project is required, in addition
21 to complying with more than 250 individual criteria in
22 the Scenic Area land use development ordinance, is
23 required to comply with numerous other regulatory
24 criteria, including the Clean Water Act, Endangered
25 Species Act, Maintenance and (indiscernible) Fishery

1 Conservation, Migratory Bird Treaty Act, Fish and
2 Wildlife coordination and so on.

3 And I just point that out because I want you
4 to be aware that there are many regulatory criteria that
5 apply here and the railroad is complying with all of
6 them.

7 And Angie also did a good job summarizing
8 this, so I don't want to go into detail here, which I
9 had a little bit more detail planned to discuss. But
10 those dozens of experts and thousands of hours have
11 included walking the entire alignment looking for
12 potential rare plants, protected species, wildlife
13 habitat, a detailed tree inventory of every tree that is
14 located within the alignment, delineation of the
15 wetlands in accordance with federal and state criteria.

16 A walking survey of the cultural resources
17 have included shovel testing and inventory of historic
18 structures, detailed analysis of the visual resources in
19 the area and how the project would occur from key
20 viewing areas that are designated in the code. Angie
21 also summarized those.

22 And as a result of those analyses, even
23 before the project application was submitted, there were
24 modifications made to the project design in order to
25 avoid, wherever possible, impacts to resources.

1 As a result, of all of the coordination
2 efforts that were completed and the review of these
3 application materials by the various agencies, numerous
4 agencies, as Angie indicated in her presentation, have
5 concurred with the finding that there will be no adverse
6 impact to protected cultural and biological resources,
7 in particular.

8 And I call those out specifically because
9 there are issues that have been raised in conjunction
10 with the appeals here. The Oregon State Historic
11 Preservation Office, no adverse effect to historical or
12 archeological property.

13 U.S. Forest Service; no adverse effect to
14 historic or archeological sites. National Marine
15 Fishery Service issued a detailed biological opinion
16 that also concluded the project is not likely to modify
17 the technical scientist language they like to use. But,
18 basically, no impact to critical habitats, no impact to
19 protected salmon species.

20 And with that, I'd like to turn it over to
21 Clint Schelbitzki for a discussion of the reasons that a
22 project needs.

23 MR. SCHELBITZKI: Thank you, Linnea.

24 My name is Clint Schelbitzki. I'm with
25 Union Pacific Railroad and in our network planning

1 department.

2 As Ty mentioned twice and Linnea ended with,
3 my sole purpose is to discuss the reason for the
4 project, really what is driving the need for us to build
5 this project.

6 And we'll start with a slide here. Then I'm
7 going to get into a couple scenarios that show the
8 operations through the Gorge. But, really, at its most
9 basic level, what's driving the need for this project is
10 the fluidity and efficiency of trainings moving through
11 the Gorge. You do that by eliminating a bottleneck.

12 And right now the, bottleneck for us is the
13 Mosier siding, which is short. It doesn't allow for all
14 train traffic to move fluidly across the network through
15 the Gorge.

16 I also think it's important to note up front
17 the issue of capacity and more trains moving through the
18 Gorge per day. This project in no way impacts how many
19 trains are going to be moving through the Gorge.

20 Trains per day ebbs and flows with the
21 general economy. So as the economy improves, train
22 traffic likely increases with that. And conversely, as
23 the economy detracts, train traffic will -- you'll see a
24 decline in train traffic as a result.

25 And I go back, to use an example, back to

1 2008. Right before the recession Union Pacific was
2 moving nearly 35 trains per day through the Gorge with
3 the existing infrastructure that we have today. The
4 recession hit. And today, we're at 20 to 25 trains per
5 day.

6 So you did see a decline in train traffic
7 over those years. But it's with the general flow of --
8 of the economy. So I just wanted to make sure that that
9 was a point made up front.

10 And now I want to move into the different
11 scenarios that we see with trains moving through the
12 Gorge. And this is going to be one of these animations
13 we'll show.

14 What you see there in the middle is the
15 Mosier siding, roughly 6,400 feet. And in this example,
16 you have a short train and a longer train needing to
17 pass each other through this area.

18 Because the short train fits within the
19 Mosier siding, it has to go first and allow the other
20 train to pass it. Once that train passes, the shorter
21 train can then clear out.

22 The critical point here is that the shorter
23 train has to go into Mosier siding and stop. It has to
24 be stationary and idle and wait in order for the longer
25 train to clear before it can proceed forward.

1 In a just as common a scenario is we have
2 two longer trains moving through -- through the Gorge.
3 Neither of them can fit within the short Mosier siding.
4 So in order for these trains to meet and pass one
5 another, you can only move one at a time.

6 First train proceeds west, it clears. The
7 second train proceeds east and it clears and they
8 continue to move on to their respective destinations.

9 In this example, it takes nearly an hour and
10 a half for both trains to clear the area. While you
11 have one train moving across the network, the other
12 train is sitting and idling in the existing double track
13 or siding area.

14 Takes about 41 minutes for one train to get
15 across. So during that 41 minutes, you have one train
16 standing still and idling.

17 Now I want to look at the proposed condition
18 after we extend the double tracks. What you see there
19 in the green is the extension of the double track. It
20 has done two things; one, allowed for the longer --
21 either of the longer trains to go into the Mosier double
22 track extension. And it's also shortened the single
23 track -- the single-track gap between the Meno siding
24 and Mosier and the single-track track Mosier and The
25 Dalles.

1 So here's what the operation will look like
2 after the project. The critical point there is that
3 neither train has to sit and wait on the other. Both
4 trains can proceed and pass each other simultaneously.
5 And that, ultimately, is what we're trying to achieve.
6 It's the efficiency and fluidity benefits of that
7 interaction right there.

8 And we convinced the network, but this has a
9 cascading effect across all the other sidings within the
10 Gorge, where we're having to make these meet and passes
11 as the train continues to move on.

12 Lastly here, I want to tie in the commercial
13 component. Because on those trains, we move a lot of
14 goods. The map on the left shows the origin and
15 destination points for all of the trains that move
16 through the Gorge, that shows the reach that this
17 project area has across the national network and through
18 international boundaries.

19 The list on the right is what commodities we
20 ship on those trains moving through the Gorge. I think
21 it's important to note that 61 percent, nearly two
22 thirds of all traffic moving through the Gorge, is
23 intermodal. And what intermodal is, intermodal --
24 you've probably seen a lot of them. They're the boxes
25 that travel on top of the trains. They're truck

1 trailers that travel on the trains.

2 In those is consumer goods. It's stuff we
3 all buy on a regular basis at a retail store. That's
4 the -- about two thirds of the products that are shipped
5 through the Gorge.

6 The other thing I want to point out is the
7 chemical line item, 12 percent of our business. The
8 majority of this chemicals item is fertilizers coming --
9 coming to the state and to be exported. A very small
10 percentage of it is crude oil.

11 Crude oil is less than one percent of all
12 traffic moving through the Gorge. And I mention that
13 because it's been discussed in the context of this
14 project quite a bit. It is not driving this project at
15 all.

16 It's about the fluidity and efficiency for
17 all of those other -- for all of those other commodity
18 lines that we ship. It's -- it's important not just for
19 us, but for our customers.

20 So when you look at the support letters
21 we've received; Greenbrier, Port of Portland, the Oregon
22 Business Association and the Oregon Rail Users' League,
23 they all realize that there's inherent benefits in the
24 fluidity and efficiency of our network to their
25 business, to their employees, to their customers. And

1 that's -- that is why we think it's important for this
2 project to proceed and why our customers think it's
3 important as well.

4 Now with that, that concludes our formal
5 remarks. We're happy to take questions, the entire
6 team, and we appreciate your consideration of both the
7 project in whole and the appeals that we have submitted.
8 Thank you.

9 CHAIRMAN RUNYON: Questions?

10 I've got one here, but we're not discussing
11 municipalities here. The double track outside of
12 Mosier, to the east and to the west is a concern.

13 Right now, I believe in Mosier, you're
14 staying to about 30 miles an hour; is that correct?

15 MR. LUJAN: Yes.

16 CHAIRMAN RUNYON: Okay. The double track to
17 the east of Mosier for trains going to the west or
18 heading west, does that allow those trains to increase
19 their speed?

20 MR. WYMAN: Let me first recognize the
21 question. Thank you very much, Chair Runyon.

22 I introduced Luke Baatz earlier as the
23 project designer, project manager.

24 MR. BAATZ: Yes. Thank you for the
25 question. The answer to that is no. The existing main

1 track will -- will remain the same speed and the
2 proposed track will match that speed.

3 CHAIRMAN RUNYON: And so if there was any
4 other speed designations, that would be up to the City
5 of Mosier to deal with (indiscernible)?

6 MR. BAATZ: The FRA manages the speed
7 restrictions and it has to do with curvature of track
8 and grade, things like that. So, no, there is no local
9 agency that manages the speed of traffic, of rail
10 traffic.

11 CHAIRMAN RUNYON: Okay. I just wanted to
12 ask that because that's a question that has come up from
13 residents around Mosier; the increased double track will
14 allow the railroad to increase the speed through the
15 community.

16 MR. BAATZ: No.

17 CHAIRMAN RUNYON: That's not correct?

18 MR. BAATZ: No, that's not correct.

19 COMMISSIONER HEGE: So just clarification on
20 that.

21 So what is the speed limit in this section?
22 And is it a specific speed limit that's legally bound?

23 MR. BAATZ: It is legally bound. The --
24 throughout the project limits it will vary and does
25 currently vary between 30 and 40 miles an hour.

1 COMMISSIONER HEGE: Okay. So -- and what is
2 the -- within the city limits of Mosier is there one
3 speed limit or do both of those apply?

4 MR. BAATZ: Both of what apply?

5 COMMISSIONER HEGE: 40 and 30.

6 MR. BAATZ: I could vary the exact mile
7 post. I don't know how -- exactly where those mile
8 posts, off the top of my head, fall within the City of
9 Mosier, but if my recollection is correct, I believe
10 it's 30 miles per hour within city limits.

11 COMMISSIONER HEGE: Okay. Then is there any
12 provision to change the speed limit to increase it
13 potentially for some reason?

14 MR. BAATZ: No.

15 COMMISSIONER HEGE: That's not possible?

16 MR. BAATZ: It's not for Union Pacific to
17 make that recommendation or have that authority to
18 change the speed. That would be for the FRA to decide.

19 COMMISSIONER HEGE: Okay. So I have a
20 question for Ty, I think.

21 And this is kind of a general question. And
22 I'm looking at your appeal. This -- the same issue is
23 in many places. But I'll just read this.

24 "The commerce clause is so important to
25 railroad operations Congress implemented it with the

1 Interstate Commerce Commission Termination Act, the
2 ICCTA.

3 UP noted -- UPR noted in the application
4 that ICCTA preempts local government permitting
5 processes, including Scenic Area review." And then
6 there's a reference and lots of comments about that.

7 So my question is, with that stated and with
8 UP basically bringing it up so many times, my question
9 is, why are you applying for this if you're basically
10 saying, We don't need to apply for this permit because
11 of all these federal regulations, but yet, you're here.

12 And it's just slightly confusing to me why
13 you are applying if you're asserting so much that you
14 don't have to comply.

15 MR. WYMAN: We want to be here. We want to
16 be in your community. We're absolutely fine being in
17 your community for hearings like this. We've been in
18 your community. I mean, I have, but I'm outside
19 counsel.

20 Employees of the railroad, many not here;
21 Union Pacific police department, et cetera, are in your
22 communities on a daily basis. We did state up front,
23 we're not waiving anything. We have submitted this
24 application voluntarily.

25 But we're going to have -- we're going to

1 have -- we know we're going to have conversation with
2 you. And so this is the process that you have asked us,
3 certainly, to go through. And we're going to do it.
4 We're not shirking from that.

5 Wes, did you want to add anything?

6 MR. LUJAN: Yes. I'd just like to...

7 Thank you. Wes Lujan with Union Pacific. I
8 just want to follow up, Commissioner, that, you know,
9 even though we recognize this law, the laws that have
10 been put in place to protect your interstate commerce,
11 we treat our shareholders, our employees and our
12 customers and our communities as co-equals. It's part
13 of our values, our corporate culture. It's part of what
14 we are as a company.

15 We've been operating in communities here
16 since the late 1800s. We plan on being here a long time
17 after that.

18 The goal is to develop a good product,
19 working in collaboration with your staff and your body
20 and other local governments and agencies that are
21 involved in the Gorge management to vote a quality
22 solution that is amicable and meets all of your needs.
23 That's all we are trying to achieve here.

24 COMMISSIONER HEGE: Thank you. We
25 appreciate that.

1 Maybe another one for Ty. Because one of
2 the points of the appeal is this issue that you brought
3 up about you didn't want the mandatory requirement for
4 these crossings. And you indicate that that could be
5 achieved, kind of in some sort of a voluntary process.
6 But as you heard Angie mention, you know, we're required
7 to make sure that this stuff happens.

8 So how -- I mean, I'm not sure how -- I
9 mean, because if it's a voluntary process, just by the
10 words, it basically doesn't require you to do anything
11 unless you agree to it. So how can we be assured that
12 that's going to happen?

13 MR. WYMAN: Well, you've heard -- first of
14 all, you heard the assurance, I believe, from the top,
15 from the chairman of the company there. What happened
16 is, are we legally obligated to provide access, river
17 access, in the way that has been laid out through this
18 process?

19 Quite simply, we don't believe that we are.
20 And we -- I think we've articulated a number of times
21 why we don't view that as a legal obligation. Are we
22 still -- do we still want to address it? Yeah,
23 absolutely we do for the reasons that I set out.

24 Having people cross our tracks, a mainline
25 track in an uncontrolled location is hugely problematic

1 for us. And we share that, that problem.

2 So we simply feel that the voluntary
3 compliance is more likely -- more likely to get
4 somewhere as it has done in other -- in other locations.

5 COMMISSIONER HEGE: Okay. Another question
6 I had was, I've heard some discussion about the idea of
7 shortening the project. Potentially just, you know,
8 either shortening the project or moving it one direction
9 or another, so that it -- double track doesn't actually
10 go through Mosier. And I'm wondering if someone can
11 address why that does not work?

12 MR. SCHELBITZKI: So we -- we -- Clint
13 Schelbitzki again.

14 COMMISSIONER HEGE: One point of
15 clarification. So I understand that it maybe isn't
16 ideal, but could you also address a question that while
17 it may not be ideal, would it be a better solution than
18 nothing?

19 MR. SCHELBITZKI: So to address the question
20 about shortening the project from either one side or the
21 other, one of the two bottleneck factors are both the
22 length of the siding and the single-track gaps that are
23 on each side of it.

24 Shortening one side of it would still create
25 a gap where you would have -- it would still be

1 difficult to have that same fluid simultaneous action.
2 Because what we're trying to do is create that
3 double-track corridor so it's closer to the nearest
4 sidings that are -- that are outside of the area. And
5 to be able to run simultaneous trains fluidly, you need
6 -- you need the extension in both directions.

7 If you don't have that, you might still have
8 one train waiting at either Meno or if we go the other
9 way, you'll still have trains sitting in The Dalles.

10 So we're trying to -- to circumvent that
11 issue on both ends.

12 MR. BAATZ: I'll just add that analysis has
13 concluded that if we aren't able to have all 5.37 miles,
14 we would likely end up with a stopped train in -- at the
15 Mosier siding, which would, what it would be --
16 ultimately be, which would not solve the issue that
17 we're having.

18 COMMISSIONER HEGE: So when you say it
19 wouldn't solve the issue, would it provide any
20 improvement or would there be no improvement if it
21 wasn't the whole project?

22 MR. BAATZ: It would allow for longer trains
23 to meet, but not fluidly.

24 COMMISSIONER HEGE: All right. Thank you.

25 So there were some comments and we heard a

1 lot of comments, a lot of statements to the effect that
2 the proposed project and improvements will not make
3 more -- will not create more trains, will not bring more
4 trains.

5 So my question is, not so much that, but as
6 Angie pointed out, kind of looking at worst scenario, my
7 question is, would these improvements increase the
8 capacity of trains to flow through?

9 There's a lot of discussion about 30 trains
10 or up to 30 trains. And so if this is done, we heard --
11 we've heard some testimony, read some testimony about
12 other people that have said the capacity of the -- of
13 the infrastructure goes up to -- I don't know what it
14 was -- 70 or something like that.

15 So is there -- with this improvement, will
16 there be -- I understand you're saying that, you know,
17 the market dictates the number of trains that go
18 through. I understand that. But the market, 50 years
19 from now could be very different. And -- and will this
20 improvement allow for more trains to pass through this
21 area?

22 MR. WYMAN: Thank you, Commissioner. I know
23 that Clint Schelbitzki is -- is chomping at the bit.
24 This is his issue. But I have learned enough that what
25 he's going to talk about is, it's a distinction between

1 capacity and fluid capacity when you've got trains going
2 each way.

3 Clint.

4 MR. SCHELBITZKI: Client Schelbitzki.

5 Appreciate the question. It is one that is talked about
6 a lot. So -- and we have submitted that this will
7 increase our fluid capacity five to seven trains per
8 day, I mean, that's the range that we're talking about.

9 Capacity, in general, is how much you can
10 put through a given network. It's roads, railways,
11 pipelines. I mean, that's -- that's -- that's kind
12 of -- that's the general capacity.

13 What we look for is fluid capacity. What's
14 an acceptable level of delay for our customers. So when
15 we talk about five to seven trains, we're talking about
16 five to seven trains more potentially moving fluidly
17 across the network.

18 So when I go back to the 2008 example, we
19 were moving nearly 35 trains per day. They may not have
20 been fluid. I wasn't here in 2008, so I don't know what
21 the -- what the dynamic was within the Gorge.

22 But, typically, when you start increasing
23 trains, you can -- you can push more and more volume
24 through the network, but what you'll have is more trains
25 sitting in each of the sidings across the network. So

1 you'll have more trains in The Dalles. You'll have more
2 shorter trains waiting in Mosier. And the longer trains
3 that don't fit, they're the ones that are, you know,
4 they continue to move on the mainline, while the other
5 trains sit and wait in each of those respective sidings.

6 So it's, yes. I mean, to directly answer
7 your question, yes. We -- when we modeled it, five to
8 seven more trains fluid capacity potentially moving
9 through the network, but our capacity could, you know,
10 be beyond that less fluidly.

11 COMMISSIONER HEGE: Okay. So I had another
12 question related to noise. And I'm just curious, in
13 terms of existing situation versus what's proposed and
14 primarily related to the existing noise that would be in
15 the Mosier area right now and what could be expected
16 with this.

17 Is there any -- is there any way that that
18 noise is going to be reduced in some way with this --
19 with this proposal?

20 MR. BAATZ: So in terms of reduction, we
21 won't have -- the intent is to not have idling trains,
22 so that would be the reduction.

23 There would also be the induction of
24 lubricators on either side of the project area. That
25 will allow for a reduction in the squeaking noise of the

1 wheels hitting the side of the rail.

2 COMMISSIONER HEGE: I've heard the
3 lubricator issue. Is that a fixed -- is that a fixed
4 facility that somehow provides lubricant as the train
5 comes into that area or is that something that is
6 actually on the train?

7 MR. BAATZ: That's something that's on the
8 track itself.

9 COMMISSIONER HEGE: On the tracks. Okay.
10 So -- and that's something that doesn't exist today?

11 MR. BAATZ: There's one out there today on
12 the east end of the project -- of the siding.

13 COMMISSIONER HEGE: East of the siding.
14 Okay.

15 So in terms of the noise, is -- what should
16 residents expect? I mean, would the noise be different
17 or would it be largely the same?

18 And I guess what's behind that, I was
19 talking to somebody. The idea of trains rolling
20 through, potentially, is quite different than a train
21 that is sitting there.

22 MR. BAATZ: Trains currently go through the
23 area at the same speed. I've heard a couple of
24 arguments or questions related to two trains passing
25 each other, and what is the -- is there a larger ambient

1 noise?

2 And -- and the reality is that there is,
3 decibel wise, going to be a slightly larger noise ratio.
4 But there are also facts that we have to consider in
5 that there -- when one train is passing the other, that
6 first train is blocking the sound or acting as a barrier
7 to the other train.

8 MR. LUJAN: Or -- or -- Wes Lujan again.

9 Or I may add that if you have a train that
10 is stopped from a standing position and starting up
11 again, it's going to be exerting more noise. So we're
12 trying to eliminate that. We're trying to eliminate
13 that standing train, the idling train, pulling that very
14 heavy load of cargo and having to work extra hard.

15 You know, noise issues come up in a lot of
16 our communities, Commissioners. I've worked on a number
17 of them over the years. You know, there's different
18 resources to look at noise studies and ambient train
19 noise and there's different limits for, you know, the
20 horn. There's different limits for ambient rail noise.
21 You know, that's one of those things I can definitely
22 talk to your staff more about. I know the Federal
23 Railroad Administration has resources to educate people
24 about that and even do testing.

25 So it's one of those things we'd have to

1 work through that with you guys to identify the actual
2 impacts.

3 COMMISSIONER HEGE: Well, I think for
4 Mosier, in particular, obviously, you can imagine it's a
5 significant concern that if there's already noise there,
6 but if the noise level is increased significantly that's
7 not something that's going to be helpful or appreciated
8 by the community.

9 MR. LUJAN: No, we understand that. We
10 don't think there's going to be an excessive amount of
11 change in noise at the area.

12 You know, in conversation with Team Mosier
13 there's been references to noise mitigation. You know,
14 results of some of our conversations we have with the
15 community. And, you know, I'm really trying to figure
16 out what would be -- what the community is thinking is
17 appropriate mitigation.

18 Because I know the people like their view of
19 the river, so I don't think a barrier or a sound wall is
20 an answer. And sound walls cause other issues other
21 places; they deflect noise across the river or up or,
22 you know, a number of different impacts that way, so
23 that's one issue.

24 So there's just a lot of things. You have
25 to get an acoustical engineer and try to understand

1 that.

2 COMMISSIONER HEGE: Okay. Well, I was
3 wondering if there was any modeling that is done
4 typically with trains going through a community that it
5 would be some sort of, you know, you can provide
6 expectations on decibel levels or other noise factors.

7 MR. LUJAN: There -- there are different
8 ranges for the different pieces of equipment in the
9 locomotive. I can follow up with your staff to get you
10 those parameters. There's a table that illustrates what
11 the decibels are for different pieces of equipment.

12 COMMISSIONER HEGE: Okay. Well, listen, I
13 mean, obviously, you know the point is Mosier does not
14 want more noise. They want less. Or at least not more.

15 MR. LUJAN: Understood, Commissioner.

16 COMMISSIONER HEGE: Okay.

17 MR. LUJAN: Thank you.

18 COMMISSIONER HEGE: One final question
19 related to safety. There's a lot of questions related
20 to safety, but somebody -- I saw this in one of the -- I
21 think recent comments was this idea of -- well, is this
22 proposed development going to be safer? Is there some
23 -- some evidence that suggests that this is a safer
24 alignment of the track and is there any additional risk
25 that is -- comes into play? Somebody commented about

1 trains passing at speed and having an issue and then
2 impacting with opposite speeds, even if you're going
3 30 miles an hour, if they, obviously, impact head-on,
4 that would be a 60-mile-an-hour crash.

5 MR. LUJAN: Commissioner, thanks for the
6 question.

7 We -- this project is not about safety. But
8 some of the elements that do improve the safety is, for
9 example, if you don't have a standing locomotive or
10 standing train set out on the right away, you don't have
11 people plowing through it. That's something we've
12 basically cited as a possible improvement to the safety.
13 You know, that's -- that's something that we try to
14 avoid at all costs, but we know people do that.

15 With respect to the dispatching of the
16 trains and movement of the trains, there is basically
17 what we call power switches, that would be on either end
18 of the -- of the siding, right?

19 So they have, basically, electronically
20 controlled switches -- and Luke can speak to these in
21 more detail -- that basically have fail-safes involved
22 to try to prohibit those types of collisions.

23 You know, there's a dispatch center back in
24 Omaha that that's installed in a bunker that basically
25 is fortified and basically controls our network across

1 32,000 miles of track, 23 states and 7,300 communities.
2 Our goal is to make sure that never happened.

3 CHAIRMAN RUNYON: First of all, thank you,
4 Scott, for taking care of my three pages of questions.
5 I do have one -- I do have one here, though.

6 The Planning Commission crossed off on their
7 attachment C, No. 20, which is under the treaty rights
8 conditions. And that was: "The proposed development
9 shall not directly result in significantly increased net
10 volume of rail traffic, including a number of individual
11 trains, length of trains or speed of trains.

12 I'm not sure I'm happy that that's crossed
13 off. And I wonder if you can address that. The
14 planning department director has, in her testimony,
15 talked about putting some of these things back in, many
16 of them that had to be crossed off. So this is the
17 first one.

18 MR. WYMAN: Yeah, thank you, Chair Runyon
19 for that question. And I certainly recognize your --
20 your concern about it.

21 One of the fundamentals here, for all of us,
22 is the common carrier law. For a county to attempt to
23 limit the number of trains, frequency of trains coming
24 through its community, would simply, very openly,
25 violate that.

1 And so that's why, you know, our point,
2 actually, to the Planning Commission was, that's --
3 that's not even enforceable. So it's not enforceable to
4 set a limit. And the limit was set at another
5 condition, I think the 20 to 30 trains per day. It
6 simply relates back to the common carrier law. We must
7 carry any load that is given to us by, you know, by a
8 customer, as long as it is packaged and according with a
9 number of federal regulations.

10 CHAIRMAN RUNYON: Okay.

11 COMMISSIONER HEGE: So I guess, then, the
12 question that may come up in response to that is, it
13 doesn't require you to carry on this track, right? I
14 mean, you could carry it in other places on your
15 network; is that correct?

16 MR. WYMAN: Again, I introduced him up
17 front. Vice president Bob Belt's offices in Omaha deals
18 with these issues directly.

19 MR. BELT: Thank you, Commissioner. Bob
20 Belt. I'll try to address that question.

21 So, I'll just point blank say it.
22 Regulating the number of trains by a county is preempted
23 by federal law under ICTA, the Interstate Commerce
24 Termination Act.

25 Economic regulation is now by the Surface

1 Transportation Board, safety regulations by the Federal
2 Railroad Administration.

3 Respecting the concerns of the County about,
4 okay, number of trains you could send them somewhere
5 else, that is interfering with train operations. You
6 tell us -- a county tells us to go somewhere else and
7 carry more trains down here, not in our backyard is, in
8 effect, a regulation by your County of interstate
9 commerce which we respectfully submit is preempted by
10 federal law. And I mean that with all due respect.

11 CHAIRMAN RUNYON: So that would have to do
12 with No. 15, which was also crossed out. UPR
13 (indiscernible) within the existing range of 20 to 30
14 trains per day, as stated in the application materials.

15 So that's what you -- what you put in the
16 application materials is what you expect. But we have
17 no way to regulate that?

18 MR. BELT: That's correct. I would give you
19 the same answer, Commissioner.

20 CHAIRMAN RUNYON: Just trying to get the
21 questions out that are brought to us.

22 MR. BELT: Yes. Thank you. I appreciate
23 it.

24 CHAIRMAN RUNYON: Another one that is on the
25 list here that was crossed off, and I'd like you to

1 explain, is No. 13: "Coal cars are required to be
2 covered." That was crossed off. Can you tell me what's
3 behind that?

4 MR. BELT: Basically, the same issue. And
5 the cars and the coverage of coal cars is a customer
6 responsibility. There are -- I'm going to readily
7 admit, I can't, with any scientific detail, explain how
8 all of this works. But they -- they put sprays on them
9 to prevent the coal dust from blowing. It is not
10 required by either the Surface Transportation Board or
11 the Federal Railroad Administration. And requiring it
12 through the Gorge, but not in other locations, again, is
13 in effect, a regulation of interstate commerce.

14 MR. LUJAN: Commissioner -- Chairman, if I
15 may. You know, another thing that it's important to
16 recognize is that at this time, we do not haul coal west
17 of Boardman, Oregon, so...

18 CHAIRMAN RUNYON: Okay. That's the one I
19 was looking for, actually. Commissioner Kramer, do
20 you have --

21 COMMISSIONER KRAMER: No.

22 CHAIRMAN RUNYON: So -- this is quite a line
23 here.

24 We are going to move along to our next
25 appellant, but we reserve the right to come back with

1 more questions and come back and -- and ask those.

2 MR. WYMAN: Absolutely. And we'd be happy
3 to take them. Thank you very much.

4

5 CHAIRMAN RUNYON: We'll go on and bring up
6 Federated Tribes now. Go on and introduce yourself and
7 where you're from.

8 MS. PENN-ROCO: My name is Amber Penn-Roco.
9 I'm an enrolled member of the Chehalis Tribe. I'm a
10 member of Galenda Broadman, representing the Yakama
11 Nation here tonight.

12 CHAIRMAN RUNYON: And it sounds like you
13 have a soft voice, which is very pretty. We need you to
14 be close to that microphone, so bring that right up to
15 you. You can move it.

16 MS. PENN-ROCO: So, sorry. Again, my name
17 is Amber Penn-Roco. I'm here representing the Yakama
18 Nation. I have two statements from the Yakama Nation;
19 our official letter detailing our appeal and then a
20 statement from the Tribal Council that I was told to
21 read for them during the designated time for tribal
22 official response.

23 I will -- this is addressing our appeal.
24 And I will address the applicants' comments in our
25 rebuttal.

1 On behalf of the Confederated Tribes and
2 Bands of the Yakama Nation, I submit to the Wasco County
3 Board of Commissioner the following comments regarding
4 the Planning Commission's decision to approve Union
5 Pacific Railroad's application for rail extension.

6 We believe that the proposed rail extension
7 interferes with the Yakama Nation's treaty rights.

8 The Yakama Nation previously submitted
9 correspondence to the Planning Commission, detailing the
10 adverse impact of the proposed rail expansion, including
11 the impacts to our treaty rights. We submitted those
12 letters on the 13th and the 26th, both have been
13 provided to you below.

14 And what I will read is an excerpt that
15 specifically details the impact on treaty rights.

16 The Yakama Nation is a federally recognized
17 sovereign nation, a signatory to a treaty with the
18 United States. In the treaty, the Yakama Nation
19 explicitly reserved the right of its people to hunt,
20 fish and gather at their usual and accustomed places.

21 The treaty provides the exclusive rights of
22 taking fish in all the streams, where running through or
23 bordering said reservation is further secured to said
24 Confederated Tribes and Bands of Indians, as also the
25 right of taking fish at all usual and accustomed places

1 in common with the citizens of the territory and
2 erecting temporary buildings for curing them, together
3 with the privilege of hunting, gathering roots and
4 berries and pasturing their horses and cattle upon open
5 and unclaimed land.

6 The Yakama Nation treaty rights are not
7 granted to the Yakama Nation, but rather are grants of
8 rights from them; a reservation of rights not granted to
9 the United States.

10 Treaties are the highest law of the land and
11 create a fiduciary duty and trust responsibility upon
12 all agencies of the United States to protect treaty
13 rights, included fishing rights.

14 These treaty rights cannot be abrogated,
15 except by explicit Congressional authorization. Courts
16 have consistently required federal agencies and states
17 to keep the treaty promises upon which tribes relied
18 when they ceded huge tracts of land to the United
19 States.

20 Further, treaty rights include a property
21 right and adjacent lands, to the extent and purpose
22 mentioned in the treaties. As part of these treaty
23 rights, courts have confirmed that the tribes of
24 Washington have a right to half of the harvestable fish
25 in state waters.

1 Accordingly, the Yakama Nation, as a
2 sovereign nation, has a profound interest in the
3 preservation of its treaty rights. The United States v.
4 Oregon and Boldt decisions also established the Yakama
5 Nation as a co-manager of the fisheries' resources with
6 the state of Washington.

7 The Yakama Nation actively regulates its
8 fisheries. The Yakama Nation staffs the Yakama Nation
9 fisheries. The fisheries focus on the protection of
10 treaty rights. The restoration of aquatic populations
11 and their habitats and ensuring the fish are honored in
12 a manner reflecting their paramount importance to the
13 Yakama Nations' people, diet and health. The fisheries
14 accomplish these goals using two primary methods:
15 Population and habitat management goals and actions and
16 natural resource policies and regulatory mechanisms.

17 The Yakama Nation resides on central
18 Washington's plateau and along the Columbia River.
19 While the Yakama Nation was officially recognized by the
20 United States in 1855 by the treaty, the people that
21 comprise the Yakama Nation have lived in the area since
22 the time immemorial.

