

WASCO COUNTY PLANNING COMMISSION

Application for Conditional Use

Union Pacific Case File PLASAR 15-01-0004

September 26, 2016

1 CHAIRMAN HARGRAVE: So calling the hearing to
2 order for deliberation on application
3 PLASAR-15-01-0004.

4 The first hearing for this proposal occurred on
5 September 6th, 2016, during which staff provided a
6 presentation of the proposed development and the
7 application -- and the applicable rules. Some
8 testimony was received from the Applicant and by
9 all members of the audience who signed up to speak.
10 The record was held open for seven more days and
11 closed on September 13th, 2016.

12 As you will recall, the application includes
13 expanding an existing railroad siding on either
14 side of Mosier for 4.02 miles of new second
15 mainline track and realign the existing track;
16 replace five equipment shelters; install drainage
17 structures, including ditches and culverts; a
18 retaining wall; new lighting and signage and
19 wireless communication poles; modify existing
20 utilities, temporary landing zones for
21 construction; construct temporary and permanent
22 access roads and offsite wetland mitigation.

23 The proposed development location -- the
24 project area begins at rail milepost 66.98 east of
25 the Wasco County line, approximately two miles west

1 of the city of Mosier, and ends at milepost 72.35,
2 approximately three miles east of Mosier within
3 Memaloose State Park.

4 The project area roughly parallels the Columbia
5 River at Interstate 84. The portion of this
6 project located inside the urban area of Mosier is
7 exempt from National Scenic Area requirements and
8 is not subject to this review.

9 The procedure that I would like to follow is,
10 first, disclosure of interest, ex parte contact, or
11 potential conflicts; then the planning department
12 will present information received during the
13 extended period; then the Planning Commission will
14 begin deliberation. If enough information is
15 available, the Planning Commission will make a
16 decision today.

17 It's actually a recommendation. That should be
18 phrased differently in this script. The
19 commissioners would make the decision. I'm sure
20 that we will be making a recommendation. I can't
21 speak for the commissioners. Sorry if you can't
22 hear the questions here.

23 Okay. Then I think -- I think before we move
24 to the next agenda item, we should ask if anyone
25 wants to speak about business which is not on

1 today's agenda and also roll call. So a few things
2 are not here.

3 Let's start with roll call. Lynne.

4 MS. ERICKSON: Lynne Erickson, The Dalles.

5 MR. HANDLEY: Jeff Handley, The Dalles.

6 MR. DEHART: Brad DeHart, The Dalles.

7 MS. ASHLEY: Vicki Ashley, Bakeoven.

8 CHAIRMAN HARGRAVE: Russ Hargrave, Mosier.

9 MR. SCHANNO: Chris Schanno, Dufur.

10 MR. MYERS: Andrew Myers, The Dalles.

11 MR. DAVIS: Mike Davis, Tygh Valley.

12 CHAIRMAN HARGRAVE: Okay. Great.

13 Does anyone wish to speak or raise an issue
14 that is not on today's agenda, something not
15 relevant to what we have on the agenda?

16 Okay. Hearing none.

17 So does any Planning Commissioner wish to
18 disqualify themselves for any personal or financial
19 interest in this matter?

20 Does any Planning Commissioner wish to report
21 any significant ex parte or prehearing contacts?

22 Does any member of the audience wish to
23 challenge the right of any planning commissioner to
24 hear this matter?

25 Okay. Is there any member of the audience who

1 wishes to question the jurisdiction of this body to
2 act on behalf of Wasco County in this matter?

3 Okay. Will the staff please present their
4 report. So do you want us to go through -- there
5 is some information that came in that we have not
6 had a chance to read. We're going to read it at
7 the beginning of this session.

8 Do you want us to do it before your report or
9 after, Angie?

10 MS. BREWER: That's really up to you. I'm
11 happy to give a high-level overview of what we did
12 get and then you can take a break.

13 CHAIRMAN HARGRAVE: I think that would provide
14 better context.

15 MS. BREWER: Okay. I'm going to have -- the
16 PowerPoint projector clicker here, if you will, is
17 not working, so I'm going to have to signal my
18 staff every time I want to change slides.

19 (Pause in proceedings)

20 MS. BREWER: So we received a handful of new
21 documents between the hearing on the 6th and the
22 cut-off timeline, the extended seven-day timeline
23 of September 13th. I'm going to go through them
24 briefly on a very high level because they are part
25 of the packet.

1 And for you -- for those of you in the
2 audience, what we were just talking about is, as it
3 turns out, the rebuttal comment received from Union
4 Pacific Railroad was left out of the last email to
5 the Planning Commissioners, so we're going to give
6 them a small period of time to review that before
7 they get into their deliberations here this
8 afternoon.

9 So, first and foremost, we received a letter
10 from the Confederated Tribes and Bands of the
11 Yakama Nation citing treaty rights impacts, natural
12 and cultural resource concerns, and increased risk
13 of derailments and spills, and interference with
14 Yakama Nation treaty rights, including access to
15 usual and custom areas and cumulative natural
16 resource impacts associated with regular long-term
17 use of and transport of commodities of concern and
18 also the sort of catastrophic derailment
19 incidents/accidents that could occur based on those
20 commodities of concern.

21 So along those lines, I just want to remind the
22 Planning Commission that there are very specific
23 criteria and language in the Scenic Area rules
24 about treaty right protections, and that if there
25 were any -- if it was concluded by the Planning

1 Commission that there were adverse effects, or the
2 likelihood of adverse effects to treaty rights, we
3 would then have to prohibit the project. So I just
4 want to make sure that that's very clear.

5 We received comment from Mosier Fire. They had
6 provided comment for the last hearing and they came
7 and presented it personally.

8 And I'm looking in the audience to see if
9 anyone is here from them today, but they did
10 provide additional information asking specifically
11 to eliminate the west end of the project from the
12 proposal before moving forward. They feel strongly
13 that they cannot mitigate the impacts and increased
14 risk on the areas closest to the city of Mosier and
15 made some pretty specific requests on that.

16 I'm hoping that you all received that packet of
17 information and are familiar with that. I have
18 hard copies if anyone is interested in seeing that
19 again.

20 We received a letter from the Hood River Valley
21 Residents Committee citing public health concerns
22 and safety concerns not only from the existing
23 railroad traffic and uses on the railroad, but
24 expanded risks based on the potential expansion of
25 rail traffic.

1 We received a letter from the Sierra Club
2 citing public -- again, public health and safety
3 concerns, specific resource impacts in the Scenic
4 Area subject to the protections of the scenic,
5 natural, cultural, and recreation resource
6 protections, as well as the treaty rights
7 protection clauses. They have some concerns about
8 ensuring those were implemented.

9 We received responses from Union Pacific
10 Railroad to items raised at the hearing on the 6th.
11 That is available on our website as well. There
12 were some very specific responses to each of the
13 individual comments and items raised at that
14 hearing, along with some additional information to
15 support their responses.

16 We received new information from the Friends of
17 the Gorge and a response to some of the items at
18 the hearing last -- excuse me, the September 6th
19 hearing. I think I was able to advance that
20 myself.

21 And then we received nearly 1800 new public
22 comments by email requesting the denial of the
23 proposed development; many of them were similar to
24 the comments we received the first time around. A
25 lot of them were template letters, but there were

1 some original and unique comments provided in
2 response to what they heard at the hearing on the
3 6th.

4 And then staff provided some responses to
5 planning commissioner questions, and so did our
6 County Counsel, Kristen Campbell.

7 We received questions from one planning
8 commissioner asking for clarification on several
9 items. It was Lynne Erickson. And staff wrote
10 that up and put it into the record so you could all
11 see what the questions were and what the answers
12 were from staff.

13 And then the rebuttal that we're going to take
14 a moment to pause and look through was provided by
15 Union Pacific Railroad on September 21st in
16 response to the comment received by the 13th.

17 So no new information has been submitted since
18 the 13th. The record has been closed on that date.
19 We have received a few other items, but they didn't
20 make the cut-off timeline. And if anyone has
21 questions about those, I can generally answer, but
22 I can't get into the information.

23 So that concludes my presentation of the new
24 information that has come in. I didn't get into a
25 lot of detail about the Friends comments, but I'll

1 just quickly do that for you. It's a longer list.
2 They submitted a couple of documents. You should
3 be aware of that and hopefully you've all had a
4 chance to read it.

5 The Friends comments cite illegal
6 insufficiencies, zoning conflicts, inconsistent
7 with variance criteria and set-back requirements,
8 resource protection requirements.

9 It surmises -- well, it states that the staff
10 report fails to adequately address resource impacts
11 and cumulative effects. It has concerns expressed
12 in there that staff catered to the Applicant and
13 failed to address ordinance requirements, and that
14 the staff report is lacking language in the
15 conditions of approval to make them enforceable.
16 That's just something to be aware of.

17 Any questions before I turn it back over to you
18 for reading through the rest of it?

19 MR. DEHART: I have a question. You mentioned
20 that the City of Mosier had submitted a request
21 that a portion of the project be eliminated.

22 MS. BREWER: Yes.

23 MR. DEHART: We don't really have the ability
24 to -- I mean, that would require that we go back to
25 the beginning, so to speak, because the project

1 would be a different application then, wouldn't it?

2 MS. BREWER: In my personal opinion and
3 professional opinion, no, you can definitely place
4 conditions on anything in the application,
5 including the scope, size, location, design. Those
6 would be based on the need to be consistent with
7 resource protection requirements, and so
8 they -- there would need to be a nexus there for
9 the possible impact of concern and what is being
10 proposed.

11 MR. DEHART: Okay.

12 MS. BREWER: You can't just deny it because you
13 want to. There has to be a connection there with
14 real impacts addressed and cited by the proponent.

15 CHAIRMAN HARGRAVE: Do commissioners have any
16 other questions?

17 Okay. Thanks.

18 (Pause in proceedings)

19 CHAIRMAN HARGRAVE: Before we read through the
20 rest of this, I want to clarify, go back to
21 something that came up earlier. We will in this
22 case be -- it depends on the case as to whether
23 we're making a decision or a recommendation. In
24 this case we will be making a decision. This does
25 not automatically go to the County commission

1 except on appeal. So we will be making a decision.
2 If we have enough information, we'll make that
3 decision today.

4 I ferreted this out. We are making a decision.

5 So I want to go ahead and open this for
6 deliberation. We will not take any questions
7 today. The first thing we're going to do in
8 deliberation is take a good 20 minutes at the
9 beginning and read through the response from Union
10 Pacific because we did not have that ahead of time.

11 (RECESS 3:15 to 3:35)

12 CHAIRMAN HARGRAVE: Have all of the
13 commissioners read completely through the document
14 at this point?

15 Okay. Good work on that.

16 Okay. What do you guys think?

17 MS. ASHLEY: We've all got questions.

18 CHAIRMAN HARGRAVE: If you have questions,
19 but -- yes, Lynne.

20 MS. ERICKSON: I think, given all of the
21 changes requested by Union Pacific, that I would
22 like to hear or see staff and legal counsel's
23 response to all of these changes.

24 CHAIRMAN HARGRAVE: Okay. Angie?

25 MS. BREWER: I'm sorry, I didn't hear that.

1 CHAIRMAN HARGRAVE: Given the -- so the
2 document we've just read through is from Union
3 Pacific Railroad, written comments, and there are a
4 lot of specifics in here. And Lynne is requesting
5 that, given the amount of specific detail of
6 changes that they are alluding to in here, she
7 would like to hear from the planning department
8 what do you -- what do you think of these
9 recommended changes?

10 MS. BREWER: Well, so there are -- there are a
11 lot of comments in that letter and a lot of
12 responses, and I could go through them one by one,
13 but, really, truly, it's for the Planning
14 Commission's consideration and decision to evaluate
15 whether or not you would agree or you would like
16 additional information. Staff would have to do
17 some additional analysis to go back and compare a
18 lot of these things. It's quite lengthy, so I
19 don't know if you want to go through one by one or
20 just generally.

21 CHAIRMAN HARGRAVE: No, I don't. I think if
22 you have some sort of general reaction, that would
23 be really helpful at this point, or from legal.

24 MS. BREWER: Just to be clear, is this the
25 document that we just -- you guys just took some

1 time to read through?

2 CHAIRMAN HARGRAVE: Yes, because that was
3 late-breaking for us.

4 MS. BREWER: Sure. So there are some legal
5 questions in there and some project-specific
6 questions in there. And I'll start by deferring to
7 Kristen if she wants to talk about the legal
8 questions first.

9 MS. CAMPBELL: So the legal issues --

10 (Multiple Speakers - Inaudible)

11 MR. MYERS: So, Kristen, what's being asserted
12 from what I can tell in that document is that we
13 don't have authority to impose many of the
14 conditions of approval that are suggested, so I
15 guess that's what we're wanting to hear from you.

16 MS. CAMPBELL: Right. Okay. So that's the
17 essence of it. My initial memo took a broad-level
18 approach to that analysis. Is that something that
19 you would like me to reiterate now? Is that what
20 you're asking?

21 MR. MYERS: I guess we want to know do you
22 agree or disagree that we have the authority to
23 suggest that they cover coal cars or that they have
24 a certain number of trains per day?

25 CHAIRMAN HARGRAVE: Can everyone hear?

1 GROUP SPEAKING: Sort of. Not really.

2 MS. CAMPBELL: Okay. So it is my opinion that
3 there is federal precedent that requires local
4 government to administer particularly federal
5 environmental laws through -- through Compact. And
6 in this case the Compact requires the management
7 plan, which is what -- what our authority in this
8 case is -- is implementing.

9 So it is my opinion that we -- that you have
10 the authority to consider these items.

11 CHAIRMAN HARGRAVE: Thanks, Kristen.

12 Any other questions for Kristen?

13 MR. DAVIS: Just one other question regarding
14 the legality, because a number of statements in
15 their letter basically states that they undertook
16 this as a voluntary and that because state and
17 local requirements cannot be applied as they are
18 stating that, into, like, page two, the top of page
19 two.

20 So -- and also they are stating that -- if you
21 look at page four, to be specific, it's basically
22 they are saying that, hey, we don't have to abide
23 by -- we can just do this anyway, but -- so the
24 question I have is that -- is that the case in
25 these type of -- this type of thing, meaning that

1 whether we say "yes" or "no" becomes an irrelevancy
2 based upon federal law, that basically they state
3 they can do this operation anyway. You see what
4 I'm saying?

5 MS. CAMPBELL: Give me a second to look where
6 you have cited.

7 Okay. So, again, this, in my opinion,
8 dovetails what I just opined in that -- and to note
9 also, I think more specifically maybe cite this,
10 that the service transportation board has
11 repeatedly held that nothing in -- in the sections
12 that they cite is intended to interfere with the
13 role of state and local agencies in implementing
14 federal environmental statutes.

15 And so beyond that, for example, the authority
16 that they cite is distinguishable in that in those
17 cases it wasn't the federal. Those local
18 governments weren't implementing the federal
19 environmental laws. They were implementing in
20 those state laws or in another case the -- it
21 preceded what I -- what I just recited.

22 MS. BREWER: So one thing for us all through,
23 just to refresh you guys, just a reminder that the
24 scenic area ordinance that we implement is
25 specifically implementing the Columbia River Gorge

1 National Scenic Area Act which is signed by
2 Congress through its federal authority. It is
3 implemented through a five-state Compact in Oregon
4 and Washington, created the Columbia River Gorge
5 (inaudible) which is a five state regional agency
6 and the Forest Service National Scenic Area Office,
7 a federal agency, to create those rules and review
8 our ordinances for consistency so that we -- when
9 we adopt our ordinances and implement them locally,
10 we are consistent with the federal requirements on
11 a regional scale.

12 So our rules do carry -- I'm looking to -- it
13 was tested in court before that the rules are
14 federal in nature. Even though they are
15 implemented on a local scale, they do carry that
16 full weight and authority, and staff feels strongly
17 that we do have the authority to regulate this.

18 CHAIRMAN HARGRAVE: Thanks, Angie.

19 Lynne, did that answer your questions?

20 MS. ERICKSON: Oh, well, I have various
21 questions throughout.

22 I guess one that really troubled me was the
23 lengthy revision of the condition about access.
24 And, to me, it looks more like an agreement rather
25 than condition, the way it's proposed to be

1 revised.

2 MS. BREWER: Just so we're on the same page,
3 are you looking at the revised staff --

4 MS. ERICKSON: Condition 21.

5 CHAIRMAN HARGRAVE: From the staff?

6 MS. BREWER: Oh, I'm sorry. Let me get there.

7 CHAIRMAN HARGRAVE: I think that's fair to
8 point out.

9 MR. DAVIS: Page 6 of the memorandum.

10 MS. BREWER: So their recommended changes to
11 condition number 21. I can tell you that I
12 disagree with this recommendation for a couple of
13 reasons. I think that historically trying to
14 address recreation and treaty rights access in the
15 same location has not been successful.

16 Let me just skim this for a second here and
17 make sure -- yeah, so their suggestion is that the
18 access concerns be addressed perhaps more
19 comprehensively through a sort of unified approach,
20 and they suggest a fund of \$2 million to support
21 the planning, permitting and building of those
22 access areas.

23 In my opinion, this is a -- it's a bit
24 premature to put a price point on it because we
25 don't know what the -- what kinds of access will

1 satisfy the concerns provided by the Umatilla and
2 now the Yakama Nation and we don't know what the
3 outcome of the study for the recreation resource
4 impacts will be. So to assume that we can address
5 them in the same location and with a specific
6 amount of money, I just don't think we have enough
7 information to draw those conclusions to support
8 this sort of very specific proposal. I appreciate
9 it very much, but I think it's a bit premature to
10 put a cap on it in both numbers of locations and
11 the costs it will incur.

12 MS. ERICKSON: And, also, assumes that the
13 County is going to be the builder, which I think is
14 not a problem.

15 CHAIRMAN HARGRAVE: Any other questions for
16 staff? I don't want to go through all of these one
17 by one. I mean, we're going to do that when we
18 deliberate.

19 Did you have other big questions? What
20 I'm -- let me explain my sort of thinking on the
21 deliberation here. It will probably help. I'm
22 trying to get information out first, so clarifying
23 questions, maybe based on this document, clarifying
24 questions back to UPRR or to Kristen or staff.

25 MR. SCHANNO: Can we ask questions of the Union

1 Pacific at this point or not?

2 CHAIRMAN HARGRAVE: Yes. I'm trying to get all
3 the information on the table and then I'll tee up
4 some actual deliberations. I'm going to ask you
5 what do you think at this point and that will help
6 you to move the discussion forward. If everyone is
7 in one position, then we're going to have to manage
8 the discussion accordingly. If people are all over
9 the map, that would be different.