23 Historically, villages were located on or
24 near waterways, in places where a variety of resources
25 could be obtained. Currently, the people use vegetation

1 and wildlife as both food resources and cultural
2 resources.

3 The people gather edible greens, roots and
4 berries. The people hunt and fish. Many earn their
5 living fishing for salmon in the waters of the Columbia
6 River and its tributaries. The proposed rail expansion
7 has the potential to interfere with the Yakama Nation's
8 exercise of its treaty rights to hunt, fish and gather
9 in its usual and accustomed areas.

10 For example, the proposed rail traffic will
11 directly interfere with fishing in the Columbia River.
12 The Boldt decision affirmed the Yakama Nation's usual
13 and accustomed fishing areas include the Columbia River
14 area where approximately 400 tribal members fish
15 commercially.

16 The Yakama Nation jointly regulates the
17 exercise of its members' treaty fishing rights on the
18 Columbia River. The Court also noted that the Yakama
19 Nation's members utilize fish for both ceremonial and
20 personal reasons and that they have been and continue to
21 be very dependent on anadromous fish to sustain their
22 way of life. The Court found that anadromous fish are
23 vital to the Yakama Nation's members' diets.

24 As the Boldt decision observed, many of the
25 Yakama Nation's usual and accustomed fishing areas lie

1 along the Columbia River. Along the Columbia River,
2 there are train tracks. The proposed rail expansion
3 would be in Mosier, Washington, which is situated along
4 the Columbia River.

5 The proposed rail expansion raises two
6 significant issues in regards to the exercise of the
7 Yakama Nation's treaty rights. Increased train traffic
8 would limit both access to the Yakama Nation's usual and
9 accustomed fishing areas and would increase the risk of
10 injury or death to tribal fishers.

11 In regards to access to fishing sites, there
12 is the obvious impact hat increasing train traffic will
13 make it more difficult to cross the train tracks,
14 limiting access to those sites that lie alongside train
15 tracks.

16 These significant impacts must be addressed
17 in any proper analysis of the application at issue here.
18 Further, as discussed in detail below, increased train
19 traffic results in and increased risk of trains
20 derailing and spilling.

21 Historically, the Yakama Nation has endured
22 the loss of many traditional fishing places due to the
23 development of the Columbia River and spills. The loss
24 of more fishing sites due to a train derailment or any
25 resulting oil spill, would place an unacceptable

1 cumulative burden of loss on the Yakama Nation. Again,
2 these significant impacts must likewise be addressed in
3 any adequate analysis on the application.

4 The biggest risk to the safety of tribal
5 fishers when accessing fishing sites is the proximity of
6 the train tracks to fishing sites. Many fishing sites
7 can only be accessed by crossing train tracks.

8 In order to access fishing sites, tribal
9 fishers have to cross the train tracks, by foot or in
10 vehicles. The crossings, especially in remote
11 locations, do not always have signal and safety
12 measures. Every time a tribal fisher crosses a train
13 track, they are exposing themselves to a significant
14 risk of injury or death.

15 Over the years, the Yakama Nation has
16 suffered fatalities and injuries due to train strikes.
17 Any increase in the train traffic would both make it
18 more difficult for tribal fishers to access
19 treaty-protected fishing sites and would increase the
20 safety risks faced by tribal fishers.

21 The Yakama Nation's treaty rights allow its
22 people to maintain their customary way of life. The
23 treaty rights include the right to hunt, fish, and
24 gather at all usual and accustomed places and throughout
25 the Yakama Nation's ceded lands, including those usual

1 and accustomed places along the Columbia River at issue
2 here. The proposed rail expansion would have a direct
3 adverse impact to the Yakama Nation, its people and its
4 treaty-reserved rights and treaty-protected resources.

5 The Yakama Nation considers these impacts to
6 the Yakama Nation's treaty rights unacceptable.

7 Further, in regards to mitigation, to put it simply,
8 there is no mitigation adequate to address the
9 diminishment or destruction of the Yakama Nation's
10 treaty-reserved rights and treaty-protected resources.

11 There is no adequate mitigation that will
12 compensate the Yakama Nation or its people for the
13 continued degradation of our sacred places and the
14 incremental, but constant damage to our natural
15 resources that sustain our culture and the constant
16 threat to the livelihood and cultural practices of the
17 Yakama people.

18 Further, and as outlined in detail in the
19 Yakama Nation's prior correspondence, the Yakama Nation
20 has other significant interests that will be impacted by
21 the proposed rail expansion, including:

22 The proposed rail expansion would result in
23 irreparable harm to the Yakama Nation's cultural and
24 natural resources.

25 The proposed rail expansion would increase

1 the risk of derailments, spills, explosions and other
2 avoidable catastrophic impacts resulting from the
3 increase in rail traffic through our lands that will
4 follow the proposed rail expansion.

5 The proposed rail expansion would increase
6 emissions, aggravating climate change.

7 The Planning Commission did not adequately
8 protect the Yakama Nation's interests. As discussed
9 below, the Planning Commission's decision is in direct
10 violation of the applicable laws.

11 The decision violates the applicable laws,
12 which prohibit projects that affect or modify treaty
13 rights. The National Scenic Area Act provides that
14 nothing shall affect or modify any treaty or other
15 rights of any Indian tribe.

16 This requirement is recognized in the
17 Management Plan for the Columbia River Gorge National
18 Scenic Area, which expressly cites the National Scenic
19 Area Act. The Management Plan further provides that
20 Indian treaty rights must be observed by the Gorge
21 Commission, as well as local and state governments,
22 federal agencies and private citizens.

23 The National Scenic Area Land Use
24 Development Ordinance recognized these requirements and
25 provides that use that would affect or modify such

1 treaty rights shall be prohibited.

2 In recognition of these limitations, the
3 staff recommendation and conditions of approval included
4 two treaty rights conditions that we've discussed; 20
5 and 21.

6 And further, the staff recommended a
7 following related condition, Condition 15, that they
8 shall stay within the existing range of 20 to 30 trains.

9 At the hearing, the Planning Commission
10 discussed removing Condition 20. At the hearing, the
11 director informed the commission that if the plan
12 commission removed Condition 20, quote, "We would be
13 allowing something that has a potential adverse effect
14 to treaty rights," which would be in violation of the
15 applicable laws.

16 Further commissioners themselves suggested
17 that removing the limit on the number of trains would
18 make the decision violate the Planning Commission's
19 ordinances and the treaty of the tribes. However, the
20 Planning Commission dismissed the concerns of its own
21 director and removed the condition despite legal
22 requirements to the contrary.

23 Here, the Yakama Nation informed the
24 Planning Commission that the proposed rail expansion
25 would result in violations of the Yakama Nation's treaty

1 rights.

2 Accordingly, the governing laws require that
3 the Planning Commission to ensure that the proposed rail
4 expansion did not affect or modify treaty rights, as
5 uses that affect or modify treaty rights shall be
6 prohibited.

7 By ignoring the staff recommendations and
8 warnings at the hearing, the Planning Commission
9 violated its governing laws.

10 Further, even if Condition 20 was included,
11 the proposed rail expansion would still adversely impact
12 the Yakama Nation's treaty rights. In the Yakama
13 Nation's September 26, 2016 letter, it pointed out that
14 Condition 20 was unenforceable by the County, and based
15 on this, informed the Planning Commission that even with
16 the recommended conditions, the proposed rail expansion
17 would still have adverse impacts on Yakama Nations'
18 treaty rights.

19 The commissioners stated that, "A limitation
20 on the number of trains per day very well might not be
21 something that's enforceable in the first place."

22 And in regards to the treaty rights
23 condition, "I don't know if it's something that's
24 enforceable."

25 Accordingly, because the proposed rail

1 expansion will have an adverse impact on the Yakama
2 Nation's treaty rights, even if the decision is revised
3 to include Condition 20, the Board should deny Union
4 Pacific's application.

5 This conclusion is supported by the Planning
6 Department's review of our application. The Planning
7 Department concluded that the "Board must find that the
8 proposed use would not affect or modify treaty or other
9 rights of any Indian tribe. If this cannot be
10 concluded, then the proposed development is inconsistent
11 with the ordinance and should be denied."

12 Here, the Planning Commission determined
13 that the proposed condition could not be enforced. The
14 Yakama Nation agrees.

15 However, the Planning Commission's response
16 to their conclusion should not have been removal of the
17 condition. The application will negatively impact the
18 Yakama Nation's treaty rights. Accordingly, and as
19 outlined by the Planning Department, the Board must deny
20 the application.

21 CHAIRMAN RUNYON: Questions?

22 COMMISSIONER HEGE: I have a question. I
23 think I know the answer to it, but in terms of this
24 issue of impacting the treaty rights, I heard you say --
25 and I just want to hear it again, I guess.

1 Is there anything at all that could be done
2 that would basically eliminate that -- that position?

3 I mean, I understand that you're saying that
4 like it is currently proposed, maybe. But is there some
5 other route that the treaty rights would not be
6 impacted?

7 MS. PENN-ROCO: The increase in rail traffic
8 is what is concerning. And because it is their position
9 that you do not have any authority to limit the amount
10 of train traffic going through, the increase will impact
11 treaty rights.

12 I will get to this in a rebuttal. But they
13 argued that there is no evidence, that it's just the
14 word of Yakama Nation. But I have personally met with a
15 variety of tribal fishers and then members of our Yakama
16 Nation fishery. We collectively met to discuss this
17 subject. And the letters that we sent are distilled
18 information based on those .

19 And what we are seeing, across the board, is
20 that it is dangerous. It is getting more dangerous.

21 COMMISSIONER HEGE: Okay. So I guess as a
22 follow-up question, if there were some assurance that
23 there would be no increase or something to that effect,
24 is there any -- any possibility that that might be, if
25 there was some assurance of that, would that be

1 something that might be possible?

2 MS. PENN-ROCO: Yes, although everything we
3 are hearing tonight is --

4 COMMISSIONER HEGE: Right. No, no. And I
5 understand that. I'm just trying to get at, is there a
6 solution out there? Potential?

7 MS. PENN-ROCO: Potentially. But that would
8 require them recognizing, one, that they can, and two,
9 that there is.

10 The point that they were making with citing
11 these cultural and historic studies, yes, an analysis of
12 the archeological historic sites along the river is
13 useful, but it does not -- it is not the be all end all
14 of what our treaty rights encompass. There are two
15 separate subjects.

16 COMMISSIONER HEGE: Okay. Thank you very
17 much.

18 One final thing. I think some of the -- I
19 think with the appeal, maybe. I'm not sure. There were
20 so many documents. There were several letters that were
21 sent -- that was sent to the Corps of Engineers.

22 And what we received were just the letters
23 that the tribe sent to the Corps. Were there responses
24 from the Corps to those letters answering those
25 questions?

1 MS. PENN-ROCO: Those were the Umatilla
2 letters that you're referring to, not the Yakama Nation.
3 We didn't submit any materials with the --

4 COMMISSIONER HEGE: Okay.

5 MS. PENN-ROCO: Recognizing the --
6 (Crosstalk - indiscernible.)

7 CHAIRMAN RUNYON: Thank you very much.

8 Friends of the Gorge, Columbia Riverkeepers
9 and Physicians for Social Responsibility, as one group.

10 MR. KAHN: Thank you, Mr. Chair, members of
11 the Commission. My name is Gary Kahn with the firm of
12 Reeves, Kahn, Hennessy & Elkins.

13 And I'm here today on behalf of Friends of
14 the Columbia Gorge, Physicians for Social Responsibility
15 and Columbia Riverkeepers.

16 We appreciate the time to present our issues
17 here. Earlier today we submitted, for the record, a
18 lengthy narrative explaining why we believe there are --

19 CHAIRMAN RUNYON: Does your microphone come
20 up? There you go.

21 MR. KAHN: Okay.

22 In our notice of appeal, we've listed 29
23 flaws in the decision, 29 places where we think the
24 decision is in error.

25 Today we submitted a lengthy narrative with

1 support for each of those contentions. Today I will
2 highlight only a few of them, as time permits. This
3 project is one of the largest, if not the largest,
4 development project ever proposed since the Scenic Area
5 has been created.

6 As Ms. Brewer pointed out in her staff
7 report and orally today, it involves new development in
8 seven different land zones, including SMA and GMA open
9 space, which contains the most sensitive resources and
10 needs the biggest protection.

11 For a variety of reasons, the application is
12 not consistent with the National Scenic Area Act, the
13 Management Plan for the National Scenic Area Act and
14 Wasco County land use and development ordinance
15 implemented to further the National Scenic Area Act.

16 Before I get into any of the specific
17 allegations, I'd like to talk about some general issues
18 that permeate the entire project.

19 First, it's very important to understand
20 what the current use of these parcels is and what the
21 future use will be if this project is approved.

22 Right now, the current use certainly is a
23 railroad. According to the applicant, 20 to 30 trains a
24 day. That railroad has been there for over 100 years
25 and that railroad predated the National Scenic Area Act

1 and all of its regulations.

2 The Management Plan issued by the Gorge
3 Commission recognized the existence of the railroad. It
4 allowed the continued use, maintenance and repair and
5 operation of the railroad in all of its land use zones.
6 Nothing in the Management Act impairs or impacts
7 continued use of the railroad as it has been used.

8 But the Gorge Commission in its Management
9 Plan limited where there can be new railroad development
10 or expansion of the railroad that is not allowed in all
11 zones, in contrast to the continued use and operation,
12 which is allowed in all zones.

13 This shows that the Gorge Commission was
14 very much aware of the railroad when it passed the
15 Management Plan, and kind of undercuts the staff's
16 contention that there were oversights in the Management
17 Plan because of the railroad.

18 Now, this is important for several reasons.
19 The Planning Commission decision -- excuse me. There
20 are a number of places where -- and staff acknowledges
21 this -- that provisions of land use development
22 ordinance were not applied because, as Ms. Brewer said,
23 there was oversights where the Management Plan couldn't
24 have intended to prevent railroad expansion because it
25 allows the use of railroads.

1 Well, as I mentioned, the Gorge Commission
2 was well aware of the railroads on each side of the
3 river and allowed for its continued use. And where they
4 felt it was appropriate, allowed for new development or
5 expansion under certain conditions. Where it felt it
6 was not appropriate, it did not allow that, and
7 unfortunately, this decision violates that.

8 The proposed use. If this project is
9 approved, there will be the same railroad. There will
10 be more track, and according to what the applicant says
11 in writing and today, there will be no more trains. In
12 fact, they say there may be fewer trains, but longer
13 trains. In essence, no additional volume of freight
14 will be carried, based on what they said today.

15 Now, there are a number of proposals pending
16 in the Northwest for various coal or oil export
17 facilities. They are in various stages of approvals,
18 both in Oregon and Washington.

19 Many people believe that that's why the
20 railroad is applying for this. They're trying to set
21 the stage so they can get some of that extra business,
22 because if any of those proposals for export facilities
23 are approved, they're going to need trains to bring the
24 materials to them. And many people are saying that the
25 railroad is positioning itself to take advantage of

1 that.

2 We have no idea whether that's true. And
3 let's take the railroad at its word today; there will be
4 no additional train traffic as a result of this.

5 Well, the purpose of this is for, that they
6 said, fluidity. "To improve operational efficiency of
7 the train movement." That's right out of the
8 application.

9 "Not to increase the volume, not to increase
10 the number of trains or the freight carrier."

11 This becomes important for two reasons.
12 Many of the land use development ordinance provisions
13 require the railroad to establish that this proposal is
14 in the public interest. It's a tradeoff because of the
15 impacts to various resources. This is right out of the
16 code.

17 Here, there really isn't any public interest
18 being put forward. There will be no more volume moved,
19 there will not be anything that affects what gets from
20 point A to point B.

21 What happens is they have more efficient
22 movement of their trains and more profit to their bottom
23 line. Not a public interest, whatsoever. Purely a
24 private interest. And, therefore, the application
25 should be denied on that grounds alone.

1 Because the -- after approval and after
2 construction use of this train track will be no
3 different in terms of volume than it was before.

4 And in fact, Mr. Schelbitzki -- and I hope I
5 haven't butchered that too badly -- he said today that a
6 decade ago or so, there were 35 trains a day on these
7 very same tracks. So, apparently, the capacity on the
8 train tracks as they exist today is at least 35. They
9 may be using it for 20 to 30 today, but they can go at
10 least 35. Based on what they said today, they could
11 almost double that.

12 Mr. Schelbitzki said that this would
13 increase fluid capacity five to seven trains a day,
14 would increase non-fluid capacity by an unknown number.
15 So, arguably, it could double from the 20 to 25 to 30
16 that we have today.

17 The second issue this -- the second reason
18 this issue of the proposed use versus the current use is
19 important, is that another set of the ordinance
20 provisions require that the applicant show -- applicant
21 show that the minimum size necessary for the use is
22 being sought, that they should not seek anything more
23 than the minimum necessary. Many land use development
24 ordinance provisions require that.

25 Again, what will be the post-project use?

1 The same as it is now. If they're going to run the same
2 freight volume through the new configuration, as they
3 are now, then obviously, the minimum size necessary to
4 move that volume of freight is what they have now. They
5 cannot show the need for anything further, other than to
6 pad their bottom line.

7 The applicant simply cannot meet this
8 minimum sides test with any expansion of the railroad
9 because what they're going to get at the end is no
10 different than what they're going to get now, except the
11 trains are going to move faster and they're going to
12 have savings of scale.

13 Now I'd like to go into some of the specific
14 provisions that we think are violated by the Planning
15 Commission's decision. Six-point-four-one acres of GMA
16 open space will be affected by this proposal.

17 The Management Plan prohibits any expansion
18 of railroad use in GMA open space. Your ordinance
19 allows expansion, but the Management Plan does not. The
20 Management Plan allows repair, maintenance, operation
21 and improvement of existing railroads. Your ordinance
22 added an expansion.

23 So allowing this in the GMA open space would
24 be arguably, in this case, consistent with your
25 ordinance, but not consistent with the Management Plan.

1 And where there's a conflict between the various
2 hierarchies of rules, your ordinance provides that the
3 stricter provision applies. That is in Section 1.070.
4 The more restrictive provision controls.

5 Here we have a Management Plan that is more
6 restrictive than the ordinance. The more restrictive
7 Management Plan should control. And that flat out
8 prohibits any expansion or new development of the
9 railroad into open space.

10 A condition should be included if this
11 approval is -- if this project is approved, a condition
12 should be included to prevent any new use in GMA open
13 space.

14 We have a similar issue with the use in the
15 large-scale agriculture zone. Three-point-three acres
16 of large-scale agriculture will be affected.

17 This is from one of the slides that Ms.
18 Brewer showed. Well, it's in the staff report. I don't
19 think she showed it today.

20 In large-scale agriculture, an expansion of
21 the railroad use is allowed if there is no practicable
22 alternative and the minimum -- and it is the minimum
23 size necessary to provide the same service.

24 As I said at the outset, this is not the
25 minimum size necessary to provide the service. That is

1 today's level of use. They have no -- they do not meet
2 this minimum-size test because they can't show that they
3 need this additional mainline track to produce the
4 service. The same service afterwards is being produced
5 today.

6 In other words, this does not meet this
7 criteria and a condition of approval should be inserted,
8 disallowing any use -- any expansion into large-scale
9 agriculture zone.

10 There's a new culvert proposed to be located
11 within GMA open space. The land use development
12 ordinance allows the replacement and expansion of
13 culverts in this zone, but does not allow a new culvert.

14 In Section 3.180(f), it states that, "If not
15 specifically allowed in this chapter, the use is
16 prohibited in GMA open space." That applies to the
17 culvert and a culvert should not be allowed.

18 Similarly, there's a new culvert proposed in
19 the SMA public recreation zone, which is in the vicinity
20 of Memaloose National Park. Similar -- not "national
21 park" Memaloos State Park.

22 Similar to the last issue I mentioned about
23 the culvert in GMA open space, your ordinance simply
24 does not allow a new culvert in this designation. That
25 is unquestionable.

1 Section 3.170(f) of the ordinance, which
2 applies to public recreation states that, "Any uses not
3 allowed are prohibited."

4 Therefore, if this project is approved there
5 should be a condition prohibiting a new culvert in the
6 public recreation zone.

7 They are proposing five communication
8 towers -- I think it's five, it might be six -- to be 53
9 feet tall. In each one of the zones in which these
10 poles will be, there is a height limit of 35 feet.
11 There is no variance included in any of those and no
12 exception to any of those. Flat out prohibited.

13 The staff report states, "That the height
14 limit has historically not been applied to communication
15 poles." This is at page 21 of the staff report.

16 I don't think that gives you the right to
17 continue violating the ordinance. The ordinance says 35
18 feet. These are 53 feet; there should be no allowance
19 for it. There are numerous other places where there are
20 numerical limits; setbacks, buffers, things like that.
21 And variances are allowed if the conditions are met.

22 There is no variance allowed for this
23 35-foot-height limit. And the fact that it may have
24 happened in the past does not allow it to happen now.

25 The applicant has sought a number of

1 setbacks in the GM -- excuse me -- variances from
2 setbacks in the GMAs.

3 The ordinance allows for variances in
4 Chapter 6, but only when one setback or buffer conflicts
5 with another setback or buffer.

6 Here, there has been absolutely no analysis
7 of any of that whatsoever. If you look through the
8 staff report, all you see is blanket requests for
9 exemptions and we need to grant it because if we don't
10 allow, if we don't grant the variances, the railroad
11 can't function.

12 Ms. Brewer said something today that kind of
13 took me back -- took me back a little bit. She stated
14 that some of the complaints or some of the allegations
15 in the appeals were that there was not an adequate
16 analysis to support the findings.

17 And she also stated that even if it's not in
18 what has been written and submitted and part of the
19 record, that analysis was done.

20 Well, we don't know what was done if it's
21 not in the staff report, if it's not in the thousands of
22 pages of the record. So I don't think you can rely on
23 an oral assurance that these analyses were done, if
24 there is nothing to point to.

25 Similarly, Section 14.200(g) of your

1 ordinance requires a 100-foot setback. This is part of
2 the same setback and buffer issue. Requires a 100-foot
3 setback from the Columbia River for all development.

4 There's a variance allowed if the proposal
5 is for a water-dependent use or the setback would render
6 the property unbuildable. No question the railroad is
7 not a water-dependent use.

8 So the only way they can get around the
9 setback is if the position of the setback would render
10 the property unbuildable.

11 Three minutes? I hope I would be given the
12 same few extra minutes that the appellant did.

13 Here, the property is clearly not
14 unbuildable. It has use. It has exiting use. It's
15 been there for a century. It is not unbuildable. It is
16 not a water-dependent use. There is no basis to provide
17 for a variance of the 100-foot setback.

18 Similarly, in the SMAs there are setbacks
19 and buffers sought. From nine -- the setback from nine
20 different wetlands. To allow this, your ordinance in
21 Chapter 14, Sections 14.610 allows a variance setback
22 buffer -- excuse me -- a variance from the buffer for
23 these, but only if the applicant can show there are no
24 practicable alternatives. This is set forth in Section
25 14.6(a).

1 One of the requirements to meet the no
2 practicable alternatives test, is that the proposal is
3 the minimum size necessary to provide for the use.

4 As I have said several times, the minimum
5 size necessary is what there is now. No additional
6 development should be allowed.

7 Moving on to scenic resources. Section
8 14.020 of your ordinance requires a detailed landscaping
9 plan, which shows the location, height, species of
10 existing trees, trees to be removed and a host of other
11 requirements.

12 Applicant acknowledges they did not submit
13 it. The staff report acknowledges this wasn't
14 submitted. This should not be allowed. The application
15 is incomplete.

16 One of the more egregious errors, we
17 believe, involves key viewing areas. Many provisions of
18 the scenic ordinance require an analysis of the scenic
19 impacts of the project, as visible from key viewing
20 areas.

21 The applicant evaluated it from several key
22 viewing areas, the staff evaluated it from four. There
23 are at least four others that are not evaluated, that
24 from which this project is visible. The Cook-Underwood
25 Road, Rowena Plateau, Washington state Route 141 and

1 Washington state Route 142.

2 Included in our submission today, are maps
3 from the Gorge Commission known as scene area maps.
4 They are analyses on the maps with colors, showing where
5 lands are visible from key viewing areas. From the four
6 key viewing areas I just mentioned, much, if not most of
7 this project is visible.

8 There is simply no analysis, whatsoever,
9 from any of those KVAs. And we believe that alone
10 should merit this application to be deemed incomplete
11 and shall be returned for more work.

12 I guess my time is up. I will end with
13 that. I'm happy to answer any questions.

14 Okay. Thank you very much.

15 COMMISSIONER HEGE: So one question I had, I
16 guess it's related to -- sorry. I've got a lot of notes
17 here.

18 So we heard comments about a variety of
19 things, but related to the movement of goods and the
20 fact that trains are a fairly efficient way to move
21 those goods versus other methods.

22 So I'm curious, is there any concern on you
23 or your parties about the idea that if these goods don't
24 move in a train component that they may be moved onto
25 the road? Is there any issue there? What's your

1 thoughts on that?

2 MR. KAHN: The -- the goods are being moved
3 by the train in the current -- on the trains in the
4 current configuration. As they stated today and as they
5 stated in their written materials, this will not result
6 in the increase in trains. Although, they objected to a
7 condition of approval that would specify that.

8 So denying this application will not result
9 in a change of the volume of freight that's moved
10 through the rail line through the Gorge. They have said
11 that in a number of cases.

12 That doesn't necessarily address your
13 question, but I think it kind of -- it shows that the
14 question doesn't need to be answered, but I will.

15 Yes, if there are some additional -- I don't
16 know what the volume of freight is that they would be
17 looking to move in other -- through other mechanisms.
18 But, yes, there could be some additional impact. But we
19 believe that the potential impacts from additional
20 trains, both the noise, the scenic impacts, the
21 development of this and god forbid another derailment
22 and explosion outweigh the fact that there may be some
23 additional truckloads on the roads.

24 COMMISSIONER HEGE: Thank you.

25 Well, I guess from -- well, especially from

1 staff, Angie.

2 Am I correct that we just got this letter
3 like when we sat down; is that correct?

4 MS. BREWER: Correct.

5 COMMISSIONER HEGE: So I'm assuming, then --
6 I haven't -- but we really haven't had a chance to
7 review that. He made a lot of comments about things.
8 I'm assuming if I was about to ask you about this, that
9 and the other, you would say you haven't had a chance to
10 review it; is that correct?

11 MS. BREWER: That is correct. I have not
12 had a chance to review it.

13 COMMISSIONER HEGE: Okay.

14 MR. KAHN: I would add, Commissioner, that
15 much of what's in that letter has been in previous
16 comments we have submitted. Not in the same fashion and
17 there's certainly some more detail here. But it's not
18 new information being submitted for the first time
19 today.

20 COMMISSIONER HEGE: No. I understand that.
21 We -- in your appeal, your client's appeal and then in
22 the staff's response. The staff responded to many of
23 those 29 point or whatever. And are these responses
24 different in some way than the response? Do they
25 conflict with our staff? Is that what I'm hearing you

1 say?

2 MR. KAHN: Yes. In many places we
3 respectfully disagree with each other.

4 MS. BREWER: I can respond to things that
5 have been said, but I'll wait until you call on me.

6 MR. KAHN: Is that it?

7 Thank you very much.

8 CHAIRMAN RUNYON: Now I call on any tribal
9 elders who wish to speak.

10 MS. PENN-ROCO: So the Yakama Nation Tribal
11 Council, because of the short notice of this meeting,
12 could not come here themselves. But they prepared a
13 statement that they would like me to read on their
14 behalf. And my apologies if it echoes some of our
15 earlier comments --

16 AUDIENCE MEMBER: Could you speak up?

17 MS. PENN-ROCO: The Yakama Nation Tribal
18 Council could not make it themselves, but they prepared
19 a statement on their behalf. And my apologies if it
20 kind of -- if it overlaps between my previous comments,
21 but this is more their comments as the Yakama Nation
22 tribe as opposed kind of the legal side of it.

23 The Yakama Nation is a federally recognized
24 sovereign nation. It was first expressly and legally
25 recognized in 1855 in a treaty with the United States.

1 This treaty explicitly reserves the right of its people
2 to hunt and fish and gather at their usual and
3 accustomed places.

4 The treaty rights were not granted, rather
5 the treaty was a reservation of rights not ceded to the
6 United States. The Yakama Nation has always lived along
7 the Columbia River. Generations of our ancestors have
8 hunted, fished and gathered in the surrounding areas.

9 Our right to continue to exercise our treaty
10 rights is well documented in the court system. We are
11 fiercely protective of our treaty rights, as those
12 rights have been under near constant attack since they
13 were first memorialized in 1855.

14 We are protective of the rights our
15 ancestors reserved for us because our people depend on
16 them. Our tribal members fish in the Columbia River.
17 Fishing is done for a variety of purposes beyond
18 commercial gain.

19 We fish for sustenance purposes, to provide
20 food for our communities, including our elders and those
21 who cannot provide for themselves, and for religious and
22 cultural purposes.

23 Fishing is a tradition passed down along
24 families since time immemorial. Both the act of fishing
25 and the fish themselves are important cultural

1 resources.

2 The same may be said for hunting and
3 gathering. These things are woven into the fabric of
4 our people, just as the Bill of Rights is woven into the
5 fabric of the United States.

6 Our usual and accustomed fishing grounds
7 lies along the Columbia River. And we reserved our
8 rights to hunt and gather in our ceded lands. Any
9 impact to the Columbia River and its surrounding areas
10 threatens our treaty rights.

11 The proposed rail expansion will increase
12 the amount of train traffic. This will have a negative
13 impact on the Yakama Nation in a variety of ways. Most
14 importantly, it will interfere exercise of the Yakama
15 Nation's treaty rights.

16 An increase of train traffic will impact
17 both access to fishing sites and the risk of injury or
18 death to tribal fishers.

19 Along the Columbia River there are train
20 tracks. Many fishing sites are accessed by crossing
21 these tracks. And increase in train traffic will limit
22 access to those sites.

23 Further increase in train traffic will
24 increase the risk of injury or death. Every time a
25 tribal fisher crosses the train track, they're exposing

1 themselves to the risk of injury or death.

2 Over the years, the Yakama Nation people
3 have suffered fatalities and injuries, due to train
4 strikes, in areas where it is perilous to cross, but
5 necessary to access treaty-protected fishing sites. Any
6 increase in train traffic would increase the safety risk
7 faced by tribal fishers.

8 There were a variety of other impacts that
9 were discussed in detail in the letters submitted to the
10 commission. The increase rail traffic threatens
11 cultural resources, like She Who Watches, that lies
12 along the Columbia River. It threatens the fish and
13 wildlife restoration the Yakama Nation has been doing
14 through its Fisheries Management Program and increases
15 the risks of train derailment and spills, as we seen in
16 the recent derailment in Mosier. Finally, it increases
17 emissions, negatively impacting climate change.

18 When making your decision on the
19 application, it is important to keep in mind the real
20 world impact of your decision. We provided all of this
21 information to the Commission. The Department
22 recommended conditions to protect the Yakama Nation's
23 treaty rights. However, the Commission seemingly
24 discounted the importance of Yakama Nation's treaty
25 rights and eliminated the recommended conditions.

1 If you look at the transcript of the
2 hearing, it is clear that the Department's director
3 warned the Commission that removing the recommended
4 condition would have an adverse impact on treaty rights,
5 which would violate governing laws. The Scenic Area
6 Act, The Management Act, the Scenic Area ordinance all
7 require protection of treaty rights and prohibit uses
8 that negatively affect treaty rights.

9 The removal of the recommended conditions,
10 which were included to protect treaty rights, shows the
11 Commission violated its own laws in approving the
12 application.

13 However, even if the conditions were
14 reincorporated, the conditions will not adequately
15 protect treaty rights. Before the last meeting, we
16 informed the Commission of our position, that the
17 Commission does not have ability to enforce a provision
18 limiting train traffic. This concern was echoed by many
19 of the commissioners at the last meeting. Several
20 commissioners stated that as a reason the conditions
21 should be removed.

22 However, that is not what the applicable
23 laws governing your decision on this application
24 provide. As the Department stated in its review of our
25 appeal, the Board has only two options. They must

1 either include conditions that would ensure the project
2 would not affect or modify any treaty rights or the
3 Board must deny the railroad's application.

4 I am here to tell you that any supposed
5 condition limiting the amount of rail traffic would not
6 be adequately enforced against the railroad. If the
7 Board grants this application, it will have a negative
8 impact on treaty rights. Therefore, the Board must deny
9 the application.