10 So at this point I'm trying to get all the
11 information out. What questions do you have?

12 (Pause in proceedings)

13 CHAIRMAN HARGRAVE: So if you agree to that
14 kind of format, clarify or information-seeking
15 questions. We do not want to open up new areas,
16 but if you have clarifying questions about areas
17 that are already open either in the previous
18 meeting or during the period through September
19 13th.

20 Anyone?

21 MR. SCHANNO: I want to ask the UPRR question.

22 CHAIRMAN HARGRAVE: Go ahead, Chris.

23 MR. BAKER: Nathan Baker, Friends of Columbia
24 Gorge. Will the public be allowed to respond to
25 the questions that are asked of Union Pacific?

1 CHAIRMAN HARGRAVE: We're asking clarification
2 to them. There shouldn't -- there shouldn't be a
3 response needed. What we're trying to do is
4 clarify things that are already in the record up
5 through September 13th. If it turns out
6 differently, we'll certainly manage that, but my
7 first line of managing it is to try and limit the
8 questions to clarifications on issues that have
9 already been presented and which have already been
10 discussed.

11 MR. BAKER: Hasn't the record technically been
12 closed already?

13 CHAIRMAN HARGRAVE: It is.

14 MR. BAKER: Thank you.

15 CHAIRMAN HARGRAVE: So clarifying questions
16 around something that's already in the record?
17 Chris.

18 MR. SCHANNO: Do you guys currently run any
19 covered coal cars anywhere now?

20 MR. WYMAN: Thank you very much, Commissioner
21 Schanno. Ty Wyman from --

22 UNIDENTIFIED SPEAKER: We would like to object.
23 That's a question of entering into -- evidence into
24 the record. If you would like to reopen the
25 record, then that would be fine to reopen the

1 record.

2 MS. CAMPBELL: So we shouldn't be taking
3 comment or questions at this point.

4 CHAIRMAN HARGRAVE: I'm looking for more like
5 something that you didn't understand because there
6 was a smudge on the page.

7 MR. DAVIS: Kristen, I just wanted to make sure
8 that I'm understanding. I'm sorry to keep on about
9 this, but the conditions of approval, at least
10 several of them, Union Pacific has suggested that
11 we don't have legal authority, not just that, they
12 have suggested that they don't even have legal
13 authority to agree to them really and your position
14 is otherwise, that we do have the authority to
15 impose those conditions. Is that correct?

16 MS. CAMPBELL: That effectively -- effectively
17 our ordinance carries the weight, it effectively is
18 federal law.

19 MR. DAVIS: Okay. The issue of covering coal
20 cars, their response has been not only is that not
21 a common practice, but it would essentially be
22 impossible and that it would disrupt, you know, the
23 economy, essentially.

24 MS. CAMPBELL: Okay. So that does bring
25 up -- that does bring up an issue for your

1 consideration, that what I cited to you earlier, it
2 does have -- hold on. Let me make sure I get the
3 appropriate language here.

4 CHAIRMAN HARGRAVE: And out of
5 consideration -- you may sit back down, it turns
6 out.

7 MS. CAMPBELL: So when a local government is
8 applying federal environmental law such as this, it
9 still -- it cannot -- it cannot unduly restrict the
10 railroad from conducting its operations or
11 unreasonably burden interstate commerce. So that
12 is the qualifying consideration and analysis here.

13 And it really is a fact-driven analysis. Each
14 case tends to be, you know, obviously different in
15 that analysis. So applying the facts here to those
16 qualifications.

17 MR. SCHANNO: Thank you.

18 MS. BREWER: I would just add that we're not
19 asking them to discontinue a contract. We're just
20 asking them to carry it safely to comply with the
21 ordinances that we have.

22 MS. ASHLEY: I would just like to make a
23 statement before we get much further into this.

24 We've heard a lot in the last few days. We've
25 read tremendous number of treaties from reams of

1 paper. We have to remember this is a land use
2 issue, not an emotional issue. And I think
3 that -- that's going to go a long ways to our
4 decision.

5 CHAIRMAN HARGRAVE: Okay. Lynne. Go ahead.

6 MS. ERICKSON: A couple points of
7 clarification. In several documents I read that we
8 received -- the issue was raised that the Union
9 Pacific did not address the fact that they did not
10 get the land transfer from the parks in their
11 application and how that would impact the project.
12 Could I get some clarification on that from either
13 staff or Union Pacific?

14 MS. BREWER: I can respond to that.

15 So there was quite a bit of discussion at the
16 time when the Oregon State Parks and Recreation
17 Commission was making a decision as to whether or
18 not to move forward with the piece of the project
19 on the -- proposed for their land.

20 Their commission directed staff to discontinue
21 conversations with Union Pacific on that proposal
22 because they were waiting on a number of things.
23 They wanted to make sure they fully understood the
24 potential impacts to the landscape and the
25 resources that they're offering to citizens but

1 also required to protect by state law.

2 And, also, it did not get a lot of support from
3 that commission in general, so they -- they did let
4 us know that they had directed staff to stop
5 working with Union Pacific on those negotiations.

6 However, when we asked Union -- excuse me, when
7 we asked Oregon State Parks, should we be modifying
8 this proposal in any way, do I need a new proposal,
9 they said no. Let it move forward. We need to
10 know the outcome of that analysis in order to know
11 what their next steps are.

12 So the Applicant was asked if they had any
13 preferences whether or not they wanted to change
14 the scope. They said no, you know, best case for
15 them would be to proceed with the full-scale
16 project they had proposed in their alternatives
17 analysis, and so we moved forward with confirmation
18 from Oregon State Parks expressing a level of
19 comfort with the land use and planning and
20 permitting process, all the while knowing that as
21 the land owner, they have the ability to -- to not
22 allow that development to occur on their property
23 at a future date if it did get approved.

24 So staff felt comfortable moving forward with
25 the scope and if for some reason they decide not to

1 build that piece of the project, it does not -- it
2 does not change any of the other conditions of
3 approval or changes that we have recommended for
4 scope, design, public health and safety
5 requirements. It wouldn't change any of those
6 things. It just would be that that piece of the
7 project would not be constructed.

8 MS. ERICKSON: That being the access, access
9 road?

10 MS. BREWER: A portion of the access road is
11 owned by the Applicant. And I should just start by
12 saying the ownership in that area was a very
13 complicated discussion for months and months early
14 on. So -- and that was part of the Oregon State
15 Parks and Rec Commission concern about what was
16 happening there. There was a lack of clarity for a
17 while as to who owned what. So there is a -- if I
18 remember correctly, the access piece is mostly
19 owned by Union Pacific Railroad, if not entirely
20 owned by them, but there are quite a few pieces of
21 the railroad right-of-way where they were looking
22 to expand that were owned by Oregon State Parks.

23 Does that answer your question?

24 MS. ERICKSON: Let me think about it a minute.

25 CHAIRMAN HARGRAVE: Okay. I'll tell you, let's

1 launch into deliberations.

2 So our job is to either approve the application
3 or deny the application or approve it with
4 conditions. Am I correct?

5 MS. BREWER: Yes, you're correct, but you can
6 also ask for modifications of findings or
7 conditions.

8 CHAIRMAN HARGRAVE: Right, absolutely. So we
9 don't need to take the conditions exactly as they
10 are in the staff's recommendation, and a number of
11 modifications to those conditions have been entered
12 into the record, so that's certainly an
13 alternative, too.

14 If we were to deny it, we need to do it based
15 on which criteria, Angie?

16 MS. BREWER: Any of the criteria you found to
17 be inconsistent you would have that ability to deny
18 based on that.

19 CHAIRMAN HARGRAVE: With the management plan?

20 MS. BREWER: With our ordinance. And the
21 management plan is effective, too, but it's
22 implemented through our ordinance.

23 CHAIRMAN HARGRAVE: So is everyone clear on
24 that? So I am curious -- to try and manage this
25 and facilitate it in a reasonable amount of time,

1 we could spend an awful lot of time discussing
2 things which may not turn out to be important. So
3 I want to ask for a straw vote. I don't want a
4 binding vote. I'm hopeful that our deliberations
5 will influence our thinking and that as we learn
6 what each other has thought of all the stuff we've
7 listened to and read, that we're all going to
8 listen to each other and that that wisdom and
9 knowledge from all of the material we've absorbed
10 is going to influence our thinking.

11 I want to facilitate that effectively. I'm
12 curious right now, I want to take a quick straw
13 poll to see where your head is at; accept, approve
14 the application, deny the application, or with
15 conditions, and those conditions could be as the
16 staff recommended or modified.

17 So starting with Mike.

18 MR. DAVIS: Since this is a straw vote, after
19 listening to the audio tapes twice over and going
20 through everything, and keeping an eye on what we
21 are here to do, at this stage I am -- if I had to
22 vote right now, I would accept the application only
23 based upon accepting all the conditions that have
24 been outlined as written and not modified by our
25 staff. That's where I'm positioned at this point.

1 MR. MYERS: And for me it's tough to give a
2 position at this point. What I want to do is -- we
3 heard a lot from people in the community, and we
4 heard I think specifically with regard to issues of
5 concern that deal directly with the application,
6 things such as vegetation, effect on recreation,
7 noise, all of those considerations.

8 And I think that what I would suggest is that
9 we take each one of those things one by one and
10 discuss them. If I was to vote right now, I would
11 vote to deny the application.

12 MR. SCHANNO: I would say my -- I'm probably
13 leaning towards the same way Commissioner Myers is.
14 I would vote -- I would lean towards denying it at
15 this point until we talk more about it.

16 CHAIRMAN HARGRAVE: My initial reaction, which
17 is not at all initial. I've heard hours and hours
18 of testimony; some of it expert and professional
19 and a lot of it from people who aren't experts, but
20 have a tremendous amount invested in this area of
21 this community and the culture we have here.

22 I have listened carefully to a lot of
23 information and I really came in without any
24 particular bias on this, but based on what I heard,
25 at this point my inclination would be to deny it.

1 MS. ASHLEY: Okay. Based on what I have read,
2 what I listened to for hours, reread, considering
3 that it's a land use issue, I would be in favor of
4 it with conditions.

5 MR. DEHART: I don't think I need the
6 microphone. Can you hear me in the back?

7 I have never felt like our decision here was
8 more insignificant in the whole scheme of things,
9 but that being said, I mean, we're arguing about
10 legal matters that I believe are going to play
11 themselves out on a different stage. This has
12 become what I consider to be a relatively simple
13 and straightforward project application, has become
14 one where we're having more discussion around
15 whether we should be using fossil fuels on this
16 planet or not.

17 And for this body, for my portion of this, I've
18 listened to all that testimony and I don't believe
19 that we can wrap all of that into this. My
20 inclination has been to approve the application
21 with conditions, but not with the conditions as
22 they are exactly written in the staff report. I do
23 have actually some changes that I would want to see
24 in those conditions before I would be able to
25 approve it.

1 CHAIRMAN HARGRAVE: Thanks.

2 MR. HANDLEY: I would have to agree with Brad
3 on this. I have read through everything, including
4 every last letter that was sent by email that I
5 have received.

6 At this point I'm leaning towards approval but
7 with changes to the conditions.

8 MS. ERICKSON: I would be leaning towards
9 disapproval, but I don't get to vote today, but,
10 also, thinking about some additional conditions, if
11 we were to move in that direction, that would need
12 to be modified.

13 CHAIRMAN HARGRAVE: Okay. Thanks. That helps.

14 So, John, you were saying that -- I'm sorry, I
15 meant Andrew. Mr. Myers, you said you were leaning
16 towards denying it. I'm curious to learn a little
17 bit of your thinking on that. Try and relate your
18 thinking specifically back to our management plan.
19 What are the conditions in that that you see as
20 incompatible with this application?

21 MR. MYERS: Guess my thought, Russ, is that I
22 want to have more of a conversation about it and I
23 want to do it kind of one step at a time. So I
24 want to look at -- let's start with vegetation.
25 You know, that was something I heard a lot about

1 from people who came in and spoke to us.

2 And from what I can understand, the requirement
3 is that there not be any loss of plant habitat. Is
4 that what everybody -- okay. And I don't see how
5 the -- even the conditions of approval really would
6 effectuate that, that it's preserved to the
7 greatest extent practicable. I don't see how that
8 is ensuring that we're not having plant habitat
9 loss, you know, that a certain percentage -- 75
10 percent of vegetation be -- you know, survive after
11 a period of in one case five years, in another case
12 three years, depending on whether it's planted in a
13 different location or planted in the same location.

14 That kind of concerns me that there is not
15 really -- there is not really, in my view, a very
16 detailed or very carefully thought out way to
17 ensure that that condition is satisfied.

18 You know, I want to have conversation. I want
19 to hear the other commissioners' thoughts on how
20 this project might affect recreation in that area
21 and how it might, you know, might -- the noise
22 issue. That's something that's significant to me.

23 I also have some questions, I think, just with
24 regard to the staff report and I also -- I am with
25 Brad in that I'm trying to make -- this is a land

1 use decision and I'm not making it an emotional
2 decision. And I agree that the whole fossil fuel
3 issue is something that is a bit distractive. But
4 the question on the number of trains -- and I don't
5 think that that's really something that
6 would -- would warrant approval or denial, but at
7 the same time, I have questions about it because
8 our -- you know, I have heard from Union Pacific --
9 I have heard from opponents of the project that
10 we're going to have a lot more trains. I've heard
11 from Union Pacific that we're not going to have
12 either any more trains or many more trains, and
13 then in the staff report we have we're going to
14 have less trains. And I don't know how they got
15 that, because I didn't hear that from even Union
16 Pacific.

17 CHAIRMAN HARGRAVE: I would like to just
18 comment. You asked for a dialogue, so I'm going to
19 jump in.

20 In terms of, you know, more trains, I
21 think -- I understood UPRR's assertion that this
22 wouldn't affect the number of trains is being based
23 on business, which makes a lot of sense to me.
24 It's what's the demand and they are going to
25 facilitate the demand. I think that was

1 the -- what they were basing the response on.

2 Okay. But as an engineer, what is clear is
3 that they are increasing the capacity of the track,
4 and they acknowledged that when I asked that
5 specific question. There is a lot of debate about
6 how much it increases it. And the increased
7 capacity can also be phrased as increased
8 efficiency, right, because if you have a given
9 amount of track and you make it more efficient, you
10 can move more trains on it, so we've heard it
11 called both capacity and efficiency.

12 It's clear that it increases the capacity.
13 It's apparently not clear from all the experts we
14 heard on exactly how much, but I wanted to separate
15 that out from the supply and demand aspect because
16 if the capacity is X, it can't be above that
17 regardless of demand.

18 MR. DEHART: What I recall from our discussions
19 in the past was that the improvements by this
20 additional length of siding could increase the
21 efficiency of the overall corridor by, I believe it
22 was five to six trains per day.

23 So by us putting a restriction in there that
24 says that -- that train traffic or the number of
25 trains won't go beyond what we're seeing today,

1 already the existing configuration provides for a
2 lot more trains to pass through the Gorge than
3 what's -- than what's occurring today.

4 I don't see how we have the ability to impose a
5 restriction on the efficiency of the rail based on
6 just what I would consider to be somewhat of an
7 arbitrary point in time, today, and what the train
8 traffic is on UPRR's lines.

9 MR. SCHANNO: I also agree with Brad on that,
10 too, when it comes to the amount of trains that you
11 are putting through. I don't know if we can put a
12 number there because as a retired railroader,
13 they -- you're not going to get -- four miles of
14 double track, it's going to increase the velocity
15 through that stretch. It's not going to be
16 increasing the amount of trains that much.

17 And, like Brad said, you are going to be able
18 to reach far more higher numbers if they ran it
19 correctly. And part of that, too, when it comes to
20 number of trains, that's like -- it's hard to put a
21 number on it today because of economic -- where we
22 are economically as opposed to where we could be
23 five years from now or ten years from now. And
24 also who is going to hold them accountable to that
25 from today until forever? You expect the UP to

1 self-report? I mean, we need to be realistic with
2 some of the things we put in there.

3 And also when it comes to the noise and train
4 blocking the recreation access through Mosier, part
5 of that's going to be actually decreased because if
6 this is double track, they will be able to move on
7 by it.

8 So I'm also not doing it as a -- I'm trying to
9 be unemotional and I agree totally with Brad's
10 comments about the fossil fuels being -- clouding
11 the -- what this is. So we just need to make sure
12 we're doing it as best we can with the correct
13 stipulations, I guess, and monitoring.

14 MR. HANDLEY: I think for me with the number of
15 trains and such, I look at it as if ODOT was
16 going -- sorry to use ODOT, but if ODOT was going
17 to increase the capability or capacity (inaudible)
18 they look at ODOT and say, yeah, we'll let you do
19 that, but you can only have so many cars pass
20 through that corridor at any given time.

21 I just don't see how -- how we can impose a
22 standard on a private entity that we wouldn't
23 probably likely not impose on another entity.

24 And with the vegetation part, we've had other
25 stuff come through, other applications come through

1 us, where we have never even took a second look at
2 the plants or vegetation. We just went with the
3 recommendations. So I don't see how holding the UP
4 to a higher standard than what we held previous
5 applicants to would be appropriate.

6 CHAIRMAN HARGRAVE: Not necessarily a higher
7 standard, if I understood the comment right. It
8 was relative to the conditions. So in those other
9 ones you might be recalling, the conditions might
10 have been quite different. I think that was your
11 comment is that you didn't see how the conditions
12 would achieve that, right, or how the proposal
13 would achieve those conditions.

14 MR. MYERS: Correct.

15 MS. ASHLEY: I have a question. I have a
16 question in the fact that what makes more noise,
17 the train sitting idling on the siding waiting for
18 a train to go by or two trains moving
19 simultaneously in opposite direction? To me, it
20 seems like there would be less pollution and
21 exhaustion fumes if they kept moving. That is just
22 one of my thoughts on the siding.

23 MR. MYERS: Would they be sitting idling in
24 that same location, though?

25 MS. ASHLEY: They do. They do. They sit there

1 and wait for the other one to go by.

2 MR. MYERS: Well, not if they go to double
3 track.

4 MS. ASHLEY: But they wouldn't be. With double
5 track --

6 (Multiple Speakers - Indiscernible)

7 MR. DAVIS: In regards to the two topics, let's
8 take the first one, which is about the train
9 operations itself, is -- I think one of the
10 questions why it was raised in regards to the --

11 GROUP SPEAKING: Can you speak up?

12 MR. DAVIS: On page four, I'm referring to the
13 train operations which we were discussing here, it
14 goes back to their original statement in regards to
15 what I brought up and that was the carrier, the
16 federal government basically saying that they have
17 the right to carry.

18 So the question would be is that I think that
19 the number of trains that would go through there,
20 how do we monitor, limit, whatnot, I think that
21 we're going to be -- that's going to be shaken out
22 on more of a legal condition. I don't see how we
23 can put that in there, personally. So I think that
24 if we carry this thing forward, we can't sit here
25 and say, oh, by the way, you can only do so many

1 trains every 15 minutes or whatever.

2 So I think the likelihood of fairness of other
3 places is we have to look at that as you're
4 improving that rail for carrying more goods, more
5 stuff through there, and I question whether we have
6 the wherewithal to put that in successfully.

7 As far as the wetlands and as far as the
8 vegetation, et cetera, I think we have some areas
9 to protect in the section of the natural resource
10 conditions and that that should be looked at, and I
11 think we have in the past looked at -- considered
12 that irrelevant of who's in that process. So I
13 feel comfortable as long as we keep the sections on
14 those conditions to protect our wetlands and
15 protect our vegetation growth.

16 Anyway, that's my comment.

17 CHAIRMAN HARGRAVE: I agree with the point
18 about it not being feasible to put a condition on
19 the number of cars or whatever, but -- Angie.

20 MS. BREWER: Can I provide a little bit of
21 context about the source of these conditions?

22 So think about the existing bottleneck, if you
23 will, in Mosier as a bit of a traffic-calming
24 device. Right now it only allows so many trains to
25 pass and so many -- and specific lengths of trains

1 to pass safely and efficiently.

2 The letters that we received from the Umatilla
3 during the comment period, and again similar
4 comments during the window of time after our last
5 hearing from the 13th, the treaty rights concerns
6 specifically discuss increases in rail traffic. We
7 also received those concerns from others, but in
8 order to comply with our treaty rights protection
9 requirements and allow any kind of proposal to move
10 forward, we have to attempt to regulate it. If we
11 don't try to keep it at least somewhat similar to
12 what it is now, then we would be allowing something
13 that has a potential adverse effect to treaty
14 rights to move forward and that would be in
15 conflict with our resource protection requirements.

16 MR. HANDLEY: I would like to say something
17 about the treaty rights. It says right in their
18 letter "may result in violation." It doesn't say
19 that it will result in violation. It said it may.
20 I imagine that if it would, we would have totally
21 different documentation in there and it should say
22 "shall" result in violations instead of "may." And
23 there is a big difference in my opinion between
24 "may," "it may do this," than "shall, it shall do
25 this."

1 MS. ASHLEY: Or will.

2 MS. BREWER: So the -- I understand what you
3 are saying. The rules in our ordinance discuss our
4 ability to protect treaty rights from direct and
5 indirect as well as cumulative effects. It is very
6 difficult without being able to project market
7 demands what the changes will actually be.

8 So what they are doing is they are assuming the
9 worst-case scenario, which is what we have to do as
10 well, because, again, if you open up that
11 bottleneck and it is subject to the demands on the
12 market, you really don't know what the impacts of
13 that traffic will be with certainty.

14 So, again, that condition is specifically in
15 there to address the treaty rights concerns as much
16 as we can and the alternative is deny.

17 MR. DAVIS: Could I have a question, Angie? So
18 what you are saying is that we need to put in a
19 moderate time, a number of trains, just because of
20 the treaty and so we have to put something in
21 there.

22 MS. BREWER: There needs to be something that
23 can address the concerns regarding increased rail
24 traffic.

25 MR. DAVIS: Okay.

1 MR. MYERS: My point with regard to that is it
2 is UP's position that we can't do that.

3 MR. DEHART: Can I make a comment on that?
4 What I would like to say is I believe that if we
5 were to consider things such as efficiency and
6 pollution and all of those kinds of things, putting
7 restrictions on the number of trains could actually
8 have an adverse effect on some of the other tribal
9 concerns or some of the other constituents'
10 concerns around pollution in the Gorge.

11 If you think about the efficiencies that this
12 is reported as providing for rail traffic, then
13 when we start talking about less smog, less noise,
14 all of those other adverse impacts to inefficient
15 trains traveling through the Gorge, we may be
16 shooting ourselves in the foot by removing or
17 by -- by actually making UP run less efficiently
18 than they could if they built this project.

19 CHAIRMAN HARGRAVE: Sure. It's a good point.
20 And I think to some extent, Brad, maybe it's scale.
21 If you look at it across the country, certainly
22 improved efficiency is a good thing. If I look at
23 it within the Gorge and realize that improved
24 efficiency would increase capacity -- and I'm just
25 going to take a minute to pontificate here to share

1 with you my thinking -- it would increase capacity
2 in two ways, as I understand it. One is you could
3 have more trains, more cars, but the other one is
4 could have bigger trains. And so I realize as a
5 land use person, I want to just look at it as a
6 land use issue.

7 If a factory were coming before us and asking
8 to increase capacity, okay, how does that line up
9 with our management plan and our county goals?
10 With this application I see a safety issue and I
11 see a health issue. And if the factory -- and, you
12 know, most of the factories in our County don't
13 have those issues to a high degree, at least not
14 the ones that I've been made aware of in this
15 capacity.

16 So if I look at it through that lens, I am
17 concerned about the safety issues that come with
18 increased capacity and about the health issues.
19 And that's why it's my thinking that regardless of
20 this condition or that condition, none of these
21 conditions adequately address those fundamental
22 issues.

23 And, Brad, you asked, you know, a good question
24 around -- this is an arbitrary point in time. The
25 capacity is X. If we went back -- this railroad

1 has been operating for a long time. If we went
2 back 100 years, the capacity would be something
3 different. And so, you know, why should we
4 arbitrarily constrain it to what it happens to be
5 today? I think that was kind of the gist of your
6 point. I don't know.

7 All I know is that we have an application in
8 front of us today and we have to make a decision
9 today. And while it might be an arbitrary point in
10 time, it is the decision that we're faced with, and
11 so that's some of my thinking. My concerns are
12 safety, number one, and health, number two. And I
13 don't see that any of the conditions adequately
14 addressed that.

15 MS. ASHLEY: I would like to address the point
16 of safety. I think we need to break that out.

17 Fire safety. I live off of the Deschutes
18 River. We see fires from the trains there from
19 brakes. If they would commit to putting one of
20 those foam trailers permanently stationed in The
21 Dalles or Hood River so that there is access for
22 this mid Columbia Gorge area for the foam trailer,
23 that, to me, would be -- that foam is so much
24 better than just plain old water. And I know, I've
25 used plain old water in a gunny sack and if I had

1 foam, it would be a whole lot better to put fires
2 out.

3 CHAIRMAN HARGRAVE: I agree with you that
4 mitigation conditions could be -- there might
5 definitely be effective mitigations. And, you
6 know, the foam was key in the one scenario that
7 we've had and, you know, staging foam would
8 certainly be an important aspect of addressing
9 safety concerns.

10 Fundamentally, though, the topography and
11 geography of the area is problematic with regard to
12 safety. If you look at Mosier as an example, and
13 that's where this application is centered, there is
14 not a lot of routes out and in. It's
15 extraordinarily dependent on routes that are
16 adjacent to where this proposal is.

17 MS. ASHLEY: The same thing could happen if a
18 big truck carrying hazardous material on the
19 freeway had a wreck, the same type of thing. It's
20 going to close off wherever, or a barge.

21 CHAIRMAN HARGRAVE: I agree. Well, a barge
22 might be different.

23 MR. SCHANNO: Or any train that they currently
24 run.

25 MS. ASHLEY: Yes, or any train that they

1 currently run.

2 MR. DAVIS: I have a question for Angie, if you
3 don't mind. This goes back to the train
4 operations, the number of. And the concern that's
5 been in my head since we started talking about this
6 is that I feel we have a catch-22 on this between
7 the tribes. And I think that there was a -- the
8 catch-22 on this in regards to what we're obligated
9 with the tribes to look at, as well as what they
10 are stipulating in the memorandum of demand.

11 When you have something like that, it makes me
12 step back and say, wait a second, time-out. We
13 have to have push-back on this whole thing because
14 there is no win. There is no -- you know, it's
15 wrong no matter if you step into it. Is that
16 correct in regards to the operation?

17 MS. BREWER: You were looking at her but
18 talking to me?

19 MR. DAVIS: I'm asking both of you for just
20 some direction.

21 MS. BREWER: I think, if I understand your
22 question correctly, is there any way to move
23 forward? Is that what you're asking?

24 MR. DAVIS: Yes, right.

25 MS. BREWER: So based on the information we had

1 a week before the hearing is what you are seeing in
2 the staff's recommendation, or a week before the
3 first hearing, and we took up our sort of best stab
4 in the dark at conditions of approval to address
5 the concerns that we heard. We postponed this
6 hearing several times asking for more feedback from
7 our technical assistance partners. It was a
8 struggle every time.

9 And so you will notice that there are still
10 some questions looming and that is, in part,
11 because we could not get technical assistance that
12 we were asking for and we needed to issue a
13 unanimous decision based on the application that
14 was provided to us, which was a complete
15 application.

16 They prepared several natural resource and
17 cultural resource surveys to accompany that
18 application. So we had a lot of information to
19 look at and review but, again, there are some very
20 specific treaty rights concerns that are
21 essentially deal breakers. If we do not have a way
22 to respond to them and mitigate them, we cannot
23 move forward based on the proposal that would still
24 protect those treaty rights.

25 And I have the language from our ordinance in

1 front of me, if anyone wants me to read it, but
2 essentially it says that if we do reach a different
3 conclusion from what they have asked for, we need
4 to be able to justify that. We can't -- we need to
5 have some information to back that decision.

6 And it goes on to say that -- let me see if I
7 can find it here -- uses that would affect or
8 modify any treaty rights, any such rights, shall be
9 prohibited. It's a "shall." It's not optional.
10 There is not a lot of discretion there.

11 So staff feels that, you know, if you feel like
12 there is a way to monitor this and you have some
13 level of confidence in monitoring those numbers,
14 then you could move forward. The physical
15 restraint of the bottleneck now is the only sort of
16 guarantee that the numbers won't change, but that
17 doesn't mean that monitoring can't happen, and
18 that's really your decision.

19 Anything you want to add?

20 MS. CAMPBELL: And with respect to some of
21 these conflicted laws, provisions, with all due
22 respect, those are issues that won't be settled by
23 you here today.

24 So it's my best advice in that regard that when
25 in doubt, do your best to apply the facts, the

1 criteria, and whether you think a particular
2 condition is needed to address the standard.

3 CHAIRMAN HARGRAVE: Does anyone else want to
4 speak, share your thoughts?

5 MR. HANDLEY: About just 20 to 30 trains?

6 CHAIRMAN HARGRAVE: The whole thing.

7 MR. MYERS: Just to kind of clarify to make
8 sure I'm on the same page with what Mike and Angie
9 were saying, are we all -- what's everybody's
10 position on if we did -- we know we're increasing
11 capacity. We don't know if we're increasing number
12 of trains. If we did increase number of trains,
13 are we saying that that's going to have an impact
14 on treaty rights? Is everybody in agreement with
15 that, or no?

16 MR. HANDLEY: I'm saying that we don't know if
17 it will or not. The tribes don't even know. They
18 put in their letter to us they don't even know if
19 they are going to impact their treaty rights. They
20 said it may impact their treaty rights. They did
21 not say it that will impact your treaty rights.
22 That's what I'm saying.

23 MR. MYERS: Can I ask Angie, what's your
24 understanding at this point of how an increase in
25 train traffic would or potentially could improve

1 treaty rights?

2 MS. BREWER: So my understanding is based on
3 the comment letter which you've all seen. And it
4 is specific. It doesn't use -- so you're right,
5 Commissioner Handley, it doesn't say "will." You
6 know, there is no sort of definitive "This will
7 happen. Beware." A lot of it -- and I have a hard
8 copy of the Yakama letter in front of me, but not
9 the Umatilla's.

10 It's not just one thing or the other. They
11 both cite multiple concerns revolving around
12 increased traffic, but also just expansion of use.
13 So there are concerns about trains not stopping
14 would potentially increase deaths and accidents for
15 their fisherman along the tracks trying to access
16 the property. That's one of the conditions we've
17 included in there which I think addresses some of
18 those concerns.

19 There are other concerns about a likelihood for
20 irreparable harm to natural and cultural resources,
21 which is based on the notion that with increased
22 capacity, there is increased risk of any kind of
23 derailment or incident that would cause impacts.

24 So it doesn't need to be -- it doesn't need to
25 be a doubling of the numbers. I mean, it's really

1 just a recognition from them that any increase is
2 an increase in the existing risk because there is
3 an existing risk right now.

4 MR. MYERS: And our rule says any increase
5 shall be prohibited.

6 MS. BREWER: Well, it doesn't say any increase.

7 MR. MYERS: Or any increase or any risk.

8 MR. DAVIS: It says impact.

9 CHAIRMAN HARGRAVE: Negative impact, right.

10 MS. BREWER: The proposed uses must not affect
11 or modify treaty rights or other rights of Indian
12 tribes. Uses that would affect or modify such
13 rights shall be prohibited.

14 And our rules are a bit more expansive than the
15 Corps of Engineers' rules and other federal rules,
16 so our rules allow us to look at indirect impacts
17 as well as direct impacts and also the cumulative
18 effects of all of those -- all of our rules
19 combined, what that means for the long-term outcome
20 of our resources and our treaty rights.

21 MS. ASHLEY: So I guess I go back to the fact,
22 okay, we say no increase in number, so they are
23 running ten trains with 100 cars, they will just
24 run ten trains with 200 cars. They will increase
25 their capacity, but they are not going to increase

1 their number.

2 MR. DAVIS: What was that?

3 MS. ASHLEY: Okay. So we don't allow them to
4 have more trains per day. Well, we don't have any
5 say on the length of the train.

6 MR. MYERS: But right now the length is
7 restricted because of the track that's in there.

8 MS. ASHLEY: Not really.

9 MR. MYERS: I think it is.

10 CHAIRMAN HARGRAVE: It is because the --

11 MR. SCHANNO: If you stop in that section of
12 track.

13 CHAIRMAN HARGRAVE: It's not to say they
14 couldn't run bigger trains than they do today, but
15 there is certainly a limit because you only have so
16 much bypass.

17 MR. SCHANNO: (Inaudible) unless you connect
18 all 176 miles with double track.

19 CHAIRMAN HARGRAVE: I appreciate that. It
20 wouldn't have to all have double track. It would
21 all have to have long enough.

22 MR. MYERS: I recall hearing that specifically
23 from UP, that this project would allow them to
24 increase the length of the trains.

25 MS. ASHLEY: Yes.

1 CHAIRMAN HARGRAVE: I recall that also. And I
2 think the number was one mile. It would increase
3 it to one mile.

4 MR. SCHANNO: The fact is that they can run a
5 train in that siding now that's short enough. They
6 can meet a three-mile train. They pull a short
7 train in there, they could meet a three-mile train
8 in there. On the four-mile stretch of track they
9 will not be able to take two four-mile trains.
10 They will only go four miles.

11 CHAIRMAN HARGRAVE: I think we're down the rat
12 hole because Vicki's point was that there is two
13 parameters here and if you simply restrict the
14 number of trains, that doesn't necessarily address
15 the issue because you could have fewer longer
16 trains. That was her point.

17 MS. ERICKSON: Under the conditions proposed by
18 staff, number 20 says there shall -- "Proposed
19 development shall not directly result in
20 significant increase in net volume of rail traffic,
21 including number of individual trains, length of
22 trains."

23 That's been sort of addressed, but if -- Angie
24 did also suggest some language to be added to
25 ensure compliance with that in the memo that was

1 sent out and that UP -- we could require UPRR to
2 provide quarterly reports to the planning
3 department to document that.

4 CHAIRMAN HARGRAVE: So my feeling, I will
5 just -- my thinking on this, having worked for a
6 lot of large bureaucracies, it's just unmanageable.
7 I'm not even sure it's measurable. I mean, maybe
8 they could self-report. I just see so many issues
9 with trying to micro-manage this thing.

10 I think we need to decide, you know, as a
11 commission, are we approving or denying it?
12 Because if we're trying to deny it through a
13 condition that's, you know, un -- if we really want
14 to deny it, then let's do that and not try and have
15 some crazy condition that, you know, that sort of
16 does that, because I'm not sure this is manageable
17 or the right way to put policy out there. It just
18 seems really hard to measure or manage.

19 MS. ASHLEY: I think some of these conditions
20 need to be tweaked.

21 CHAIRMAN HARGRAVE: Let me do this.

22 MS. BREWER: Can I just add one piece of the
23 timeline? I just want to make sure the timeline is
24 straight in our mind. I just want to call out
25 again, and I mentioned it earlier, that the

1 Yakama's letter came in after they had a chance to
2 see our conditions of approval. I just want you
3 guys to know that. They are still citing concerns
4 that are not addressed by those conditions of
5 approval.

6 CHAIRMAN HARGRAVE: Right. I appreciate those.
7 Back to Vicki's comment around trying to manage
8 lengths of trains and number of trains. So how
9 about if I facilitate it like this, why don't we
10 first decide as a commission what our thinking is
11 on approve or deny. If we're definitely going to
12 go ahead -- I mean, where does the majority lie on
13 that? Because if we're going to deny, then this
14 debate isn't really needed, right?

15 If we're going to approve, then let's figure
16 out are we going to approve with the conditions as
17 recommended or are we going to modify it? If we're
18 going to modify it, then I'll facilitate that and
19 we will get through this in a timely manner.

20 Does that make sense? Okay.

21 MR. MYERS: Another straw poll.

22 CHAIRMAN HARGRAVE: We could do it via straw
23 poll or via motion, either way.

24 MR. MYERS: I would make a motion to deny the
25 application in its entirety.

1 CHAIRMAN HARGRAVE: I would second that.

2 All in favor? Well, hold on. Let's back up.

3 Discussion, please.

4 MR. DAVIS: I have now a concern over
5 monitoring. I have been around very large
6 companies before. I agree with you. You can't
7 micro-manage the thing. I think it's unmanageable
8 on some of the topics that we see. And so
9 I'm -- based upon what I'm hearing now, I'm going
10 to have to push back and I would have to agree with
11 you to deny it. That's my feeling about this
12 thing.