10 Thank you for your time and attention. The
11 Yakama Nation appreciates your careful consideration of
12 this issue.

13 CHAIRMAN RUNYON: Are there any other tribal
14 officials who wish to speak?

15 Please give us your name and your
16 affiliation.

17 MS. JACK: Good afternoon. My name is Lana
18 Jack. I'm of the Celilio-Wyam people, band of people.
19 Our people have long existed here for 10,000-plus years.
20 There's not many of us Celilio-Wyam who are not
21 federally recognized.

22 Unlike the verbiage of this writing,
23 somewhere in the treaty writing, it said something about
24 treaty rights and Indian rights. There is a
25 delineation. So as I define that -- because I'm not

1 federally recognized -- I do come from the original
2 people at Celilio. My blood quantum would prove that.

3 So I do possess a certain amount of
4 aboriginal title, meaning I have some say over the
5 matter of the tracks that cross through our land.

6 I'm a resident. I come from many
7 generations of women, all women who have fought to
8 protect and preserve our village and our rights and our
9 way of life.

10 Celilio-Wyam and its people have been
11 disenfranchised and made to believe they have no say
12 over the land in which they reside. Part of the
13 disempowerment came behind the united -- the Union
14 Pacific Railroad. It was our first relocation. Celilio
15 has been through six.

16 And in living at Celilio at this time, I
17 can't honestly say that any one of the tribal members
18 represent me because I'm not federally recognized with
19 their tribe. But as I reside upon the land, I can
20 honestly tell you that the Union Pacific has come in and
21 laid down new tracks behind my house and built up the
22 tracks higher than they once were.

23 At one time, I do believe in my heart, that
24 the uncovered coal has deposited itself underneath the
25 rocks it now cover where it lies.

1 The coal concern and the uncovered coal
2 trains that pass by my house on a regular -- the oil
3 trains that pass by, I'm sorry, I don't see all the rest
4 of the commerce. I don't see the rice. All I see is
5 oil, oil, oil and contaminant, something toxic going
6 across my backyard.

7 And I live in fear. Can I tell you that? I
8 live in fear. I live in fear because I live at Celilio.
9 And there's no way out should this train pull into our
10 village and derail at any point. There's no way out. I
11 serve our Indian villages up and down this river.

12 And there's not, but a couple of few, that
13 you don't have to pass over some tracks to get in to
14 where the Indians reside here. And, yes, there's a
15 number of Indians who do reside on this river. And I
16 serve those folks who are living out here, without the
17 means half the time.

18 But, nonetheless, our ancestral-reserved
19 rights and our -- preserving the integrity of our
20 communities here on the Columbia River has to be as much
21 concern for each and every one of you as it is for me.
22 Because if you were to go to any one of these Indian
23 villages where our people live here, who didn't leave
24 the Columbia River to be relegated off to a reservation,
25 you would find that each one of these villages is

1 blocked by the trains, if there's a train in that the
2 vicinity.

3 I've seen many, many trains just sitting in
4 front of our villages with chemicals that we're unaware
5 of, except that I know that the coal is dusting our
6 highways and byways and we're unprotected.

7 So do I have a treaty right? Yes, because
8 our Celilio-Wyam chief signed the treaty of 1855. Do I
9 have the right to speak my voice on behalf of my
10 ancestral homeland, the Celilio-Wyam? I -- I -- I am
11 affirmed by the paperwork that I possess that I have the
12 right to speak on behalf of Wyam, that is Celilio-Wyam.

13 We haven't been heard for the last 60 years
14 because, you know, they don't even think we're here
15 anymore. When I say I'm a Celilio-Wyam, I'm mocked for
16 it. Today I have to defend the right to be an Indian on
17 this land. Today I have to defend the right to say that
18 I've come from 10,000 years of occupation. And I defend
19 the right to say that our people precede all of the
20 laws, including the treaties, 10,000 years of our
21 occupation and co-existed with this land in protecting
22 it.

23 It means, when we protect the land, we are
24 protect ing our people. That's how we have always been
25 as an Indian people on this land. We have protected our

1 salmon. We have protected our water. These are our
2 rights. And I'm very privileged at this time to sit on
3 a decision today, to weigh in on a decision because
4 there's a number of people up and down -- I would love
5 for you to meet our Columbia River Indians, who live at
6 these sites, who are blocked in by railroad tracks.

7 And I'm not convinced that a couple of new
8 tracks isn't going to increase the amount of coal that
9 goes to Boardman. The amount of coal that goes to
10 Boardman -- as is, no nobody is giving us statistics
11 there, but I can guarantee you, the mercury that is
12 dusting our rivers and highways and byways is about to
13 make a difference in -- in everybody's community.

14 And where our water is concerned in this
15 river, we all have to be out to protect this river. And
16 should we have another Bakken oil explosion --
17 metho-mercury deposits at the very bottom. And there's
18 no getting rid of metho-mercury if an oil -- Bakken
19 spills 50,000 or how many ever gallons they have the
20 potential to do when they run through with 20 trains of
21 oil.

22 I go to sleep at night and I'm scared. I
23 can honestly tell you that. So I just want you to know
24 there's a fear with the increase of oil and coal trains
25 in my backyard. And I care about the Columbia Indians

1 who live here, who never left. And I just want -- I
2 want you to care about them too.

3 CHAIRMAN RUNYON: Thank you.

4 Sir, you can come forward.

5 MR. GREEN: Thank you for allowing me some
6 time here. My name is Austin Green. I am the chairman
7 for the Confederated Tribe of Warm Springs.

8 And I concur with the messages sent here
9 this evening by the Yakama Nation, Amber, and the true
10 words that Lana Jack had spoke of this evening. And I'm
11 not going to go back into taking up too much time.

12 But, you know, in the words that were said
13 here, you know, we are very concerned about our
14 ancestral homeland, as we ceded 10 million acres to the
15 U.S. Government in 1855. And this is still our
16 homeland.

17 And cultural resources protection is top of
18 my list. And I guess for the presentation made early on
19 by -- Angie. Sorry -- you know, I saw in there that
20 there was shovel testing. As far as cultural resources
21 are concerned, I don't think shovel testing is enough
22 testing to -- especially in this area. You know, we
23 have been talking about safety issues. And, you know,
24 what Lana had referred to, you know, there's treaty
25 fishing access sites along the Columbia River on both

1 sides that are -- have rail between the river, the
2 treaty fishing access site and the railroad.

3 And I don't blame her for living in fear.
4 You know, our fishermen have come down here on the
5 river, you know, that in those access sites for fishing,
6 you know, are always between -- I shared this with
7 --with -- just going through my notes -- the CEO, Lance
8 Fritz on an August 26th meeting here in The Dalles,
9 across the way here.

10 So, you know, I don't want to take up too
11 much more time. I concur with what's been said here. I
12 leave it to the Commission to make a proper choice on
13 behalf of the Native Americans, as this is our ancestral
14 homeland, I'm not going to go any further than that and
15 appreciate, you know, the opportunity given to speak
16 here tonight, so thank you.

17 CHAIRMAN RUNYON: Thank you. Were there any
18 other tribal officials that -- I hadn't seen his hand
19 initially? Is there somebody else?

20 So we'll move to the next segment, which are
21 non-tribal elected officials. It looks like somebody
22 from Mosier is going to be first.

23 MS. BURNS: Hi. I'm Arlene Burns, I'm the
24 mayor of Mosier. And we have a city council meeting
25 starting in about a half an hour, so thank you for

1 allowing us to come and speak.

2 I wanted to write a letter to urge you to
3 support your constituents in denying the permit for
4 railroad expansion through the entire City of Mosier and
5 the National Scenic Area.

6 What the double tracks will do for Mosier?
7 Increase risk by increasing capacity of cargo, proven to
8 be explosive. Increase risk by turning the bottleneck
9 into a spillway, which means trains will be timed to
10 pass each other at full speed. So if a train derails,
11 for example, at full speed, it would be the equivalent
12 of a 60-miles-an-hour collision.

13 Increasing train noise. Already in downtown
14 when a train comes through, you cannot have a
15 conversation, as the noise is too loud. It will
16 eliminate our loop trail among the south side Harmony
17 Lake. It will disturb our wetlands, which are not being
18 mitigated, locally.

19 It will make the town unlivable during the
20 construction and beyond. It will decrease economic
21 development along Highway 30 and it will decrease our
22 property values. Already, Mosier has lost our gas
23 station, our coffee shop and our convenience store. Our
24 restaurant is sitting empty. Our post office has
25 reduced hours. Potential investors in downtown

1 businesses have walked away since the derailment.

2 We all fear that the double tracks will have
3 severe and lasting consequences for our town. The area
4 of Mosier is defined by massive geologic uplift, which
5 created the sink line cliffs on both sides of the river.
6 We concur with ODOT that more seismic observation and
7 tests are really necessary, as we are all living in an
8 area where we're preparing for a major earthquake in the
9 next 30 to 50 years. And so it's something to really
10 think about before you're increasing capacity of
11 volatile products when -- when they incur so much
12 danger.

13 And everyone is thinking that the pipelines
14 are unsafe. They're fighting them all over the country.
15 And I don't think there is any -- any discussion that
16 thinks that trains are safer than pipelines. So here
17 we're defaulting to a less safe way of carrying this
18 crude oil.

19 If we truly have no choice in the matter,
20 then here are some options that would help us. Track
21 expansion east of the city of Mosier. This would still
22 give the railroad more than two miles of track, but
23 they're unit trains, enabling trains to pass without
24 devastating consequences to our town.

25 Access under or over the tracks at Mosier

1 Creek were cut off from access. The only way to connect
2 our trails is to trespass over active tracks.
3 Year-round access under Rock Creek, now we can only
4 access our Columbia River waterfront park seasonally.
5 Trains passing each other should either reduce speeds to
6 half the existing speed; 15 miles an hour, if they are
7 passing each other. Otherwise, it's incredibly
8 dangerous to think of two trains going at what they're
9 considering a safe speed of 30 miles an hour in
10 opposition to each other.

11 Wetland mitigation locally, including
12 restoration of the trail on the south side of Harmony
13 Lake, and some effort to reduce noise, which will be
14 elevated due to not only the noise and the vibration of
15 two trains passing each other.

16 Bottom line for us, one track is enough.
17 Until we are able to change federal regulations to
18 protect our communities and our National Scenic Area
19 from crude oil transport, then we certainly do not need
20 to do anything to add to the problem.

21 Commissioners, you have been our friends and
22 allies in helping or community in many areas. And we
23 really appreciate your attention to Mosier and our
24 issues. This is the biggest threat to our community
25 that we have faced. Please show your solidarity with

1 the people of Mosier, to all the communities along the
2 tracks, to the National Scenic Area, to the tribal
3 nation and to your own children and grandchildren.
4 Thank you.

5 CHAIRMAN RUNYON: One question for you,
6 Arlene.

7 COMMISSIONER HEGE: It's actually two.
8 You mentioned the -- eliminate a loop trail.
9 I'm not familiar with that. Is that something that
10 could be mitigated or not?

11 MS. BURNS: Well, I don't know. I was just
12 talking to our city manager about it today. Where the
13 second track would go would be on the north side of the
14 existing track and the lake in front of that. I was
15 thinking that the double track would go into the
16 existing wetland and she felt like it would not go,
17 necessarily, hitting the water, but our trail that's
18 been there that enables a loop -- it's the only loop
19 trail we have -- would be where the second track would
20 be.

21 COMMISSIONER HEGE: Okay. So that would be
22 something to potentially mitigate.

23 And I thought you mentioned something about
24 some wetlands impacted but not mitigated?

25 MS. BURNS: Yes. There is not any effort --

1 and I think Union Pacific tried to do mitigation on the
2 Mosier site and the Army Corps of Engineers said it
3 should be done off site.

4 So we kind of feel like we got vomited on
5 with the derailment and now we're getting pooped on. I
6 mean, it's like, we have a lot to lose here and the
7 mitigation is going elsewhere. I mean, it's like we get
8 to deal with these trains passing each other and have to
9 deal with the noise and the danger. And it just seems,
10 like, utterly unnecessary, considering all of the
11 factors.

12 CHAIRMAN RUNYON: Arlene, the Group Team
13 Oregon, which you're a part of --

14 MS. BURNS: Team Mosier.

15 CHAIRMAN RUNYON: Team Mosier. I'm sorry.
16 Have you had any success speaking with the railroad
17 regarding the access over the track and Mosier Creek?

18 MS. BURNS: Well, the better -- we have been
19 talking to Union Pacific. And I think they've all
20 agreed in theory that access there is a great idea,
21 whether it's over the tracks or under the tracks. You
22 know, one is a little more complicated, but makes a lot
23 more sense because it could also be an egress and it
24 could also enable us to have water pumped from the river
25 towards the road in another emergency, so we are hoping

1 these things can be addressed.

2 CHAIRMAN RUNYON: Okay. Thank you. Your
3 meeting won't start without you.

4 MS. REED: Thank you. Thank you for your
5 work. Thank you for your work. There's a lot to do
6 here. And I appreciate it. And I wanted to thank UP
7 for your -- the way that you treated us through this
8 process has been great on a personal level and I
9 appreciate that and I -- I'll push back. I think you'll
10 understand.

11 CHAIRMAN RUNYON: Emily, you need to give
12 your name and who you represent.

13 MS. REED: I'm sorry. I'm Emily Reed. I am
14 counsel president of Mosier City.

15 So I just wanted to say, I think you would
16 do the same thing. You would definitely be pushing back
17 if this was in your town. So this is not personal, but
18 it's important to us.

19 And I just wanted to say when I started
20 Mosier council, ever since I've been, one of our biggest
21 focuses has been on building up our downtown, the
22 economics of our downtown. And we are really looking
23 at, how do we attract families? How do we attract
24 businesses? How do we attract people to come to those
25 businesses and really allow our downtown to thrive? It

1 is the key to the viability of our town.

2 And so we've done a lot of things in the
3 time that I've been there. We've changed ordinances,
4 we've planted trees. We painted murals. We've built
5 benches and applied for a lot of grants. We really want
6 to built a strong economy.

7 And one of the big, big plans, as you know,
8 is slo-mo. It's developing a downtown front street, so
9 that is more walkable, more living. People can come and
10 they can walk around and they can really enjoy our town.
11 That's a key piece to our town.

12 I think you can see that Mosier is the only
13 town in the Gorge that has this rail system so
14 integrated into our downtown. Every single other town
15 in the Gorge has at least a block buffer and is -- with
16 the downtown buffered off from the rail. The rail is
17 very much a part of our downtown. So it is a big effect
18 when you increase traffic.

19 I want you to picture yourself -- I want you
20 to picture yourself downtown and you're standing across
21 from the totem and you're maybe having an ice cream. I
22 want you to understand when you saw that visual, there
23 was no sound there. I want to play what it's like if
24 you're standing downtown, across the street, eating an
25 ice cream cone.

1 This is what it sounds like.

2 (Recording of train playing.)

3 Can you hear that? It's very hard to talk
4 over. It's very hard to have a conversation. You have
5 to stop. You have to -- you have to pause and not have
6 a conversation.

7 So I want you to imagine eating ice cream or
8 having a beer at the Rack & Cloth. And what would that
9 be like if it was doubled? It's hard to imagine. And
10 yet, if you're down, right up against the train, it is a
11 very visceral feeling. And I would love for this
12 meeting to be there now because there's no way --
13 there's no way that a recording can really capture the
14 vibrations and the effect of that feeling on the town.
15 It's very hard.

16 And I just -- basically what we're talking
17 about, when you show that image of the two trains
18 passing, that's our downtown. You have two
19 30-mile-an-hour trains designed to pass each other now.
20 You have designed the front of our downtown to be a
21 fluid process, fluid flow, of two trains passing each
22 other absolutely every moment that you can, in order to
23 increase your efficiency. That's going to kill our
24 town. I believe that with all my heart.

25 And I don't know why I'm on the council at

1 this point in time or it's my point -- job to stand up
2 and say this. But I believe with all my heart that this
3 will kill our town. There's so little difference
4 between making it work. It's so close. You know, one
5 coffee shop. One solid pub will make all the
6 difference. You can feel it in town. There's a
7 momentum that's wanting to happen, but it's just as easy
8 to stop that momentum. And I believe this would do
9 that.

10 I'm wondering -- my habitat, has my habitat
11 been studied in that binder? Have you looked at the way
12 this is going to affect our town with real estate prices
13 and the downtown? I'm just wondering because that is
14 going to really be a big deal to us. I wish I could
15 have said that more eloquently, but that's my point.
16 Thank you.

17 CHAIRMAN RUNYON: Thank you, Emily.

18 We'll continue on now with non-tribal
19 elected officials. That's what we're doing at this
20 point.

21

22 MR. McDERMOTT: Hi. I'm Don McDermott. And
23 I'm not used to using microphones, so let me just adjust
24 it a little bit. I'm the president of The Dallesport
25 Community Council. And want to compliment the people on

1 this side of the river for coming forward and trying to
2 stand up for their rights.

3 On the Washington side our community council
4 objected to coal train traffic back in 2011. We were
5 the first ones in the Gorge that did. We got no
6 response from publicly elected officials to protect our
7 public safety. I should do a little full disclosure
8 here. I am a retired Conrail executive. And I was in
9 damage prevention back east.

10 And lots of the coal from trains has been an
11 issue since way, way long ago when I was working. The
12 railroad wisely decided that the shippers should be
13 responsible for containing their loads. With coal
14 trains, the -- allowing the shipper to get by with a
15 layer of Elmer's glue on top of the load to control the
16 loss from the load, only prevents blow-off from the
17 load. It doesn't prevent sift-through from the coal
18 trains.

19 And the ballast and the infrastructure is
20 compromised by the presence of coal in the ballast. And
21 the railroad knows this. You guys know this. And the
22 shippers don't want to pay for it. The railroad doesn't
23 want to pay for it. And we're always a little risky on
24 whether or not we are governing to have a derailment
25 because some of your infrastructure is compromised.

1 Evidence of inadequate protecting of the
2 public as evidenced by the recent derailment in Mosier,
3 it is admitted. You guys have owned it. And on the
4 Washington side, now we're getting a lot of oil train
5 and coal train traffic. It's a political issue over on
6 my side of the river and I think our elected officials
7 think that anything they do that objects to business or
8 commerce or traffic is -- somehow it's a lefty kind of a
9 thing and they shouldn't stand up for that.

10 I want to commend Wasco County, and Scott,
11 you in particular, with your questions and your
12 comments. When an applicant for a development is
13 appearing in front of a commission, their legal counsel
14 is always going to say that, you know, we've got you.
15 That, you know, we're doing this to be nice and you're
16 going to rely on our compassion and our cooperation and
17 being a good member of your community. But we're not
18 going to admit or allow you to put any restrictions upon
19 us because we think that if we went to court with you,
20 that we'd win.

21 There is an implied threat there. But as
22 publically elected officials, I think you have a
23 responsibility to do the best you can, including
24 surviving a lawsuit from a big corporation to protect
25 the public. Thank you.

1 CHAIRMAN RUNYON: Next.

2 MR. CORNELISON: My name is Peter
3 Cornelison. I'm an Hood River City elected official.
4 I'm speaking today on my own. I live at 1003 Fifth
5 Street, Hood River, Oregon. And I also work for Friends
6 of the Columbia Gorge.

7 As has already been stated, the project is
8 definitely inconsistent with the purposes of the
9 National Scenic Act. It would adversely affect scenic,
10 natural, cultural and recreation resources and endanger
11 local communities.

12 My contribution here today is to tell you
13 about a little boat trip I took. I did something
14 called -- we are currently calling "kayaktivism."

15 I put it in at Rowena and kayaked down to
16 Rock Creek to get an idea of what's involved, how much
17 of a disturbance this would be. And I frankly was
18 shocked. Because if I understand it correctly, it's
19 going to be over 1,000 trees cut and tons and tons of
20 rock. The rock cut that they've got to go through this
21 basalt plateau is major.

22 So it's going to be visible from any boat on
23 the Columbia. And I don't think the staff report or
24 what the (indiscernible) submitted really takes that
25 into account from the river, which is a key viewing

1 area. There's also a fishing platform along that
2 section of the river. So it's definitely used for
3 fishing.

4 So that's what I had to say. And I would
5 just second Don's comments. I really appreciate the
6 intelligent questions that you guys have been asking.
7 Thank you.

8 MR. NELSON: Hi. I'm Don Nelson, elected
9 school board member for D-21. For full disclosure, I'm
10 also on the board of Friends of the Gorge and their land
11 trust president.

12 The National Scenic Act requires that each
13 of the six Gorge counties, including Wasco County, adopt
14 land use ordinances that are consistent with the
15 Management Plan. In order to be compliant with that
16 plan, the County is held to a higher standard.

17 The primary purpose of the creation of the
18 National Scenic Act and the act, which authorized it, is
19 to protect and provide for the enhancement of the
20 scenic, cultural, recreational and natural resources of
21 the Gorge.

22 I attended the Planning Commission hearing
23 on this matter on September 26th. Numerous times during
24 that hearing, Director Brewer cautioned commissioners
25 not to eliminate any of the planning staff's proposed

1 conditions written to address this application. She
2 said, "If the Commission chose to eliminate any of the
3 conditions, that would potentially put us out of
4 compliance with our ordinance. The planning staff wrote
5 these conditions to address our obligations to the
6 National Scenic Act." Director Brewer advised the
7 commissioners that they could modify the conditions, but
8 not eliminate them. And they were there for a reason.

9 The Planning Commission then proceeded to
10 disregard the staff's advice and eliminated all the
11 conditions that you've heard. So I'm not going to
12 repeat that.

13 It's these very conditions, which were
14 eliminated, are all crucial to addressing the County's
15 compliance to the Management Plan. By law, you must
16 find that the railroad's proposal is consistent with the
17 goals and objective of the Management Plan for the
18 Columbia River National Scenic Area and consistent with
19 the provisions of the County's implementing ordinances.

20 I believe that Union Pacific's attempt here
21 to expand their facilities and create a longer stretch
22 of double track in a National Scenic Area is more than
23 an attempt to create fluidity and efficiency of train
24 movement and improve regional service.

25 If, as in testimony tonight, it's not for

1 safety; that's not going to change. It's not for noise;
2 the railroad said that's not going to change, if it's
3 not for increasing the volume of traffic, they're not
4 going to add any more trains to the route, then what's
5 it for? Why are they doing that?

6 Well, I think it's also something that
7 nobody has talked about. It's about increasing their
8 share of profits earned by moving cargo in a more
9 efficient and fluid way. Now, the problem with that
10 idea in our region is that the expansion of their
11 traditional use of this land corridor, is -- it's
12 changed here.

13 If they do this thing, as Arlene was saying,
14 it will hugely impact Mosier. If they do this thing, it
15 will hugely impact the area upon which they're going to
16 blast rock, remove trees. So, you know, this has all
17 been said. So I think this proposal actually flies in
18 the face of the intention of the Scenic Act itself.

19 And I have one last thing to say. In our
20 pursuit, in general, of human commerce as human beings,
21 let me remind you of a small poem that Alanis Obomsawin,
22 a native American, who lives in Canada. This is his
23 (sic) poem, it sort of speaks to this issue.

24 "When the last tree is cut down and the last
25 fish eaten and the last stream poisoned, you'll realize

1 you can't eat money."

2 So, you know, we're all in that predicament,
3 from the richest, most powerful man and woman in the
4 world to the opposite of that, we're all constrained by
5 that fact. Money isn't all.

6 CHAIRMAN RUNYON: Okay. We've been here for
7 three hours. And we're going to take a ten-minute
8 break, if that's okay.

9 (Break taken.)

10 MR. OLSEN: Then next speaker will be Jim
11 Appleton and then I have Regna Merritt and Dr. Theodorea
12 Tsongas.

13 MR. APPLETON: Good evening and thanks for
14 everyone, thanks Union Pacific. Good to see some of my
15 old heros here.

16 I want to be real quick and point out that
17 we do have some existing testimony, both written and
18 verbal before. I want to focus on something that wasn't
19 highlighted in Angie's presentation of what we said
20 before, which was a letter that I sent that really
21 focused on two issues that relate so much to the idea of
22 fluidity, Union Pacific's goal.

23 If you remember that animation, it showed
24 two trains, at speed, going on the two tracks side by
25 side. If I think about it, Mosier is right in the

1 middle of that. And so the sweet spot is two trains
2 passing in the middle of Mosier.

3 And my biggest concern is the fire safety
4 and EMS provider is mainly the tracks to the west. So
5 that's Segment 1 on the map. That's our upwind segment.
6 And the one of your criteria and the conditional use
7 criteria, two of them touch on fire service. Forgive
8 me. "Must not significantly burden public service,
9 including fire and EMS, and secondly, must not
10 significantly increase fire hazard suppression costs or
11 risk to personnel."

12 That fluidity creates a whole new class of
13 risk by having two trains in motion at the same time.
14 And, Scott, I appreciate your questions about that.

15 That doesn't exist now in that area. And
16 the idea of holding trains, which is the -- the goal
17 that you're trying to eliminate, creates -- introduces a
18 whole new class of risk. So that's something that as
19 the provider of emergency services, that creates a big
20 problem for me.

21 The second one is I have jurisdiction for
22 the fire district, including the City of Mosier and 22
23 square miles around it. I want -- echo and concur with
24 the economic arguments that Arlene and Emily raised and
25 that that is the effect on my fire district. If our

1 property values decrease because of this second track,
2 my ability to provide services throughout the district
3 is impacted negatively. That's money out of our pockets
4 that we no longer have to provide our services.

5 So although that's a city issue, it's my
6 district and that's a negative impact on our services.
7 I'll leave it there. Any questions?

8 COMMISSIONER KRAMER: Thanks, Jim.

9 CHAIRMAN RUNYON: Next we have Regna Merritt
10 and on deck is Theodora Tsongas and Alona Steinke.

11 MS. MERRITT: Good evening. My name is
12 Regna Merritt. I'm here representing Oregon Physicians
13 for Social Responsibility and over 2,000 health
14 professionals and public advocates who oppose this
15 project.

16 We stand with the fire chief and with the
17 Mosier City Council and echo their concerns. We also
18 stand with the Yakama Nation in support of tribal treaty
19 rights and non-treaty tribes, which also should be able
20 to exercise rights held in time immemorial.

21 For years I provided primary care in the
22 emergency department of a regional trauma center. I can
23 attest to the fact that terrible accidents happen. And
24 that with greater speed of any wheel bridge or tankers,
25 the damage to life and limb is vastly increased.

1 Indeed, the risk to the lives and safety of Wasco County
2 residents and to tribal members are vastly increased
3 with greater speed, longer trains and greater numbers of
4 unit oil trains and coal trains proposed for these
5 tracks. We're talking about trains that are 125-cars
6 long.

7 I'd like to share with you some thoughts
8 from Dr. Maria McCormack, who is with her patients
9 tonight.

10 "I'm a mother, I'm a farmer's wife, I'm a
11 family physician. My family farm is in Mosier. You all
12 know what happened in Mosier five months ago. The oil
13 train derailed and caught on fire at the community
14 school. My husband and I were particularly fearful that
15 day, not just because of the environmental disaster that
16 was happening in our small town, but we recall that in
17 the mid '80s, a passing train on the UP line sparked the
18 fire that raced up the hill just east of downtown
19 Mosier. A quick-spreading fire destroyed the family
20 home on what is now our land. Accidents can happen and
21 that one was devastating.

22 But with Bakken Oil trailing our tracks, we
23 cannot describe what happened in Mosier on June 3rd or
24 any other oil-by-rail derailment by simple accident.
25 These are predictable catastrophes. And there will be

1 more and worse catastrophes, like the one in
2 (indiscernible) that killed 47 people, displaced 2,000
3 people from their homes and destroyed much of the
4 downtown.

5 The risk of another catastrophic oil
6 catastrophe in Mosier, or anywhere else and allow the UP
7 line means the lives of our children. It means our
8 livelihoods, it means the lives of my patients and their
9 families.

10 In Planning Commission documents UP reported
11 that commodity traffic is not expected to increase in
12 the Gorge as a result of the rail expansion in Mosier.
13 This is the equivalent of relying on foxes to report
14 that they do not intend to eat more chickens, even if
15 the hen house is expanded. Of course commodity traffic
16 will increase and of course speed will increase. That
17 means more oil traveling through the Gorge, putting the
18 health and safety of all of us at risk.

19 Please do not allow the expansion of this UP
20 line. Thank you." From Dr. Maria McCormack.

21 MR. OLSEN: And the next person up after
22 these two is Don Steinke.

23 BY MS. TSONGAS: Good evening. I'm Dr.
24 Theodora Tsongas. I'm an environmental scientist. I'm
25 a member of the environmental health working group of

1 Oregon physicians for social responsibility and I'm a
2 member of the Multnomah County (indiscernible)
3 Committee.

4 Since the project will be reviewed as a
5 conditional use under the National Scenic Act, it must
6 comply with the Chapter 11 Fire Safety Standards, as
7 well as all other standards.

8 The project application does not address the
9 fire safety standard in Chapter 11. Given the history
10 of wild fires started by railroads in the Gorge, this
11 omission is particularly glaring and requires the denial
12 of application.

13 The new track would allow longer, faster and
14 more frequent trains carrying highly volatile Bakken
15 crude oil. The failure of the applicant to address
16 Chapter 11 is basis to deny the application.

17 The additional trains that would be enabled
18 by the efficiency improvement proposed by the applicant,
19 no longer the train -- no matter the train contents --
20 would have impacts on the National Scenic Area.

21 The Rowena Plan describes the fire
22 conditions through this stretch of track. Given the
23 slow (indiscernible) predominant wind patterns and
24 wildland urban interface, any fire within the planning
25 area between late May and late October is potentially

1 significant.

2 Light flashing fuels, such as cheek grass
3 coupled with (indiscernible) and strong west winds
4 combined to generate explosive fire behavior
5 characterized by rapid rates of spread.

6 Such fire behavior within the wild land
7 urban interface generates significant public and
8 firefighter safety concerns.

9 The Rowena Plan also described the incidence
10 of the wildfires in only the small part of the NCA. A
11 review of fire statistics from 1992 through 2004
12 indicates that some 34 fires burned in the planning unit
13 within that time period.

14 These fires were all human caused and ranged
15 in source from fireworks and cigarettes to railroad,
16 farm equipment and power lines. Of these 34 fours, nine
17 fires would be classified as significant, based on size
18 and/or complexity.

19 CHAIRMAN RUNYON: One minute.

20 MS. TSONGAS: The new facility proposed by
21 UP railroad would allow five to seven or more longer
22 trains to pass through the National Scenic Area per day.
23 This would necessarily result in more fires started
24 thought length of the National Scenic Area.

25 Fires often result in degradation of the

1 scenic, natural, cultural and recreational resources of
2 the NSA and damage to property.

3 These cumulative adverse effects on the
4 protected resources of the Columbia River, National --
5 River Gorge National Scenic Area must be taken into
6 account. Please deny this application.

7 CHAIRMAN RUNYON: Thank you.

8 COMMISSIONER HEGE: I have a question for
9 staff. There was a comment about Chapter 11 and how the
10 project doesn't address that.

11 Is that accurate?

12 MS. BREWER: On page 38 of the staff report
13 in the final Planning Commission decision and report,
14 there is a finding that the applicant provided the
15 required, signed and certified fire safety
16 self-certification application that we require of all
17 applicants. They did prove that as part of their
18 complete application.

19 This is also a condition of approval that
20 requires the development of a spill response plan for
21 derailments and other railroad accidents and to provide
22 regular training to Gorge Fire Department, included in
23 the Mid Columbia Five-County Mutual Aid Agreement and
24 requires the railroad to solicit feedback about the
25 local needs for combating a railroad-related fire

1 incident and assisting in meeting those needs.

2 That is the actual findings of that chapter.

3 MS. STEINKE: Good evening. My name is
4 Alona Steinke. I'm a retired RN from Vancouver. Our
5 beautiful Columbia River is the third largest river in
6 the nation. In April of 2015, it was listed by American
7 Rivers as the second most endangered river in the U.S.
8 And these are rivers that have the most to lose or to
9 gain.

10 This project most definitely would result in
11 an increase in rail traffic, according to rail traffic
12 experts, maybe as by as much as tenfold. You can expect
13 to see more unit trains of crude oil and coal,
14 especially if the current projects in Longview and
15 Vancouver are approved.