13 CHAIRMAN HARGRAVE: I am in a similar space,
14 which is a proposal could be put forward that would
15 address the concerns that I have based on all the
16 testimony we've heard and read, but this proposal
17 doesn't. And so rather than go through some
18 extraordinary machinations to recraft the proposal
19 in a commission meeting by via really complex
20 conditions, I would rather approve it or deny it.

21 If we deny it, it could be resubmitted and then
22 that would give much more time to recraft it much
23 better than we can do here on the fly in a meeting.

24 So similar thinking to yours, Mike, has led me
25 to where my -- where I am. What do you guys think?

1 MR. DEHART: I don't agree with denying it.

2 MS. ASHLEY: I don't either.

3 MR. HANDLEY: I don't either.

4 CHAIRMAN HARGRAVE: Well, tell us why.

5 MR. DEHART: I have got a list of nine
6 revisions to the conditions that we have right now
7 that, for me, if these revisions were made, I would
8 easily be able to approve the application. Some of
9 them are extreme, complete elimination of
10 conditions, because I don't -- and those are
11 related to some of these restrictions around the
12 covering of coal trains or the number of trains.

13 I don't believe that we want to put Wasco
14 County in a policing position making sure that
15 Union Pacific Railroad or any carrier coming
16 through our County is abiding by conditions that I
17 don't feel we have the ability to enforce.

18 So many of my changes that I would recommend
19 are complete elimination --

20 CHAIRMAN HARGRAVE: To remove those.

21 MR. DEHART: -- conditions. Others are less
22 extreme, subtle changes in some language to better
23 clarify, I believe, what we're trying to achieve.

24 MS. ASHLEY: I move that --

25 MR. HANDLEY: That's the direction I'm in.

1 MS. ASHLEY: I can't agree with the motion in
2 the fact that I think we can work with it. I think
3 a bunch of these conditions need to be tweaked.
4 Some need to be totally removed. Some need to be
5 tweaked, but I think we could approve it on a land
6 use issue quite simply with some revision.

7 CHAIRMAN HARGRAVE: Okay. And, Jeff.

8 MR. HANDLEY: I agree with what Brad had to
9 say. There is some stuff in there I would like to
10 completely remove, some I would like to change the
11 wording of, but we have been working on this for a
12 long time. We have gone through everything. I
13 think it would be kicking the bucket down the road
14 to another -- another section to go and redo all
15 this and I think it's taking the easy way out.

16 CHAIRMAN HARGRAVE: Any other discussion or
17 comments?

18 MR. SCHANNO: I'm starting to lean towards the
19 way Brad is thinking in the sense that if we send
20 them back to the drawing board, we're going to be
21 back all again, whereas the drawing board has been
22 there. We know what we want. We know the majority
23 of it right now. We're all here. It seems like we
24 can go through and talk about the revisions that
25 need to be made or what we agree or don't agree.

1 Part of it comes, even when you talk about the
2 treaties with the tribes, they don't have a maximum
3 amount of train traffic they can run through there
4 right now, so how can we -- we're not a
5 law -- we're not the sheriff's office. You know
6 what I mean? We can't go and say, well, they are
7 violating that because in the Treaty of 1800 it
8 says no more than 50 trains.

9 CHAIRMAN HARGRAVE: I mean, I totally agree, if
10 I understand what you're saying, and what Brad
11 articulated pretty clearly, that we can't get in
12 that business. Our business is approval of land
13 use applications. You know, and that -- that's
14 kind of where my head is at, too.

15 It might lead me to a different vote on this
16 motion, but, you know, I'm like, hey, we don't want
17 to get in the business of monitoring trains. We're
18 approving applications or denying them or modifying
19 them. Right?

20 Is there more discussion or do you want to vote
21 on this? Okay. Mike.

22 MR. DAVIS: I guess so what I'm hearing is that
23 -- there is some fundamental things that I'm
24 wrestling with. One, of course, is safety and the
25 other one is, is this a catch-22 that I feel that

1 we're kind of falling into with the tribes and with
2 the land use, with what we are -- in our management
3 plan of what we shall conform with. Okay?

4 If we -- if we decide to -- and I'm all for it,
5 by the way, that if we want to go through each item
6 by item and start tearing into it, you know, that's
7 fine. That may or may not change, you know, how I
8 feel, but I'm fine with that if we want to take the
9 time to do that. We may take Brad's suggestion and
10 go through those modifications.

11 But if I had to vote right now, based on this,
12 I'd still have to say that I would have to push
13 back.

14 CHAIRMAN HARGRAVE: Okay. And there is a
15 motion open. Any more discussion on the motion?
16 Okay.

17 All in favor of denying the application, say
18 aye.

19 GROUP RESPONSE: Aye.

20 CHAIRMAN HARGRAVE: Against?

21 GROUP RESPONSE: Aye.

22 CHAIRMAN HARGRAVE: The motion is not carried.

23 MR. SCHANNO: We're going to keep talking about
24 it, right? I'm not opposed to voting to denying.

25 CHAIRMAN HARGRAVE: We will probably vote many

1 times. Don't worry.

2 MR. DEHART: Can I make a suggestion, a
3 platform to discuss this from. I'm not going to
4 make a motion, but I would like to share my
5 thoughts on the changes, the nine -- I believe it
6 was nine changes and maybe it can be a starting
7 point for the discussion. I don't know that we
8 need to walk down through all of those conditions,
9 but I think if I've heard all the conversation and
10 deliberations and stuff, I believe that we kind
11 of -- they are circling around these conditions
12 that I've got written down. Okay?

13 And I'm not going to look at what the
14 conditions are. I just called them out by number
15 when I wrote this down, but I just want to
16 reiterate that I believe this is a lot of my
17 thought around this is based upon whether we want
18 to put Wasco County in a position of policing the
19 Union Pacific Railroad on so many issues that I
20 don't believe -- I understand what you have said,
21 Angie, but I don't believe we have the ability to
22 do, to police that.

23 So I'm just going to walk down through these.
24 I want to eliminate condition number 13. I want to
25 clarify --

1 MR. MYERS: Can you slow down a bit?

2 MR. DEHART: I want to clarify condition number
3 14 to specify whether the spill plan -- and this
4 may be just something we can do in
5 discussion -- but whether the spill plan that's
6 being called for there is for derailments or
7 whether it's a spill plan for construction
8 activities. I think that's an important
9 clarification because I wasn't sure.

10 The next one was to eliminate condition number
11 15; eliminate condition number 16.

12 In condition number 17, I would like to see
13 something a little bit more objective in the
14 requirement than "make a good faith effort." I
15 feel like that's -- maybe we could talk about that
16 one a little bit more, but I just don't know -- I
17 think we need to get a little bit more objective
18 about what that looks like.

19 I would like to eliminate condition number 20.
20 I would like to eliminate condition number 21 and
21 replace it with something that is collectively
22 crafted that includes something along the lines of
23 Union Pacific's proposal for \$2 million. Maybe the
24 figure isn't the right figure, but that there is
25 some sort of collective proposal around how those

1 crossings are going to be determined. And I would
2 also like to restrict those specifically to
3 occurring within Wasco County.

4 I would like to revise condition number 23 to
5 remove, to the extent practicable, with a more
6 objective requirement, perhaps something along the
7 lines of half cast would be removed or something.
8 And this has to do with the visual appearance of
9 rock faces that are blasted. I think we could
10 be -- put something in there that's a little bit
11 more objective rather than just saying "to the
12 extent practicable." There are ways that you can
13 line drill and shoot and then go back in and chip
14 away at those drilling half casts, they call them,
15 and get a more natural-looking face.

16 And then the last one was I would suggest that
17 we make number 47 a recommendation, just like we
18 have made 48 a recommendation.

19 MS. ASHLEY: Okay. Going along that same line,
20 if we're doing a few revisions, I would combine
21 conditions 22, 31, and 33 all to be combined -- I
22 mean, we just kind of reiterate the thing over and
23 over on coloring stuff, combine all of that to one
24 restriction -- condition, I mean.

25 UNIDENTIFIED SPEAKER: Which numbers again?

1 MS. ASHLEY: 22, 31, and 33.

2 MR. MYERS: Could you say that again?

3 MS. ASHLEY: 22 --

4 MR. MYERS: No. What you said about them.

5 MS. ASHLEY: Well, they are all conditions

6 dealing with the color and to the Scenic Area.

7 Make them one condensed condition. It's just kind

8 of a little wordy in there.

9 CHAIRMAN HARGRAVE: Do you have any?

10 MR. HANDLEY: Yes, 33. UP calls out 33 saying
11 that if we throw that condition on them, it's going
12 to violate their -- the federal standards that they
13 have for lighting for track management.

14 MS. ASHLEY: Safety.

15 MR. HANDLEY: Safety and track management.

16 CHAIRMAN HARGRAVE: It's just confusing because
17 it's not consistent along that line.

18 MR. HANDLEY: Right. And that's why I have a
19 problem with 33. I want safe transportation on the
20 railroad. That would be like asking the city to
21 change two of their traffic lights to a different
22 pattern because of whatever reason. I think that
23 it should be consistent throughout their system.

24 CHAIRMAN HARGRAVE: Yes, I agree with that.

25 MR. HANDLEY: So I propose just eliminating

1 condition 33.

2 CHAIRMAN HARGRAVE: Oh, I would propose they
3 change the rest of the system.

4 MR. DEHART: I appreciate what you are talking
5 about there. And then I also read that and I felt
6 like -- let me use an example from projects that we
7 do within ODOT, within the Scenic area. We color
8 signal poles in our projects, the pole, the mast
9 arm, those parts of it are colored a specific
10 color, browns and stuff, to blend in better.

11 I took this as meaning coloring of the support
12 structure and stuff and not changing the colors of
13 lights or anything like that so the face of the
14 signals would still be rail standard, but --

15 MR. HANDLEY: It says the shielding and
16 coating.

17 MS. ASHLEY: I took it as the coloring.

18 MR. HANDLEY: I wouldn't either. And, again,
19 we don't -- we don't paint brown around the face of
20 a signal, the signal itself. There are standard
21 requirements of what the face of that signal look
22 like and it's got some reflectiveness and stuff
23 like that.

24 I think that we can work --

25 CHAIRMAN HARGRAVE: It sounds like we all have

1 the same -- we might just want to clean this up.

2 MR. HANDLEY: Clean 33 instead of removing it.

3 CHAIRMAN HARGRAVE: Not changing the face of
4 the signal.

5 MR. DEHART: We're wanting it to still be --

6 MS. BREWER: If I might just give some comment
7 on that. They did provide elevation drawings of
8 standard lighting that they use throughout their
9 railroad already. And those standard fixtures do
10 have a little bit of a shield over the top of them.
11 They have a little bit of a lip because they are
12 trying to funnel that light down the track,
13 basically.

14 So this lighting standard is a standard
15 condition of approval we include in every single
16 land use decision, and staff feels that they are
17 complying with the lighting that they have proposed
18 already. So this isn't trying -- this is trying to
19 do exactly what Commissioner DeHart just explained,
20 is require the colors of the structures and the
21 material of the structures to comply, but not in
22 any way trying to undermine the safety that the
23 existing lighting has.

24 MR. HANDLEY: Or the consistency of Union
25 Pacific.

1 CHAIRMAN HARGRAVE: But in reaching their
2 response -- I think we're all on the same page. It
3 apparently wasn't clear to Union Pacific, based on
4 their response.

5 MS. BREWER: Sure. So I would be for a
6 revision to be more clear, but not an elimination.

7 CHAIRMAN HARGRAVE: So that is still a
8 subsection of the conditions would be open for
9 surgery. Any other conditions that we haven't
10 talked about that the commissioners feel need to be
11 modified?

12 MS. ERICKSON: I had raised an issue -- I had
13 raised an issue about one of the safety issues
14 related to Chief Appleton's comments last time.

15 And I wondered if UPRR can be required to
16 notify fire districts in advance of hazardous
17 materials being shipped through their areas? And
18 Angie said yes, but it's possible that it's already
19 available to fire districts through an app, but
20 that we could suggest that condition be added as
21 well.

22 MR. DEHART: I believe that's already -- some
23 regulations are being worked. I think it's already
24 become a condition in Washington state. I know I
25 can't ask Union Pacific what they could share with

1 us about that right now but, again, I feel like
2 something like that is being resolved on a larger
3 stage at a state-wide level. Whether we want to
4 specifically require something like that, we may be
5 able to get some feedback.

6 CHAIRMAN HARGRAVE: Do you know, Angie?

7 MS. BREWER: I participated in a meeting a few
8 weeks ago with railroad staff and that question
9 came up and that's how I was able to respond to
10 Commissioner Erickson's question is that the app is
11 apparently something you can download on your phone
12 and the only concern that was expressed is that
13 there is a disclaimer at the bottom of it that sort
14 of states that it could be accurate, you know, it's
15 as accurate as it can be, basically, and that
16 last-minute changes to that list might not be
17 captured. And I'm really not -- I don't have that
18 app. I haven't viewed it, but that was the
19 discussion around that app.

20 CHAIRMAN HARGRAVE: I'm kind of in the same
21 space as Brad, which is if Wasco County doesn't
22 need to get in and manage it, you know, let's try
23 and avoid that. I'm not clear where this one is.

24 MS. ASHLEY: I talked to two Wasco County
25 different fire departments about this particular

1 type of thing; one is already monitoring it and the
2 other one is implementing it. So I don't think we
3 need to police it. I think it's being done or is
4 going to be shortly.

5 CHAIRMAN HARGRAVE: Why don't we do this, to
6 talk to the specific recommendations in the time we
7 have left.

8 I think we've got all the conditions on the
9 table at this point that people are wanting to
10 modify, right? So --

11 MR. DAVIS: Excuse me. Did we address -- one
12 of the things I think Vicki brought up, and that is
13 the safety in regards to some kind of -- would you
14 say foam.

15 MS. ASHLEY: Oh, the foam tanker?

16 MR. DAVIS: Was there going to be any kind of
17 modification to the safety clauses in here that
18 addresses that or are we passing that by? Are you
19 recommending --

20 MS. ASHLEY: I would like to make a
21 recommendation that it be positioned in the mid
22 Columbia, whether it be The Dalles or Hood River,
23 but I don't know how we can totally put it in
24 another county.

25 MR. DEHART: Condition 17 says, "UPRR shall

1 provide regular training in the Gorge fire
2 department to include the mid Columbia fire
3 (inaudible)" --

4 (Pause in proceedings)

5 MR. DEHART: Sorry. "Condition 17, UPRR shall
6 provide regular training to Gorge fire departments
7 included in the Mid Columbia Five County Mutual Aid
8 Agreement and requires UPRR to solicit feedback
9 about local needs for combatting a railroad-related
10 fire incident and make good faith effort to assist
11 in meeting those needs."

12 The revision that I had suggested was to make
13 something a little bit more objective in there
14 around what "good faith effort" would constitute,
15 but I would rather rely upon that interaction
16 between Union Pacific and our fire departments and
17 allow them to make requests for where they might
18 want to see foam trailers or training or allow that
19 discussion to occur between them. We still have
20 the condition in here.

21 MR. DAVIS: So that needs to be modified to add
22 some more specifics to that point.

23 CHAIRMAN HARGRAVE: Thanks for pointing that
24 out, Mike. What I was going to do was kind of
25 march through each one of these that we want to

1 modify; agree, if we can, on wording and then if we
2 are successful at that, then we can back up and
3 make a motion. To try and have each person make a
4 motion and in that motion express their idea of how
5 the condition should be reworded I think is too
6 cumbersome.

7 So why don't we go through the first section,
8 which is -- which is -- let's see, the first one I
9 think that we tripped up on was 13, right?

10 MS. BREWER: I'm sorry. Can I interrupt just
11 one thing before you get into that? I just would
12 ask that you all keep in mind that when we
13 eliminate a condition, we're potentially coming out
14 of compliance with the ordinance itself. So if
15 we're going to take something away, we need to be
16 conscious of what that means for the findings in
17 the staff summary and our overall
18 compliance -- finding of compliance.

19 MR. MYERS: Can you let us know if you have any
20 concerns?

21 MS. BREWER: The only reasons those conditions
22 of approval are in there is to ensure compliance
23 and consistency with the rules, so all of them are
24 considered by staff to be necessary. They can be
25 modified, but if you are going to eliminate them

1 completely, just please be aware that that could
2 cause some issues and inconsistencies throughout
3 the rest of it.

4 CHAIRMAN HARGRAVE: They are in there for good
5 reasons.

6 MR. DEHART: I believe that's a risk we're
7 going to have to take.

8 CHAIRMAN HARGRAVE: So let's dive in and look
9 at 13. I think that 1 through 12 nobody wanted to
10 change, right?

11 So 13, should coal cars be covered? What do
12 you want to do with that? Brad?

13 MR. DEHART: Eliminate it.

14 CHAIRMAN HARGRAVE: Okay. Does anyone disagree
15 with Brad?

16 MS. ASHLEY: And I think the reason behind that
17 is statistics basically that were presented by
18 Union Pacific Railroad that if Wasco County did it,
19 we would be the only one in the nation and we
20 probably would fight clear to Congress to get it
21 accomplished.

22 MR. HANDLEY: I have a couple thoughts on that.
23 I agree to go ahead and eliminate it, and here is
24 my reasoning. At this time Union Pacific doesn't
25 even run coal through Wasco County. They stop at

1 Boardman. They put that in there, in their stuff,
2 in the packet to us.

3 Second, is that Friends of the Gorge footnoted
4 Burlington Northern website that talked about coal
5 trains and the covering of coal with chemicals and
6 a soapy substance, and I think I remember reading,
7 to eliminate the coal, and that seems to be the
8 industry standard. The industry standard isn't to
9 cover coal trains. It's to apply this soapy
10 substance to the top of the trains to limit the
11 coal dust from blowing out of the train cars as
12 they are going down the track. Up to 80 percent, I
13 think is what I read in there, that it eliminates,
14 the coal dust.

15 MS. ASHLEY: Also covered coal trains, as I
16 remember reading, can have internal combustion.

17 MR. HANDLEY: This was testified by somebody
18 that said that they have the --

19 CHAIRMAN HARGRAVE: So my concern with the
20 condition the way it is worded is -- my concern
21 similar to what has been expressed is that it is
22 too prescriptive. You know, we're not in the
23 business of figuring out what's the best way to
24 protect from coal dust, if that's the main intent
25 of the covers.

1 So if the issue is health and environment, I'm
2 not sure we're in a good position to specify a
3 specific remedy, especially as technology evolves
4 over time. You know, the commission doesn't --

5 MR. HANDLEY: Can I ask a question of Angie
6 then really quick?

7 Angie, can you share with us, if coal trains
8 don't even come through the Gorge right now on
9 Union Pacific's lines, how could that be put in
10 there as a condition of approval?