16 Coal can easily be found along the tracks
17 and even in the river, where it is poisoning the fish
18 and its other inhabitants. The coal doesn't only just
19 come off the top of the uncovered cars, but from the
20 bottom through the weep holes. And I'm sure you don't
21 need to be reminded, once again, of the effects of the
22 oil spill that leaked into the river in Mosier.

23 The Columbia River Gorge is already home to
24 the worst haze in the western United States. As -- as
25 pollution kills. It kills people. It kills wildlife.

1 It kills ecosystems. A wise Native American once said
2 that with every decision one makes, we must ask
3 ourselves, How will this affect the water? How will
4 this affect the water? Please ask yourselves that
5 question. Water is life.

6 MR. OLSEN: After Mr. Steinke, we have
7 Sheila Dooley, Reverend John Boonstra.

8 MR. STEINKE: I'm John Steinke from
9 Vancouver. I have some new information. There is no
10 such thing as an oil spill cleanup. Also, there's no
11 such thing as a safe tank car. Most of the tank cars on
12 the road now, on the railroad now were built before
13 2011. And those would resist puncture up to nine miles
14 an hour.

15 The new tank car standards resist puncture
16 up to 12 miles an hour. And I don't think there's any
17 that resist it up to more than 17 miles an hour
18 available. Most of the tank cars that are on the road
19 now would rupture. And the ones that are planned, the
20 2015 standards, they would rupture, at least -- if not
21 at 18 miles an hour or less.

22 I'd also like to say that I believe that
23 treaties have precedent over regulations of Congress. I
24 believe it takes a two thirds vote of the Senate to
25 change a treaty, but only a 51 percent vote of Congress.

1 So I believe that the tribes have higher rates to the
2 Commerce Clause.

3 The tribes shouldn't have to be all running
4 around all over the country defending their treaties.
5 They were up in Seattle eight days ago asking the Army
6 Corps of Engineers to -- to enforce the law better. I
7 encourage you to enforce the law better too. Enforce
8 the law. Protect their treaty rights.

9 What about their reputation of the fish if
10 there was an oil spill in the Columbia Gorge? I
11 attended a meeting recently in the Portland Planning and
12 Sustainability Commission. They want to limit the
13 increased storage and handling of fossil fuels to eight
14 million gallons at any one facility. They chose that
15 number, specifically, to discourage unit trains of crude
16 oil, which carry three million gallons. The
17 recommendation goes to the city council on November 10.

18 In 20 days I -- I attended 20 days of public
19 hearings at an adjudicated hearing for the Energy
20 Facilities Site Evaluation Council, and I estimate that
21 the attorneys for Vancouver, Washougal, Clark County,
22 Spokane spent a half million dollars, trying to keep oil
23 trains out of the Gorge. The tribes, in particular,
24 placed the most evidence into the record. I urge you to
25 listen to the Yakama Nation. Respect treaty rights.

1 Obey the law.

2 Many communities through the Gorge have
3 passed resolutions of concern about oil trains. In
4 spite of that, the executive director at the Port of
5 Vancouver asked the Energy Facilities Site Evaluation
6 Council counsel to ignore the impact to -- to oil trains
7 on rail communities.

8 In spite of the greater good, the Freight
9 Mobility Board in the state of Washington is lobbying
10 the legislature right now to require that environmental
11 studies be limited to the immediate vicinity of a
12 proposed project.

13 CHAIRMAN RUNYON: Sir, we're out of time.
14 If you could come to a conclusion.

15 MR. STEINKE: They're lobbying the
16 legislature to ignore the impacts to the communities
17 such as the Dalles, (indiscernible) Celilo Falls and
18 Cascade Locks. Please obey the law. Thank you.

19 MS. DOOLEY: As a Wasco County resident, I
20 am especially concerned that this application would be
21 approved by the Planning Commission, even though none or
22 next to none of the Chapter 5 had conditional use
23 criteria.

24 In fairness, if this application is
25 approved, then any future conditional use application by

1 anyone should be approved, regardless of whether it
2 meets the criteria or not. There are no enforceable
3 conditions of approval that have made this application
4 meet the criteria.

5 My reaction to the Planning Commission's
6 approval was not unlike my reaction to the verdict in
7 the Malheur Occupiers trial; one of disbelief.

8 The Planning Commission was told these
9 conditions may be acceptable to the tribes and treaty
10 rights, they approved the application anyway, knowing it
11 didn't meet the criteria.

12 For these reasons and the other items
13 contained in the appeals by Friends of Gorge, et cetera
14 and the Confederated Tribes of Yakama Nation, the --
15 Union Pacific Railroad's application should be denied.

16 MR. OLSEN: All right. Next up we have
17 Peter Frothingham and Lena -- is it Jacob or Jacor? And
18 Sherrin Ungren.

19 MR. BOONSTRA: Thank you for being here. My
20 name is John Boonstra. I'm the creation justice
21 minister of the Center Pacific Conference United Church
22 of Christ, former administer of the Washington State
23 Association of Churches and a resident of Hood River,
24 with the Columbia Gorge Climate Action Network.

25 On September 26th, a long lineup of legal,

1 environmental, health public safety, spirit and
2 indigenous leaders spoke passionately, informatively and
3 unanimously from their areas of expertise against the UP
4 Railroad's proposed double tracking project.

5 Today I support appeals raised by the
6 Friends of the Columbia Gorge, Columbia Riverkeepers,
7 Physicians of Social Responsibility and our friends at
8 the Confederated Tribes and Bands of the Yakama Nation.

9 I find the decision of the Planning
10 Commission unconscionable and in a very grave violation
11 of public trust to attend to all of our common good. I
12 am struck by the apparent disregard of issues protecting
13 the well-being and integrity of our regional life.

14 The decision violates the Yakama Nation's
15 treaty protected rights. It fails dozens of times to
16 comply with the Wasco County National Scenic Area land
17 use and development ordinance. It ignores provisions of
18 Management Plan for the Columbia River Gorge National
19 Scenic Act.

20 The Planning Commission had sufficient
21 access to an overwhelming articulation place of
22 irrefutable and convincing evidence about the dangers
23 and shortsighted foolishness of this track expansion
24 proposal.

25 Their decision needs to be overturned in a

1 dutiful and responsible defense of the social interests
2 of the community, of the ecological interests of the
3 Columbia River and its Gorge, and the sustainable,
4 economic interest of our local commerce and health
5 interest of every living, breathing form of life that
6 inhabits our region.

7 This is the opportunity for the Wasco County
8 Board of Commissioners to exercise ethical and
9 forward-thinking leadership about the long-term
10 interests that bind us justly together in a connected
11 society. It's an occasion to say with a firm,
12 well-researched and educated voice, We will no longer
13 grant any legal and social license to corporate
14 interests that cripple our communal ability to build a
15 viable future.

16 MR. OLSEN: Next up we have, after Mr.
17 Frothingham we have Sherrin Ungren and Chris Turner.

18 MR. FROTHINGHAM: Good evening,
19 Commissioners. Thank you for the opportunity to speak
20 to you tonight. My name is Peter Frothingham. And I
21 second the many different things that you've heard this
22 evening in support of granting the appeal of the Friends
23 of the Gorge and the others, who are in opposition to
24 this plan.

25 And I would simply add my voice to say that

1 the proposed plan by the Union Pacific Railroad that was
2 unfortunately approved by the Planning Commission,
3 grossly violates the Scenic Area Act by -- among the
4 many other things that you've heard today -- visibly and
5 unnaturally scarring the Gorge from all viewpoints on
6 Washington Highway 14 and along many places on I-84, as
7 well.

8 This, as you've heard already, and many
9 other things, are certainly valid grounds to deny this
10 proposal. Thank you.

11 MR. OLSEN: Okay. Sherrin Ungren and Chris
12 Turner.

13 MS. TURNER: My name is Chris Turner. And
14 live in Longview. Please reverse the Planning
15 Commission's decision on this project and deny the
16 project in its entirety. I think this project needs to
17 be brought back to the basics.

18 Approving this project would ignore the more
19 than 50 percent variances required. It would fill in
20 wetlands that aren't mitigated in the Gorge. It ignores
21 the buffers and the setbacks, constructing tracks in the
22 buffer zone directly next to the Columbia River. Using
23 tracks in the National Scenic Area as a train yard,
24 storage yard, train parking lot and trains that would be
25 visible from view points and the roadways, absolutely

1 foreseeable significant train traffic increases.
2 Longview's proposal for the coal terminal alone is 18
3 additional coal trains a day.

4 The Gorge is the most undeniably direct
5 route from the mines to Longview. Trains will be
6 located so close to the river as to deliver the coal
7 dust and sledge directly into the river. All the
8 railroads are prepared for the proposed project in
9 anticipation of these projects being permitted.
10 Unfortunately, they are all fossil-fuels oriented for
11 the oil and coal and will bring additional pollution and
12 additional safety concerns to Wasco County.

13 Without these proposed projects, there
14 wouldn't be a need to expand the railroad in the
15 National Scenic Area nor would it be required in the
16 Longview area junctions, which is already in the
17 process, by the way. This expansion is necessary in the
18 Gorge to reduce the bottleneck in the Gorge for these
19 projects that are coming up.

20 The railroad wants to say no coal in the
21 Gorge, full well knowing that the proposed coal terminal
22 in Longview will add those 18 trains a day. In order to
23 approve this project, the Commission must ignore
24 applicable Wasco County ordinances, multiple the rules
25 of law regarding the National Scenic Area, and the

1 treaty rights.

2 Please deny this project's application. My
3 main concern is that track being put right next to the
4 river. The railroad companies are not willing to
5 mitigate the coal dust or to help you out by not
6 polluting the river and this permit should be denied.

7 MR. OLSEN: Next we have Linda Kremin, Louie
8 Knightly and Gina Fuller. Any of those folks here?

9 Linda Kremin?

10 MS. KREMIN: I'm Linda Kremin of Hood River,
11 Oregon and I concur with many of my neighbors that have
12 spoke before me. This proposal needs to be denied. We
13 need to uphold the appeal of the Friends of the Gorge
14 for the safety and the health of myself, my family, my
15 neighbors. I thank you for considering our position.

16 MR. OLSEN: Thank you. After Ms. Knightly,
17 we have Gina Fuller and Dave -- it's either Berger or
18 Bergen.

19 MS. FULLER: My name is Gina Fuller. I've
20 lived and worked in the Gorge since 1991. I make my
21 home in Home Valley.

22 Over the past few years we've seen an
23 increase in rail traffic in the Gorge. It's had a
24 negative impact on people's lives already. I think the
25 tolerance level for rail traffic is already at a maximum

1 in the Gorge. I have friends who have had to sell their
2 home because they couldn't get any sleep. I think the,
3 you know, the rail traffic is sort of turning the Scenic
4 Area into an industrial area and into a fossil-fuel
5 corridor that is facilitating the acceleration of global
6 warming. These are important things to consider.

7 I don't think that we can continue to have
8 corporate profits; the only sole factor that you
9 consider in important decisions like this.

10 In the past hearing, one of the UP
11 representatives stated that currently, the single track
12 limits the size of the trains to one mile long. And
13 that the expansion will allow longer trains.

14 I don't think that it's a good idea to
15 increase the capacity of rail traffic in the Gorge.
16 Especially with no -- there's no restrictions on that,
17 you know. It's -- so, anyway, the danger of larger
18 trains that are volatile, explosive oil is, you know,
19 it's hard to comprehend what the consequences of that
20 could be with a four-mile long train.

21 I think this application will be appealed
22 over and over again until it is finally denied. And I
23 think this will be a very expensive, time consuming
24 process for a lot of people. And I think it's really
25 the right thing to dismiss this at this point. Thank

1 you.

2 CHAIRMAN RUNYON: Thank you.

3 MR. OLSEN: After Mr. Berger we have Kalama
4 Royder.

5 MR. BERGER: Hi. I'm Dave Berger from
6 Klickitat County, Washington. Thank you for all your
7 work, especially Angie, who I know is like herding cats
8 times.

9 I'm here to oppose this -- this -- basically
10 to say that this shouldn't even happen at all. At a
11 minimum, the railroad, if they were really sincere,
12 should be coming out with an emergency evacuation plans
13 for every town they go through after this. Where they
14 have emergency response plans, they should have
15 emergency evacuation plans.

16 I just want you to think about considering
17 the alternatives for a site. All alternative locations
18 should be looked at with regard to wildlife, cultural
19 and botanical issues.

20 There should be truly a good faith effort
21 made with the BNSF on the other side to look at a
22 circular pattern as an alternative. As well, they
23 should be considering -- you should be considering
24 mitigation as strict as mine was for my solar panels,
25 which required trees for the length of them. For the

1 length of any project such as this, mitigation should be
2 considered.

3 No part of this state park should be taken
4 away. No usefulness at all without adding more to the
5 state park. Cumulative impact. One of you guys said
6 that climate change is not part of this. Well,
7 unfortunately, the Act does address cumulative impact.
8 Cumulative impact of fossil fuels coming in from Asia
9 regarding ground level ozone, beryllium, mercury,
10 selenium and others, as well as particulate all are
11 issues that need to be addressed, as well as those from
12 diesel trains, particulate as well.

13 Also, there is more of a cumulative impact
14 from climate change to anyone we've ever known in the
15 Gorge. So it is on the agenda.

16 And let me remind you, the Yakama Nation
17 considered it part of a violation of treaty rights. The
18 trains are -- are -- are and still move through here and
19 we're looking at a serious in expansion. In fact, the
20 railroad in Mr. Wyman's statement that he wrote to you
21 says that if we don't get the trains through here, we're
22 going to need more -- more shipping by trucks. Well, if
23 that's true, obviously, more trains are coming through.

24 And then regarding some of the comments
25 made. The Scenic Act is a federal law. Tribal rights

1 are a federal law. Someone said there's no impacts.
2 Well, walking and breathing is an impact on the land, if
3 you know anything about the environment.

4 Clearly since the number of trains is based
5 on the economy, there will be more trains. That
6 statement has been very clearly made. What I see on the
7 Washington side is far more than one percent oil trains
8 coming past my house every day.

9 Concerning speed, not being -- not based on
10 what the communities that the trains are going through
11 is kind of ridiculous. You have to lower the speed of
12 the explosive nature of the trains in each and every
13 community, regardless of what the turns are on the
14 track. More capacity means more trains, which means
15 more noise. And very disingenuous to say a few more
16 decibels is all that's going to happen from two trains
17 passing each other. Guess what? That stuff is
18 logarithmic. A few more decibels is a huge increase in
19 the sound you hear. It's logarithms. They know it.
20 They just don't think you do.

21 And so I want to thank you for your time and
22 I want you to think about the things that we're all here
23 for. The goodness in human beings and what we can do to
24 make the world better and safer for each other.

25 And I have a deep respect for the tribes.

1 And I'm not sure that 10,000 years is right. I believe
2 it's more like 20. Thank you.

3 MS. ROYDER: My name is Kalama Royder. I'm
4 a resident of the Gorge. And I commend your planning
5 department for holding a comprehensive oversight on this
6 project. This took into consideration all the
7 requirements of law and they called on the expertise of
8 many agencies on what could be done to mitigate this
9 project.

10 Their original well-thought conditions were
11 protective and all encompassing. The revised approved
12 version is less comprehensive and should not be
13 compromised further, further especially in regards to
14 tribal treaty rights.

15 With their original stipulated conditions,
16 the County Planning Department was attending to tribal
17 concerns around risks to resources and access-deficient
18 sites.

19 How can the Board determine this expansion
20 of tracks and the resulting increase in trains and speed
21 would not increase the risk of polluting the Columbia
22 River from any of the toxic commodities that are being
23 transported by rail.

24 There are plenty of other chemicals that are
25 very hazardous to the waterway. And this really needs

1 to be considered. Especially with the risks that have
2 been exemplified by my friends and neighbors.

3 Increased traffic equals increased risk and
4 Union Pacific does not have a good track record.
5 Allowing the railroad -- and this is -- this part
6 specifically addresses their appeal, the railroad
7 appeal -- allowing the railroad to split the access
8 issues apart from the permitting process is yet another
9 way of discounting the importance of the impact on
10 native livelihoods. Creating safe crossings needs to be
11 an integral part of this project.

12 Voluntary discussions, as suggested, is a
13 way of sidelining this issue. I urge the Board to
14 require the applicant to work with the tribes to
15 identify and implement improvements for river access.

16 As your statement says, compliance must be
17 demonstrated before concluding that there will be no
18 adverse effects to sensitive and protected resources.
19 Voluntary compliance does not afford any guarantee that
20 the tribal concerns will be addressed adequately and in
21 a timely way.

22 I stand with the tribes, for the health and
23 safety of all railroad communities. Thank you.

24 MR. OLSEN: That's all of the persons that
25 we have signed up. Does anyone wish to testify that did

1 not sign up or?

2 Ma'am? Did you sign up?

3 (Indiscernible.)

4 We'll have you sign up when you come up to
5 the desk.

6

7 MS. BARKER: My name is Jill Barker and I
8 live in Mosier or outside of Mosier, Oregon. And I
9 won't repeat what's been said over and over again, but I
10 concur fully with the entirety of the appeal that the
11 Friends of Gorge, the Physicians For Social
12 Responsibility and the Columbia Riverkeepers have filed.

13 And the only thing I want to add to a lot of
14 really excellent testimony today, is that one thing that
15 hasn't been mentioned is that these oil tankers are
16 highly volatile and can spontaneously combust, simply
17 due to the high temperatures, which are so common in the
18 Gorge in the summer.

19 If you have increase of traffic or trains
20 passing one another, especially in the city limits of
21 Mosier, where they will pass one another, it's not a
22 matter of a derailment and then explosions and fires.
23 But often these oil tankers will just explode
24 spontaneously through combustion, spontaneous
25 combustion. And then they will derail and then the fire

1 will follow.

2 So I don't think that has been talked about
3 at all. And I think that was one of the causes -- I
4 believe it was Kentucky or West Virginia where there was
5 a derailment and explosion and it was a spontaneous
6 combustion. The train didn't derail. It was just
7 traveling along in the high temperatures, exploded the
8 tanker.

9 So that has to be taken into consideration
10 here in the Gorge where we have such high temperatures
11 in the summertime. And the danger of wildfire is just
12 unbelievable. So I have nothing more to add and I
13 concur with everybody. Thank you.

14 CHAIRMAN RUNYON: Thank you.

15 MR. OLSEN: Is there anyone else who wishes
16 to testify that hasn't signed up?

17 AUDIENCE MEMBER: My name is (indiscernible)
18 and I live in Hood River.

19 The only thing that hasn't been addressed is
20 that rather than expanding the railroad, dealing with
21 the problems that happen when tanks explode, as it
22 happened in Mosier, it could have been a much, much
23 bigger disaster. And we all know that. But it's not
24 been talked about at all today. That the highways were
25 closed. They couldn't get the foam, which is the only

1 thing you can put on burning Bakken oil. It took
2 11 hours to finally get some foam down here.

3 Who is taking up the expense of that? Why
4 isn't there foam at every municipal -- any town along
5 the river, on both sides of the river, they should have
6 foam available and trained firefighters to do it. The
7 fact you've not done that is a very irresponsible sign,
8 ma'am.

9 MR. OLSEN: Anyone else?

10 MR. SWAIN: Hi, Commissioners. My name is
11 Phil Swain. I own property in Mosier. I live outside
12 of Mosier. My thought always was that I would probably
13 retire to the City of Mosier when I wanted to get off
14 the hill. And if the double tracks -- if this double
15 track project is approved, I would seriously doubt I
16 would do that.

17 I also own property that is commercially
18 zoned in Mosier. So the effect on the City of Mosier is
19 rather grave. I don't think it's the role of the
20 Planning Commission to help improve the efficiency of
21 the Union Pacific Railroad. They're saying Mosier is a
22 pinch point. But there's a ten-mile double track in The
23 Dalles. Mosier is the next passing track which is now
24 rather short, of course. But then to Portland, you
25 would have a five-mile double track in Mosier, ten miles

1 in The Dalles. And I don't think there's another
2 section of five-mile track between what would be Mosier
3 and Portland. So they're putting the pinch point down
4 the road, if you're saying this is important to the
5 efficiency of the railroad.

6 So I concur with the Friends of the Gorge.
7 I concur with the Yakama treaty appeal. And I guess
8 another thing to consider is, you know, the Indians have
9 treaty rights and they signed it in 1855. But usually
10 that's just pushed out of the way, always ignored. And
11 I don't think we should ignore it. Thank you.

12 MR. OLSEN: Please make sure you sign in.
13 Is there anyone else that wishes to speak but did not
14 sign in?

15 Seeing no one else, Mr. Chairman.

16 CHAIRMAN RUNYON: Any objections of staff?

17 MR. OLSEN: Mr. Chairman, I didn't observe
18 anyone raising an objection regarding testimony.

19 CHAIRMAN RUNYON: So we'll move to rebuttal.
20 We'll now hear rebuttal. You shall not include any new
21 evidence. Each appellant will have 10 minutes and it
22 looks like, first up, representative of the tribes. And
23 looks like you wish to provide rebuttal.

24 MS. PENN-ROCO: Quickly. I'll attempt to
25 keep this brief. So these comments will address the

1 applicant's appeal, both their written appeal and then
2 their oral comments today.

3 So the applicant's appeal seeks removal of
4 the few conditions that were included to protect treaty
5 rights. The appeal papers claim that the tribes are
6 arguing that we have absolute access, able to cross at
7 all locations at all times.

8 We wish to make it clear that that is not
9 what we are arguing. We were arguing that we have
10 treaty rights and those include property rights in the
11 adjacent land.

12 Courts routinely struck down impediments and
13 obstruction to access to those treaty fishing rights.
14 The issue is not whether tribes have an absolute access
15 right, but whether the proposed rail expansion would
16 affect or modify treaty rights as prohibited by the
17 ordinance.

18 They also claim that the tribes have no
19 evidence supporting their impact on treaty rights.
20 Again, as I said earlier, our comments are a
21 distillation of many hours of work, meetings with
22 fishers and fisheries' employees, specifically to
23 discuss the impact of rail on tribal fishermen.

24 Yakama Nation has participated in the review
25 of multiple projects all along the Columbia River.

1 Testimony provided by the government and government
2 officials is usually sufficient to these agencies. Four
3 letters were submitted in combination of Umatilla and
4 Yakama Nation.

5 The fact that Umatilla did not appeal should
6 not be used as evidence that it doesn't believe there
7 will be impacts. The Umatilla didn't appeal the
8 application as it was approved with the conditions that
9 they are seeking to remove. I will also point out that
10 tribes have limited resources. Our treaty rights are
11 challenged on a wide variety of basis and projects.

12 We often have to pull resources to defend
13 our treaty rights. And the decision to appeal isn't
14 limited to just whether we have the resources to defend
15 our treaty rights, but whether we want to subject our
16 treaty rights to potential litigation.

17 The application urges voluntary compliance
18 in our experience relying on railroads on their word
19 that it will work with tribes is not a viable method of
20 protecting treaty rights. It fails. As many people
21 have commented, we are often ignored.

22 This is especially because its position is
23 that it is not legally required to provide access. So
24 it urges you to have them interact with us on an
25 individual basis, cutting the other governments out, but

1 it doesn't think that it has any responsibility to
2 protect those rights.

3 It implies that studies on archeological and
4 historical sites, where the conclusion is that there are
5 no impacts and there's no impact on treaty rights.
6 That's a misunderstanding of treaty rights. A
7 collection of historical sites, as I said earlier, does
8 not reflect the impact on treaty fishing rights.

9 CHAIRMAN RUNYON: Thank you. Next would be
10 rebuttal, if desired, by the representatives of Friends
11 of the Gorge, Riverkeepers and Physicians for Social
12 Responsibility.

13 MR. KAHN: Thank you, Mr. Chair. For the
14 record, Gary Kahn representing Friends of the Columbia
15 Gorge, Columbia Riverkeepers and Physicians for Social
16 Responsibility.

17 I will keep my comments very brief. I'm
18 going to address the issue of preemption, which involves
19 both the tribes' appeal and UP's appeal, is very -- in
20 essence, largely the flip side of each other.

21 With respect to the legal issue of
22 preemption, you've got several competing principles,
23 several competing laws.

24 First you have the ICCTA, which admittedly
25 does preempt some local land use laws. You also have

1 the National Scenic Area Act, which is a federal
2 environmental law and then you have the tribal treaties,
3 which are in a separate class all by themselves.

4 According to the railroad, in essence, the
5 ICCTA preempts everything. They have no business being
6 before you. You have no right to restrict them. You
7 have no right to do anything that is counter to their
8 desires.

9 It's not so black and white. In your
10 staff's response to their appeal, which is in the
11 record, there is an excerpt of -- I don't know. It must
12 be a written opinion -- we haven't seen it -- but a
13 written opinion from your counsel Ms. Campbell -- sorry.
14 I couldn't think of your name there for a second -- in
15 which she rebuts that and she rebuts that very well.
16 And says that when you have a federal environmental law
17 involved, you have to harmonize the two. It is not as
18 black and white a preemption as UP would have you
19 believe.

20 And as one of the public commenters -- I
21 don't remember which person it was -- said very
22 eloquently, you should not run from the threat of a
23 lawsuit. If you think that the application is not
24 consistent with the Act, then you should deny it and let
25 the chips fall where they may.

1 And I can tell you, going out on a limb
2 here, but if that's the situation and you get sued by
3 UP, my clients will almost certainly join in that
4 lawsuit to help defend you.

5 I also find it kind of interesting. UP says
6 today they don't have to be here, but they're doing so
7 out of a desire to be a good neighbor, to work with you.

8 Well, same situation exists with the City of
9 Mosier. They haven't applied for any permits under
10 their land use ordinances. I just wonder whether they
11 knew that they weren't going to get them and they would
12 run into a bigger problem.

13 In conclusion, we fully support the Yakama
14 appeal. We believe that they do have treaty rights,
15 which trump the ICCTA and UP's application. We also
16 think that none of this really matters, because this
17 application is inconsistent with the Scenic Area Act,
18 the Management Plan, the Wasco County ordinances and
19 should be denied in its entirety. Thank you.

20 CHAIRMAN RUNYON: Does the applicant wish to
21 provide rebuttal?

22 MR. WYMAN: Well, thank you very much,
23 members of the Board.

24 I want to start our rebuttal -- lots of
25 comments were made on the safety issue. And Wes Lujan

1 spoke directly to the Planning Commission on that issue.
2 I just wanted him to reiterate the remarks that he
3 provided there.

4 MR. LUJAN: Thank you, Ty, Commissioners.

5 So I just wanted to reiterate that we've
6 been working since the derailment to correct some of the
7 situations that happened. So when the derailment
8 occurred on June 3rd, basically a leg screw broke in the
9 Mosier area. That created a wide-gate situation.

10 What we have don't since then is we have
11 done a full replacement of eight miles of curves of leg
12 screws in the Gorge. That was completed October 15th.
13 So I just wanted to update you on that. I had
14 referenced in my earlier testimony before the Planning
15 Commission and just wanted to let you know that it
16 happened.

17 Also, there was kind of a -- you know, I
18 should have done a little better job of describing some
19 of the things we've been doing proactively on safety,
20 you know, with respect to positive train control.

21 So there's a mandate in place now with the
22 federal government as a result of an incident that
23 happened in Southern California in 2008, that requires
24 the railroads to implement positive train control, which
25 is essentially a predictive braking system. It's

1 intent -- intended to eliminate human error or
2 drastically reduce it.

3 So what's happened is we're in the process
4 implementing that between now and 2018. And that will
5 be implemented on this corridor, as I understand it. So
6 that basically creates a situation where if there's a
7 red-signal situation on the track.

8 So if there's a switch at each and there's a
9 signal; green, red to go into that siding, if the
10 operator of that locomotive does comply with that
11 signal, it will stop the train. So it's intended to
12 back up and help correct that. That's really it.

13 MR. WYMAN: Yeah, thanks so much, Wes. I
14 just have -- obviously, we can't be comprehensive at
15 this point, but a couple remarks that you heard tonight
16 I wanted to touch on on rebuttal.

17 Friends of the Gorge, as I understood it,
18 asserted that this application was not in the public
19 interest. It was noting that it was an increase in
20 efficiency. We firmly believe the increased efficiency
21 of the movement of freight on that railroad is in the
22 public interest, absolutely.

23 Secondly, Friends mentioned just at the very
24 end made a comment about -- suggested that we did not
25 seek approval from the City of Mosier because we knew

1 wouldn't get it.

2 Counsel is apparently not aware. We went
3 immediately to the City of Mosier. And I believe that
4 the city has actually acknowledged this in its most
5 recent letter. We got a ruling of the City of Mosier
6 that it simply did not have jurisdiction. We went first
7 to them. That's how we wound up with the letter
8 agreement with the city that is in the record and I
9 would commend to your reading.

10 I'll finish with the testimony by the Yakama
11 Nation. And -- and absolutely, I salute them. They
12 sent, obviously, a very compelling, excellent speaker
13 out here tonight. I just wish that they had been here
14 on September the 6th.

15 We heard a lot -- we've heard a lot over the
16 last hour or so about your Planning Commission, that
17 your Planning Commission didn't do its job. I don't --
18 I -- clearly, we don't agree completely with what the
19 Planning Commission decided.

20 However, the Planning Commission listened to
21 far more testimony than you have. They went about six
22 hours. They deliberated for many hours. And the Yakama
23 Nation was first -- I believe the record is the Yakama
24 Nation was first provided notice of this project in
25 April 2015. They were provided multiple notices

1 afterward. They were provided notice of the
2 September -- clearly of the September Planning
3 Commission hearing.

4 That hearing drew Friends of the Gorge first
5 submitted written comment in June. Thousands of people
6 found the time, the inclination to comment. But they --
7 but the Yakama did not come and testify to the Planning
8 Commission. And it's somewhat difficult for me to hear
9 them throwing that Planning Commission decision under
10 the proverbial bus whey they weren't here to present
11 their case to them then and submit to questions, as --
12 as we have done and as others have done.

13 Going back to where I started and
14 particularly again, characterizations about your
15 Planning Commission and the job that they did. I simply
16 don't believe that the Planning Commission decision was
17 unconscionable in any way. What I saw here were
18 volunteers acting in completely the opposite, acting
19 with remarkable conscientiousness about the job that
20 they had, the very difficult job that they had that
21 evening.

22 So with that, we conclude. We would
23 appreciate a vote in favor of not just the application,
24 but our appeal. And we may be beyond questions, but
25 we're always happy to take them from you.

1 COMMISSIONER HEGE: I just have a quick
2 question.

3 So there was a lot of questions but the
4 issue of the foam and basically the fire fighting stuff,
5 I'm just curious, obviously, it's not just your problem,
6 but do you have any comments on how that can be
7 addressed and how that will be addressed to make sure
8 that the materials needed to deal with these kind of
9 issues -- because I think that was a bit of a concern in
10 the Mosier issue.

11 MR. OLSEN: Mr. Chairman, before we have the
12 applicant respond to that question, I -- during the
13 applicant's rebuttal, we received three objections to
14 new evidence in the rebuttal. And I'm going to try to
15 characterize those because I think I know what they are.

16 And Mr. Kahn can correct me if I'm wrong,
17 but the first one is to testimony about the predictive
18 brake systems coming into place on the trains. You're
19 alleging that. That's not in the record.

20 The second one is that the Mosier -- the
21 status of the Mosier decision and not having
22 jurisdiction, they're alleging that that's not in the
23 record. And now we just got an objection that --
24 indications about what the railroad is doing regarding
25 foam are not in the record.

1 So your Board has two choices here. One
2 choice would be to make a ruling on these objections,
3 based on what you perceive to be in the record. And
4 staff may be able to help you out with that.

5 The second would be to accept the testimony,
6 but allow other parties to rebut that testimony.
7 Basically, be we'd be providing Friends an opportunity
8 to rebut that testimony.

9 MR. KAHN: I just want to spend a little bit
10 on the first point you made, my objection included what
11 you mentioned, but there was also some additional
12 statement by Mr. Lujan about not just -- broader aspects
13 of the safety issue that I think constitute new
14 evidence.

15 CHAIRMAN RUNYON: The issue of foam was
16 brought up in testimony by a citizen.

17 MR. OLSEN: Correct. But there's -- and
18 that's why you would need to open the record if you want
19 to listen to new evidence in response to that.

20 So you have that choice. If you feel like
21 this evidence is important to you, that's been objected
22 to, then my recommendation would be that you allow it in
23 so you can provide an opportunity to rebut.

24 If you feel like it's either already in the
25 record or you couldn't wish or need to consider it, then

1 you can just exclude it.

2 CHAIRMAN RUNYON: I'm here to listen. I
3 don't know about the other two.

4 COMMISSIONER HEGE: I think we're all here
5 for -- to address whatever questions you have, we're
6 happy to have anybody else who wants to speak to these
7 assertively new issues. Apparently we don't have time
8 to climb through -- to comb through the 12,000 pages of
9 the record to figure out where we did discuss -- he did
10 discuss safety issues at length at the Planning
11 Commission orally.

12 So is there -- did you want to hear a
13 response on the foam issue?

14 CHAIRMAN RUNYON: On the foam, for sure.

15 MR. LUJAN: Great.

16 CHAIRMAN RUNYON: It was more of a foam, but
17 it was talking about individual towns along the route,
18 that sort of thing. Fire safety issues, in general.

19 MR. LUJAN: Okay. So with respect to the
20 foam trailers, as a result of legislation that I believe
21 was passed in 2014, (indiscernible) can give a specific
22 reference, but basically compelled us to work
23 voluntarily with the state of Oregon to enter into a
24 memorandum of understanding to purchase six foam
25 trailers, which we have done and they are in possession

1 of the state fire marshall.

2 So they are being disbursed throughout the
3 different areas of the state. I'm not sure, with
4 respect to the location, in the Gorge or near the Gorge,
5 but that's something that we have done. I executed an
6 agreement with the state fire marshal. And we have
7 purchased the trailers. They are onsite here in Oregon.
8 So that's something we worked towards as a result of
9 prior legislation.

10 With respect to training, we worked very
11 hard. I don't have the exact number in front of me, but
12 it's roughly about 340 firefighters have been trained in
13 their stations, I believe throughout northern Oregon,
14 with respect to fire HAZMAT response.

15 We also have voluntarily, as part of this
16 memorandum of understanding with the state on the foam
17 trailers, we have volunteered to provide training to the
18 state, to send them to Pueblo, Colorado for training
19 courses for first responders.

20 Gresham, Oregon had just sent, I believe,
21 some firefighters to that training prior to the incident
22 on June 3rd. Since the incident on June 3rd, I believe
23 Chief Appleton, if he has not gone already with a couple
24 of other firefighters in his community, will be going
25 shortly to Pueblo, Colorado for that training. Thank

1 you.

2 MR. WYMAN: I think we're done.

3 MR. OLSEN: I think it would be appropriate
4 to provide the party that made the objection an
5 opportunity to rebut.

6 CHAIRMAN RUNYON: That's fine.

7 MR. KAHN: This -- this will be very brief
8 since we weren't expecting this and the evidence came in
9 during the rebuttal phase.

10 But I believe at the first Planning
11 Commission hearing on September 6th, I think it was,
12 that Mr. Appleton testified that foam would not have
13 worked because of the intense heat from the fire, foam
14 would have evaporated. They would have had to pour
15 water on it to keep it cool, so foam is not the panacea.

16 Without any opportunity to go through the
17 record, I can't respond any differently than that.

18 CHAIRMAN RUNYON: Okay. So at this point,
19 that takes care of those things.

20 Any final comments, but not evidence from
21 staff?

22 MS. BREWER: I can respond to some of the
23 items that have been raised this evening, if you'd like
24 me to, yes.

25 So I have a couple notes here. If I've

1 missed anything and you'd like me to answer any
2 questions, specifically, please just let me know.

3 And Kristen and Dan, please chime in if I'm
4 speaking out of turn in any of these things.

5 But in response to the testimony provided by
6 Pacific Railroad, their comments about how voluntary
7 compliance is easier in some ways because the devil is
8 in the details and, you know, being mandatory is easy up
9 front, but difficult in the long run.

10 It's definitely difficult in the long run,
11 no matter how you slice and dice it, essentially. So in
12 order for us to ensure that we have absolutely met our
13 ordinance requirements, we do need to require something.
14 We can't allow that to be voluntary.

15 I just want to point out, for the record,
16 that there was comment provided that fluidity does bring
17 potentially five to seven additional trains within that
18 existing range of traffic.

19 I want to highlight Mr. Wyman's testimony
20 about his preemption assertions about how a County would
21 be implementing County rule to regulate federal
22 legislation. And I want to point out that, yes, we are
23 a County and we are implementing the local rule. But we
24 are -- we're more than that in the Scenic Area. We are
25 a designated implementing agency of the national act,

1 the National Scenic Area Act. So it's more than just a
2 town implementing a county code.

3 Just in the rebuttal testimony, there was a
4 note about it would have been nice if the Yakama Nation
5 had provided comment earlier on in the process. And I
6 just want to point out that our rules do specifically
7 say that -- let's see, "failure of an Indian tribe to
8 comment or consult on (indiscernible) as provided in
9 these guidelines shall in no way be interpreted as a
10 waiver of those rights." So I just want to make sure
11 you knew that rule. It's very specific.

12 In response to the Yakama Nation's comments,
13 I just want to make sure that you all understand that
14 the cultural and natural resource provisions are
15 separate from the treaty rights' provisions. So
16 although there was a lot of conversation about how
17 cultural, natural resource surveys were provided, those
18 don't satisfy the treaty rights' provision on their own.
19 They can't substitute the treaty rights.

20 And then there was some discussion about
21 whether or not, as a response to a question from the
22 Commission, whether or not the tribe would be willing to
23 work with the applicant on negotiating a different
24 alignment or a different scope of project. I just want
25 to voice concerns about the -- that idea because we

1 would not have had a chance to evaluate whatever that
2 outcome would have been as part of this review. And if
3 that was something to be pursued in the future, it
4 should be its own new application for full review.

5 The Friends of the Gorge provided comments,
6 Mr. Kahn made some statements about how rules were not
7 applied. All of the applicable rules are referenced in
8 the staff reports in the final decision and made
9 findings as to whether or not they complied or not.

10 And also, one other item, Mr. Kahn noted
11 that there were four key viewing areas not within our
12 scenic resource assessment. He is referring to a GIS
13 layer provided by the Forest Service, Scenic Area Office
14 and the Gorge Commission called the scene areas layer,
15 which is created by a GIS tool using topographic maps
16 and computer models to identify what might be visible
17 from designated key viewing area points.

18 It is not 100 percent accurate that staff
19 always starts every evaluation with that scene area
20 layer and then we confirm in the field site visit to
21 verify whether or not we can actually see the proposed
22 development, based on topography. So I just want you to
23 know that we did start with that layer and we went from
24 there.

25 My last comment is just want to highlight

1 the significance of Warm Springs Tribal Chairman Austin
2 Green attending this evening. You've now heard from
3 three of the four treaty tribes for this project.

4 Any questions for me?

5 COMMISSIONER HEGE: I have a question. So
6 the letter that we got from the counsel representing
7 Friends of the Gorge, we just got it. We actually --
8 I'm asking questions -- we haven't reviewed it and do we
9 need time to review what's stated in there for both you
10 and legal counsel to review that to see if there is any
11 impact?

12 MS. BREWER: I have not seen it yet. And
13 I'm seeing on Kristen's face, we would need some time to
14 review it to be able to respond.

15 COMMISSIONER HEGE: Okay.

16 CHAIRMAN RUNYON: Any other comments from
17 staff?

18 MS. BREWER: No.

19 CHAIRMAN RUNYON: And basically with that
20 last answer there, I think we received our marching
21 orders.

22 COMMISSIONER HEGE: A few questions. I lost
23 my thought. Maybe this question is to legal counsel.
24 But I guess what I heard UP say is that there -- it's
25 clear that there is federal laws and regulations that

1 give them rights and so on.

2 And I also heard other comments about, like,
3 the treaty-related stuff that give -- well, we have laws
4 and rules that we are mandated to require -- that
5 require things. It seems to me -- and this is a
6 question -- there's conflicts between those two legal
7 conflicts. I understand theirs and I accept that. But
8 we also have our things and they don't agree.

9 Am I saying that right or am I not saying
10 that right?

11 MS. BREWER: Conflicts between the
12 applicable federal rules?

13 COMMISSIONER HEGE: Basically, yeah.

14 MS. BREWER: I would say that's not uncommon
15 and, yes, there are some conflicts.

16 COMMISSIONER HEGE: So if that was to be the
17 case, I mean, it doesn't seem like we can necessarily
18 rule on that. I mean, it's not -- we're not a court of
19 law.

20 MS. BREWER: My recommendation would be that
21 our job is at home and our rules. And where there's
22 conflict, there may be challenges in the future. But
23 our job is to implement our rules to the best of the
24 ability.

25 COMMISSIONER HEGE: Okay. And one thing

1 that I forgot, I think there was a comment about how
2 thousands of trees were going to be taken down.

3 Was that an accurate statement? Do we know
4 the numbers of trees at all?

5 MS. BREWER: So the applicant provided a
6 very detailed tree survey. All of the individual trees
7 were cataloged and GPS'd and mapped. And if you include
8 all the proposed clearings, yes. There were many, many
9 trees proposed removed. The Planning Commission
10 prohibited the most significant clearing that was
11 proposed.

12 COMMISSIONER HEGE: That was that six acre?

13 MS. BREWER: Mm-hm. There will still be
14 trees removed, but not nearly as many as the original
15 proposal requested.

16 COMMISSIONER HEGE: Okay. And I'm assuming
17 that there's -- if the trees are removed, there's some
18 requirement to, like, replace or do something?

19 MS. BREWER: Yes. There is a mitigation
20 issue specified in the Commission's approval,
21 specifically for Oregon White Oaks.

22 COMMISSIONER HEGE: Okay. And one other
23 thing I heard was this issue of a landscaping plan and
24 that we require one. None was submitted. Can you
25 address that?

1 MS. BREWER: In this particular application
2 because we knew that due to the location of the railroad
3 corridor, being up against the river, and the fact that
4 there simply is no location to plant new screening
5 vegetation along most of the project area, especially
6 where the new development was going to included.

7 We felt it was most informative for our
8 scenic resource analysis to better understand what trees
9 and screening vegetation were coming out so that we
10 could address all of the structural development with the
11 scenic resource evaluation; the colors and materials and
12 siding and minimizing cut faces as fill as much as we
13 could to ensure that the development was able to meet
14 the scenic visual standard, the visual quality
15 objectives for each landscape setting.

16 Vegetation is supposed to be sort of a last
17 resort when it comes to complying with your landscape
18 setting and your ability to comply with the scenic
19 resource criteria. That said, we took a different
20 approach. We didn't call it a landscaping plan, but it
21 was essentially satisfying the same requirement and the
22 same needs for our ability to analyze the effects.

23 It's called a tree inventory instead of
24 landscaping plan. And part of the reason why we felt it
25 was not possible to plant new vegetation is, again,

1 because of the physical constraints, but also because
2 any vegetation within there -- the vegetation would have
3 needed to be in and around those properties to comply
4 with our regulation.

5 Because the corridors were so narrow, we
6 were concerned that planting new trees that close to the
7 tracks would actually increase fire risk. And that was
8 not something we were willing to taking the risk for.

9 CHAIRMAN RUNYON: Anything else?

10 So, Commissioner Hegge, you brought up the
11 last batch of letters and Angie made a comment, as well
12 as Ms. Campbell apparently agreed with that comment that
13 you haven't had a chance to review it. And --

14 MS. CAMPBELL: I haven't seen it.

15 CHAIRMAN RUNYON: So I scanned. It seemed
16 like it was substantial like many of the others we've
17 gotten in the short time we had to look at it. And I
18 have not read it thoroughly. But yeah. After a few
19 weeks of this, you start making up things.

20 So what are you thinking, Scott? Are you
21 looking to continue since you brought that up? And if
22 we're going do to that, we have to think about a date.
23 I know we had one tentative date out there, but there
24 was some problems with that, so.

25 COMMISSIONER HEGGE: I guess I would look to

1 staff and counsel to advise us on what they think the
2 approach, given this information, what the approach is
3 going on from here.

4 I have some thoughts about the where I think
5 we're going to go, but I'm just wondering, do we need to
6 take not, you know, not do -- there's some options in
7 here that we can look at. But should we not do that at
8 this point and take time and deal with that later? Or
9 you think we have enough to move forward at this point
10 or should we wait to review that?

11 MR. OLSEN: Mr. Chairman, members of the
12 Board. You've got a few options. First of all, if your
13 Board is inclined to agree with the Friends and deny the
14 application, then you may not need that letter because
15 you feel that there's enough evidence already without
16 having enough detailed opportunity to review that letter
17 to deny it.

18 Conversely, if you're inclined to approve
19 the application, you may also conclude that you got
20 enough evidence and that there's really nothing that's
21 likely to be in the letter that would be -- change your
22 mind. The applicant or the opponents had an opportunity
23 to summarize their testimony during testimony. And, you
24 know, this is not uncommon to get a lot of documents at
25 the last minute. And it doesn't always mean that you

1 have to have a continuance.

2 And then your third option is, of course, to
3 continue to give you more opportunity to review and have
4 to come back to conduct -- to deliberate at another
5 time.

6 I would want to make sure we have staff
7 weigh in on that because if you want to continue this,
8 to have an opportunity to spend more time reviewing the
9 record, we would then need you to do that, have a
10 meeting where you indicate your tentative decision, at
11 least, perhaps, a final decision, but if not, then a
12 tentative decision.

13 And if it is a tentative decision, then you
14 would need to hold it over yet again to provide staff
15 with an opportunity to finish up the findings and adopt
16 that. So we could be looking at a couple continuances.
17 And I know we're running up against the deadline. I'm
18 not sure exactly what that deadline is.

19 MS. BREWER: November 17th.

20 Mr. Olsen: So November 17th. Under the
21 state law, the statute says, basically, you have to make
22 a decision within 356 days. The problem with the
23 statute is it doesn't say what happens if you don't.

24 There are other statutes that say that the
25 decision is void. But that's in a different context.

1 There's another statute that says the applicant can file
2 in a Circuit Court proceeding. It's not clear whether
3 that applies in this case. And of course, the applicant
4 can always waive, if they chose to.

5 So you are running up against it. So if you
6 do desire to continue this matter to have more time to
7 review the record, we would need to try to do that on a
8 pretty quick time frame.

9 COMMISSIONER HEGE: Okay. So I guess I can
10 tell you where I'm at. So when I look at this whole
11 project, I think my -- my -- my perspective is I look at
12 it from a standpoint of safety. It's critical that the
13 operation railroad, you know, anywhere, but certainly
14 here in Wasco County, we want it to be operated safely.
15 We're going to require it to be operated safely. So I
16 think with our rules, as our staff has said, you know,
17 that's a key issue.

18 I think the other thing is impacts to our
19 citizens. And, obviously, all of these things are
20 addressed in all of the conversations, in the testimony
21 and the staff report. I think in terms of impact to me,
22 the primary one is noise and how we deal with that and
23 how that's responded to.

24 So when I look at everything that we've seen
25 and I can tell you I have not read every single page.

1 There's thousands and thousands of pages, but I've read
2 many of them, my tendency is staff report that they
3 provided to us today and the comments that they made,
4 the presentation that Angie made, my tendency is to
5 agree with what she's saying, follow the rules, our
6 rules.

7 And so the conditions that were, you know,
8 largely removed, I think that I stand probably with her
9 opinion, that those need to be added back in, in terms
10 of the staff report.

11 I think the challenge that I see right now,
12 though, is in staff recommendation, which says if the
13 Board is not able to find the proposed development would
14 not adversely affect treaty rights, then staff
15 recommends option C, reverse Planning Commission's
16 decision and deny the proposed development.

17 And right now I cannot see how this, based
18 on the comments that we had, you know, I don't see how
19 it doesn't adversely affect treaty rights, based on the
20 discussions I've had with staff and how we deal with
21 these and how to respond.

22 It doesn't seem like that issue was really
23 vetted out. And it seems like we're kind of at a
24 standstill. And I understand Ups position to be, you
25 know, we have all these rights and rules and stuff. And

1 I don't disagree with that, but I also think we have a
2 responsibility to deal with our rules and laws and
3 judgment based on that and then someone else has to
4 really decide who's right in those two parties.

5 So that's kind of where I'm at right now in
6 terms of just for deliberation standpoint.

7 CHAIRMAN RUNYON: One the options, though,
8 is to put the planning director, planning staff
9 conditions back into the document. In other words, go
10 against the Planning Commission where -- where they took
11 some things out that were recommended. And a couple of
12 those had to do with treaty rights and whatnot. And I'm
13 leaning in that direction. That is a more reasonable
14 approach, I think, no matter what we do.

15 It's going to be appealed either way. It's
16 going to be around awhile. I have a lot of faith in our
17 Planning Department and plus the fact that our planning
18 director was a former planning director for the Gorge
19 Commission. So she's pretty darn thorough. And I think
20 the railroad knows that.

21 I have been reading, at least since last
22 Wednesday. So although we may have gotten more paper
23 today, after six years as a County commissioner and
24 eight years as a Port of the Dalles commissioner, I know
25 you get things late in the game. But they're, for the

1 most part, they did not appear, in my scan, appear to be
2 substantially different. But at this point, that's kind
3 of where I'm at, is I would take the comment of the
4 planning director and her staff and put those back into,
5 if we were to approve.

6 COMMISSIONER KRAMER: Agree with most of
7 that. But I was listening to what we've heard with the
8 increase in rail traffic five to seven more. I think
9 that it does adversely affect. And so I'm -- I'm
10 leaning to -- I'm leaning to No. 4, to reverse and deny.
11 So something like maybe we're at odds here. You know,
12 we may need more time to deliberate.

13 CHAIRMAN RUNYON: Any comments?

14 COMMISSIONER HEGE: Well -- and I would
15 agree with Chair Runyon. I think that it's clear to me
16 that in order to fulfill, stand by and really be with
17 our law, you know, I think that even though I understand
18 the reasons for taking them out, I think they need to be
19 put back in.

20 So I think I agree with that. I think when
21 you get to the issue of treaty rights, I'm troubled with
22 how that plays out. And it seems to me like there are
23 impacts and they haven't been addressed. And it's not
24 really -- based on the discussion I have had, it's not
25 necessarily our call to say whether they are or not.

1 It's really our partners, which is the tribes, to say if
2 the treaty rights are okay or not. And if they're not,
3 it's pretty difficult for me to go against that.

4 So somehow, I think that issue needs to be
5 resolved, should be resolved. And I'm not sure how to
6 do that, but it's certainly not a call I'm going to make
7 to say, I don't -- the treaty rights are not impacted.
8 I think it's clear that they are. It sounds to me from
9 some of the testimony, there's possibilities for that to
10 be worked out. But it hasn't been worked out, so it's
11 hard for me to say I approve.

12 I think it's certainly something that is
13 going to have to be dealt with outside of this body, in
14 my opinion.

15 And maybe the other question I would ask
16 Angie, your thoughts on these discussions? I mean, do
17 you have any thoughts to add to this? Or even Kristen,
18 I'd be interested in your thoughts. Or Dan.

19 MS. BREWER: Dan had a good suggestion that
20 I clarify the recommendation on the staff summary that
21 you have in front of you.

22 It really comes down, from staff's
23 perspective, based on the analysis with the grounds of
24 appeal, and I haven't seen the Friend's new information.

25 But based on information we have, what it

1 really comes down to for staff is treaty rights. We
2 feel very strongly about everything else in our analysis
3 and in our recommendations. Adding those conditions of
4 approval back in would address a lot of the conditional
5 use provisions and other provisions we were concerned
6 about.

7 However, the treaty rights impacts are --
8 they are -- without information to defend an alternate
9 or opposing perspective, which we do not have, it's
10 difficult for us to disagree with our partners and our
11 experts and the treaty rights that there may be an
12 impact. And our rules require us to consider any
13 effects on modification of those rights very seriously.

14 So my recommendation is if you feel that
15 there is a treaty rights impact that could result from
16 this project, then the project must be denied.

17 If you feel you heard that there is no
18 treaty rights impact, then I would recommend adding
19 those conditions of approval back in and affirming the
20 Planning Commission's decision.

21 So, D (2) which is the conclusion of the
22 treaty rights protection process specifically says, "The
23 treaty rights protection process may conclude if the
24 County determines that the proposed uses would not
25 affect or modify treaty rights of other or other rights

1 of any Indian tribe. Uses that would affect or modify
2 such rights shall be prohibited." So I guess --

3 COMMISSIONER HEGE: Could you read that one
4 more time?

5 MS. BREWER: Sure.

6 "The treaty rights protection process may
7 conclude if the County determines that the proposed uses
8 would not affect or modify treaty rights of other or
9 other rights of any Indian tribe. Uses that would
10 affect or modify such rights shall be prohibited."

11 So I guess I would ask you, if you feel you
12 heard a treaty rights impact with the evidence provided
13 to you, do you even need to consider any of the
14 additional information to make your decision?

15 CHAIRMAN RUNYON: But at the same time, one
16 of your possible motions or whatnot includes adding back
17 in the conditions that were taken out. And of those,
18 there were treaty rights.

19 MS. BREWER: Yes, you're correct. Quite a
20 few of the ones removed were specifically included to
21 address treaty rights. But the Yakama Nation's letters
22 received after that staff report was prepared have
23 specifically said those conditions of approval were not
24 sufficient.

25 Again, the Board has the discretion to reach

1 a different conclusion from staff.

2 COMMISSIONER HEGE: So Kristen, you're our
3 counsel, and Dan. Can you please give us some advice.

4 MS. CAMPBELL: I agree with Ms. Brewer's
5 summary of the law. And I agree with your ultimate
6 assessment that it's your role to apply all of the facts
7 that you've heard to our ordinance, which Angie just
8 recited.

9 MR. OLSEN: I think what we're saying is if
10 you decide that there is not an impact on treaty rights
11 or that the conditions that the Planning Commission
12 removed, if you reimpose those, that would adequately
13 take care of the impacts on treaty rights, you need to
14 articulate that fairly carefully to staff, so they can
15 be put in the findings.

16 And if you feel that you can't articulate
17 that, then, that obviously forms your decision.

18 COMMISSIONER HEGE: So the question I have
19 is, I understand that. But, like, how is that
20 determined and how is that articulated? I've had
21 conversations about a myriad of things, like wildlife
22 issues. We aren't the judge and jury. We go off to our
23 partners. We ask them. You do this study. You look at
24 the study and tell us whether there's impacts.

25 And so, this is a similar situation, where

1 you know, we are not necessarily the ones, but we're
2 looking for our partners to tell us. And in this case,
3 it seems like -- tell me if I'm wrong -- our partners
4 have made it very clear in a pretty unanimous situation
5 that the treaty rights have not been addressed with
6 what's proposed here. They didn't suggest it could
7 never occur, but they suggested as it is now, it's not
8 being addressed and there's -- the mitigation is not
9 adequate.

10 So I guess the question is, how do we
11 determine what mitigation -- and is it our decision or
12 how do we get to that point?

13 MS. BREWER: So the letter actually says
14 that there is no mitigation that would be adequate. So
15 I don't feel comfortable inserting potential mitigation
16 and assuming that it would be adequate when we've heard
17 it is not, it could not.

18 Again, I agree there might be different
19 versions of this project in the future that are proposed
20 that may be maybe more proactive to address this issue
21 and could resolve some of those concerns, but they
22 haven't been for this particular proposal.

23 COMMISSIONER HEGE: Okay. Yeah. And that's
24 why I asked the follow-up question was -- is there
25 something -- and what I heard was "perhaps." Because it

1 seemed like the issue, there's a track out there now.

2 There's dangers and issues out there now.

3 So, the question really is, is this going to
4 make it worse or make it better? The question was, if
5 it's not worse, then maybe the tribes would be okay with
6 it. But right now we don't have an answer. And what's
7 proposed, the tribes have said no, this will be worse
8 and it will impact them. That's what I heard.

9 MS. BREWER: That's what I heard as well.

10 MR. OLSEN: I do think it's important to
11 make sure you understand. The tribes don't have a veto
12 here. It's your decision. But they're the experts.
13 And you need to find something in record -- if you feel
14 that they are wrong. You need to find something in the
15 record that supports that decision.

16 CHAIRMAN RUNYON: On the other hand, we've
17 been told here tonight our actions don't mean a whole
18 heck of a lot. I'm having a hard time putting all that
19 together.

20 I can make a real quick motion here if we're
21 done with the questioning.

22 Steve, do have anything to add?

23 COMMISSIONER KRAMER: Not right now.

24 CHAIRMAN RUNYON: How about this? I'll make
25 a motion to deny the application. Is there a second?

1 COMMISSIONER HEGE: Can I ask a question?

2 CHAIRMAN RUNYON: You can ask a question
3 once we get the second.

4 COMMISSIONER HEGE: I'll second.

5 COMMISSIONER KRAMER: Mr. Chair, I think to
6 reverse and deny would be more appropriate due to the
7 fact that I think that we need to add the findings and
8 options back in, so as this moves forward it's not
9 remanded back to us. I think that we need to do our due
10 diligence here and make sure that we've done all that we
11 can. And I think that we need to -- we need to give
12 staff time to put those back in for -- before can -- so
13 anyway, that's my thoughts on that.

14 CHAIRMAN RUNYON: Further to that
15 discussion, I don't disagree. I just wanted to get
16 moving.

17 COMMISSIONER HEGE: So I guess I would ask
18 staff and counsel for comments on what Commissioner
19 Runyon just said in regards to that.

20 MR. OLSEN: Mr. Chairman, members of the
21 Board, what we're looking for, I think, is for the --
22 anyone who would be interested -- well, before you vote
23 on a motion before -- for you to articulate in the
24 record what evidence either leads you to support the
25 motion or what evidence leads you to oppose the motion,

1 so that it gives the -- assuming, for example, the
2 motion passed. It would give us some guidance for
3 preparing the findings so that we can capture your
4 reasoning.

5 If denied, then we would have basis to go
6 onto the next motion.

7 COMMISSIONER HEGE: So I'm wondering, this
8 issue where we talked about at our work session the idea
9 of tentatively doing this and giving time to staff to
10 work through the findings and then come back for a
11 final. And that's not the motion on the floor right
12 now, but that's -- is that something we should consider?

13 MS. BREWER: You're certainly welcome to
14 consider it. But either way, you're still going to have
15 to provide what Dan just described, so that we can
16 articulate the findings on the report.

17 MR. OLSEN: I recommend that you either
18 tentatively deny or tentatively approve and set it over
19 for final adoption of findings. Again, having first
20 provided staff some guidance for those findings.

21 CHAIRMAN RUNYON: So what was asked by me a
22 moment ago was reasons for the motion and they were
23 pretty well explained right here at the table, in my
24 opinion about treaty rights and so forth. So that's why
25 I made the motion. I don't know that I will vote for

1 it. But it's out there.

2 So we have a motion on the table. Is there
3 any more discussion?

4 MR. OLSEN: I would ask in aid of
5 understanding a motion, does that include continuing it
6 for final adoption of findings?

7 CHAIRMAN RUNYON: No, it does not.

8 MR. OLSEN: So just a final decision
9 tonight?

10 CHAIRMAN RUNYON: As we were told earlier,
11 it that was a decision we didn't need to read anymore
12 paper.

13 Or the reverse of it, if a different motion
14 was made. For example, if this one fails, another
15 motion is made. We can either read more paper or we can
16 make an affirmative decision to approve it. I'm not
17 swaying the vote here at all.

18 All in favor of hearing no more discussion?
19 All in favor of the motion to deny the application?

20 MS. BREWER: I ask a clarifying question.
21 You did say you wanted to include those conditions of
22 approval back in or original --

23 CHAIRMAN RUNYON: No. This was just deny.

24 MR. OLSEN: Just deny the application on the
25 treaty rights grounds.

1 CHAIRMAN RUNYON: All those in favor? All
2 those opposed?

3 COMMISSIONER HEGE: Aye.

4 CHAIRMAN RUNYON: Aye.

5 COMMISSIONER HEGE: Okay. I would make a
6 motion to reverse and deny to allow staff time to make
7 necessary changes and findings and conditions before
8 adoption.

9 I move to accept option C, to tentatively
10 deny the application and continue this matter to a point
11 in the future to be determined.

12 CHAIRMAN RUNYON: There is a date?

13 COMMISSIONER KRAMER: November 10th.

14 COMMISSIONER HEGE: Okay. And the basis for
15 the denial is simply the fact that the treaty rights
16 have been affected.

17 COMMISSIONER KRAMER: Second.

18 CHAIRMAN RUNYON: Motion a second. Any
19 further discussion?

20 COMMISSIONER HEGE: Quick question.

21 So, Counsel, I'm curious, your comment, is
22 that motion acceptable? Do you think it's going to
23 work? What are your thoughts?

24 MR. OLSEN: Mr. Chairman, members of the
25 Board, what I wrote down from your previous comments

1 were that there were concerns about impact on treaty
2 rights relating to safety, increasing the rail traffic,
3 and there might be the potential to work out those
4 impacts, but there were proposals before you that
5 adequately address the impact.

6 That's what I've got so far. To the extent
7 you can add anything to that, based on your
8 consideration of the evidence, the more the better.

9 COMMISSIONER HEGE: I would concur with
10 that. I think it's relatively simple. And I think
11 you've captured it, yes.

12 CHAIRMAN RUNYON: Anything else?

13 COMMISSIONER HEGE: One thing.

14 CHAIRMAN RUNYON: Of course.

15 COMMISSIONER HEGE: Sorry.

16 The motion that we read, we're going to
17 revise the staff? Is that right?

18 MS. BREWER: What I'm hearing you say is
19 we'll revise the staff based on treaty rights alone.
20 I'd love some clarification of the submission of
21 approval that previously addressed the treaty rights and
22 whether or not you want those.

23 MR. OLSEN: If it's a denial, it's not a --

24 MS. BREWER: Right, no conditions. But I
25 just want to make sure we're all on the same page.

1 Because I heard Commissioner Kramer mention that the
2 conditions should come back to minimize a remand risk.

3 So I'm hearing you say we're denying just on
4 treaty rights. The bulk of our work would be spent on
5 revising the finding, specifically addressing that.

6 CHAIRMAN RUNYON: As we heard before, we had
7 specific wording in our own ordinances in the County
8 regarding treaty rights, correct?

9 MS. BREWER: Correct.

10 CHAIRMAN RUNYON: So those are the things
11 that I'm thinking we're talking about.

12 COMMISSIONER KRAMER: Yes.

13 COMMISSIONER HEGE: But then my question
14 would be in terms of remanding, do we need to address
15 the rest of the staff report or not?

16 MR. OLSEN: The rule is you only need one
17 ground to deny. But to the extent that you can address
18 the other issues, it certainly -- you know, if there are
19 more reasons to deny that you feel are appropriate, then
20 certainly, it is useful to have those. If you feel that
21 all of the other standards have been met, to the best of
22 your understanding, then you can articulate that as
23 well.

24 COMMISSIONER HEGE: I think my motion to
25 deny is based on treaty rights, period. But I also

1 agree with the recommendations to the staff report, the
2 changes basically to remove all of what the staff said,
3 I agree with those too.

4 But I think the denial is based purely on
5 the tribal issue. So I do want those other things
6 changed, but the denial is not based on those, it's
7 based on the treaty issue.

8 MS. BREWER: Okay. So adding back in what
9 was removed and denying based on treaty rights?

10 COMMISSIONER HEGE: Yes, based on your staff
11 recommendation.

12 COMMISSIONER KRAMER: Those numbers would be
13 13, 15, 16 and 20? Those were the four that were
14 struck?

15 COMMISSIONER HEGE: And the reason for that
16 was based to comply with our (indiscernible) and based
17 on staff recommendation, we must do that in order to
18 comply with our own (indiscernible).

19 CHAIRMAN RUNYON: I thought I heard in the
20 report, the modifications are 14, 17, 21, 23. Are those
21 the other ones that had modifications to them?

22 MS. BREWER: The modifications don't bring
23 them out of compliance. There is a correction, two
24 corrections I noted that I would be happy to go ahead
25 and make.

1 CHAIRMAN RUNYON: And to clarify one more
2 thing before we vote, does this preclude any new
3 information, new evidence or are we good with what we
4 got here, the review of what's received?

5 MR. OLSEN: It precludes new evidence, Mr.
6 Chairman, but when you see the revised findings, then
7 you can certainly modify those. You can even change
8 your mind on the decision. But it does preclude new
9 evidence. Because this is a tentative decision.

10 CHAIRMAN RUNYON: Okay. Good. All in favor
11 signify by saying aye.

12 COMMISSIONER HEGE: Aye.

13 COMMISSIONER KRAMER: Aye.

14 CHAIRMAN RUNYON: Chair says aye. Thank you
15 everyone.

16 (Whereupon, the proceedings adjourned at
17 8:10 p.m.)