11 MS. BREWER: Sure. Good question.

12 Just because they don't come now doesn't mean
13 they won't come later. Everything, as the
14 Applicant has described in their materials, is --
15 everything is market-driven. Just because it's not
16 here now doesn't mean it won't happen later. We
17 received concerns from several entities, including
18 the tribes, about accumulation of coal dust and
19 relied on a recent study at the University of
20 Washington that addressed coal accumulation on the
21 Washington side of the Columbia River where they do
22 use that spray on the coal that's being carried
23 through.

24 The lead author on that study happens to be the
25 Columbia River Gorge Air Quality Strategy lead

1 author and is very familiar with the rules that
2 apply in the Scenic Area and the resources that
3 we're trying so hard to protect and balance these
4 projects with.

5 So I hope that makes sense. We can't assume
6 that they will never come. And when we have
7 comments at hand, we are trying our best to address
8 them. I did confirm with Union Pacific staff that
9 covering coal was an option and that there were no
10 internal instantaneous combustion or any combustion
11 risks associated with covering coal. When I heard
12 that at the hearing, I was a little panicked, so I
13 made sure to follow up on that.

14 And it's just the understanding that things
15 might change in the future and what we're looking
16 at right now is a land use decision based on the
17 physical development that's proposed, not knowing
18 what's coming on those rails 50 years from now.

19 CHAIRMAN HARGRAVE: Did that answer your
20 question?

21 MR. HANDLEY: Yes.

22 MR. DAVIS: So I guess my question, based on
23 her response, do we even have to take it out or
24 should it be more properly modified more towards
25 the open-endedness of the future that there should

1 be considerations if coal --

2 CHAIRMAN HARGRAVE: Put something in like
3 employ the best industry practices to control coal
4 dust or something.

5 MR. DEHART: That puts us back in a position,
6 or the County back in a position of having to try
7 and police something like that when it's already
8 going to be policed. The best industry practices
9 and those sorts of things are policed by larger
10 entities than Wasco County.

11 MS. BREWER: I agree with you completely. And
12 just, again, the reasons these are in there is this
13 is the only path forward. Treaty rights impacts
14 are pretty black and white. So that's why they are
15 in there. I'm not trying to advocate.

16 MR. DEHART: With all due respect, Angie, when
17 impacts to treaty rights are stated with "mays" and
18 "maybes" and "might," I have a hard time saying
19 that -- you know, saying that there isn't some
20 other avenue to address those.

21 CHAIRMAN HARGRAVE: Maybe we should vote on
22 this condition. I mean, people have legitimate
23 differences of opinion. I understand your concern.
24 I actually share it, to a large degree. I
25 understand Angie's point, which is, if you want

1 this to move forward, there are certain things that
2 it needs to address and that's why she has put this
3 in here.

4 So I --

5 MS. ASHLEY: I have a suggestion. Change the
6 word "are" to "may be."

7 CHAIRMAN HARGRAVE: Well, I have a serious
8 concern about --

9 MS. ASHLEY: That isn't going to help anything.

10 CHAIRMAN HARGRAVE: -- about specifying a
11 particular recommendation as technology changes
12 very quickly.

13 MR. DAVIS: If we take 13 completely out, does
14 that put an end to the whole thing?

15 CHAIRMAN HARGRAVE: Why would you take it out?
16 The problems with it can be fixed. I think, to me,
17 the problem is specifying a particular remedy. I
18 would be quite happy with a statement around "using
19 industry best practices to control coal dust."

20 And, to your point, you know, maybe that is
21 also monitored by other agencies at higher levels,
22 but what's the harm? It is an issue that we need
23 to address in this proposal. That's Angie's point.

24 I would be interested in a motion to reword
25 this to -- along the lines of industry best

1 practices.

2 MR. HANDLEY: I think I just want to make a
3 motion to remove it altogether.

4 CHAIRMAN HARGRAVE: Go ahead. Motions are --

5 MR. HANDLEY: Let's take a vote on that and see
6 how that goes.

7 I'm going to make a motion to remove condition
8 13 from this application.

9 CHAIRMAN HARGRAVE: Anyone want to second that?

10 MR. DEHART: I second.

11 CHAIRMAN HARGRAVE: Okay. Discussion.

12 MR. SCHANNO: Can we ask Angie, if 13 is taken
13 out, does it automatic -- I mean, does it put an
14 end to it?

15 MS. BREWER: So, again, it's the Planning
16 Commission's decision as to whether or not you
17 reach -- if you reach a different conclusion about
18 treaty rights impacts than staff has, you are
19 certainly allowed to do, but based on our analysis,
20 staff feels that that's a necessary condition.

21 CHAIRMAN HARGRAVE: My input, Chris -- and I
22 have studied this far less than Angie, so I pay
23 attention to what she is saying. I have sat here
24 for a very, very long time, though, well over a
25 decade. It does not seem like a deal breaker to

1 me. If I understand the way the treaty is worded
2 and the way the concern is, taking this condition
3 out doesn't feel like a deal breaker to me.

4 MS. ASHLEY: I agree. I can't see how -- when
5 I read the treaty, I have gone back and forth,
6 there weren't even coal trains when the treaties
7 were written, but I can't see how -- I'm sorry.
8 I'll just -- let's vote. I'll get myself in more
9 trouble.

10 CHAIRMAN HARGRAVE: Any other discussion?
11 Okay. All in favor of the motion to take out
12 condition 13, say aye?

13 GROUP RESPONSE: Aye.

14 CHAIRMAN HARGRAVE: Against?

15 GROUP RESPONSE: Aye.

16 CHAIRMAN HARGRAVE: I'm against it.

17 Okay. The motion is carried.

18 The next one we tripped on was 14, which is
19 "Spill response plan is prepared or made available
20 prior to the commencement of construction." Who
21 wanted to do something with that?

22 MR. DEHART: All I was asking for -- and maybe
23 Angie could answer this. I wasn't clear on whether
24 that spill response plan was for derailments on the
25 railroad or whether it was a spill response plan

1 for construction activity.

2 MS. BREWER: My intent was for a derailment
3 incident, an emergency, spill response plan for an
4 emergency event. We are requiring the use of best
5 management practices and other -- not just spill
6 prevention and (inaudible) concerns for
7 construction specifically, so the intent was to be
8 emergency-related.

9 CHAIRMAN HARGRAVE: So I would be interested in
10 a motion to -- sorry.

11 MR. SCHANNO: I was just asking Brad if he just
12 wanted to add that language?

13 CHAIRMAN HARGRAVE: Yes, that's where I was
14 going.

15 MR. DEHART: I think that's something that's
16 probably already been developed or is being
17 developed in cooperation, hopefully with our fire
18 departments in the area, you know, based on number
19 17.

20 CHAIRMAN HARGRAVE: So did you want to take it
21 out then?

22 MR. DEHART: No. I would like to clarify that
23 it's a spill response plan for derailment and it's
24 not --

25 CHAIRMAN HARGRAVE: You might want to say

1 "derailment or other accident," but that's the
2 idea.

3 MR. DEHART: That's the idea.

4 CHAIRMAN HARGRAVE: I would be interested in a
5 motion to that effect.

6 MS. ASHLEY: I move that condition 14 be
7 reworded to indicate for a derailment or accident.

8 CHAIRMAN HARGRAVE: Or other train accident.
9 A second?

10 MR. HANDLEY: I'll second that.

11 CHAIRMAN HARGRAVE: Okay. Any more discussion
12 on it?

13 Okay. All in favor?

14 GROUP RESPONSE: Aye.

15 CHAIRMAN HARGRAVE: Against?

16 Okay. 15. "UPRR shall stay within the
17 existing range of 20 to 30 trains per day as stated
18 in the application materials."

19 So, Brad, maybe you wanted to kick off
20 the -- you wanted to take that out, right?

21 MR. DEHART: I did.

22 MR. SCHANNO: I wonder if we can change the
23 wording on that to say, you know, within reason.
24 Put some sort of -- to keep them within where they
25 are now within reason, you know.

1 MS. ASHLEY: Like a percentage?

2 MR. DEHART: Here is how I have looked at that
3 one. We have already heard that the track as it
4 sits today could accommodate more trains than what
5 we're saying today and that market conditions could
6 increase traffic with or without any control by us.

7 There is no doubt in my mind that wherever
8 the -- whether this track gets installed or this
9 project goes through or not, that rail traffic is
10 likely going to increase on Union Pacific's line
11 and whatever they can't carry is going to get there
12 by some other means, probably on the highway or by
13 barge or other means.

14 I believe that -- that rail is an efficient way
15 to transport goods and there is going to be a lot
16 of goods to be transported, not just the ones that
17 people don't want, but the ones that everybody
18 wants as well. I just don't want Wasco County to
19 get in the role or be in the position of having to
20 potentially revoke a permit based on the volume of
21 trains that goes up and down Union Pacific lines.

22 CHAIRMAN HARGRAVE: Thanks. Here's my thinking
23 on it. You know, I think -- I think we need to
24 understand where we are on the issue of increased
25 capacity. I have two problems with this really.

1 It's one Brad mentioned, that they are not using
2 all the capacity that's there today so the
3 restriction seems not well-aligned with the project
4 in that respect. That's my first problem.

5 My second problem is -- are we approving or
6 not? Because the application is to improve the
7 efficiency, i.e., to be able to have more capacity
8 because you have improved efficiency. That's the
9 application.

10 So if we don't think that the capacity should
11 be increased, and that's really what this condition
12 says. It says, I don't think the capacity should
13 be increased. That would be -- to me, denying it
14 would be the straightforward way to do that rather
15 than this, you know, sort of backdoor way of
16 limiting capacity.

17 The application, to me, is an application to
18 increase capacity of the track and this condition
19 defies that, so that's my second problem with it.

20 I -- you know, I don't agree that if you
21 constrain this capacity as it is currently
22 constrained, although they are not running as many
23 trains as they could, they are not running as many
24 trains as they could with increased capacity, if
25 you constrain it, it will get there by other means,

1 but not necessarily through the Gorge, which has a
2 very peculiar topography.

3 Running extra capacity through the Gorge is
4 much more problematic in terms of a disaster than
5 running it somewhere else. There are probably
6 other places that are worse, too, so I share your
7 thinking that it is going to get from point A to
8 point B some other way; if there is a supply demand
9 in place, that's going to make that happen, but all
10 routes are not equally safe. That's the other
11 aspect that I'm factoring in.

12 Nevertheless, I don't think this condition
13 makes sense in that it defies the basic, you know,
14 nature of the application. And it also -- I don't
15 think it's manageable.

16 Lynne.

17 MS. ERICKSON: I just wondered how we get at
18 the issue of the Umatilla Indians say that any
19 increase in rail traffic would have an adverse
20 effect to treaty rights protected -- that are
21 protected under the Scenic Area Act.

22 MR. SCHANNO: In my opinion, I don't know that
23 we're -- by approving this four miles, I don't know
24 that you are increasing the amount of rail traffic
25 that can go of the tracks. So I don't know if it

1 would be in violation of the treaty to begin with
2 because maybe there is a bottleneck in Mosier at
3 this point. Putting this double track in is only
4 going to move that bottleneck to The Dalles or to
5 somewhere else. I mean, wherever that may be. I
6 don't know where, but there -- there is a finite
7 amount of train traffic that can run over the train
8 tracks.

9 Unless you were completely to go double track
10 for 176 miles, it's going to double that amount of
11 traffic. There is only so much that can get -- you
12 can only fit so much through a bottleneck and it
13 will be somewhere until you double track the whole
14 thing.

15 So I don't know that we're in violation of the
16 treaty if we keep that in there because we're
17 probably --

18 CHAIRMAN HARGRAVE: Take it out.

19 MR. SCHANNO: Yeah, if we take it out, sorry,
20 because I don't know if we're anywhere near the
21 maximum capacity that they could run if they
22 decided to do it, which they could decide to do it
23 just because.

24 CHAIRMAN HARGRAVE: Any other -- so did you
25 make a motion -- I have lost track -- to remove it?

1 Does someone want to make a motion one way or the
2 other?

3 MR. SCHANNO: I move to remove item 15.

4 MR. MYERS: Second.

5 MS. JENKINS: I'm sorry, I didn't see who
6 seconded.

7 Thank you.

8 CHAIRMAN HARGRAVE: So what other discussion?
9 We have talked about this extensively. I want to
10 make sure that everyone has had a chance to state
11 their position or point or ask questions.

12 MR. MYERS: Well, my position is how it affects
13 the overall project as opposed to this particular
14 issue. I mean, we're hearing from our planning
15 director that removing this condition makes it so
16 we're not going to be in alliance with our
17 ordinance, and some of the other conditions that
18 are being removed, but at the same time -- so
19 that's a concern I have.

20 At the same time, you know, disregarding that
21 concern, I agree it's not something that's
22 manageable and very well might not be something
23 that's enforceable in the first place. So if it's
24 going to be approved, I suppose I -- I agree with
25 taking it out, but I also -- my position would be

1 that, you know, it very well might be that we're no
2 longer in alliance with our ordinance.

3 CHAIRMAN HARGRAVE: Yeah, I'm in a similar
4 space, Andrew. I would agree with taking it out
5 because I think it's unmanageable. I also think
6 it's a backdoor way -- you know, if you have an
7 application to increase capacity and you put a
8 condition on it that you can't increase capacity,
9 it's kind of schizo.

10 I do think it might move us out of -- into an
11 issue with the treaty. I absolutely do. And
12 that's why I voted to deny it, which, to me, is the
13 straightforward land use way of addressing the
14 issue. The condition is not manageable to me.

15 MS. ASHLEY: I move that we vote.

16 CHAIRMAN HARGRAVE: You move we vote? We can't
17 quite do that.

18 Are we done with the discussion then? Any more
19 discussion?

20 So all in favor of the motion to remove, say
21 aye.

22 GROUP RESPONSE: Aye.

23 CHAIRMAN HARGRAVE: Against?

24 Okay. Super.

25 Which brings us to 16. "So UPRR to adhere to

1 all ERA" --

2 MS. ASHLEY: FRA.

3 CHAIRMAN HARGRAVE: "FRA safety standards,
4 including any safety improvements that are
5 optional."

6 MS. ASHLEY: It's pretty vague to me.

7 MR. HANDLEY: I can't imagine making anybody
8 adhere to something that's optional. If it's
9 optional, it's because there is a reason it's
10 optional. Its not -- it doesn't make any sense to
11 me.

12 I don't mind leaving that wording in. Just get
13 rid of "any improvements that are optional." Get
14 rid of that.

15 MS. ASHLEY: So strike from the comma on.

16 CHAIRMAN HARGRAVE: So, Angie, was there a
17 specific optional requirement that --

18 MS. BREWER: So the reason this is in here is
19 because in the conditional use findings there is a
20 lot of discussion about public health and safety,
21 and a lot of the information provided for staff's
22 review and also from the Applicant and from other
23 stakeholders who have public comments is that some
24 of the safer cars, specifically for oil transport,
25 are not necessarily required yet, but they may be.

1 You know, with new technology comes new safer,
2 better things, but it takes time to make those
3 changes for federal requirements.

4 So some of the safest possible ways to
5 transport these commodities of concern are not
6 necessarily requirements yet. They are likely to
7 be in the future and we were suggesting this
8 condition to ensure that it is as safe as it
9 possibly can be if we're going to allow an increase
10 in these commodities coming through.

11 MR. MYERS: Can I ask you how is that something
12 that's enforceable or how is that something that's
13 determined? I feel like you're always going to
14 find somebody out there who is going to say you
15 could do something safer. Unless it's a generally
16 accepted --

17 CHAIRMAN HARGRAVE: These are specific FRA --

18 MR. DEHART: And, as such, as specific Federal
19 Rail Administration requirements, I prefer to leave
20 it in their lap to oversee them than to put us in
21 the middle of it as Wasco County in trying to
22 police something like that.

23 MS. BREWER: It will, admittedly, be difficult
24 to track and monitor and enforce compliance. I
25 would agree with that. But I would also say that

1 every application and land use decision that we
2 work through and send out decisions on come with
3 their own compliance issues, and that's part of our
4 job is trying to track down all of these little
5 things and big things that come out of compliance.

6 CHAIRMAN HARGRAVE: It's a burden, though.

7 MS. ASHLEY: I would make a recommendation to
8 modify this to just say, UPRR is to adhere to FRA
9 safety standard purely.

10 CHAIRMAN HARGRAVE: That's already the law.

11 MS. ASHLEY: If she wants to leave it in there
12 for compliance, just leave it at that.

13 MR. HANDLEY: There is already federal law that
14 says they have to have that.

15 MS. ASHLEY: I know there is a federal law, but
16 if you want to leave it in there, just leave it
17 like that and not put the optional thing in there.

18 CHAIRMAN HARGRAVE: Okay. Is there a motion
19 around this? Who wants to make a motion either to
20 take it out or to modify it?

21 MR. HANDLEY: I will go ahead and make a
22 motion.

23 CHAIRMAN HARGRAVE: Or to leave it in.

24 MR. HANDLEY: I will be quick on the motion.

25 I'm going to make a motion we just take condition

1 16 out completely.

2 CHAIRMAN HARGRAVE: Okay. Is there a second?

3 MR. HANDLEY: It's already covered by a federal
4 law.

5 CHAIRMAN HARGRAVE: Is there a -- excuse me,
6 guys. You need to use the microphone because we
7 don't want to miss any of yours words of wisdom.
8 We're looking for second.

9 MS. ASHLEY: I'll second it.

10 MR. HANDLEY: You want me to restate it?

11 CHAIRMAN HARGRAVE: Please.

12 MR. HANDLEY: I'm going to make a
13 motion -- sorry, a lot going on -- make a motion to
14 completely remove 16 from the application.

15 CHAIRMAN HARGRAVE: And?

16 MS. ASHLEY: What?

17 CHAIRMAN HARGRAVE: Vicki, you were going to
18 second it.

19 MS. ASHLEY: I will second that.

20 CHAIRMAN HARGRAVE: Okay. And discussion.

21 MR. HANDLEY: Discussion. I think it's already
22 covered by federal law and we don't need to be
23 doubling or adding more cumbersome items into
24 something. It just muddies the water, in my
25 opinion.

1 CHAIRMAN HARGRAVE: Any other discussion or
2 questions?

3 You had similar thinking, Vicki?

4 MS. ASHLEY: Well, I had similar thinking that
5 if we wanted to leave it as a compliance factor,
6 just -- I didn't like the part that was optional.
7 And I was going to just say they must adhere to all
8 safety standards and leave it at that if we didn't
9 completely strike it.