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1 I, Mary C. Soldati, Registered Professional
2 Reporter, do hereby certify that the proceedings were
3 taken down by me in stenotype and thereafter reduced to
4 typewriting; and, that the foregoing transcript,
5 constitutes an accurate record of said proceedings, to
6 the best of my ability.

7 Witness my hand at Portland, Oregon, this 10th
8 day of November, 2016.

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Mary C. Soldati, RPR





WASCO COUNTY BOARD OF COMMISSIONERS
CONTINUATION OF APPEALS HEARING FOR
PLASAR 15-01-0004
NOVEMBER 10, 2016

PRESENT: Scott Hege, County Commissioner
Steve Kramer, County Commissioner
Rod Runyon, Commission Chair
STAFF: Tyler Stone, Administrative Officer
Kathy White, Executive Assistant

At 5:30 p.m. Chair Runyon re-opened the public hearing for the Appeals of the Planning Commission's decision regarding the Land Use Application PLASAR 15-01-0004. He explained that the Board will be reviewing the alterations to the final report prepared by staff; the Board met on November 2, 2016 to hear three appeals from the Planning Commission's Approval of the Application.

He stated that the three appeals were:

- Number 16-10-0001 from Friends of the Gorge, Columbia Riverkeeper and Physicians for Social Responsibility
- Number 16-10-0002 from the Union Pacific Railroad
- Number 16-10-0003 from the Confederated Tribes and bands of the Yakama Nation

As a reminder, this was an application from the Union Pacific Railroad for a conditional use approval and variance in the National Scenic Area to expand an existing railroad siding with 4.02 miles of new second mainline track, realign existing track, replace five equipment shelters and make related improvements.

The Board voted 3-0 to reverse the Planning Commission decision and deny the proposed development on the basis that the proposal affects treaty rights, to add back in the stricken

WASCO COUNTY BOARD OF COMMISSIONERS
CONTINUATION OF APPEALS HEARING FOR PLASAR 15-01-0004
NOVEMBER 10, 2016
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conditions of approval and affirm the Planning commission decision on all other grounds.

The Board of Commissioners record was closed on November 2nd. The Board directed staff to prepare draft findings based on the record and consistent with our tentative decision. No new testimony will be received and now new evidence may be provided.

Chair Runyon went on to say that the process will be as follows:

- County staff will present the final staff report, including summarizing the Commissioner's requested changes and final decision.
- The board will deliberate, make any necessary changes to the final decision and confirm the final decision.

Chair Runyon asked if anyone has an objection to the jurisdiction of this Commission, the described procedures or to the participation of any commissioner. There were none.

UPRR Counsel Ty Wyman submitted a request to reconsider the tentative decision. He stated that he had received a decision from the Army Corps of Engineers that contradicts the Board's tentative decision. He said that the highest priority is for the decision makers to consider all the evidence.

Outside Counsel Dan Olsen stated that the Board has three options: 1) They can deny the objection based on the hearing being closed to further evidence. 2) They can re-open the hearing which would require new noticing and will move the process beyond the statutory deadline – it is unclear what would happen in that case 3) They can remand it to the Planning Commission which would also push it past the statutory deadline. He noted that none of the commissioners have read the letter raising the objection. He stated that the Board will need to allow or deny the stated objection.

Commissioner Hege asked if the information regarding the objection will come forward in the next step of the process even if the objection is denied. Mr. Olsen replied that it would.

\$\$\$Commissioner Kramer moved to deny Mr. Wyman's objection based on the fact that the hearing has been closed to further evidence. Commissioner Hege seconded the motion which passed unanimously.\$\$\$

Chair Runyon asked Planning Director Angie Brewer to present the staff report. Ms. Brewer reported that staff has made changes to the findings appropriate to the Board's tentative decision. She stated that most of the changes are in the preamble and the

WASCO COUNTY BOARD OF COMMISSIONERS
CONTINUATION OF APPEALS HEARING FOR PLASAR 15-01-0004
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conditions removed by the Planning Commission have been added back in. In addition, the listing of commenting parties and additional comments have been completed. The last page of the preamble section contains a conclusion statement: On November 2, 2016, the Wasco County Board of Commissioners heard the appeals, staff's response, and public testimony, and closed the hearing to any new evidence or public testimony. With a vote of 3 - 0, the Board moved to tentatively overturn the Planning Commission decision on the basis that the proposal affects Treaty rights, to add back in the stricken conditions of approval and affirm the Planning Commission decision on all other grounds, and directed staff to return with findings for review and a final decision on November 10, 2016. No new evidence may be provided at the November 10 meeting, and no new testimony will be received.

Ms. Brewer read into the record the following passage from the Findings in the Final Decision Document (attached):

#81 (final paragraph) At its November 2, 2016 hearing, the Board of County Commissioners concluded that three of the four Treaty tribes of the Gorge had voiced concerns that the proposed development would adversely affect Treaty rights, and that in order to be consistent with the Management Plan for the Columbia River Gorge National Scenic Area and the Wasco County National Scenic Area Land Use and Development Ordinance, the proposed development must be denied. Pursuant to (2) above, the treaty rights protection process may conclude with the Commissioners' decision to deny the proposed development.

#82 In addition to the above stated findings, the Board adopts the analysis of appeals provided by Staff in Attachments E, H and J that responds directly to points raised in the hearings process.

Commissioner Hege noted that beginning on page 118 of the findings, there is a reference to tribal treaty rights: "This provision requires notices to include enough information for the tribal governments to evaluate possible impacts and provide comments back to staff within 20 days. Section 14.800(C) provides a 10 day consultation period to interested tribal governments that provide substantive written comments within a timely manner." He asked how that relates to the comments that were received. Ms. Brewer responded that the 20 day comment period is exclusive to the cultural resource coordination process and its substantive comments are received during that 20 days with an additional 10-day consultation period that is an offer made to the commenting party to see if they would like to go on-site and then further discuss the concerns. She said that process started but as it

evolved it turned out to be a request for addition cultural resource information and that information was provided by the applicant so ultimately that consultation process ceased. That request was specific to cultural resource concerns; however, those timelines are specified in some of the treaty rights language throughout the Scenic Area Rules. She stated that there are other instances in the rules where it says that lack of response or delayed response does not preclude the tribes from writing additional comment later.

Commissioner Hege asked if that provision for lack of response or delayed response is unique to the Tribes. Ms. Brewer replied that it is and is discussed in the findings.

Chair Runyon opened deliberations.

{{{Commissioner Kramer moved to reverse the Planning Commission's decision and deny the application on the basis that the proposed development affects Treaty rights, to add back in the stricken conditions of approval and affirm the Planning Commission decision on all other grounds. This decision is supported in detail by the Notice of Decision and Final Decision Report for PLASAR 15-01-0004 including Attachments A through L, which contain findings of fact and conclusions of law, conditions of approval, appeals received, Staff's response to the appeals and supplemental information used in the decision-making process – all of which are adopted. Commissioner Hege seconded the motion which passed unanimously.}}}

Chair Runyon closed the hearing at 5:51 p.m.

Wasco County
Board of Commissioners

Rod L. Runyon, Board Chair

Scott C. Hege, County Commissioner

Steven D. Kramer, County Commissioner



WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
DECEMBER 21, 2016

PRESENT: Scott Hege, County Commissioner
Steve Kramer, County Commissioner
Rod Runyon, Commission Chair
STAFF: Tyler Stone, Administrative Officer
Kathy White, Executive Assistant

At 9:00 a.m. Chair Runyon opened the Regular Session of the Board of Commissioners with the Pledge of Allegiance.

Discussion List – Appointments

Commissioner Kramer moved to approved Order 16-071 appointing Pat Ashmore to the Local Public Safety Coordinating Council. Commissioner Hege seconded the motion which passed unanimously.}}

Commissioner Hege moved to approved Order 16-085 appointing Fritz Osborne to the Local Public Safety Coordinating Council. Commissioner Kramer seconded the motion which passed unanimously.}}

Discussion List – Master Interlocal Law Enforcement Assistance Agreement

Sheriff Lane Magill explained that this agreement, already in force, is reviewed periodically for grammar, spelling, statute updates and signatures. The agreement is essentially unchanged but new signatures are needed. Mr. Stone indicated that he would like to review the document with Sheriff Magill prior to the next substantial revision

process. Sheriff Magill agreed.

Sheriff Magill explained that the agreement allows agencies to assist one another across jurisdictions; this is important for crisis response, narcotics investigations and other cross-jurisdictional investigations. He stated that it was used for the recent Mosier train derailment incident.

*****The Board was in consensus to sign the new signature page for the Master Interlocal Law Enforcement Assistance Agreement.*****

Department Directors – Planning

Planning Director Angie Brewer reported that Wasco County Codes Enforcement has been awarded a \$75,000 grant for improving the abatement violation program to help with clean-up for violators unable to accomplish the work; this includes the elderly, infirmed and low income populations. A large portion of the money will be used to purchase a truck and trailer for hauling debris. The program will also help with the Household Hazardous Waste Program and the work crew programs for both Youth Services and Community Corrections.

Commissioner Kramer commended Codes Compliance Office Joseph Ramirez for his efforts in applying for the grant and working with other departments for the benefit of the community programs. Chair Runyon concurred saying that this is not insignificant and will help many people.

Ms. Brewer went on to say that the BOCC Union Pacific Railroad appeal decision has been appealed to the Columbia River Gorge Commission by both Union Pacific and Friends of the Gorge, et al. Commissioner Hege asked what the County will need to do for that process. Ms. Brewer responded that we must compile the record and file a notice of intent to appear so that we can be present and provide statements. She stated that much of that work will be done by County Counsel. She commented that the bulk of our work is done, but we want to stay abreast of the process.

Discussion List – ORMAP Award

GIS Coordinator Tycho Granville explained that this is the second grant award for a multilayer process to remap lines in order to increase accuracy. He stated that some of the maps are as much as 20 feet off from what is actually on the ground. This process will repair the mapping throughout the County; the project will last approximately 10 years. This grant award for \$54,000 will be applied in part to the cost of the surveyors

but most will go to Lane County to do much of the work; the County's \$6,000 match is in staff time from both GIS and the surveyors.

Commissioner Hege asked if any of the data has been uploaded to the system. Mr. Granville replied that we will not be ready for that until we are further into the process.

Commissioner Kramer moved to approve Department of Revenue ORMAP Intergovernmental Agreement Contract #3582-16. Commissioner Hege seconded the motion which passed unanimously.}}

Discussion List – Spanish Class Update

Human Resources Manager Nichole Biechler reported that although this round of classes began with 11 students, only a fraction of that number completed the course. She stated that at \$165 per student, it is not worth the investment due to the low rate of attendance. She added that the class was good, there was just not enough follow-through on the part of the employees signed-up for the class.

Discussion List – Blue Zone

Mr. Stone explained that the Blue Zones is a community project that was brought to the County's attention a few months ago as the City of The Dalles has applied for the program. He noted that County Surveyor Dan Boldt had brought it to the Management Team to gauge our interest in the program. He reported that several county representatives participated in a local conference to gain more information. There were seven Oregon applicants; the City of The Dalles is in the final three. The Blue Zones organization is asking for financial commitments before moving forward with the program; we need to be able to say whether or not we are willing to commit any funds to the program. He stated that they are looking for a community commitment of \$200,000 for each of the first two years and \$300,000 for the third year – after that the program would be completely supported by local funds. He said that the program is reported to be a 2 to 1 match with the Blue Zone organization. He concluded by saying that there were several organizations at the conference who expressed interest and some have committed funding such as Mid-Columbia Medical Center.

Commissioner Kramer reported that Klamath Falls is a Blue Zone city; he spoke with Klamath Falls Commissioner Kelley Minty Morris. Commissioner Morris shared with him that their Blue Zone covers 44,000 people in two zip codes. Their hospital, Sky Lakes Medical Center, is funding the entire project. In our area, this started out as a gorge-wide idea and settled on The Dalles as the most likely candidate to be designated

as a Blue Zone. He explained that there are three candidates in the running; the organization wants to designate all three or none of the three. He stated that he thinks we will need more exploratory time before committing any funds.

Chair Runyon observed that all three Commissioners attended the local conference; he stated that he has no memory of a local financial commitment being mentioned during that event.

Commissioner Hege asked what the effect of the program has been in Klamath Falls. Commissioner Kramer replied that Commissioner Morris expressed satisfaction with the program but is concerned about how they will fund it at the end of the three years; they currently have four full-time employees for the project plus marketing expenses and she does not know how they will keep the employees. The project encompasses all of Klamath Falls as well as the population in their urban growth boundary.

Mr. Stone noted that we will have to make a decision about committing funds and let the organization know if we are in or out.

Discussion List – Columbia River Systems Operations Comment Period

Mr. Stone explained that this is a comment period on a lot of work that has been done up to this point in the Columbia River Gorge Operations Systems and the impact of that work and work being proposed. They are currently working to develop an environmental impact statement which deals with many aspects including cultural resources, floods, irrigation, navigation, etc. in the Columbia River Gorge.

Ms. Brewer stated that she has not been invited into this conversation but has asked to be included since we have our own regulations and want to know what will come from this process.

Mr. Stone said that he believes we should have some comment to make and would like the Board's input.

Commissioner Hege noted that one idea being discussed is the removal of the dams. He agreed that we need to get our position on the record. Chair Runyon and Commissioner Kramer concurred; Commissioner Kramer pointed out that the deadline for comment is January 15, 2017. He added that the Watershed Coordinating Board will be discussing this for comment as well. This is a four-year project with a final document expected in year five.

Chair Runyon said he would like to hear from other stakeholders in the County. Tyler commented that our input should be independent from others in the County. Commissioner Hege stated that the Board will need to have something to consider at the next Board session. Ms. Brewer replied that she will be happy to draft that document; she asked if there were any entities the Board would like her to confer with on that. The Board suggested she contact PUD and the Watershed Councils Coordinating Board.

Agenda Item – Election Certifications

County Clerk Lisa Gамbee explained that she is here for the Board to sign-off on the certifications for elected County officials as well as the Board members of the recently-formed South Wasco Park and Recreation District which is a separate government entity. The Board presented election certificates to Sheriff Lane Magill, County Treasurer Elijah Preston, and County Clerk Lisa Gамbee.

Commissioner Kramer thanked all the members of the South Wasco Park and Recreation Advisory Committee who have served to move the District forward with the Board of County Commissioners as their governing body until such time as a duly elected District Board is in place. Certificates of appreciation were presented to Ray Johnson, Stan Kelsey, Dennis Ross, Joe Holub and Bill Brackman (not all were present). Dan Boldt and Keith Mobley were also awarded certificates for the significant contributions they made to assist the newly-formed District.

Election Certificates were presented to Valerie Manning, Frank Veenker, Bill Brackman, Joe Holub and Brian Manning as elected members of the SWPRD Board.

Ms. Gамbee noted that Mr. Veenker's and Mr. Brackman's terms will run through May of 2017 at which time they can run for re-election. All the terms for the newly elected District Board will begin on January 2, 2017. Terms will end in 2019 with expirations staggered which will create continuity for the Board.

Commissioner Hege asked when the first meeting of the newly elected board is scheduled. Ms. Gамbee replied that they meeting every first Tuesday of the month from 3:30-6:30 p.m. at the Wamic Community Center. January's meeting will be on the 3rd. She thanked Commissioner Kramer for attending the last meeting to educate members on public meetings and records law.

Wampin Rock Editor in Chief Merle Hlavka stated that he has been involved with trying to get this started for the last 4-5 years. He said he would like to thank the Board

of Commissioners, County Administrator Tyler Stone. County Clerk Lisa Gambee and Planning Director Angie Brewer along with Keith Mobley and Dan Boldt for all the work that went into making this a reality. He noted that in 1977 a proposed park and recreation district failed by one vote.

Mr. Stone added that Commissioner Kramer also deserves special recognition for his hard work and support.

Consent Agenda – 12.7.2016 Minutes, Reappointments

Commissioner Kramer noted that there will be two upcoming appointments to the Wasco County Forest Collaborative Group Steering Committee to replace David Jacobs, recently retired from the Oregon Department of Forestry, and Clay Penhollow, who has moved on from the Warm Springs Tribe to another position. He said that David Jacobs' replacement at ODF is Kristin Dodd who will be applying for the position on the Steering Committee; he is still seeking a replacement for Mr. Penhollow.

Commissioner Kramer moved to approve the Consent Agenda. Commissioner Hege seconded the motion which passed unanimously.

At 9:49 a.m. Chair Runyon recessed the session to open meetings of the 4H and Extension Service District and the Library Service District.

The session resumed at 9:51 a.m.

Introduction – County Treasurer

Chair Runyon asked Treasurer-Elect Elijah Preston to come forward and introduce himself. Mr. Preston stated that he has been a local resident for 17 years and is a Detective with the Oregon State Police, sharing his time between Portland and The Dalles. He said that he is a member of the local high school Booster Club and has three active boys. He stated that he is excited to be able to serve the County.

Commissioner Hege asked what Mr. Preston does in his capacity as Detective. Mr. Preston replied that his position is funded by the State Lottery; he does a lot of investigations into white collar crime and high-end fraud.

The Board welcomed Mr. Preston saying they are very happy to have him on the team.

Agenda Item – ActOn Software Agreement

Youth Think Coordinator Debby Jones explained that this contract has been nearly six

months in the making. She stated that she has been using the software for nearly two years on a month to month basis; the company, which has recently become international, revised their business model and want to move to more stable contracting for annual terms.

County Counsel Kristen Campbell interjected that the company is not accustomed to working with the public sector and the original agreement, contained in the Board Packet, does not have some of our required clauses. She said that she does not anticipate a problem, noting that there is little to no risk. She advised that should the Board move to approve the agreement, they do so pending final legal approval.

Ms. Jones stated that this software helps them use social media to reach out more effectively to their target audience. She said this also might be useful to the County as a whole in using social media to reach citizens on a variety of topics. She explained that Youth Think has 500 people on their mailing list and wanted subscribers to build a relationship with Youth Think. She stated that she can track email openings and create profiles to better understand what people are interested in – what information they want and need. She observed that a monthly meeting is not enough and reaches very few people.

Chair Runyon asked if the company is providing data, infrastructure and marketing. Ms. Jones replied affirmatively, saying that they help her to manage the touch points without her having to go out to every social media site to gather the information – they aggregate it. Information Systems Director Paul Ferguson interjected that he has reviewed it and it is a good program that might be expanded to other areas of the County. He said he is anxious to see how well it works.

Chair Runyon asked for the cost of the program. Ms. Jones replied that it is \$400 per month and is part of the Youth Think budget. She stated that the Youth Think board supports the program. She said that she still needs to become more familiar with it to be able to use it more fully. Chair Runyon asked what the termination requirements are. Ms. Jones responded that termination language is one of the items legal is working to resolve. She added that the company understands that Youth Think is grant-funded and is not pressing for an immediately executed contract.

Ms. Gambee stated that with her background in marketing, she believes this is a great example of pioneering pathways – this will open pathways of communications and will help keep kids from being part of the system later in life. She said that Youth Think will need to be able to make full use of the program which will take a full commitment from

Youth Think and Information Systems.

Commissioner Hege asked what Ms. Jones has seen so far in her experience with the program. Ms. Jones replied that she is seeing more awareness in her target audience and learning what language prompts people to actually open an email. She said that it allows a more personal experience with each person on the contact list.

Commissioner Hege asked if the company provides support or training. Ms. Jones replied that she did receive training and had a personal coach. She added that she will soon attend a 3-day boot camp training in Portland. She said that it will help her to be more efficient and effective. Commissioner Hege asked where the company is based. Ms. Jones responded that they started in Wilsonville, Oregon but have moved their headquarters to California.

{{{Commissioner Kramer moved to approve the ClickWrap Service agreement pending final legal approval. Commissioner Hege seconded the motion which passed unanimously.}}}

Chair Runyon called for a recess at 10:15 a.m.

The Session reconvened at 10:20 a.m.

Agenda Item – Community Work Service

Community Corrections Manager Fritz Osborne explained that he has been talking with Youth Services Director Molly Rogers for some time about a shared position for work crew supervision for both departments. He noted that Youth Services already employs a part-time Work Crew Coordinator, Nicole Beaman, who has experience working with both youth and adult offenders. He stated that he could use a part-time coordinator to tap into the adult offenders who could benefit from the experience and have obligations for community service hours or could do service in lieu of fees or time on supervision if they are doing well. He added that there are also many situations with lessor violations where work service would be a more appropriate response than jail time.

Mr. Osborne went on to say that there are programs that will pay to have the work crew and the program could be largely funded through those opportunities; Ms. Beaman already has some contracts in place for that. However, he and Ms. Rogers would commit budget dollars to the program to ensure stability while still seeking contracts. He stated that he would like to see the position made full-time with supervision for the

Coordinator to remain with Youth Services.

Mr. Stone added that there is some history for this; Jack Bisset used to supervise the work crew four days a week and there was a funding stream for that. When he retired, the program shifted to NORCOR but they were not able to continue the program. Youth Services has had the position at half-time and it has been successful. He noted that the cost of the position at full time is included in the Board Packet; he said that he believes the revenue numbers are conservative. Mr. Osborne agreed, saying that it has the potential to generate revenue beyond the cost of the position.

Chair Runyon asked if Finance has been involved in this discussion. Mr. Osborne replied that he and Ms. Rogers met with Finance Director Mike Middleton on Monday; the position would be accounted for in the Youth Services Budget with a transfer in from Community Corrections.

Chair Runyon asked who would be responsible for marketing to find the contracts. Mr. Osborne stated that marketing would be the responsibility of the Work Crew Coordinator. He said that the position would be .8 for now with the potential for 1.0 by the end of June. Mr. Stone noted that the level of full-time would depend on the revenue side and what contracts were acquired.

Mr. Osborne explained that one of the advantages of the shared position is that there is work the youth offenders cannot do but they could go in and do prep work with the adult offenders following up to complete the work. However, at no time would adult work crews be on site at the same time as youth work crews.

}}}Commissioner Kramer moved to approve the expansion of the Work Crew Coordinator position from a 0.5 part time position to a maximum of a 1.0 full-time position. Commissioner Hege seconded the motion which passed unanimously.}}

Agenda Item – Justice Reinvestment Program Contract Amendment

Mr. Osborne reported that he brought a proposal to LPSCC for a shift in the use of excess Justice Reinvestment Program funds be applied to transitional housing. LPSCC approved the change and he sent the amendment proposal to the Criminal Justice Commission for consideration; they also approved the change and accepted the amendment with his signature. However, as the amendment went through the process, they contacted Ms. Rogers to say that the amendment, included in the Board Packet, requires the Board's approval and signature.

{{{Commissioner Hege moved to approve Criminal Justice Commission Justice Reinvestment Grant Program Grant Agreement Amendment #1. Commissioner Kramer seconded the motion which passed unanimously.}}}

Chair Runyon asked about the progress for transitional housing. Mr. Osborne reported that the first house they had identified as a possibility met with a significant amount of community resistance and they determined that it would not be a good fit. He stated that they are looking at a second house – 5 bedroom, 3 bathrooms – and have thus far received positive feedback from the neighborhood residents. He stated that there will be an open house tomorrow.

Agenda Item – EDC Quarterly Report and Appointment

MCEDD Project Manager Carrie Pipinich reviewed the report included in the Board Packet. She stated that they have begun a major update of the Strategic Action Plan with the goal of bringing it in line with the shift in the EDC's role and activity level. She stated that some of that work is included in the packet and she welcomes feedback from the Board. EDC Chair Kathy Ursprung added that their comprehensive strategy meeting has been rescheduled to January 26th and will be followed by a tour of the Cherry Growers port facility; she invited the Commissioners to attend.

Commissioner Hege asked for a progress report on the business flyers. Ms. Pipinich reported that the flyers are on the City, Port and EDC sites. They are still reaching out to get more awareness and are working on a flyer for Maupin.

Ms. Pipinich stated that Daniel Hunter moved to another position at the City of The Dalles and tendered his resignation from the EDC. She said that the City of The Dalles usually provides a recommendation for that EDC position and has recommended Matthew Klebes who was recently hired as the City Manager's Assistant.

{{{Commissioner Kramer moved to approve Order 16-116 appointing Matthew Klebes to Position #5 on the Wasco County Economic Development Commission. Commissioner Hege seconded the motion which passed unanimously.}}}

Commissioner Kramer asked Ms. Pipinich to expand on the strategic plan item looking at business development for threats and concentrated risks. Ms. Pipinich explained that is to insure diversification so that we do not find ourselves in the same situation as we did when the aluminum plant closed and devastated the job market and economy.

Agenda Item – The Dalles Main Street MOU/IGA

The Dalles Main Street Interim Executive Director Jeremiah Paulson explained that they had originally intended to use the Enterprise Zone funds to build a parklet but had determined that secure storage was a higher priority and therefore had requested to shift the use of the funds to building a storage facility on a North Wasco Parks and Recreation District site. He stated that as they moved through that process they discovered that building the storage unit would be too costly and began to look for alternatives. While they would prefer a more permanent situation, the need for storage is urgent and they would like to improve some storage units on the County's property located on 10th Street.

Mr. Stone reported that Chuck Covert had come to him about six months ago with this idea. He stated that the County has a 5 or 6 bay storage area available but a few of the units have had the roofing material blown off over time. He said that currently the County uses the area to store scrap metal until such time as it is taken to be sold.

Mr. Stone went on to say that the Main Street items are currently being stored on private property. He has explained that everyone needs to understand that this is a month to month arrangement as there is no guarantee that the County will not need the space in the future or could even dispose of the property – that risk needs to be understood before Main Street invests in the repair of the units. He said that with that understanding, the bays can be used for out-of-the weather storage until the County does something else which may or may not happen.

Chair Runyon asked why there are two agreements. Mr. Covert explained that one is for a shift in the use of the Enterprise Zone funds; the other is an agreement between the County and Main Street for the use of the storage units. He said that Main Street will be roofing six units and using five of the six for the storage of a trailer, stars and trees, floats, and parklets.

Chair Runyon asked if the County will still have some use. Mr. Stone replied that we already have some things in other bays but we have room for this.

Commissioner Hege stated that it seems like it would be better to find a more permanent solution. Mr. Covert agreed but said that costs were escalating for the building at Park and Recreation; they could not afford the \$25,000-\$30,000 price. The \$5,000 from the Enterprise Zone grant would have only covered engineering. Commissioner Hege commented that it could be for a year or ten years. Commissioner

Kramer noted that in the meantime, the County will get new roofing on the units.

{{{Commissioner Hege moved to approve the second addendum to The Dalles Main Street MOU with Wasco County and the City of The Dalles. Commissioner Kramer seconded the motion which passed unanimously.}}}

{{{Commissioner Kramer moved to approve The Dalles Main Street Intergovernmental Agreement for Storage. Commissioner Hege seconded the motion which passed unanimously.}}}

Agenda Item – Designation of Enterprise Zone Manager

The Dalles City Manager Julie Krueger explained that Daniel Hunter has moved to a new position with the City. She said that Matthew Klebes will be managing the dozen or so enterprise zones to their conclusion; the local economy has stabilized to the level that we are no longer eligible for the Enterprise Zone program.

Chair Runyon asked Ms. Krueger how things are going for her at the City. Ms. Krueger stated that she has been in the position for nine months and it is going well; there have been numerous retirements in senior management and it is great to have fresh eyes looking at City programs. She reported that senior management will be meeting in mid-January for goal-setting which will be the first time they have worked together as a group. She added that the Finance Director will be retiring in March and the City is actively looking for her replacement.

{{{Commissioner Kramer moved to approve Resolution 16-026 designating Matthew Klebes as the Local Enterprise Zone Manager. Commissioner Hege seconded the motion which passed unanimously.}}}

Agenda Item – Watershed Councils Coordinating Board Annual Report

Pat Davis, Chair of the Watershed Councils Coordinating Board, noted that there is a written report included in the Board Packet. He stated that the Board was initially created because the State wanted to cut down on paperwork and create more streamlined reporting. He said that the Board wanted to keep the flavor of the various councils and have succeeded in that effort. He went on to review the written report. He noted that they have been very successful in mitigating the impact from agricultural use of pesticides but found it much more difficult to address urban conservation. He explained that it is challenging to find ways to mitigate chemicals used by homeowners; it is harder to cover an entire city with awareness of and incentives for responsible use

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of water and chemicals.

Soil & Water Conservation District Watershed Council Coordinator Abbie Forrest explained that they monitor for pesticides but much of what they are finding in the water is household chemicals. She said that they have written for a grant and want to do workshops modeled on a successful program in Underwood.

Mr. Davis went on to say that the 15-Mile Watershed was called out in the Oregonian. He said that there are a lot of issues there but there is also a lot of effort being made toward solutions. He said they are working together with the Council much like thirty years ago when we started working on forest issues. He said that by being proactive this time, they hope for better outcomes. He said that they do not have the resources for the necessary studies and will be working with other agencies and legislators to collaborate for solutions. He acknowledged that there are big issues, but the Board is confident that they can be tackled.

Chair Runyon asked if Mr. Davis thinks the State will maintain that level of funding through the budget process. Mr. Davis replied that he believes the article in the Oregon will actually support funding; right now it takes 2 ½ years to have a well inspected. He said that he believes they will see the need and the benefit; the funds are required to explore the problem and develop solutions.

Commissioner Hege noted that White River shows a substantial pipe installation. Mr. Davis explained that it is the Rock Creek main ditch piping project with 8,000 feet of 34" pipe that finished the second phase of the piping project. He stated that the pipe will save approximately 700 acre feet of water per season – April to mid-October. The previous pipe was leaking that amount; with a reservoir that holds 1,280 acre feet, that loss was over half the storage capacity of the reservoir. He said that the project was funded mostly by an NRCS grant. There was also \$35,000 of Forest Service money as some of the pipe is on their property; the Soil and Water Conservation District provided \$20,000 in support.

Chair Runyon observed that earlier in the day there had been a discussion about the Columbia River Systems Operations project comment period which is something that the Coordinating Board should have some interest in as well. He said that the County would like input from the Board. Ms. White said she would make sure to connect Mr. Davis to the County's Planning Director to start that conversation.

Commission Call

Commissioner Kramer reported that at a Council meeting last night there was a plea for membership for the Secure Rural Schools Hood-Willamette Resource Advisory Committee (see attached document). He explained that it is a four year term with two meetings per year in Salem. He said that it will be helping to move us forward with BLM and USFS on pieces that affect us; this is something that might help us get some funding. The request for membership came from the Forest Service.

Commissioner Hege asked if this is for citizens or are they asking for Board participation. Commissioner Kramer replied that anyone can apply.

*****The Board was in consensus to add the Secure Rural Schools Hood-Willamette Resource Advisory Committee information to the County website.*****

Chair Runyon recessed the session for lunch at 11:34 a.m.

The Session reconvened at 1:30 p.m.

Agenda Item – Procurement Card Agreement

Finance Director Mike Middleton explained that we currently use US Bank for our procurement cards but their program is not very responsive to our needs. He said that while he is satisfied with all other aspects of their services, this is just not an area in which they excel. He stated that Bank of America has a rebate program built in and we are very close to a level of spending that would qualify for that rebate. He said that he would expect that we will begin to pay some invoices with the program which would easily increase our levels to qualify for the rebate program. However, he said that the real benefit will come in a savings of staff time; checks take time to process and if the smaller checks move to procurement card payments, it will be a significant time savings. In addition, Bank of America software will allow us to import the financial information directly into our system.

{{{Commissioner Kramer moved to approve the City of Portland Procurement Card Program Linking Authorization. Commissioner Hege seconded the motion which passed unanimously.}}}

Agenda Item – Financial Report

Mr. Middleton said that this is his second report and he hopes it is a little more user friendly. He noted that his intent is to continue to adjust the report to meet current needs over time. He reviewed the written report and offered to answer any question about that or the tables included in the packet.

The Board expressed their gratitude for the thorough and easily digestible information; thanking Mr. Middleton for his efforts and transparency. Commissioner Hege stated that he likes lots of numbers but from a public standpoint it might be nice to occasionally include a big picture look.

Agenda Item – Columbia River Gorge Commission Report

CRGC Executive Director Krystyna Wolniakowski reviewed the report included in the Board Packet. She stated that she is here to talk about the plans for the future and will have 17 meetings with counties and cities in the process of updating their plan. She noted that they have been working on more accurate definitions for the urban growth boundaries and will have all the legal descriptions finalized in February with many corrections that will help planners.

Chair Runyon asked if any of this information is being tied into the GIS system. Ms. Wolniakowski replied that they hired a GIS person to do that and he has already corrected a couple of items. Ms. Brewer noted that what is being described is not part of the County GIS system. She said that she would like to get that information so that it can be added to our system. Chair Runyon observed that we are in the process of doing extensive work to correct inaccuracies in our system and would not like to have to redo work if at all possible. Ms. Wolniakowski responded that she will work to get it resolved.

Columbia River Gorge Commissioner Dan Erickson said that one Commissioner has asked what was added or removed from the Scenic Area. He said that he wants to make clear that nothing was added or removed; the mapping work that is being done is to clean up the maps to accurately reflect the original intent of Congress. Ms. Brewer noted that there will be a few properties where those clarifications will change the zoning regulations applied to those properties. She said that because there was no clarity, people were conservative and some properties were pulled in to the Scenic Area that should not have been; that has been corrected.

Ms. Wolniakowski went on to say that they will be holding public workshops on the

master plan review – some parts of the plan are thirty years old. She said that the challenge will be moving forward with reduced staffing. She noted that the FAQs should help answer the most common questions. She stated that they want to give the Commission certainty of what the process will be and what the goals are – it will take about 2 ½ years to engage everyone and work closely with the planning departments in each county. She stated that by the end of June they plan to have a list of issues and then will have priorities to work on for the next two years to make the plan clear and more usable. She announced that they will be kicking off the listening sessions in The Dalles.

Mr. Stone asked specifically how they will be engaging the county planners. Ms. Wolniakowski replied that the technical sessions will include the planners; those meetings will be done in a focused way to allow the planners to discuss issues and bring information with them to the meetings.

Ms. Brewer said that she has seen a draft of the questions seeking feedback. She said that she is concerned about the timeline saying that there are quarterly planning meetings but she would like to see the discussion at the level of the Planning Directors rather than the planners. She stated that she has been having conversations with planning directors and talking to cities; with the condensed timeline and public process the planners could get drowned out. She said that the directors want to be heard and to be able to get helpful information to the Commission.

Mr. Stone observed that once all these sessions are complete, somewhere there will be negotiations and back and forth about what has been brought to light – he said that the counties really need to have a voice at that table to represent the local populations that will live with the decisions on a daily basis.

Mr. Erickson responded that they do not want to leave anyone out, especially those who are charged with enforcement.

Ms. Wolniakowski went on to point out that Rodger Nichols, a Gorge Commissioner from Wasco County, put together the Gorge Gazette. Commissioner Kramer said that it is a nice document and he hopes that one day Mr. Nichols will report to Wasco County directly with this kind of information.

Ms. Wolniakowski said that they are trying to be more communicative and interactive; if people cannot attend a meeting, they can find information on the website. She stated that one of their challenges is short staffing; they have a vacancy that they are trying to

fill. They lost another staffer that they will not replace as it was a grant-funded position and the grant is ending soon. Further discussion ensued about funding challenges.

Mr. Erickson stated that the Commission has the support of the Governor. He noted that anything the Commissioners can do to reach out to their legislators for support would be very helpful. Mr. Middleton suggested that they look at a “Friends” organization that can raise funds for travel, supplies or project work.

Ms. White reminded the Board that QLife Budget Committee Member Ken Leibham passed away last month and they will need to identify someone else to serve on that committee.

Chair Runyon adjourned the session at 2:45 p.m.

Summary of Actions

Motions Passed

- **To approved Order 16-071 appointing Pat Ashmore to the Local Public Safety Coordinating.**
- **To approved Order 16-085 appointing Fritz Osborne to the Local Public Safety Coordinating Council.**
- **To approve Department of Revenue ORMAP Intergovernmental Agreement Contract #3582-16.**
- **to approve the Consent Agenda:**
 - **12.7.2016 Regular Session Minutes**
 - **12.8.23016 Work Session Minutes**
 - **Reappointments as attached – Exhibit A.**
- **To approve the ClickWrap Service agreement pending final legal approval.**
- **To approve the expansion of the Work Crew Coordinator position from a 0.5 part time position to a maximum of a 1.0 full-time position.**
- **To approve Criminal Justice Commission Justice Reinvestment Grant Program Grant Agreement Amendment #1.**
- **To approve Order 16-116 appointing Matthew Klebes to Position #5 on the Wasco County Economic Development Commission.**
- **To approve the second addendum to The Dalles Main Street MOU with Wasco County and the City of The Dalles.**

- **To approve The Dalles Main Street Intergovernmental Agreement for Storage.**
- **To approve Resolution 16-026 designating Matthew Klebes as the Local Enterprise Zone Manager.**
- **To approve the City of Portland Procurement Card Program Linking Authorization.**

Consensus

- **To sign the new signature page for the Master Interlocal Law Enforcement Assistance Agreement.**
- **To add the Secure Rural Schools Hood-Willamette Resource Advisory Committee information to the County website.**

Wasco County
Board of Commissioners

Rod L. Runyon, Board Chair

Scott C. Hege, County Commissioner

Steven D. Kramer, County Commissioner

EXHIBIT A

Organization	Appointee
Wasco County Budget Committee	Budget Officer – Finance Director
	Pat Davis
EDC	Joan Silver
	Nan Wimmers
Fair Board	Cynthia Kortge
	Colleena Tenold-Sauter
Hospital Facility Authority Board	Scott Hege
Extension Service District Budget Committee	Budget Officer – Lynn Long
	Pat Davis
Library Service District Budget Committee	Budget Officer – Jeff Wavrunek
	Pat Davis
MCCOG	Steve Lawrence
	Steve Kramer
LPSCC	Thomas Peachey
	Eric Nisley
	Lane Magill
	Pat Shortt
	Janet Stauffer
	Teri Thalhofer
	Molly Rogers
	Donna McClung
	Barbara Seatter
	Andrew Carter
	Tara Koch
	Bryan Brandenburg
	Rod Runyon
Mt. Hood Economic Alliance	Ken Bailey
	Steve Kramer
Mosier Watershed	Jim Reed
	Peter Dalke
	Kenneth Lite
	Susan Gabay
Museum Commission	Elizabeth Wallis
	Daliea Thompson
NORCOR Budget Committee	Steve Lawrence
NCPHD Board of Health	Scott Hege
Planning Commission	Vicki Ashley
The Dalles Watershed	Bruce Lumper
	John Nelson
	Mark Popoff
Forest Collaborative Steering Committee	Jeremy Thompson
Weed Council	Carolyn Wright
	John Clausen

WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
DECEMBER 21, 2016
PAGE 20

	Sherry Holliday
	Keith Smith
White River Watershed	Roy Groce
	Kenneth Martin
Wildland Urban Interface	Scott Hege
	Robert Palmer

Agenda Item
Open Funding Requests for Dial-a-Ride

- [Introductory Email](#)
- [Funding Document](#)
- [2017-2019 Advance Grant Notice](#)



Kathy White <kathyw@co.wasco.or.us>

Board Appearance

Richard Eberle <Richard.Eberle@mccog.com>
To: Kathy White <kathyw@co.wasco.or.us>

Tue, Dec 27, 2016 at 5:24 PM

Kathy:

Attached is an overview of the upcoming funding that will be reviewed by the STF Committee this week with an expected approval. Basically it's the same funding that is currently in place and overseen by MCCOG for Wasco County. Note that I'm also including a funding overview that MCCOG is expected to receive directly from the state to paint the overall picture.

The actual applications will be available for review at the County Board meeting if necessary. These are due to ODOT at the end of January and February 2017.

Sincerely,

Rich Eberle

Transportation Director

Mid-Columbia Council of Governments

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From: Kathy White [mailto:kathyw@co.wasco.or.us]

Sent: Tuesday, December 27, 2016 1:37 PM

To: Richard Eberle <Richard.Eberle@mccog.com>

Subject: Re: Board Appearance

[Quoted text hidden]

2 attachments

Funding Document - STF.pdf
547K

2017-19AdvanceGrantNotice.pdf
186K

Enhanced Mobility of Seniors and Individuals with Disabilities Program (\$5310)

As stated on Page 3 of the *ODOT Rail and Public Transit Division (RPTD) 2017-19 Advance Grant Notice*, this 5310 program funds the current / future eligible capital, contracted service, and preventive maintenance for Wasco [Counties County's](#) Dial-a-Ride program run through the LINK system for seniors and individuals with disabilities.

Though the formula allocations for 2017-2019 are lower than the previous [biennia-biennium](#) (\$181,070 vs. \$192,184) there will be [discretionary funding also available in FY 2017](#). This funding formula and discretionary funding combined may result in a net funding increase in some programs by FY 2018. These project awards will become available no later than July 2018.

As we have in the past biennia and as the STF agent for Wasco County, MCCOG proposes to utilize the full \$181,070 for the upcoming funding [biennia](#) 2017-2019 to support The LINK Dial-a-Ride program through MCCOG's Transportation Department as well as conduct regular preventative maintenance on said program vehicles as well as vehicles in use in south Wasco County.

It should be noted that in the current 2015-2017 [biennia](#), the funding for the preventative maintenance stated above is currently funded by a separate 5310 Grant through MCCOG for \$30,000. It has been identified that utilizing these type funds can be done under the umbrella of the Grant proposal through Wasco County, so for simplicity sake, MCCOG is proposing just one grant application.

The required match of 10.27% (same percentage as last [biennia](#), [but now an estimated \\$18,596](#)) for capital, contracted service, and preventive maintenance projects will be funded by the City of The Dalles and MCCOG's Medicaid contract rides. This will bring the total 5310 program funding to \$209,666.

Formula Grants for Rural Areas Program (\$5311)

This current program provides operating, capital, planning, and administrative assistance to our community. These funds (\$273,156 plus 56.08% match) are used to support services provided in the general area of The Dalles (as well as services provided to Hood River), Dufur, [Ceille-Ceילו](#) Village, Rowena, and Mosier.

The current 5311 program is funded solely through MCCOG and the match of [56.0843.92%](#) is funded through STF Funding and MCCOG's Medicaid contract rides.

The upcoming [biennia](#) will provide the same formula allocation of \$273,156 with a [reduced](#) match of 43.92% for operating projects and 10.27% for capital, planning, and project administration projects (54.19%).

MCCOG will be utilizing the upcoming [biennia](#) 5311 Funding for the same purposes as the 2015-2017 [biennia](#).

Special Transportation Fund Program (STF) Formula

The current program provides Wasco County STF Agency program funds (~~\$162~~160,000 with no match required) [for](#) transportation services benefiting seniors and individuals with disabilities. MCCOG as the [STF agent](#) ~~transit agency~~ for Wasco County utilizes this funding to partially support the match requirements for the above stated 5311 Grant Program. Since this funding is designated by Oregon state statute with an annual formula-based allocation of state funds from state cigarette taxes and other sources, the estimated statewide STF Formula funding of \$21.7 million represents a 17% reduction, on average, from FY 2015-17 to FY 2017-19. Wasco County STF Biennial target for 2017-2019 is stated as \$134,000.

MCCOG proposes that these funds be utilized again for partial match for [biennia](#) 2017-2019 5311 Grant Program.

Commented [RE1]: Verify what this is...

Commented [jdb2]: There are two sources of funds in 5310—the majority is from STP flex funds, which the Division has traditionally provided in the 5310 program, as the Legislature has set these funds aside for elderly and people with disabilities.

The discretionary funding this biennium is the appropriation amount from FTA in 5310. While it still funds the traditional capital projects we are all used to, it also can be used for non-traditional projects (but only 35% of the total). Non-traditional is what used to be New Freedom (above and beyond ADA requirements, better access to transit, etc.); as well as client-only vehicles and vehicle maintenance. While the appropriation funds have always been available, the Division had made the distinctions of funding invisible to awardees. With MAP-21 and FAST Act, the match rates have changed. In MAP-21 projects, we used STF funds to make up the difference. It was complex and confusing, so we decided to no longer do that with the reduction in STF dollars also impacting our ability to continue the practice. - Joni

Commented [RE3]: Verify with Sara B.

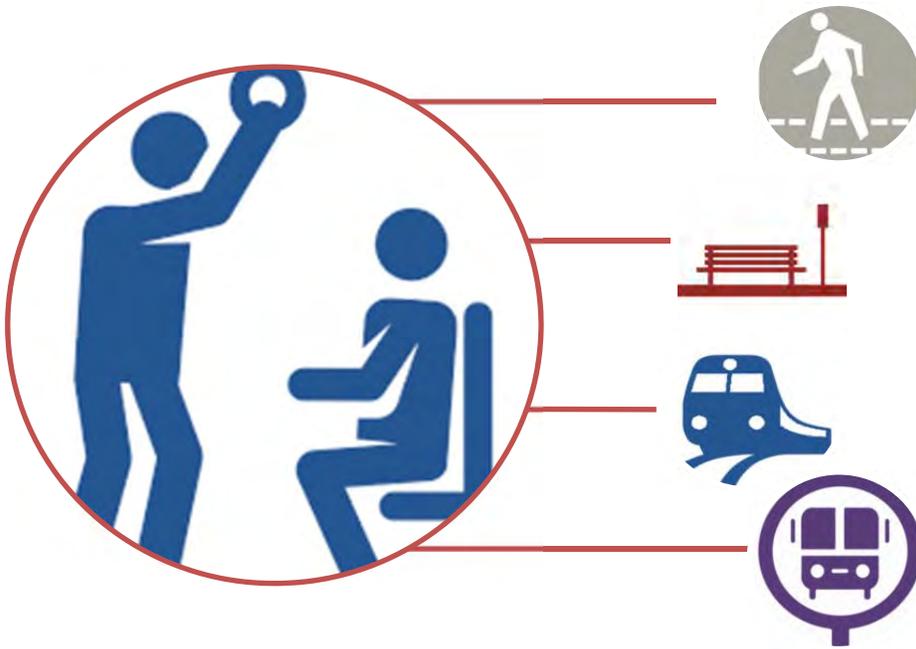
Transit Network and Intercity Program

This biennium (2017-2019), RPTD is shifting from an Intercity Program with an exclusive §5311(f) funding source to a Transit Network and Intercity Program funded primarily with §5311(f) funds. The Transit Network and Intercity Program encompasses the former Intercity Program purpose and eligible activities and expands it to include projects that support the statewide transit network (but might not meet §5311(f) requirements).

MCCOG currently utilizes its current biennium Intercity Funding ~~for to run the 2-day a week~~ The Dalles to Hood River ~~2-days a week~~ run ~~in conjunction to connect~~ with Columbia Area Transit's (CAT) ~~who has the same~~ 2-day run to the Portland area. - Plans are to increase this service to 3-days per week ~~somewhere sometime~~ in the near future, as soon as CAT decides when to expand their 3rd day.

Eligible projects include regional connector services, planning, marketing, coordination, preventive maintenance, projects that support key transit hubs, and capital assistance for buses and shelters. The Transit Network and Intercity Program is funded using FTA Intercity (§5311(f)) and other funds. The mix of funding allows greater flexibility in Transit Network and Intercity Program projects. Funds will be available through a competitive discretionary grant process based on statewide program criteria. The process and criteria will be described in the grant application materials. The estimated funding level is approximately \$1.8 million per biennium of mostly §5311(f) funds. Match: 20% for capital projects and 50% for operating projects

ODOT Rail and Public Transit Division 2017-19 Advance Grant Notice



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Summary

The Rail and Public Transit Division (RPTD), with input from the Public Transportation Advisory Committee, is gearing up for new investments in public transportation for the 2017-2019 biennium. The following information will help program participants prepare for the next round of grants which will begin later this year with grant training workshops and the posting of grant applications. Refer to the **Grant Program Schedule** on page 10 to help plan your local application processes and review timelines.

This notice provides estimated allocations for three formula programs: Enhanced Mobility of Seniors and Individuals with Disabilities Program (§5310), Formula Grants for Rural Areas Program (§5311), and Special Transportation Fund Program (STF). Discretionary funds will be available for the Transit Network and Intercity Program (§5311(f)). The table below reflects current funding estimates. The final amount available could vary depending on legislative action during the upcoming session. We are currently anticipating a reduction in STF funding and modest increases in §5311 and §5311(f) funding as compared to the previous biennia. The §5310 program has been restructured so that the FTA portion of program funding will be part of a discretionary solicitation to be offered soon. Additional details about anticipated changes in funding levels are found in each program section.

Program	Estimated Allocations
Enhanced Mobility of Seniors and Individuals with Disabilities	\$22,500,000
Formula Grants for Rural Areas	\$17,963,688
Special Transportation Fund	\$21,699,134
Transit Network and Intercity	\$1,800,000
Grand Total	\$63,962,822

Enhanced Mobility of Seniors and Individuals with Disabilities Program (§5310)

This program funds eligible capital, contracted service, and preventive maintenance projects for transportation providers serving seniors and individuals with disabilities.



Through the Jobs and Transportation Act (JTA), ODOT has supplemented FTA §5310 funds with flexible Federal Highway Administration (FHWA) Surface Transportation Program (STP) funding. In recent years, as much as 88% of §5310 funding distributed by the state was due to ODOT STP funds transferred to the FTA §5310 Program.

This biennium, ODOT has moved the FTA portion from the formula allocation to a discretionary grant process. In the first year of the 2017-19 biennium, RPTD is distributing ODOT STP funds. Only capital projects, as defined by FTA, are eligible for STP funding. The \$3 million FTA §5310 biennial program allocation will be distributed later through a separate discretionary process to allow greater flexibility and to help fund operating needs. While formula allocations in this notice may appear lower than previous biennia, discretionary funding will be available in FY 2017. The formula and discretionary funding combined will result in a net funding increase in some programs by FY 2018. These project awards will become available no later than **July 2018**. Large urban service providers will not be eligible for the FTA §5310 portion as they already receive a direct program allocation from FTA.

Refer to the **§5310 STP Biennial Targets** table on page 7 for estimated funding details.

Project selection is coordinated through the local STF Agency project selection process. STF Agencies are encouraged to identify needs and priorities for the 2017-19 biennium.

Match: 10.27% for capital, contracted service, and preventive maintenance projects

Formula Grants for Rural Areas Program (§5311)

This program provides operating, capital, planning, and administrative assistance to communities with a population of less than 50,000. The funds are used to support general public services. The majority of funds are distributed to 35 eligible entities. Any remaining funds are made available for new systems or are distributed through a discretionary grant process. A modest increase in funding is estimated for 2017-19 as compared to the previous biennium. Refer to the **§5311 Biennial Targets** table on page 8 for estimated funding details.

Match: 43.92% for operating projects and 10.27% for capital, planning, and project administration projects

Special Transportation Fund Program (STF) Formula

This program provides 42 STF Agencies (transportation districts, county governments where no transportation districts exist, and federally recognized tribal governments) designated by statute with an annual formula-based allocation of state funds from state cigarette taxes and other sources. The program funds transportation services benefiting seniors and individuals with disabilities.



STF revenues come from cigarette taxes, sales of ID cards, non-auto gas taxes, and State General Fund, which is divided into three accounts:

- State Administration—Up to 10% of total
- Formula—75% of remainder
- Discretionary—25% of remainder

The estimated statewide STF Formula funding of \$21.7 million represents a 17% reduction, on average, from FY 2015-17 to FY 2017-19. The bullets below describe the reasons and ODOT actions to minimize funding reductions.

- The STF's General Fund resources have decreased over the past two biennia from \$12.6 million in the 2013-2015 biennium to \$9.6 million in 2015-2017. ODOT has historically kept STF Formula funding levels relatively stable by moving STF Discretionary funds into the Formula program. This rebalancing was made with PTAC input. However, ODOT resources are not sufficient to fully cover the STF revenue reduction.
- While the Governor's Requested Budget for 2017-2019 has not yet been submitted to the Legislature, due to a potential deficit, state agencies may be receiving allocations that are different than their requests for General Fund resources. Since State General Fund makes up a large part of STF resources, any changes will have a significant effect on STF.
- ODOT has worked to mitigate recent changes in the STF revenues by reducing our administrative share to nine percent, which is the minimum amount needed to support program administration. ODOT also reduced by half the Discretionary budget for projects of statewide significance.

Refer to the **STF Biennial Targets** table on page 9 for estimated funding details.

STF Agencies are encouraged to use the information in this advance grant notice to begin working with their local advisory committees to identify investment priorities, taking changes in all fund sources into consideration. STF Agencies are invited to develop and recommend a prioritized project list up to 10% above their allocation for this solicitation. If additional funds become available, ODOT staff will review and award the 110% lists in collaboration with the applicants.

Match: No match is required for these funds.

Transit Network and Intercity Program

This biennium, RPTD is shifting from an Intercity Program with an exclusive §5311(f) funding source to a Transit Network and Intercity Program funded primarily with §5311(f) funds. The Transit Network and Intercity Program encompasses the former Intercity Program purpose and eligible activities and expands it to include projects that support the statewide transit network (but might not meet §5311(f) requirements). Eligible projects include regional connector services, planning, marketing, coordination, preventive maintenance, projects that support key transit hubs, and capital assistance for buses and shelters. The Transit Network and Intercity Program is funded using FTA Intercity (§5311(f)) and other funds. The mix of funding allows greater flexibility in Transit Network and Intercity Program projects.



Funds will be available through a competitive discretionary grant process based on statewide program criteria. The process and criteria will be described in the grant application materials. The estimated funding level is approximately \$1.8 million per biennium of mostly §5311(f) funds.

Match: 20% for capital projects and 50% for operating projects

Additional information and an electronic version of this notice can be found on the Rail and Public Transit Division website's [What's New?](#) page.

For information about other Rail and Public Transit Division resources and services contact us at 503-986-3300 or ptd@odot.state.or.us.

§5310 STP Estimated Biennial Targets

STF Agency Name	Allocation Estimate
Baker County	161,502
Basin Transit Service	463,040
Benton County	553,066
Burns Paiute	90,468
Columbia County	318,925
Confederated Tribes of Coos, Lower Umpqua and Siuslaw	91,536
Confederated Tribes of Grand Ronde	98,239
Confederated Tribes of Siletz	97,756
Confederated Tribes of Umatilla	94,532
Confederated Tribes of Warm Springs	101,273
Coos County	479,505
Coquille Indian Tribe	91,516
Cow Creek Tribe of Umpqua Indians	91,858
Crook County	179,236
Curry County	211,828
Deschutes County	1,090,107
Douglas County	837,496
Gilliam County	98,976
Grant County Transportation District	127,885
Harney	118,389
Hood River County Transportation District	149,782
Jefferson County	158,910
Josephine County	650,746
Klamath Tribes	96,687
Lake County	122,638
Lane Transit District	1,893,969
Lincoln County	372,254
Linn County	777,508
Malheur County	181,472
Morrow County	120,368
Rogue Valley Transportation District	1,467,440
Salem Area Mass Transit District	1,994,514
Sherman County	97,605
Sunset Empire Transportation District	258,280
Tillamook County Transportation District	194,993
Tri County Metropolitan Transportation District	6,881,050
Umatilla County	466,384
Union County	179,704
Wallowa County	123,816
Wasco County	181,070
Wheeler County	97,850
Yamhill County	635,823
Grand Total	22,500,000

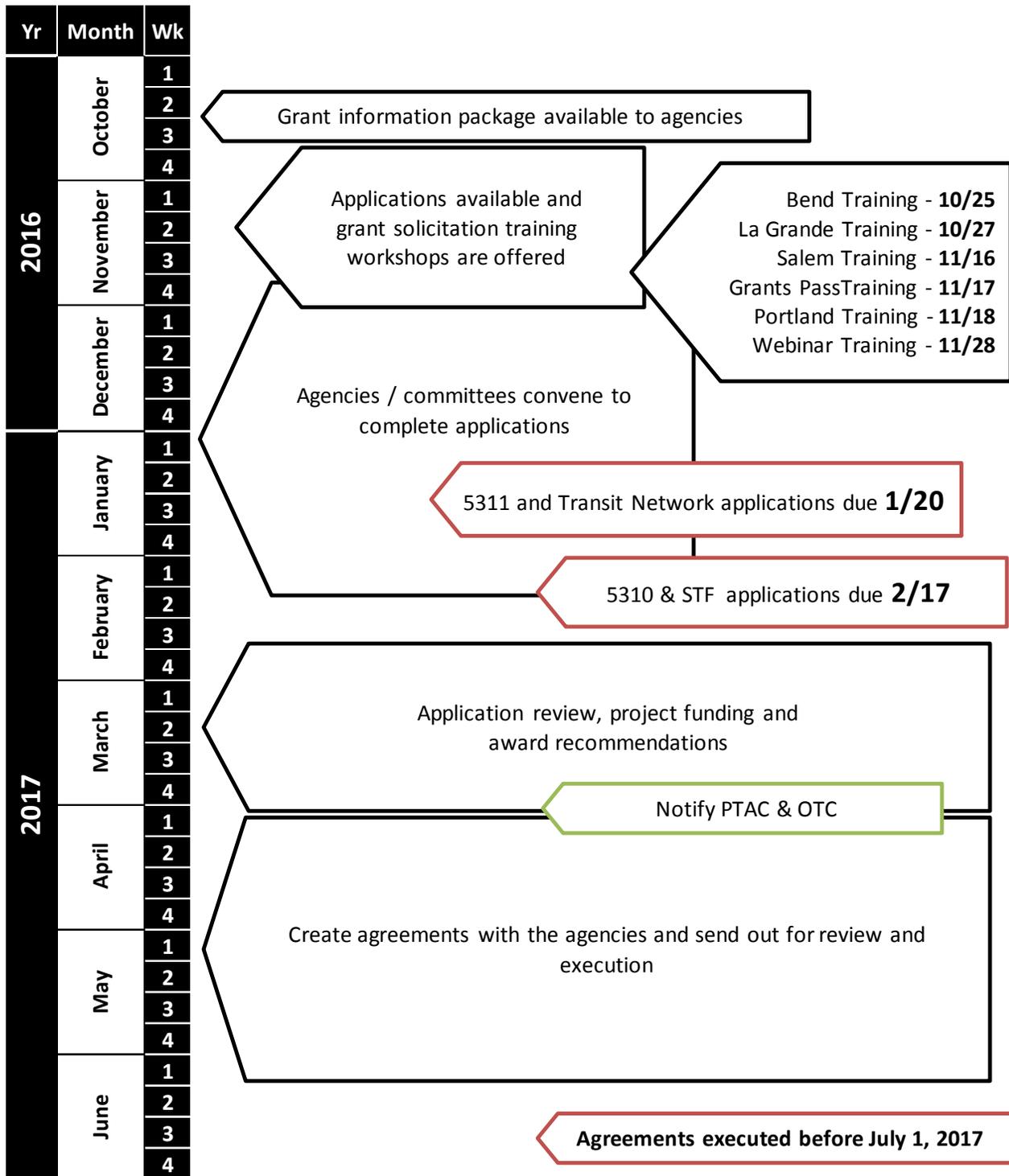
§5311 Estimated Biennial Targets

Agency Name	Allocation Estimate
Basin Transit Service Transportation District	1,092,637
Benton County	229,375
Central Oregon Intergovernmental Council	1,138,384
City of Canby	590,869
City of Cottage Grove	260,978
City of Lebanon	200,439
City of Pendleton	249,897
City of Sandy	831,875
City of Silverton	140,295
City of Sweet Home	190,027
City of Woodburn	294,729
Clackamas County	213,983
Columbia County	919,475
Community Connection of Northeast Oregon, Inc.	907,678
Confederated Tribes of Grand Ronde Community of Oregon	100,000
Confederated Tribes of the Umatilla Indian Reservation	399,880
Coos County Area Transit Service District	452,140
Curry County	372,463
Douglas County	886,058
Grant County Transportation District	252,240
Harney County	270,523
Hood River County Transportation District	320,564
Josephine County	166,665
Klamath Tribes	235,789
Lane Transit District	160,056
Lincoln County Transportation Service District	1,110,760
Linn County	262,200
Malheur County	394,739
Mid-Columbia Council of Governments	273,156
Ride Connection, Inc.	515,174
Salem Area Mass Transit District	662,100
South Clackamas Transportation District	524,663
Sunset Empire Transportation District	911,312
Tillamook County Transportation District	718,833
Yamhill County	1,713,732
Grand Total	17,963,688

STF Estimated Biennial Targets

STF Agency Name	Allocation Estimate
Baker County	134,000
Basin Transit Service Transportation District	328,407
Benton County	439,080
Burns Paiute Tribe	134,000
Columbia County	247,583
Confederated Tribes of Coos, Lower Umpqua and Siuslaw	134,000
Confederated Tribes of Grand Ronde Community of Oregon	134,000
Confederated Tribes of Siletz Indians	134,000
Confederated Tribes of the Umatilla Indian Reservation	134,000
Confederated Tribes of Warm Springs	134,000
Coos County	308,491
Coquille Indian Tribe	134,000
Cow Creek Band of Umpqua Tribe of Indians	134,000
Crook County	134,000
Curry County	134,000
Deschutes County	829,350
Douglas County	535,300
Gilliam County	134,000
Grant County Transportation District	134,000
Harney County	134,000
Hood River County Transportation District	134,000
Jefferson County	134,000
Josephine County	408,699
Klamath Tribes	134,000
Lake County	134,000
Lane Transit District	1,754,618
Lincoln County	232,284
Linn County	588,232
Malheur County	156,173
Morrow County	134,000
Rogue Valley Transportation District	1,023,844
Salem Area Mass Transit District	1,977,898
Sherman County	134,000
Sunset Empire Transportation District	186,482
Tillamook County Transportation District	134,000
Tri County Metropolitan Transportation District	8,441,117
Umatilla County	386,632
Union County	134,000
Wallowa County	134,000
Wasco County	134,000
Wheeler County	134,000
Yamhill County	504,943
Grand Total	21,699,134

Grant Program Schedule



Agenda Item
Columbia Gorge Operational Systems Public
Comment Period

- [Flyer](#)
- [Proposed Wasco County Comment Submission](#)



Open House Guide

Today's meeting is to provide you with detailed information on the process we are undertaking, the current system operations, and how the system is used to meet multiple purposes. It is important because we want to make sure you have the information you need to share your ideas on what we should consider in the environmental impact statement (EIS). The EIS will evaluate and update the Agencies' (U.S. Army Corps of Engineers, Bureau of Reclamation, and Bonneville Power Administration) approach to long-term system operations and dam configuration through a thorough analysis of alternatives to current practices.

Please stop by and watch the video, then visit with the subject matter experts we have brought along. They are prepared to provide you more information on the following topics:



NEPA

Public participation in the development of an EIS is required by the National Environmental Policy Act (NEPA). The public is encouraged to comment and provide feedback on the potential impacts of Columbia River System Operations (CRSO) operations and configurations.



Cultural Resources

The Agencies seek input regarding steps to avoid, minimize, or mitigate adverse effects that would result from changes in system operations as required under the National Historic Preservation Act.



System Overview

The Columbia River Basin is a large and complex system that supports regional and tribal economies, wildlife, flood risk management, hydropower, navigation, irrigation, recreation, water quality, and fish migration.



Flood Risk Management

Flooding associated with natural weather events in the past had severe consequences. The CRSO provides for flood control through storage and release operations at dams and reservoirs.



Hydropower

The CRSO provides hydropower energy, and is a flexible and sustainable energy resource that provides energy to meet continuous and peak demand needs.



Irrigation

The Bureau of Reclamation delivers irrigation water to the Columbia Basin Project and other smaller projects. This irrigation water supports crops such as grapes, hops, fruit trees, potatoes, sweet corn, onions, and alfalfa.



Navigation

The Columbia River System supports both commercial and recreational vessel navigation. Recreational boaters can enjoy the entire river system, and commercial goods can be transported between the Pacific Ocean and inland ports in Washington and Idaho.



Fish and Wildlife Conservation

The Agencies implement fish and wildlife conservation, protection, and mitigation activities in compliance with the Endangered Species Act, Clean Water Act, and the Northwest Power Act.



Recreation

Residents in the Northwest enjoy many recreational opportunities associated with Federal project reservoirs and lands throughout the Columbia River Basin.



Climate Change

The Columbia River Basin will continue to have fluctuations in temperature and snowpack, which require adaptation to these changing conditions in the future.



Water Quality

Water quality is important for the health of aquatic species that reside in Columbia River Basin waters. The Agencies operate the Columbia River Basin dams to manage temperatures and total dissolved gas, and monitor other water quality parameters such as nutrients and dissolved oxygen.