10 CHAIRMAN HARGRAVE: Okay. Any other discussion
11 on it? Okay. All in favor of the motion, say aye.

12 GROUP RESPONSE: Aye.

13 CHAIRMAN HARGRAVE: Against?

14 Okay. The motion is carried.

15 So no issues on 17?

16 MS. ASHLEY: Yes.

17 MR. DEHART: There was just a little bit of a
18 concern that I had shared.

19 CHAIRMAN HARGRAVE: So did you want to change
20 that?

21 MR. DEHART: I don't know. I don't have a
22 recommendation or a suggestion of how to make that
23 last sentence more objective, but it just concerns
24 me to leave it -- I mean, what one side would
25 consider making a good faith effort versus what the

1 other side would consider the good faith effort
2 seems pretty subjective. And we know that there
3 are definitely sides here.

4 So I was looking for some way that we could
5 make that a little bit more clear or objective
6 about what the expectations were. I don't have a
7 recommendation.

8 CHAIRMAN HARGRAVE: Yeah, so I agree with you.
9 This is wishy-washy. So it's a wordsmithing thing.
10 If someone has the capacity to think of a better --

11 MR. MYERS: Is it a wordsmithing thing or is it
12 -- I think the first time you mentioned it, Brad,
13 you were talking about maybe allowing the fire
14 department to --

15 CHAIRMAN HARGRAVE: How do you word that?

16 MR. MYERS: That UP shall comply with and take
17 part in trainings requested by Gorge fire
18 departments.

19 MR. SCHANNO: And to solicit local needs for
20 combatting the railroad with fire incident and meet
21 those needs.

22 CHAIRMAN HARGRAVE: Yes. To me, that sounds a
23 lot meatier and more where this was going.

24 MR. DEHART: Okay. So maybe it is so simple as
25 to just remove the "and make a good faith effort."

1 MS. ASHLEY: Stop it after "fire incident."

2 MS. BREWER: I'm just trying to track these as
3 we work on them. Are you saying that you also
4 would like to take out the word "insist" or would
5 you like -- so is it that they will meet this need
6 or they will assist?

7 CHAIRMAN HARGRAVE: That's what I'm hearing is
8 remove "make a good faith effort to assist in."

9 MR. SCHANNO: And then change the word
10 "meeting" to "meet" so it's going to say "and meet
11 those needs."

12 CHAIRMAN HARGRAVE: I think the issue with that
13 wording, Chris, is that they don't meet it alone,
14 they meet them in collaboration with the local fire
15 department.

16 MR. SCHANNO: That is still consistent.

17 CHAIRMAN HARGRAVE: I think however we word it,
18 they are not to be held wholly responsible for
19 meeting the needs. What I liked about the wording
20 once you removed that wishy -- what I see as
21 wishy-washy stuff is you are soliciting feedback.
22 So now you have got something tangible, something
23 hopefully in writing that specifies what the needs
24 are.

25 So maybe, you know, something like "providing

1 sufficient assistance to adequately meet the
2 needs," something like that that says you
3 adequately -- you solicited the needs, you are
4 adequately meeting them. You are not doing it by
5 yourself, but your assistance is sufficient to meet
6 the needs. You know, that's kind of how I --

7 MS. ASHLEY: Let's go with Chris's suggestion
8 of how to word it.

9 MR. SCHANNO: Just make it "and assist in
10 meeting the needs." They are not assisting them.

11 CHAIRMAN HARGRAVE: How much assistance?
12 That's where I was choking on it. Everybody is
13 going to help do a little bit.

14 MR. SCHANNO: You give them a window, they are
15 going to take the least amount, so you got to -- I
16 mean, I don't know how you do that.

17 CHAIRMAN HARGRAVE: Provide sufficient
18 assistance to adequately meet the needs.

19 (Multiple speakers - indiscernible)

20 MR. MYERS: I like the idea of just eliminating
21 that language.

22 CHAIRMAN HARGRAVE: You want to make a motion?

23 MR. MYERS: I would make a motion to modify
24 condition number 17 to remove the language "make a
25 good faith effort." So it should read "Related

1 fire incidents and to assist in meeting those
2 needs." It would read that way.

3 MR. SCHANNO: I second that motion.

4 CHAIRMAN HARGRAVE: Any more discussion? Who
5 wants to -- any opinions on that motion?

6 Okay. All in favor, say aye.

7 GROUP RESPONSE: Aye.

8 CHAIRMAN HARGRAVE: Against?

9 Okay. So, look, it's 5:30 plus. We have been
10 going since 3:00. Some of us started a little
11 earlier than that. I want to take a ten-minute
12 break so we have sufficient energy to do a good job
13 in what we're trying do to here. Is ten minutes
14 adequate?

15 (RECESS 5:29 to 5:39)

16 CHAIRMAN HARGRAVE: Let us reconvene. For the
17 record, it's exactly 5:40.

18 Okay. We were up to condition --

19 MS. ASHLEY: 18.

20 CHAIRMAN HARGRAVE: Okay. Condition 18. UPRR
21 is required to comply -- Brad mentioned 18.

22 MS. ASHLEY: I think I had it. Well, we
23 mentioned compliance with fire safety standards so
24 many times, but the one that I got that I just
25 didn't fully understand, and I wanted more of a

1 clarification on this, "with all future
2 landowners." I didn't understand that.

3 MS. BREWER: That is standard language of this
4 condition for all land use decisions. It just
5 means that that requirement returns with the land.

6 CHAIRMAN HARGRAVE: Successors and assigns kind
7 of thing.

8 MS. ASHLEY: Okay. That's fine.

9 CHAIRMAN HARGRAVE: All right. That brings us
10 to 20, right?

11 20. "The proposed development shall not
12 directly result in significantly increased net
13 volume of rail traffic, including number of
14 individual trains, length of trains, or speed of
15 trains." This seems a little déjà vu.

16 MR. SCHANNO: Is that one that we could leave
17 in that wouldn't necessarily be a restricted number
18 that we could --

19 MR. DEHART: I think it goes completely against
20 what we know to be the purpose of the project.

21 CHAIRMAN HARGRAVE: Let's manage it this way.
22 Why don't you make a motion and then we can discuss
23 the motion.

24 MR. DEHART: I make a motion that we eliminate
25 condition number 20 entirely.

1 CHAIRMAN HARGRAVE: Is that seconded?

2 MR. MYERS: Second.

3 CHAIRMAN HARGRAVE: Okay. So discussion.

4 MR. SCHANNO: I think Brad already answered my
5 question.

6 MS. ASHLEY: It's redundant.

7 CHAIRMAN HARGRAVE: You think it's redundant
8 with what we already dropped.

9 How do the rest feel?

10 MR. MYERS: It is the same as the other. I
11 agree with -- I understand how we're talking about
12 it and I understand why it would be removed. I
13 don't know if it's something that's enforceable
14 anyways. I think that, in my view, big picture on
15 the project, I think it takes us out of compliance
16 with our ordinance.

17 CHAIRMAN HARGRAVE: Angie, could you maybe
18 explain a little bit why that was put in, what's
19 different about it compared to the previous one.

20 MS. BREWER: Well, again, this is in regards to
21 treaty rights conditions. This one is specifically
22 listed underneath the treaty rights conditions.

23 CHAIRMAN HARGRAVE: This wording is?

24 MS. BREWER: Well, you know, let me go up to
25 the other one.

1 CHAIRMAN HARGRAVE: Because the other one said
2 is not going to increase the number of trains
3 beyond what it is today.

4 MS. BREWER: So there is -- the first chunk
5 of -- first category of conditions are general
6 conditions and number 15 was that they stay within
7 the existing range of 20 to 30. That was us
8 keeping them at their word. That's what their
9 application states that they would like to do, and
10 so we were simply saying, all right, if that's what
11 you would like to do, we're going to put in a
12 condition to confirm that that's exactly where you
13 are going to be.

14 And so an example would be if someone proposed
15 to build a house and we would have a condition of
16 approval that says, you will build exactly what you
17 proposed and if anything deviates, come back to us
18 for a revised -- with a revised site plan, revised
19 proposal, so we can assess the impact and make a
20 decision. So that was just a general -- it was
21 intended to be a general requirement.

22 CHAIRMAN HARGRAVE: That's 15.

23 MS. BREWER: 15. Number 20 is specific to the
24 treaty rights concerns. Both of them address
25 similar concerns.

1 CHAIRMAN HARGRAVE: Is there a difference -- so
2 that explains why they are separate and why the
3 wording is a little different.

4 Is there a specific difference that's material
5 that you see?

6 MS. BREWER: So the reason that there is more
7 detail in condition number 20 is because it's
8 specifically responding to the letter from the
9 Umatilla. The Umatilla had concerns about volume
10 of traffic increasing and the impacts to being able
11 to cross the tracks safely. They had concerns
12 about the number of trains, the length of trains --
13 a couple of concerns were brought up -- the
14 inability to pass them safely, but also that if
15 they are longer, they may block multiple access
16 points instead of just -- maybe they block a few
17 now, but they might block more if there are longer
18 trains.

19 CHAIRMAN HARGRAVE: Okay.

20 MS. BREWER: It's in direct response to the
21 Umatilla's letter provided prior to the September 6
22 hearing.

23 CHAIRMAN HARGRAVE: Thanks, Angie. And there
24 is a motion on the table to remove it, right? And,
25 you know, my thinking on this is just the same as

1 it was on 15. I do appreciate the differences
2 you've pointed out, but, to me, it's an application
3 to increase the volume and this condition says
4 shall not increase the volume. I think if we were
5 going to do that, we should be more straightforward
6 and simply deny the application to increase the
7 volume. So that was my thinking on 15. It's still
8 my thinking on this one.

9 MR. SCHANNO: That being said, I don't know
10 that we're increasing volume over what it is. We
11 don't know what the maximum volume is. We know
12 what the volume is today. Was it -- three years
13 ago, was it 50 trains? 2007 was it way higher than
14 20 or 30?

15 CHAIRMAN HARGRAVE: We do know that with the
16 increased track that they are proposing, they
17 could -- that their maximum capacity would be
18 greater than it is today. We do know that. No, it
19 would be. The capacity would absolutely be greater
20 and they did agree with that.

21 The point that they made, which sounds a little
22 different, is that the actual volume is going to be
23 driven by supply and demand, which is a separate
24 equation. The capacity would be increased. I
25 think we do know that.

1 MR. MYERS: So it's not a condition that really
2 you can have because -- I think UP's position was
3 the capacity, if I remember right, and I could be
4 wrong, capacity-wise this would be like five to
5 seven trains per day or something like that.

6 CHAIRMAN HARGRAVE: Yes.

7 MR. MYERS: It goes against the proposal. I
8 thought it was significantly higher than that, but
9 either way.

10 CHAIRMAN HARGRAVE: Either way it's more.
11 Okay. Is there more discussion?

12 Okay. All in favor, say aye.

13 GROUP RESPONSE: Aye.

14 CHAIRMAN HARGRAVE: All against?

15 Okay. The motion to pull it out is carried.

16 21.

17 MR. DEHART: I was suggest that 21 be removed,
18 but I guess really in listening to Angie, we're
19 trying to address concerns of the tribes around
20 access to the river. And I believe that through
21 some form of this condition, whether it be as it's
22 stated here or as Union Pacific has proposed it in
23 a -- you know, I'll call it the \$2 million
24 proposal, or some meshing of those two, I believe
25 that that's how we can get to addressing the

1 concerns from the tribe, by requiring that there be
2 effort put towards providing additional crossings,
3 safe crossing locations, as opposed to all of the
4 crossing that the tribes say is occurring now in
5 undesignated locations.

6 So I would like to see some -- I haven't
7 crafted what it might look like, but in reading the
8 Union Pacific's response, I think there is
9 some -- some benefits to some things that they put
10 in there in their proposal as well as some of the
11 stuff that we have got in this original condition.

12 MS. BREWER: Can I ask or recommend one
13 additional change for your consideration? The
14 Yakama Nation's comment was received after this,
15 after I prepared the recommended changes that are
16 listed below. So the Yakama Nation, you might want
17 to add them to this condition so the language is
18 clear that it's both tribes, not just one, if you
19 all decide to keep that condition.

20 MR. DEHART: Right. I believe that there are
21 four treaty tribes who have some rights in the
22 Gorge.

23 MS. BREWER: There are.

24 MR. DEHART: I wouldn't want to exclude any of
25 them.

1 MR. SCHANNO: I think we should leave it in
2 there because I don't think that even if it cost
3 them \$4 million per crossing, that's really none of
4 our concern. This says they have to supply it and
5 that's -- that's their cost and that's part of them
6 doing business. They need to supply safe crossings
7 for the tribes to access the river.

8 MR. HANDLEY: There is no good crossing on the
9 east side or the west side.

10 MR. SCHANNO: Then they can't do it.

11 MR. DEHART: Well, I think you bring up a good
12 point that there are a lot of other issues that
13 could come into play around the best locations for
14 crossing, like access from I-84 even. I don't
15 know.

16 MR. SCHANNO: I guess what I'm trying to say is
17 this is a condition of them meeting it. If they
18 can't meet it, then they can't -- they won't be
19 able to do it. So whatever that requires, if it's
20 going to cost them -- I don't care if it costs them
21 \$100 million, if that's what they want to put in to
22 doing it, then they are going to have to do it in
23 order to meet it because they have to give the
24 tribes access to the river. They can't block it.

25 MR. HANDLEY: With a train every 40 minutes, is

1 that blocking access to the river?

2 MR. SCHANNO: They are going to have to make
3 that determination with the tribes, per option 21.
4 They have to get in touch with them and they have
5 to talk to them and make sure -- within 45 days,
6 they have to talk to them and come up with all the
7 plans; and if they don't meet it, then they can't
8 do it.

9 So I would be against taking that out. I don't
10 know about changing the wording or anything,
11 changing it to make sure it has all the tribes
12 listed.

13 CHAIRMAN HARGRAVE: Does anyone want to make a
14 motion?

15 Well, Brad, it was on your list initially.

16 MR. DEHART: My sense is that Union Pacific has
17 shown that they are willing to work on this to a
18 certain extent, you know, to a value at least.
19 What that -- what the appropriate value or cost is,
20 it's hard to say. I have a hard time --

21 MR. DAVIS: I do think that the cost --

22 CHAIRMAN HARGRAVE: Sorry, Mike.

23 What was the next word? You are having a hard
24 time with?

25 MR. DEHART: I don't want to strike it

1 entirely, I guess, because I do believe it serves a
2 purpose in showing that we are taking into
3 consideration those access rights and this is a way
4 of achieving those. It's like providing a couple
5 of safer locations, but those -- each one of those
6 locations is going to be a project in and of itself
7 and we're going to be here probably having a
8 discussion similar to this on -- on those
9 applications for those crossings. I don't know.

10 MR. MYERS: That's a good point.

11 CHAIRMAN HARGRAVE: Mike.

12 MR. DAVIS: I guess the point I was going to
13 mention is that, as with Chris, what Chris
14 mentioned, is that the cost shouldn't be part of
15 our decision. To me, what this is is hey, you guys
16 got to get together, you got to talk about the two
17 crossings, and it's not for us to decide that cost
18 or for the location, but what we're really saying
19 on land use is that -- through the tribes, is to
20 get together and you guys figure it out and do this
21 in an immediate sort of way. That's really all I'm
22 hearing here.

23 MR. DEHART: So one of the things I thought
24 about as I read or considered this condition was,
25 you know, all of the discussion and the letters and

1 stuff like that have been around pedestrian
2 crossings of the tracks, right? Why did we elevate
3 -- in this recommendation why did we elevate it to
4 at grade vehicular crossings when -- when what they
5 are -- what they are doing today is just pedestrian
6 crossings?

7 I guess that's a question, Angie.

8 MS. BREWER: The concerns expressed by the
9 Umatilla and the Yakama were specific to the safety
10 of their fisherman accessing traditional fishing
11 grounds. Most of those locations are not -- did
12 not meet the standard of existing safe crossings,
13 right? They don't have light. They don't have
14 arms. There is no formal crossing. It's even
15 discussed as though it's trespassing in some ways
16 because they are accessing at various points along
17 the tracks.

18 The tribes feel very strongly that that is part
19 of their treaty rights is to be able to cross
20 wherever they are -- you know, their usual and
21 customary areas are for fishing rights. And so
22 this was our response to ensure a safe crossing.
23 It specifically references lights and crossing arms
24 for safety, but it doesn't say anything about
25 vehicle access.

1 And it does say that this is a minimum of
2 crossing lights and arms for safety. So it doesn't
3 -- it's not specifically saying you need a new
4 overpass or underpass or anything like that. It's
5 something that needs to be determined through that
6 process in discussions with the tribes.

7 MR. SCHANNO: And they could put in a walking
8 crossing with arms.

9 MR. DEHART: I was just thinking about that.
10 There is a case where there are pedestrian
11 crossings on BNSF's lines.

12 CHAIRMAN HARGRAVE: And this doesn't really say
13 vehicular.

14 MR. DEHART: It doesn't. You're right.

15 CHAIRMAN HARGRAVE: I think we could just leave
16 it in.

17 MR. HANDLEY: Okay. I was looking at this and
18 I don't like to limit just east and west of the
19 project just due to the fact there is no
20 traditional fishing spots in there, why would we
21 make them put in an east access point that no one
22 is going to use or a west access point that no one
23 is going to use? Why don't we strike that and
24 strike the single tribe and just put the four
25 treaty tribes they have to confer with and put two

1 crossings in somewhere to help with access.

2 MR. DEHART: Within Wasco County.

3 MR. HANDLEY: Within Wasco County, yes, sir.

4 CHAIRMAN HARGRAVE: Are we ready for a motion?

5 MR. HANDLEY: I make a motion to revise number
6 21. My motion is to strike the language "one east
7 of the project area and one west of the project
8 area" and replace that with "in Wasco County."

9 And then I also move to strike "Umatilla Fish
10 and Wildlife Commission" with "Treaty tribes."

11 CHAIRMAN HARGRAVE: Replace that with?

12 MR. HANDLEY: "The four treaty tribes."

13 CHAIRMAN HARGRAVE: The four treaty tribes,
14 okay.

15 MR. HANDLEY: And then leave the rest alone.

16 CHAIRMAN HARGRAVE: Is there a second?

17 MS. ASHLEY: I will second it.

18 CHAIRMAN HARGRAVE: Any more discussion? Come
19 on. Okay. All in favor?

20 GROUP RESPONSE: Aye.

21 CHAIRMAN HARGRAVE: Against? Okay. It's
22 carried.

23 23. "To the extent practicable" --

24 MS. BREWER: Sorry, just one quick
25 clarification on number 21. I just want to make

1 sure that that revision included a replacement of
2 the -- the second-to-last sentence has references
3 to CTUIRR for being the only ones that can request
4 an extension. Was it intended that that was
5 replaced with all four tribes?