Endangered Species Act Listed Fish and Lamprey Information

Partnerships among government and tribal entities, non-governmental and private organizations are critical to restoring healthy salmon runs and securing the economic and cultural benefits they provide.



CRSO Projects

Authorized purposes for CRSO dams include flood control, navigation, hydropower, irrigation, recreation, and support fish & wildlife.

The U.S. Army Corps of Engineers, Northwestern Division, Bureau of Reclamation, and Bonneville Power Administration (collectively, the Agencies) are the co-leads in preparation of an EIS under NEPA on CRSO operations and configurations for 14 Federal projects in the interior Columbia Basin. The Agencies request your assistance in gathering information that will help define the issues, concerns, and the scope of alternatives addressed in the EIS. Information will be gathered from interested parties during the scoping period beginning September 30, 2016, and ending January 17, 2017.

The Agencies welcome your comments, suggestions, and information that may inform the scope of issues, potential effects, and range of alternatives evaluated in the EIS. Comments may also be submitted at public scoping meetings at the Comment station.

Comments or inquiries can also be submitted:

By online comment submission: <http://www.crso.info>

By email to comment@crso.info

By mail addressed to:

**U.S. Army Corps of Engineers, Northwestern Division,
Attn: CRSO EIS, P.O. Box 2870, Portland, OR 97208-2870.**



*5 yrs
Process*



BOARD OF COUNTY COMMISSIONERS

511 Washington St, Ste. 101 • The Dalles, OR 97058
p: [541] 506-2520 • f: [541] 506-2551 • www.co.wasco.or.us

Pioneering pathways to prosperity.

January 4, 2017

U.S. Army Corps of Engineers
Northwestern Division
Attention: CRSO EIS
P.O. Box 2870
Portland, OR 97208-2870

Sent by email to comment@crso.info and provided online to <http://www.crso.info>

Subject: Comments Regarding the Columbia River System Operations Environmental Impact Statement

Greetings CRSO Project Managers,

Within the last several weeks, Wasco County Commissioners and staff were informed of the Columbia River System Operations Environmental Impact Statement and January 17, 2017 comment deadline. Please accept the following comments on behalf of Wasco County:

NEPA

The NEPA materials shown on the CRSO EIS website do not specify a “Statement of Need” or in any way identify a scope of review except that it could include absolutely everything and anything related to the hydroelectric dams and lock systems on the Columbia River. Geographically, Wasco County includes portions of the Columbia River and The Dalles Lock and Dam. Due to the ambiguous nature of the shared materials and request for feedback, our comments are high level and assume significant changes may be proposed as a result of the EIS process. As such, Wasco County would request the opportunity to submit follow-up comments once this process is further identified and the scope more narrowly focused.

Cultural Resources

Cultural resources, including archaeological resources, historic buildings and structures, and traditional cultural properties are protected by the National Scenic Area Act in portions of Wasco County – which includes the Columbia River and adjacent lands. Any impacts to cultural resources in this area must be clearly identified, must result in finding of No Adverse Effect, and must be reviewed by the appropriate Scenic Area entity to confirm resource protection (federal undertakings in the NSA must be reviewed by the U.S. Forest Service for compliance).

System Overview & CRSO Projects

As explained in the Open House Guide, the Columbia River basin is a complex system that supports regional and local economies, wildlife, flood risk management, hydropower generation and distribution, navigation, irrigation, recreation, water quality, and fish migration. Changes resulting from this process that could in any way reduce the dam’s ability to provide the categories of support listed above, would have a detrimental impact to Wasco County residents, our economy, and our carefully protected resources. Our comments for these categories are further specified

below.

Flood Risk Management

Wasco County is located adjacent to The Dalles Lock and Dam, and is further protected from floods by the North Bonneville Dam to the west and John Day Dam to the east. In our region, the ordinary high water mark of the Columbia River is regulated by these dams – affording a high level of predictability and flood risk management for our residents and development. Altering flood levels or risk may require landowners and business to relocate or acquire additional flood insurance. Significant relocation may not be possible due to urban growth boundaries constrained by the National Scenic Area Act.

Hydropower

Hydropower produced by the Columbia River System is a clean source of energy that meets the needs of our community and many others. The existing electrical grid system is sized to support this energy production and distribution system, and mitigation projects have been ongoing to ensure natural resources are not sacrificed. Wasco County does not support hydropower dam removal along the Columbia River.

Irrigation

Agriculture provides the foundation for Oregon's economy; Wasco County ranks second in the state for the number of farms in active use. Any changes to the CRSO that would reduce existing irrigation rights, increase the need for additional irrigation, or require a redesign of existing irrigation, will have a detrimental impact to not only the Wasco County community, but to the State as a whole.

Navigation

The Columbia River is the only sea level passage through the Cascade Mountain Range. As such, it contains critically important transportation and utility corridors that serve the region and the western half of the United States. These features include but are not limited to the Columbia River lock system, Interstate 84, Union Pacific Railroad, and the Bonneville Power Administration's electrical infrastructure to distribute hydro and wind power. Removal of the lock system could have devastating impacts to both industry and producers, force farmers to move more by train or truck, and eliminate jobs necessary to support barge transportation. Increased flooding or increased flood risk could jeopardize our interstate and railroads, as well as state highways and other public roads.

Fish and Wildlife Conservation & Endangered Species Act Listed Fish and Lamprey Information

Wasco County is required to protect fish and wildlife species in accordance with the rules and regulations afforded by the National Scenic Area Act, the Endangered Species Act, Clean Water Act and other state level protection requirements. Any changes to the CRSO must comply with at least these rules and must be reviewed by the appropriate Scenic Area entity to confirm compliance. Wasco County may support resource enhancement projects that do not impede or detract from energy production or flood risks to residents and local businesses.

Recreation

Located in the National Scenic Area, recreation is a protected resource that supports local and regional economies. Several communities contain active and commercial riverfront trails and beaches that could be impacted by an increased ordinary high water mark or new flood risk. Removal of the lock system could make it difficult for recreation boat traffic to navigate the river. Wasco County will not support any reduction in the already limited and restricted recreational

access to the Columbia River and surrounding lands.

Climate Change

We are only beginning to learn what the impacts of climate change might be, and what actions may be necessary to protect the public health and safety of our residents. We request that any CRSO alterations in response to climate change be coordinated with local communities to ensure impacts are addressed appropriately and as proactively as possible.

Water Quality

Water quality is vital to the health of our residents and wildlife, the livability of our communities, and the success of our irrigated farms. We ask that the water quality of the Columbia River and affected tributaries meet existing water quality standards and protections but do not adversely impact existing or future agricultural production in any way. Furthermore Wasco County does not support the expansion of water quality protections at this time without additional specific information on the size, scope, or impact of said improvements.

In sum, Wasco County urges the U.S. Army Corps of Engineers, Bureau of Reclamation, and the Bonneville Power Administration to consult the local communities and counties in their review of existing CRSO operations and the environmental impacts of alternatives considered. Without diligent and intentional efforts to ensure coordination, alteration of existing operations could have significant detrimental impacts to our residents; our local, regional and national economies; an exceptional source of clean energy; our coveted and protected natural resources; and our ability to continue supporting all of the functions and requirements noted above. It is not only imperative but a condition of any future support from Wasco County that local jurisdictions have a significant say in this process not only as part of any comment period but also in the drafting and negotiation of any process associated with the completion of this EIS.

Thank you for this opportunity to provide comment. If you have any questions, please contact our Planning Director, Angie Brewer, at 541-506-2566 or by email at angieb@co.wasco.or.us.

Sincerely,

Rod Runyon, Chair, Board of Commissioners

Steve Kramer, Commissioner

Scott Hege, Commissioner

Cc: Pat Davis, Chair for the Wasco County Watershed Councils Coordinating Board (by email to ppatdavis@hughes.net); Shilah Olson, District Manager of the Wasco County Soil and Water Conservation District (by email to shilah.olson@or.nacdnet.net); and Roger Kline, General Manager and CEO of Northern Wasco County PUD (sent by email to Roger-Kline@nwasco.com)

Agenda Item
Veterans Services Advisory Committee
Amended Bylaws

- [2014 VSAC Bylaws](#)
- [VSAC Bylaws Revisions](#)
- [2016 Amended VSAC Bylaws](#)

FILED
WASCO COUNTY

2014 OCT 3 AM 10 06

LINDA BROWN
COUNTY CLERK

**WASCO COUNTY
VETERANS SERVICES ADVISORY COMMITTEE
BYLAWS**

ARTICLE I

NAME

The name of the Advisory Committee shall be the Wasco County Veterans Services Advisory Committee.

ARTICLE II

PURPOSE

The purpose of this Advisory Committee shall be to act as an advisory body to the Wasco County Board of Commissioners regarding veterans issues: to focus public attention on the history, preservation, services and needs of Veterans and their family members; to seek funds and resources necessary to accomplish and implement the intent and purposes of the County's commitment to provide services to Veterans and their families and to accomplish the goals of this Advisory Committee.

ARTICLE III

MEMBERSHIP

Section 1. Membership of this Advisory Committee shall be as follows:

- a. Seven members shall be appointed by the Wasco County Board of Commissioners and shall serve 2-year terms, with no limit on the number of terms served subject to application and approval of the Wasco Board of Commissioners. Each of these members shall be entitled to one vote.

b. Up to two ex-officio, not-voting members may be appointed by the Wasco County Board of Commissioners and shall serve for a 2-year term with no limit on the number of terms served.

Ex-officio

c. The Wasco County Veteran Service Officer shall be appointed as a ~~regular~~ non-voting member.

ARTICLE IV

OFFICERS AND COMMITTEES

Section 1. The officers shall be a Chairman, a Vice Chairman, and a Secretary. The term shall be for one year. With the exception of the Secretary, no person shall serve for more than two consecutive one year terms in office.

Section 2. The officers and members of the Advisory Committee shall serve as the governing body of the Advisory Committee.

Section 3. The direction of affairs of this organization shall rest with the Advisory Committee, subject to approval by the Wasco County Board of Commissioners or their designee. A majority of the members of this Advisory Committee shall constitute a quorum for the transaction of business.

Section 4. The Chairman shall be an ex-officio member of all Subcommittees, with the exception of the Nominating Committee.

Section 5. The Nominating Committee shall consist of three members appointed by the Chairman of the Advisory Committee. Nominations for officers shall be presented by the Nominating Committee. Nominations from the floor will be invited. No one shall be nominated without his/her consent.

Section 6. Officers shall be elected at the September meeting or the first meeting thereafter if there is no September meeting.

Section 7. Vacancies arising on the Advisory Committee shall be filled by appointment made by the respective Board of Commissioners.

ARTICLE V

DUTIES OF OFFICERS

Section 1. CHAIRMAN: To set and distribute meeting agendas, chair over and conduct meetings and to appoint all Subcommittees and be an ex-officio member thereof, except as limited herein.

Section 2. VICE-CHAIRMAN: To perform the duties of the Chairman and to preside over meetings of the Advisory Committee in the absence of the Chairman.

Section 3. SECRETARY: To provide Public Notice of meetings, to ensure compliance with Oregon Public Meetings Laws, to record attendance at all meetings, to take the minutes of all meetings and provide copies to the Wasco County Board of Commissioners and members of the Committee, to keep a list of membership together with their addresses, to notify the members of the time and place of meetings, and to conduct the correspondence of the committee.

ARTICLE VI

MEETINGS

Section 1. The Advisory Committee shall hold its September meeting for the purpose of election of officers, to receive various reports and to enact any other business.

Section 2. The Advisory Committee shall determine a schedule that best serves the Advisory Committee members. The Advisory Committee shall meet monthly.

Section 3. A special meeting may be held as directed by the Chairman or Advisory Committee, provided the membership and public are properly notified.

ARTICLE VII

AMENDMENTS

The Bylaws may be amended, subject to the approval of the Wasco County Board of Commissioners, at any regular meeting of this Advisory Committee by two-thirds of the members present, provided that notice of the proposed amendment shall have been read at one meeting and voted on at the next meeting.

ARTICLE VIII

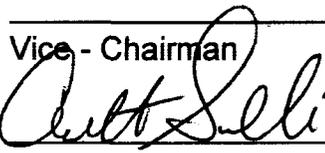
PARLIAMENTARY AUTHORITY

All meetings shall be conducted according to Robert's Rules of Order, Revised, except when in conflict with these Bylaws or with the laws of the State of Oregon.

ADOPTED by the Wasco County Veterans Advisory Committee this day 2nd of OCTOBER, 2014.



Chairman

Vice - Chairman


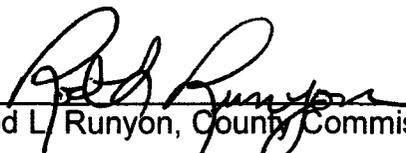
Secretary

ADOPTED by the governing body of Wasco County, Oregon, this day 17th of September, 2014.

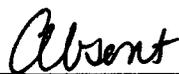
WASCO COUNTY BOARD
OF COMMISSIONERS



Scott Hege, Commission Chair



Rod L. Runyon, County Commissioner



Steve Kramer, County Commissioner

**WASCO COUNTY
VETERANS SERVICES ADVISORY COMMITTEE
BYLAWS**

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PURPOSE

The purpose of this Advisory Committee shall be to act as an advisory body to the Wasco County Board of Commissioners regarding veterans issues: ~~to focus public attention on the history, preservation, services and needs of Veterans and family members; to seek funds and resources necessary to accomplish and implement the intent and purposes of the County's commitment to provide services to Veterans and their families and to accomplish the goals of this Advisory Committee.~~ **Focusing on the needs of the veteran community of Wasco County; to include seeking funding and other resources necessary to accomplish and implement the County's commitment to provide excellent service to the Veterans and their families. To advance and maintain the history of Wasco County Veterans Services.**

ARTICLE III

MEMBERSHIP

Section 1. Membership of this Advisory Committee shall be as follows:

- a. Seven members shall be appointed by the Wasco County Board of Commissioners and shall serve 2-year terms, with no limit on the number of terms served subject to application and approval of the Wasco Board of Commissioners. Each of these members shall be entitled to one vote.

b. Up to two ex-officio, not-voting members may be appointed by the Wasco County Board of Commissioners and shall serve for a 2-year term with no limit on the number of terms served.

c. The Wasco County Veteran Service Officer shall be appointed as an ex-officio non-voting member.

ARTICLE IV

OFFICERS AND COMMITTEES

Section 1. The officers shall be a Chairman, a Vice Chairman, and a Secretary. The term shall be for one year. With the exception of the Secretary, no person shall serve for more than two consecutive one year terms in office.

Section 2. The officers and members of the Advisory Committee shall serve as the governing body of the Advisory Committee.

Section 3. The direction of affairs of this organization shall rest with the Advisory Committee, subject to approval by the Wasco County Board of Commissioners of their designee. A majority of the members of this Advisory Committee shall constitute a quorum for the transaction of business.

Section 4. The Chairman shall be an ex-officio member of all Subcommittees, with the exception of the Nominating Committee.

Section 5. The Nominating Committee shall consist of three members appointed by the Chairman of the Advisory Committee. Nominations for officers shall be presented by the Nominating Committee. Nominations from the floor will be invited. No one shall be nominated without his/her consent.

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Section 1. CHAIRMAN: To set and distribute meeting agendas, chair over and conduct meetings and to appoint all Subcommittees and be an ex-officio member thereof, except as limited herein. **Present reports to the Board of County Commissioners Quarterly or as deemed necessary by the committee or the County Commissioners. Such reports should include advice, recommendations, and information important to the veteran community of Wasco County.**

Section 2. VICE-CHAIRMAN: To perform the duties of the Chairman and to preside over meetings of the Advisory Committee in the absence of the Chairman.

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Section 1. The Advisory Committee shall hold its September meeting for the purpose of election of officers, to receive various reports and to enact any other business.

Section 2. The Advisory Committee shall determine a schedule that best serves the Advisory Committee members. The Advisory Committee shall meet monthly.

Section 3. A special meeting may be held as directed by the Chairman or Advisory Committee, provided the membership and public are properly notified.

Section 4. Hold special outreach meetings with the public at least annually.

ARTICLE VII

AMENDMENTS

The Bylaws may be amended, subject to the approval of the Wasco County Board of Commissioners, at any regular meeting of this Advisory Committee by two-thirds of the members present, provided that notice of the proposed amendment shall have been read at one meeting and voted on at the next meeting.

ARTICLE VIII

PARLIAMENTARY AUTHORITY

All meetings shall be conducted according to Robert's Rules of Order, Revised, except when in conflict with these Bylaws or with the laws of the State of Oregon.

ADOPTED by the Wasco County Veterans Advisory Committee this day _____ of _____, 2016.

Chairman

Vice - Chairman

Secretary

ADOPTED by the governing body of Wasco County, Oregon, this day _____ of _____, 2016.

WASCO COUNTY
BOARD OF COMMISSIONERS

Rod L. Runyon, Chair

APPROVED AS TO FORM:

Scott C. Hege, County Commissioner

Kristen Campbell
County Counsel

Steven D. Kramer, County Commissioner

**WASCO COUNTY
VETERANS SERVICES ADVISORY COMMITTEE
BYLAWS**

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Section 2. The Advisory Committee shall determine a schedule that best serves the Advisory Committee members. The Advisory Committee shall meet monthly.

Section 3. A special meeting may be held as directed by the Chairman or Advisory Committee, provided the membership and public are properly notified.

Section 4. Hold special outreach meetings with the public at least annually.

Section 5. A quorum for the transaction of any business shall not consist of less than four (4) committee members.

Section 6. Committee members shall receive no compensation or reimbursement except as allowed by the Board of County Commissioners.

Section 7. Committee members who have more than four unexcused absences per calendar year shall be referred to the Board of County Commissioners for possible removal.

ARTICLE VII

AMENDMENTS

The Bylaws may be amended, subject to the approval of the Wasco County Board of Commissioners, at any regular meeting of this Advisory Committee by two-thirds of the members present, provided that notice of the proposed

amendment shall have been read at one meeting and voted on at the next meeting.

ARTICLE VIII

PARLIAMENTARY AUTHORITY

All meetings shall be conducted according to Robert's Rules of Order, Revised, except when in conflict with these Bylaws or with the laws of the State of Oregon.

ADOPTED by the Wasco County Veterans Advisory Committee this day _____ of _____, 2016.

Chairman

Vice - Chairman

Secretary

ADOPTED by the governing body of Wasco County, Oregon, this day 21st
Day of December, 2016.

WASCO COUNTY
BOARD OF COMMISSIONERS

Rod L. Runyon, Chair

APPROVED AS TO FORM:

Scott C. Hege, County Commissioner

Kristen Campbell
County Counsel

Steven D. Kramer, County Commissioner

Agenda Item
Wasco County Building Codes

- [MCCOG Memorandum](#)
- [Proposed MOU](#)
- [Renewal Reminder](#)
- [2014 State of Oregon/MCCOG MOU](#)
- [2015 State Building Codes Letter re: MCCOG](#)
- [Extension Request Template](#)

Mid-Columbia Council of Governments

Memorandum

To: Wasco County
From: Bob Francis, Executive Director
Date: November 30, 2016
Subject: **Memorandum of Agreement for Building Inspection Program**

As required by the State Building Codes Division, the state allows for counties to administer a building inspection program under ORS 455.148 for a period up to four years before that agreement has to be renewed between the Building Code Division and the County (Jurisdiction). The Jurisdiction can contract that service to another governmental entity, which the county has done with MCCOG; however the legal relationship is between the Building Codes Division and the County. The time has come for the Building Code Division and the County to execute a Memorandum of Agreement so the County can continue to provide the program.

MCCOG administers the building inspection program for Wasco County and provides the eight standards outlined in Section IV of the attached agreement. In order for Building Codes Division to delegate authority to Wasco County as the jurisdiction to provide the program, the County is required to execute the attached agreement.

Time is of the essence as this agreement is due back to the Building Codes Division by January 1, 2017. However, understanding the need for the County to review this agreement with the County Attorney and then to place this on the County agenda for the Board of County Commissioners to take formal approval action, MCCOG received an extension with a new due date of February 1, 2017 to return the executed agreement to the Building Codes Division.

I have been told by Mark Long, Administrator of the Building Codes Division that this requirement has not been strictly enforced in the past but will be from now on. If you have any questions about the attached memorandum or the process, please contact me or Mark Long. Mark can be reached at 503-373-7235.

**Memorandum of Agreement
Relating to Delegated Building Inspection Program**

I. Parties:

This agreement is made and entered into by the Building Codes Division (hereinafter the “Division”), through the Department of Consumer and Business Services, and the **Wasco County** building inspection program (“Jurisdiction”). In providing the services specified in this agreement (and any associated services) both parties are public bodies and maintain their public body status as specified in ORS 30.260. Both parties understand and acknowledge that each retains all immunities and privileges granted them by the Oregon Tort Claims Act (ORS 30.260 through 30.295) and any and all other statutory rights granted as a result of their status as local public bodies.

II. Purpose:

In accordance with the authority granted by Oregon Revised Statutes (ORS) chapter 455 and the rules adopted thereunder, this Memorandum of Agreement (MOA) sets forth the delegation from the state to Jurisdiction to operate a municipal building inspection program as referenced in ORS chapter 455.

III. Background:

The Department is authorized to:

1. Promulgate a state building code to govern the construction, reconstruction, alteration and repair of buildings. The state building code establishes uniform performance standards providing reasonable safeguards for health, safety, welfare, comfort and security for the residents of this state; and
2. Delegate authority to a Jurisdiction willing and able to assume operation of all or any portion of a building inspection program for a reporting period. A reporting period means a four-year period during which a Jurisdiction administers and enforces a building inspection program pursuant to an approved operating plan on behalf of the state.

IV. Agreement:

Jurisdiction’s building inspection program agrees to the following minimum standards, policies and procedures while operating a building inspection program during the current reporting period:

1. **Administrative Standards.** Program must provide adequate funds, equipment and other resources needed to administer and enforce the program consistent with the inspection and permit requirements of the state building code.
2. **Electrical Program.** A building inspection program with an electrical program must comply with all applicable electrical rules for the inspection and enforcement of electrical programs.
3. **Fees.** Program must follow the uniform fee methodology for building permit and inspection fees. Program must use permit and inspection fees collected only for the administration and enforcement of the building inspection program. Electrical permit fees must only be used for the administration and enforcement of the electrical program. To avoid division enforcement action, program must collect and remit surcharges (with permit log) to the division no later than the 15th day following the month or quarter for which the surcharges are required to be collected according ORS 455.220.

4. **Appeals.** Program must have a policy to allow an applicant for building permit to appeal decision made by building official. Program must also allow an applicant for a building permit to file a written appeal of a decision of the building official directly to the division on any matter relating to the administration and enforcement of ORS Chapter 455.
5. **Operating Plan.** Program must amend operating plan within 30 days when changes occur and provide amended operating plan to the division. Changes include a change of building official.
6. **Staff.** Program must have and use only appropriately certified employees, or approved and appropriately certified and associated state-licensed third party contractors and inspectors for inspections.
7. **Enforcement.** Program must not enforce any standard different from the state building code, unless specifically authorized to do so by the Director of the Department of Consumer and Business Services under ORS 455.040(1), and only in the manner so authorized; any standard so authorized shall not be considered an amendment to the state building code under ORS 455.030.
8. **Documentation.** Program must respond timely to division data requests on any matter relating to the administration and enforcement of ORS Chapter 455.

V. Indemnity:

To the extent permitted by Article XI, sections 9 and 10 of the Oregon Constitution, and within the limits of liability established in the Oregon Tort Claims Act, Jurisdiction shall defend, indemnify and save the division, its officers, agents, and employees harmless from any and all claims, actions, costs or damages caused by Jurisdiction.

Subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, the State shall indemnify, within the limits of and subject to the restrictions in the Oregon Tort Claims Act, Jurisdiction, any liability for personal injury or damage to life or property arising from the State's negligent activity under this Agreement provided, however, the State shall not be required to indemnify Jurisdiction for any such liability arising out of the wrongful acts of Jurisdiction, its officers, employees or agents.

VI. Term of the Agreement:

This agreement will become effective upon signature of all parties and will remain in effect until the end of the Jurisdiction's current reporting period unless the Jurisdiction abandons or ceases to administer the building inspection program or the division assumes administration of the program under activities related to ORS 455.770. Failure to comply with any provision of this agreement may impact the Jurisdiction's continued administration of the building inspection program.

VII. Signatures:

Both parties, by the signatures below, hereby acknowledge that they have read this agreement, understand it and agree to be bound by its terms and conditions.

Building Codes Division

Wasco County

Date

Date

**Mark S. Long, Administrator
Building Codes Division**

Please print building official name



Building Official Signature

Date

Please print name and title

Jurisdiction Representative Signature



Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Building Codes Division

1535 Edgewater Street NW

P.O. Box 14470

Salem, OR 97309-0404

503-378-4133

Fax: 503-378-2322

bcd.oregon.gov

October 3, 2016

TO: Group Four Building Officials

FROM: Tyler Larson, Policy Analyst

SUBJECT: Program Renewal – **Group Four** – **RENEWAL REMINDER**

As a member of the **Group Four** reporting period established in OAR 918-020-0180, this message serves as a courtesy reminder to renew your assumed building inspection program with the Building Codes Division **no later than January 1, 2017** for the program administration period to begin July 1, 2017.

In order to notify the division of your intent to renew your assumed building inspection program, please provide the following information outlined in OAR 918-020-0090 & OAR 918-020-0105:

- 1. A complete Program Administration Request Form. Please note any new staff as provided on the reverse side of the form. A fillable version of this the form is attached.**
- 2. A complete data request form. A fillable version of this form is attached.**
- 3. A copy of your current fee schedule.**
- 4. If your operating plan has changed, please provide a copy of your jurisdiction's operating plan and a summary of the changes.**

Thank you in advance for your timely response.

Group Four Jurisdictions:

Albany
Baker City
Baker County
Bend
Boardman
Central Point
Coburg
Durham
Eagle Point
Fairview

Gilliam County
Happy Valley
Irrigon
La Grande
Lincoln County
Lowell
Marion County
Medford
Milwaukie
Multnomah County

Oakridge
Portland
Rogue River
Sherman County
Troutdale
Union County
Wasco County
Wheeler County
Wood Village

**Memorandum of Agreement
Relating to Delegated Building Inspection Program**

I. Parties:

This agreement is made and entered into by the Building Codes Division (hereinafter the "Division"), through the Department of Consumer and Business Services, and Mid-Columbia Council of Governments (MCCOG) building inspection program.

II. Purpose:

In accordance with the authority granted by Oregon Revised Statute (ORS) 455.020 and Oregon Laws 2013, chapter 528, this Memorandum of Agreement (MOA) sets forth the roles and responsibilities of MCCOG operating a municipal building inspection program as referenced in ORS chapter 455.

III. Background:

The Department is authorized to:

1. Promulgate a state building code to govern the construction, reconstruction, alteration and repair of buildings. The state building code establishes uniform performance standards providing reasonable safeguards for health, safety, welfare, comfort and security for the residents of this state; and
2. Delegate authority to a municipality to operate all or any portion of a building inspection program for a reporting period. A reporting period means a four-year period during which a municipality administers and enforces a building inspection program pursuant to an approved operating plan.

IV. Agreement:

MCCOG building inspection program agrees to the following minimum standards, policies and procedures while operating a building inspection program during the current reporting period:

1. **Administrative Standards.** Program must provide adequate funds, equipment and other resources needed to administer and enforce the program consistent with the inspection and permit requirements of the state building code.
2. **Electrical Program.** A building inspection program with an electrical program must comply with all applicable electrical rules for the inspection and enforcement of electrical programs.
3. **Fees.** Program must follow the uniform fee methodology for building permit and inspection fees. Program must only use fees collected for the administration and enforcement of the building inspection program. Electrical permit fees must only be used for the administration and enforcement of the electrical program. To avoid division enforcement action, program must collect and remit surcharges (with permit log) to the division no later than the 15th day following the month or quarter for which the surcharges are required to be collected according ORS 455.220.
4. **Appeals.** Program must have policy to allow an applicant for building permit to appeal decision made by building official. Program must also allow an applicant for a building permit to file a written appeal of a decision of the building official directly to the division on any matter relating to the administration and enforcement of ORS Chapter 455.

5. **Operating Plan.** Program must amend operating plan within 30 days when changes occur and provide amended operating plan to the division. Changes include a change of building official.
6. **Staff.** Program must have appropriately certified staff for inspections.
7. **Enforcement.** Program must not enforce any standard in conflict with the state building code.
8. **Documentation.** Program must respond timely to division data requests on any matter relating to the administration and enforcement of ORS Chapter 455.

V. Indemnity:

To the extent permitted by Article XI, sections 9 and 10 of the Oregon Constitution, and within the limits of liability established in the Oregon Tort Claims Act, MCCOG shall defend, indemnify and save the division, its officers, agents, and employees harmless from any and all claims, actions, costs or damages caused by MCCOG.

VI. Term of the Agreement:

This agreement will become effective upon signature of all parties and will remain in effect until the end of the municipality's current reporting period unless the municipality abandons or ceases to administer the building inspection program or the division assumes administration of the program under activities related to ORS 455.770. Failure to comply with any provision of this agreement may be considered a breach of this contract thereby impacting the municipality's continued administration of the building inspection program.

VII. Signatures:

Both parties, by the signatures below, hereby acknowledge that they have read this agreement, understand it and agree to be bound by its terms and conditions.

Building Codes Division

Date

1/28/2015

Mark S. Long, Administrator
Building Codes Division



Mid-Columbia Council of Governments

Date

11-19-14

Robert L. Futter, MCCOG Building Official

Building Official Signature

Date

11-19-14

John R. Arens, MCCOG Executive Director

MCCOG Representative Signature



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Building Codes Division
1535 Edgewater Street NW
P.O. Box 14470
Salem, OR 97309-0404
503-378-4133
Fax: 503-378-2322
bcd.oregon.gov

March 4, 2015

VIA ELECTRONIC MAIL (Robert.Futter@mccog.com)

Robert L. Futter
Building Official
Mid-Columbia Council of Governments
1113 Kelly Ave
The Dalles, OR 97058

RE: MCCOG's provision of building inspection services to Wasco, Sherman, Gilliam, and Wheeler Counties

Mr. Futter:

I am writing in response to your letter (11/19/14) about signing the "memorandum of agreement." This letter will provide clarity about operating the building inspection programs on behalf of Wasco, Sherman, Gilliam and Wheeler Counties.

ORS 455.148(7) allows the governing body of a municipality to request assumption of the administration and enforcement of its own building inspection program. A "municipality" is defined as a "city, county or other unit of local government authorized by law to administer a building code" (ORS 455.010(5)). The Division is unaware of any statute explicitly authorizing an ORS 190 organization to assume full building inspection services.

ORS 479.855(2) (a) provides an even clearer limitation for municipalities that can operate electrical programs. It states:

"The department may authorize the *city or county* to administer and enforce the provisions of this section and ORS 479.540 and 479.560 if it finds that the *city or county* can comply with the minimum standards and meet the qualifications for inspections, permit applications and other matters to assure adequate administration and enforcement of electrical inspection programs." (*emphasis added*)

The Division has allowed a municipality administering a building inspection program to provide building inspection services via contract. Many municipalities elect to provide these services through intergovernmental agreements. Similar to MCCOG's application on behalf of the four counties, many third parties help facilitate the application process.

In 2006, the Division received and approved program assumption requests from MCCOG on behalf of Wasco, Sherman, Gilliam, and Wheeler Counties. The application approval letter (1/31/07) your office received from the division stated:

“Based upon consideration of information received, the division approves your application. The Mid-Columbia Council of Governments may administer and enforce a building inspection program *for* Wasco, Sherman, Gilliam and Wheeler Counties, effective July 1, 2007.” (*emphasis added*)

MCCOG is considered a service provider for the four counties approved to operate a building inspection program. In the future, the division will expect each county to sign the memorandum of agreement during each renewal cycle.

If you have any further questions or concerns regarding MCCOG’s role in the provision of building inspection services, please don’t hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Salmon", written in a cursive style.

Brett Salmon
Manager, Policy and Technical Services
Oregon Building Codes Division

cc: John Arens, Executive Director, Mid-Columbia Council of Governments

Dear Mr. Long –

Wasco County will be unable to return an executed copy of the Memorandum of Agreement (MOA) required as part the County's application to renew its building inspection program by the deadline of January 1, 2017.

The County respectfully requests an extension to submit the completed program renewal application. County staff should be able to submit the completed application, including the executed MOA, by [DATE].

Thank you for your consideration in this matter –

DRAFT