6 MR. DEHART: Good clarification.

7 MS. BREWER: Thank you.

8 CHAIRMAN HARGRAVE: Thank you, Angie. "To the
9 extent practicable, rock blasting shall occur in
10 irregular patterns to produce a natural -- a
11 natural-appearing cut face."

12 Okay. Brad, you had a -- you were thinking we
13 could modify that?

14 MR. DEHART: When we have projects where we're
15 doing line blasting or split facing and stuff like
16 that and you drill at a very tight frequency in a
17 line, like every two to three feet, or something
18 like that, to get a nice clean face, we usually
19 include a requirement in there that the half cast,
20 which are the half -- the half that's left in that
21 face of the drill line, be chipped away. I think
22 it's a common requirement when you are looking for
23 a natural appearing face and it's a little bit more
24 objective than saying "to the extent practicable."

25 CHAIRMAN HARGRAVE: So how would you word that

1 then?

2 MR. DEHART: Maybe -- I'm just going to take a
3 shot at it because I didn't write down anything,
4 but maybe just striking "to the extent practicable"
5 and saying "rock blasting shall occur in irregular
6 patterns to produce a natural-appearing cut face.
7 Half cast shall be removed." That's a -- I think
8 that's a statement that provides an indication of
9 the expectations a little bit better.

10 CHAIRMAN HARGRAVE: You want to make that as a
11 motion?

12 MS. JENKINS: If you do, can you say it slower,
13 please?

14 CHAIRMAN HARGRAVE: I think he will.

15 MR. DEHART: I make a motion to strike from
16 condition 23 the wording at the beginning "to the
17 extent practicable" and just state "rock blasting
18 shall occur in irregular patterns to produce a
19 natural-appearing face. Half cast shall be
20 removed."

21 MS. JENKINS: Okay. Thank you.

22 MS. ERICKSON: Natural-appearing face or cut
23 face?

24 MR. DEHART: Cut face is fine.

25 CHAIRMAN HARGRAVE: Is there a second?

1 Chris, you seconded it? Mike did. Okay.

2 Okay. Any more discussion? Does somebody want to
3 ask what a half cut --

4 MS. ASHLEY: It just makes it look natural.

5 CHAIRMAN HARGRAVE: Any questions or comments?

6 Mike? Angie? Chris?

7 Okay. All in favor of the motion?

8 GROUP RESPONSE: Aye.

9 CHAIRMAN HARGRAVE: Against?

10 Okay. Did you want to talk about 25, Vicki?

11 MS. ASHLEY: I wanted to include under this
12 scenic resource condition, I thought we could
13 combine 22, 30, 31, not so much -- and possibly 32.
14 We got -- or 33 we agreed we were going to tweak on
15 it, but it's all associated with color and patterns
16 and nonreflective. I thought maybe we could clean
17 all that up and put it into one.

18 MS. BREWER: Can I respond to that?

19 MS. ASHLEY: Sure.

20 MS. BREWER: The reason they are split apart
21 now is because they are in response to different
22 findings throughout the document. So if combining
23 them all into one, if you decide to change other
24 items in the document, it might make it difficult
25 to parse out, how to modify a condition later.

1 MS. ASHLEY: Okay.

2 MS. BREWER: There is some reason for it. I'm
3 happy to consolidate.

4 MS. ASHLEY: It just seemed like a lot of
5 wording on one thing, but if it's all in separate
6 findings, then that's fine.

7 But 33 we do need to tweak.

8 CHAIRMAN HARGRAVE: Yes. Can you talk about
9 the tweaking, Vicki?

10 MS. ASHLEY: Well, I think Brad brought
11 up -- we were questioning whether it was the color
12 of the signpost shrouding and all or if it was the
13 coloring --

14 CHAIRMAN HARGRAVE: We wanted the signal
15 face --

16 (Indiscernible - simultaneous speech)

17 MR. DEHART: I didn't see it as being a concern
18 until it was clear from Union Pacific's response
19 that they had an issue with it, but I believe
20 that -- I mean, we talked about it. We're all in
21 agreement that we're not expecting them to make
22 changes to their signal lights or to the standards
23 for how those signal lights appear from the train
24 perspective, but from the opposite direction or
25 from the side, you know, the support structure and

1 stuff like that is what we were trying to color,
2 you know, paint.

3 MS. ASHLEY: Make everything earth tone to
4 comply with the Scenic Area.

5 MR. DEHART: So maybe -- maybe we could address
6 Union Pacific's obvious concern by stating
7 something as subjective as when it does not
8 interfere with rail safety standards, or something
9 like that.

10 MS. ASHLEY: Yes, something simple. It doesn't
11 need a lot.

12 MR. DEHART: They obviously had an issue
13 thinking that what we were going to do or what we
14 were requiring was going to actually make it less
15 safe.

16 CHAIRMAN HARGRAVE: You know, doesn't interfere
17 with the train operator's ability to operate the
18 train safely, or something like that.

19 MS. ASHLEY: I think just rail safety.

20 MR. SCHANNO: I think that's another FRA deal.
21 They are going to put up the signals.

22 (Indiscernible - simultaneous speech)

23 MR. SCHANNO: But painting the stands and stuff
24 like that, I don't see a problem.

25 CHAIRMAN HARGRAVE: It could be -- I mean, if

1 you read this, it's not clear. I think our intent
2 was more to address viewers, not operators, right?
3 And we don't say that in here.

4 MR. SCHANNO: "All signal lights and affiliated
5 structures," so maybe that's what's throwing them
6 off. And you can't -- outdoor lighting, so they
7 are saying --

8 CHAIRMAN HARGRAVE: You could say something,
9 you know, from a viewer's perspective all signal
10 lights, you know, and then have another sentence
11 that says this is not intended to interfere with
12 the operator's ability -- is not intended to change
13 the consistency of navigation up and down the line,
14 or something like that.

15 MS. ASHLEY: It just should be all rail lights
16 should comply with the National Rail Safety
17 Standards and that all standards for lights.

18 MR. SCHANNO: I think her point is that their
19 signals and stuff are already in this section.

20 MS. ASHLEY: The standard masts and all that
21 will be colored, whatever they had, darker tones.

22 MR. DEHART: If I could ask Angie, you had
23 mentioned when we were talking about this one
24 earlier, Angie, that this is pretty much a standard
25 statement around trying to keep down light

1 pollution.

2 MS. BREWER: It is a standard condition of
3 approval. And if you would like me to suggest a
4 revision, the language that I think might be
5 easiest to insert is just right upfront say "where
6 it does not interfere with Federal Railroad
7 Administration safety standards, all signal
8 lights."

9 CHAIRMAN HARGRAVE: My concern -- but my
10 concern around that is that very likely -- I'm not
11 a railroad expert, by any means, but very likely
12 the system of consistency they have up and down the
13 rail is their own and that they made their own so
14 that it is -- so that it does comply with those
15 standards, but those standards alone, you know,
16 probably wouldn't get them all the way to where
17 they are. There is probably a company standard
18 that's far, far more specific. So if you use that
19 kind of language, you are not really defeating the
20 problem that I see with this.

21 MR. SCHANNO: The FRA has a set of signals that
22 is standard throughout the federal railroad, all
23 railroads, so same lights mean the same thing.

24 CHAIRMAN HARGRAVE: But would that completely
25 specify the front face of all their signal

1 machinery? I mean, there is probably -- you know,
2 probably at their level they are saying green means
3 this, red means that, but when you get down to the
4 specific company, they are saying this shape, this
5 size, this --

6 MR. SCHANNO: No. They are all covered by FRA.

7 MR. DEHART: I'm reading through Union
8 Pacific's response and instead of referencing at
9 the beginning, like Angie proposed, that it meet
10 federal rail standards, their response says "Staff
11 proposes here a condition that would require
12 changes to UPRR's uniform signal systems and
13 standards."

14 So how about if we just revise that, Angie, to
15 say "Where it doesn't conflict with UPRR's uniform
16 signal systems and standards."

17 CHAIRMAN HARGRAVE: Yes.

18 MS. BREWER: That's certainly a motion that you
19 guys can entertain.

20 CHAIRMAN HARGRAVE: Here is where I'm kind of
21 going with it because we do want to make sure that
22 the concern Angie was trying to address in putting
23 this in is still there and, obviously, we don't
24 want them to drive off the rail because they can't
25 read the signals, right?

1 So I think we're going to have to invest two
2 sentences in this. I think we need a sentence
3 right upfront that says "From the viewer's
4 perspectives," and then it goes into this.

5 MS. ASHLEY: Which viewer?

6 CHAIRMAN HARGRAVE: Any viewers, right? It's a
7 scenic area. You've got viewpoints. You've got
8 viewers. You've got people that might be hiking or
9 windsurfing or whatever. But they are not
10 operating trains. They are viewers. That's the
11 distinction I'm trying to introduce.

12 So you could say from viewers' perspectives and
13 then launch into all this stuff.

14 MR. SCHANNO: (Inaudible) where it says key
15 viewing areas from noticeably contacting the
16 surrounding (inaudible).

17 CHAIRMAN HARGRAVE: Right. And then at the end
18 of it I would add a sentence -- just what Brad
19 said, right? Not to be inconsistent with the
20 railroad uniform standards. If you put those two
21 sentences -- so the first one qualifies all of
22 these remedies to be from the viewer's perspective,
23 and then the second one makes it really clear that
24 we don't want you to change your uniform
25 signalling.

1 MS. BREWER: Chair, for clarification, the key
2 viewing areas are the only things that we can
3 protect the views from. So adding a sentence "the
4 viewers," it makes it a little bit complicated
5 because we often get calls with concerns from
6 people who can view things from their yard or their
7 deck or something and we really don't have the
8 authority to protect those views, only those views
9 from the Scenic Area, which is why the language is
10 crafted the way that it is in that standard
11 condition.

12 CHAIRMAN HARGRAVE: Well, then let's start off
13 with "from key viewing areas," right? I mean, if
14 that phrase was sufficiently qualifying all of
15 these remedies, we wouldn't have gotten that
16 feedback. So that's fine. We can go with "key
17 viewing areas" rather than "viewers."

18 Technically it's in there, but somehow, you
19 know, you read their response and I understand the
20 way this is written. It doesn't leave out that all
21 of these remedies are under that qualification,
22 right? I mean, is that perfectly clear to everyone
23 else?

24 MS. ASHLEY: I think if we leave this alone and
25 just add --

1 CHAIRMAN HARGRAVE: Just add the sentence Brad
2 said.

3 MS. ASHLEY: Then we're fine.

4 CHAIRMAN HARGRAVE: You probably forgot it. So
5 you want to read it out as a motion then?

6 MS. ASHLEY: I recommend that we add a sentence
7 at the very beginning of condition 33 to state
8 "Union Pacific Railroad has uniform signals and
9 systems and standards across its network." And
10 then just go with "all signal lights."

11 CHAIRMAN HARGRAVE: I thought we were going to
12 say --

13 MS. ASHLEY: Did I miss it?

14 CHAIRMAN HARGRAVE: -- not intended to
15 interfere with UPRR's uniform signal standards.

16 MS. ASHLEY: Okay.

17 MS. BREWER: Would you like me to read it back
18 to you? So the way that we had set it forward was
19 "where it does not interfere with Union Pacific
20 Railroad's uniform signal and systems" -- I think I
21 have an extra "and" in there -- "signal systems and
22 standards. All signal lights" --

23 CHAIRMAN HARGRAVE: Just launch into the rest
24 of it.

25 (Pause in proceedings)

1 MS. ASHLEY: I withdraw my motion.

2 MR. SCHANNO: I move that we amend 33 to read,
3 "Where it does not interfere with the UPRR's
4 uniform signals systems and standards," and then
5 continue into "all signal lights and affiliated
6 structures."

7 CHAIRMAN HARGRAVE: Okay. Second? Okay. How
8 do you feel about that wording? Any discussion?
9 No? We've had it all, haven't we?

10 Okay. All in favor, say aye.

11 GROUP RESPONSE: Aye.

12 CHAIRMAN HARGRAVE: Against? Okay. It's
13 carried.

14 All right. That was the ones that people were
15 passionate about that I captured.

16 MR. DEHART: 47.

17 CHAIRMAN HARGRAVE: 47, okay.

18 MR. DEHART: Actually, I would like to ask for
19 some clarification from Angie about 48, first of
20 all.

21 MS. BREWER: 48 is in response to the comment
22 letter we received from ODOT in time to discuss the
23 September 6th hearing. They specifically
24 referenced their request to the Applicant for a
25 seismic study, a feasibility study. And we have

1 since learned that that's actually inside the
2 Mosier urban area. So we had discussed it at the
3 hearing as though it was something we could
4 require, but as it turns out, the location of that,
5 of that request, is actually inside the Mosier
6 urban area and we would strongly encourage it to
7 happen, but we cannot require it.

8 MR. DEHART: I see.

9 MS. BREWER: And it's not uncommon to put in
10 recommendations, sort of encouraging words.

11 MR. DEHART: I was looking at it or wondering
12 whether -- whether it was because it was a request
13 for a study like 47 is a study, but it's because of
14 where it -- where (inaudible) within the city.

15 MS. BREWER: Correct.

16 MR. DEHART: So my thinking on 47, I was -- I
17 believe that that would be easier as a
18 recommendation, but I'm afraid that that
19 might -- you might have problems with that.

20 Can you share with us a little bit more about
21 the details about what we're trying to address with
22 that new recommendation or that new condition?

23 MS. BREWER: Sure.

24 MR. SCHANNO: Are you talking about 47?

25 MR. DEHART: Yes. While you're thinking about

1 that, I'm wondering whether -- whether the
2 crossing, you know, the work that we're requiring
3 be done with the tribes around the crossing
4 locations can somehow be used to capture or address
5 condition 47.

6 MS. BREWER: So condition number 47, the
7 language came directly from the Umatilla. And, I
8 apologize, I don't have that letter in front of me.
9 It was a specific request that they made. And it
10 may be something that needs to happen anyway to
11 inform those crossing locations moving forward.

12 MR. SCHANNO: 21 and 47 are going to end up
13 being hand in hand pretty much.

14 MS. BREWER: They will be -- I mean, they are
15 related, but this is a request specifically made by
16 the Umatilla and not the Yakama or any other tribe.
17 And so whether or not you want to require that
18 study to address all four treaty tribes or just the
19 Umatilla's concerns would certainly be within your
20 discretion.

21 MR. DEHART: I'm going to leave it alone. I am
22 anyway.

23 CHAIRMAN HARGRAVE: So what about -- you know,
24 the Umatilla tribe wrote the letter, but similar to
25 our thinking before, should we limit it to the

1 Umatilla tribe? Vicki says no.

2 MR. DEHART: I can't speak on behalf of the
3 tribes by any means, but I don't believe
4 that -- that they would agree that if you include
5 one, you need to include them all.

6 CHAIRMAN HARGRAVE: Do other tribes have the
7 same interest here? Yakama would, wouldn't they?

8 MS. BREWER: There are four treaty tribes in
9 the National Scenic Area. There is Warm Springs
10 and Umatilla, Nez Perce and the Yakama. We have
11 only heard from two of them for treaty rights
12 concerns. I would say that they are all very
13 interested, but we have only heard from two of
14 them. We have only received treaty rights concerns
15 from two of them.

16 MR. DEHART: I'm sorry that I raised the issue.
17 Angie addressed my question. Angie addressed my
18 question around whether this was a recommendation
19 or just clarifying why we were using a
20 recommendation for one study and not for another
21 request for a study. That being answered, I'm
22 okay.

23 CHAIRMAN HARGRAVE: All right.

24 Lynne.

25 MS. ERICKSON: I just had a question relating

1 to 47. At the bottom it says, "Study shall
2 identify and designate funding necessary to
3 mitigate the impacts of additional trains." And I
4 wondered what is the baseline for additional?
5 Additional beyond what number are we using.

6 MR. BREWER: So we're looking at the date of
7 the application submitted. That's where we're at
8 right now. Those are the kinds of impacts we're
9 evaluating and is a change from what we currently
10 have today and what we are doing moving forward.

11 As part of the completeness review and part of
12 our analysis, we did request proprietary
13 information from the railroad and did receive it.
14 It's confidential information, but it does verify
15 that they do, indeed, have an average of 20 to 30
16 trains as their approximate average.

17 MS. ERICKSON: So it would be above 30?

18 MS. BREWER: Correct.

19 CHAIRMAN HARGRAVE: And so, Lynne, were you
20 thinking that it should be more specifically stated
21 here?

22 MS. ERICKSON: Perhaps. It raised my
23 attention. Anything that's somewhat nebulous.

24 CHAIRMAN HARGRAVE: As an engineer, what do we
25 normalize things by?

1 MR. DEHART: As an engineer also, I would
2 normalize it by what the capacity of the existing
3 configuration is, not what today's train count is.
4 And the capacity, as I recall from what Union
5 Pacific has stated, the capacity of the rail of the
6 system that's in place now was -- I believe it was
7 in the 407 trains per day.

8 CHAIRMAN HARGRAVE: 40 is what --

9 MR. DEHART: 40 to 50 trains per day. And,
10 again, the efficiency increase by this project
11 would allow for -- I believe it was five or six
12 more trains per day.

13 CHAIRMAN HARGRAVE: There were different
14 estimates in that.

15 MS. BREWER: So the information that the
16 Applicant provided to staff was that there is an
17 existing range of 20 to 30 trains. And, as you
18 have seen in some of our staff summaries, this
19 proposed project would essentially put more days
20 closer to 30 than 20. That is -- and they have
21 said that that is likely to be an increase in five
22 to -- up to five to seven trains, but it would be
23 within that 20 to 30 range.

24 So I think -- and I can't speak for the tribes,
25 but in their comment letters and in our

1 conversations with them they have said that that is
2 still an increase in capacity in their perspective,
3 the five to seven additional trains, you could
4 include it to the 30, but the way that staff has
5 almost -- you know, what we are able to address is
6 the current capacity and all we really have to base
7 that on is their average number of daily trains.

8 And so, Brad, I'm hearing you say something
9 different.

10 MR. DEHART: We're talking two different
11 things. We're talking capacity, which is a
12 theoretical or an engineering value, I guess,
13 versus current volume. I think that's an important
14 difference.

15 MS. ERICKSON: I thought we were talking about
16 the impact to tribes. And if the -- if we're used
17 to seeing 20 to 30 trains per day, then anything
18 above that is additional impact. Is that what the
19 tribes would be saying?

20 MR. SCHANNO: I tend to not agree with that
21 because I think capacity would be -- because if
22 they have the ability to run the 70 trains, only --
23 because they are only running 20 to 30 doesn't mean
24 that they can't run the 70 and that has nothing to
25 do with this decision today. The capacity and then

1 the current volume are -- are two separate things.

2 MS. ERICKSON: True, but I'm -- I'm trying to
3 get to the concern of the tribes and how do we
4 address that.

5 MR. DEHART: For me, I'm trying to address it
6 in my -- I'm trying to address it by putting
7 conditions in there that will hopefully result in
8 some additional safer locations for the tribes to
9 get access.

10 CHAIRMAN HARGRAVE: So where you're sitting
11 right now, you're willing to leave this as it is?

12 MR. DEHART: I am.

13 CHAIRMAN HARGRAVE: And I am also. I totally
14 appreciate the ambiguous -- the language is
15 ambiguous and -- however, you know, I think if you
16 do a study on it, part of the study will certainly
17 quantify, you know, what's the baseline and what's
18 the -- you know, that's what the study does, so I
19 would kind of rather do that scientifically rather
20 than up here at the end of a long meeting. That's
21 my thought on that. I like the idea of doing such
22 a study.

23 MR. HANDLEY: Which might be done --

24 (Multiple speakers - indiscernible)

25 CHAIRMAN HARGRAVE: So I am content to leave it

1 as it is. Is there somebody who wants to make a
2 motion about this?

3 MS. ERICKSON: For what?

4 CHAIRMAN HARGRAVE: That would be someone that
5 wants to change it or take it out. Certainly not
6 Brad or I.

7 MR. DEHART: I brought it to table, so if I
8 don't want to make a motion --

9 CHAIRMAN HARGRAVE: I'm thinking we might be
10 good. Okay.

11 So we have gone through all the conditions that
12 people had concerns about.

13 Lynne, yes.

14 MS. ERICKSON: I still have concerns about
15 number 44 and 45.

16 CHAIRMAN HARGRAVE: Please.

17 MS. ERICKSON: I was concerned about the way
18 that it was -- I was concerned about the way it was
19 worded, about UPRR shall work with Oregon Parks and
20 Rec to develop a feasibility study, et cetera.
21 That there was no -- to look at the impacts, but it
22 doesn't have to occur in any set time.

23 So I asked Angie what, you know, we could do
24 about that and she suggested we could add a
25 temporal component to that as we did one of the

1 other previous conditions.

2 CHAIRMAN HARGRAVE: That makes sense. Good
3 catch.

4 MS. ERICKSON: And so she provided the
5 suggested wording on the memo that was sent out on
6 September 13th to add to that condition number 44.

7 CHAIRMAN HARGRAVE: Okay. And is that wording
8 short, like you can read it out and we can remember
9 it?

10 MS. ERICKSON: Yes. It says, "The study shall
11 be" -- after the end of that sentence, "The study
12 shall be initiated with the director of Oregon
13 State Parks following the appeal period within 45
14 days of the final decision. Improved access, as
15 identified and agreed upon by UPRR and Oregon State
16 Parks as a result of this study, shall be
17 accomplished within two years of the commencement
18 of development. Extension may only be requested by
19 Oregon State Parks."

20 CHAIRMAN HARGRAVE: Okay. And so I agree with
21 adding a temporal component. That makes sense. I
22 wasn't clear on which of that is new language
23 versus old language, but nevertheless, since you
24 are not voting today, does one of the voting
25 commissioners want to make a motion around this?

1 MS. ASHLEY: I move that we accept -- that on
2 condition 44 we add to the end of the existing
3 condition the wording, "The study shall be
4 initiated by the director of Oregon State Parks
5 following the appeal period but within 45 days of
6 final decision. Improved" -- was that part of it?

7 "Improved access as identified and agreed upon
8 by UPRR and the Oregon State Parks as a result of
9 this study shall be accomplished within two years
10 of the commencement of development. Extensions may
11 only be requested by Oregon State Parks."

12 CHAIRMAN HARGRAVE: So I had a question on that
13 wording.

14 You made a motion. Is there a second?

15 MR. MYERS: I'll second it.

16 CHAIRMAN HARGRAVE: Okay. So discussion. My
17 question is, it seems as if the Applicant is not in
18 the driver's seat here. It has to be initiated by
19 Oregon State Parks. What if they don't, what does
20 that mean to the Applicant? Do they not meet the
21 conditions and their permit gets pulled?

22 MR. MYERS: No, I think they wouldn't have to
23 do anything.

24 MR. HANDLEY: They don't do anything.

25 MS. BREWER: The intent was that they would

1 initiate, just mirror the language in the other
2 condition. So it says, "The study shall be
3 initiated with the director of Oregon State Parks."

4 CHAIRMAN HARGRAVE: Okay. "With." I didn't
5 hear "with." Okay. Sorry. I misheard. I thought
6 I heard "by."

7 MS. ASHLEY: "With."

8 CHAIRMAN HARGRAVE: "With." Okay. Okay.

9 Any other discussion on that?

10 Did you capture that, Brenda?

11 MS. JENKINS: I can get it off the memo. I'm
12 good.

13 CHAIRMAN HARGRAVE: Any other discussion?

14 MR. HANDLEY: My only concern is state parks
15 didn't ask for this.

16 CHAIRMAN HARGRAVE: That's kind of the way it
17 feels to me.

18 (Indiscernible - simultaneous speech)

19 MS. BREWER: State parks provided two comment
20 letters with a laundry list of concerns about noise
21 and access and overall recreation impact to
22 existing established recreation sites. They
23 provided a long list of references to their Gorge
24 unit park plan, which is their comprehensive plan
25 for all the Gorge parks.

1 And in there there are several references to a
2 desire to initiate a study such as this. And I did
3 try to use the same language that they had in their
4 Gorge unit comp plan and it specifically is to
5 address improved access and address some of the
6 noise concerns.

7 CHAIRMAN HARGRAVE: Okay. That feels better.

8 MR. DEHART: So in their comprehensive plan
9 there were specific locations that were mentioned;
10 I believe throughout the Gorge there were five or
11 six specific locations.

12 MS. BREWER: Yes. And Memaloose was one of
13 them.

14 MR. DEHART: So are we saying that this study
15 could entail review of all of those locations up
16 and down the Gorge or are we going to focus this in
17 on our county?

18 MS. BREWER: So the second comment letter we
19 received from them was a more regional approach to
20 the impacts that they are anticipating from a
21 potential increase in rail capacity or traffic.

22 The scenic area rules allow us to look
23 regionally and we are required to address the
24 cumulative effects. So they are starting with the
25 direct impacts at Memaloose State Park, but also

1 acknowledging that if there is, indeed, going to be
2 an increase in rail traffic, this would affect all
3 of their parks throughout the Gorge. So the study,
4 again, once it's initiated, it would really come
5 down to what are the effects of the existing
6 established recreation sites? And the focus should
7 be Memaloose, but because of the way the scenic
8 area rules are written and the requirements of
9 those, it would be a cumulative assessment as well.

10 And that's similar to some of the treaty rights
11 impact concerns we have received is, you know, if
12 there is an increase in rail traffic, you may see
13 that at multiple locations throughout the Gorge,
14 not just at the site of the development itself.

15 MS. ASHLEY: I don't have any problem with it
16 as long as they requested it in their letter that a
17 study be done. We're just putting a time limit on
18 it, basically.

19 MS. BREWER: The study is referenced in a
20 couple of their -- their references to their comp
21 plan.

22 MS. ASHLEY: We're just adding the time limit.

23 CHAIRMAN HARGRAVE: Can they support the
24 timeline, I wonder, Angie? The 45 days is pretty
25 fast in the world of government.

1 MS. BREWER: So they have seen this recommended
2 condition of approval and did not provide any
3 additional response.

4 CHAIRMAN HARGRAVE: But it didn't have the time
5 component.

6 MS. BREWER: Oh, you're right. I really don't
7 know, but the language would allow them to request
8 an extension if they needed it.

9 CHAIRMAN HARGRAVE: That's true. All right.
10 Super.

11 All in favor?

12 GROUP RESPONSE: Aye.

13 CHAIRMAN HARGRAVE: Against?

14 Okay. So carried. So that's 44.

15 MS. ERICKSON: Yes. 45. I wondered -- you
16 know, they talked a lot about -- in their comments
17 about impacts to the recreation uses and that they
18 would have to close the park for part of the time
19 this construction is going on.

20 And I wonder if the wording on 45 should be
21 "campground must" -- wait a minute. "Construction
22 activities on the road shared with OPRD for the
23 Memaloose State Park campground must occur outside
24 the peak recreation season and trucks used for
25 hauling the blast and crushed materials must be

1 covered." In other words, removing "either" and
2 removing the "or" and substituting "and" so there
3 is no either/or.

4 CHAIRMAN HARGRAVE: Well, I think doing it off
5 peak makes --

6 MR. SCHANNO: There is not going to be really
7 anybody at the park during the process.

8 CHAIRMAN HARGRAVE: Does one of the
9 commissioner want to make a motion?

10 MR. HANDLEY: I don't care to make a motion and
11 this is why. It is a shared access point. They
12 have right-of-way through there already. Why are
13 we limiting their right-of-way?

14 MR. DEHART: I also believe that we need to be
15 realistic in providing some alternatives on when
16 the construction should actually occur. I'm okay
17 with it as it's written.

18 MR. HANDLEY: (Inaudible).

19 CHAIRMAN HARGRAVE: Brad said he is okay as
20 it's written and I said what about the part where
21 it says the trucks removing the excavated material
22 need to be covered? Similar to a lot of the
23 discussions that we have had earlier in this -- in
24 this dialogue, we don't want to get out of
25 our -- the business we're in, which is land use,

1 and how trucks are to run down the highway with
2 material in them is already regulated by ODOT and
3 others. I would just -- why would this be
4 different?

5 MR. HANDLEY: Tarping trucks is a common
6 practice.

7 CHAIRMAN HARGRAVE: Sure, okay.

8 MS. ERICKSON: I think it would be a good idea
9 coming up through the park.

10 CHAIRMAN HARGRAVE: Does anyone want to make a
11 motion to change this in any way?

12 MR. MYERS: So we're talking about changing
13 from "or" to "and," is that essentially what
14 we're --

15 MR. SCHANNO: If you change "or" to "and," then
16 you are saying that they can only do the
17 construction outside of peak recreation season.

18 MS. BREWER: Please keep in mind that they are
19 further constrained by (inaudible) and things like
20 that.

21 CHAIRMAN HARGRAVE: I think it's fine. Okay.
22 Lynne, did you have other --

23 MS. ERICKSON: No, that's it.

24 CHAIRMAN HARGRAVE: Okay. We have now gone
25 through all of the conditions. And I think where

1 we are is that we have decided, based on prior
2 vote, that we're going to approve it with modified
3 conditions. I believe at this point we have now
4 agreed on the modifications that we want to all the
5 conditions.

6 So my thinking is that we could have Brenda
7 read that back so we're clear on what we might be
8 voting for and someone might make a motion to
9 approve --

10 All right. Fine. I'll back off on that,
11 Brenda. That's not going to happen but, hopefully,
12 for the last three or four hours everyone was here
13 and recalls what it was we agreed.

14 We have specific --

15 MS. JENKINS: I can give it a shot, if you want
16 to know what they were.

17 CHAIRMAN HARGRAVE: Well, if you can, I would
18 be concerned how this would work afterward.

19 MR. MYERS: All of the motions have been very
20 clearly stated on the record.

21 CHAIRMAN HARGRAVE: I thought so. I'm okay
22 with that, if you guys are clear.

23 MR. MYERS: What do you think?

24 COURT CLERK: I can read back what the motions
25 were, if you guys want them.

1 MR. MYERS: Do you think it's necessary?

2 CHAIRMAN HARGRAVE: No. Do you think it's
3 necessary?

4 MS. JENKINS: I'm not the one voting on it.

5 CHAIRMAN HARGRAVE: Right. Brenda is not
6 voting on it.

7 MS. ASHLEY: I'm happy with it.

8 CHAIRMAN HARGRAVE: If you're all happy, that's
9 fine. So does someone --

10 Sorry, what was that, Angie?

11 MS. BREWER: Just so you all know, I have them
12 captured completely, so if there was any questions
13 about any one of them, I can read it back to you.

14 CHAIRMAN HARGRAVE: Okay. Does someone wish to
15 make a motion?

16 MR. DEHART: I'll make a motion to
17 approve -- are you going to make me read something?

18 I'll make a motion to approve the proposed
19 development with the revisions to the conditions
20 that we have gone through tonight and all other
21 conditions that we haven't specifically made
22 changes to. Is that adequate?

23 CHAIRMAN HARGRAVE: So it includes all the
24 conditions except as modified in these discussions.

25 Are you clear on Brad's motion?

1 MS. JENKINS: I have got his motion. I'm good.

2 CHAIRMAN HARGRAVE: Is there a second?

3 MS. ASHLEY: I'll second it.

4 CHAIRMAN HARGRAVE: Okay. So what are your
5 thoughts? Any discussion?

6 MS. BREWER: May I ask a question for
7 clarification?

8 CHAIRMAN HARGRAVE: You sure can.

9 MS. BREWER: Are there any findings in the
10 staff summary related to these conditions that you
11 would like staff to modify as a result of these
12 revised conditions?

13 CHAIRMAN HARGRAVE: Perhaps. Are there some
14 you are thinking of specifically?

15 MS. BREWER: There are quite a few references
16 limiting traffic. And I, you know, the staff -- if
17 you are going to revise one document, it will
18 impact the other one. So just when you make a
19 motion to move forward, just please be clear about
20 whether or not you would like staff to go back and
21 revise those conditions.

22 CHAIRMAN HARGRAVE: Those findings?

23 MS. BREWER: I'm sorry, yes, thank you. Those
24 findings.

25 CHAIRMAN HARGRAVE: So do you need to

1 (inaudible)?

2 MS. BREWER: I at least need to acknowledge
3 where they reference a condition of approval that's
4 been struck, I need to go back and acknowledge.

5 CHAIRMAN HARGRAVE: I would think that they
6 should modify the findings because otherwise you
7 have got kind of spaghetti codes where it says one
8 thing in one place and another in another. So, you
9 know, my thinking is that they should, which I
10 guess would modify the motion a little bit,
11 wouldn't it?

12 We're saying to approve it with the conditions
13 as modified. I think we should also add to that
14 motion that -- to modify the findings to be
15 consistent with the modified conditions.

16 MR. DEHART: What we're asking Angie or staff
17 to do then is to go back and rewrite those to --

18 CHAIRMAN HARGRAVE: Because when they make a
19 finding, it's based on this and we have changed
20 this, so the finding needs to be tweaked.

21 MR. DEHART: Angie has already made it clear
22 that she may have a difficult time actually
23 getting -- revising the findings to be in line with
24 the modified recommendations or the modified
25 conditions that were --

1 CHAIRMAN HARGRAVE: She will. That's why she
2 gets paid the big bucks.

3 I think, you know, this happens -- this happens
4 a lot, right? And Angie's job is to map that out.
5 And I think that she will struggle to make -- to
6 make that complete and convincing. So be it, but I
7 don't think that's any reason to leave it untouched
8 and, you know, completely at odds with different
9 parts of the document. She may go in and at least
10 align them.

11 MR. DEHART: Understood.

12 MS. BREWER: So I'm happy to capture what you
13 guys have discussed to date in those findings.
14 Ultimately it's the discretion of the planning
15 commission, not me, for what those findings will
16 say. So I will be capturing what I have heard here
17 and adding those to the findings based on the
18 motions and decisions.

19 CHAIRMAN HARGRAVE: Yes. So do we need to
20 modify the motion to reflect that?

21 MR. DEHART: She is going to go ahead and take
22 care of it.

23 CHAIRMAN HARGRAVE: Okay. Any more discussion?
24 All in favor, say aye?

25 Lynne? Sorry.

1 MS. ERICKSON: Just a point of clarification.
2 The variances that were included in the
3 application, is that a separate action or is that
4 incorporated in this action?

5 CHAIRMAN HARGRAVE: That would be incorporated.

6 MS. ERICKSON: Okay.

7 CHAIRMAN HARGRAVE: Okay. That's a good
8 question.

9 Any other questions? Okay. All in favor of
10 the motion, say aye.

11 GROUP RESPONSE: Aye.

12 CHAIRMAN HARGRAVE: Against?

13 I'm against.

14 MR. MYERS: Against.

15 CHAIRMAN HARGRAVE: Okay. Motion is carried.

16 The meeting is adjourned.

17 (Proceedings adjourned 6:40)

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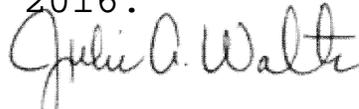
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C E R T I F I C A T E

I, Julie A. Walter, CSR No. 90-0173, do hereby certify that the proceedings were taken down by me in stenotype and thereafter reduced to typewriting; and, that the foregoing transcript, Pages 1 to 143, both inclusive, constitutes an accurate record of said proceedings, to the best of my ability.

Witness my hand at Portland, Oregon, this 30th day of September, 2016.



Julie A. Walter

CSR No. 90-0173



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WASCO COUNTY PLANNING COMMISSION

Application for Conditional Use

Union Pacific Case File PLASAR 15-01-0004

September 26, 2016

WASCO County Planning Commission Application for Conditional Use September 26, 2016

Page 2	Page 4
<p>1 CHAIRMAN HARGRAVE: So calling the hearing to 2 order for deliberation on application 3 PLASAR-15-01-0004. 4 The first hearing for this proposal occurred on 5 September 6th, 2016, during which staff provided a 6 presentation of the proposed development and the 7 application -- and the applicable rules. Some 8 testimony was received from the Applicant and by 9 all members of the audience who signed up to speak. 10 The record was held open for seven more days and 11 closed on September 13th, 2016. 12 As you will recall, the application includes 13 expanding an existing railroad siding on either 14 side of Mosier for 4.02 miles of new second 15 mainline track and realign the existing track; 16 replace five equipment shelters; install drainage 17 structures, including ditches and culverts; a 18 retaining wall; new lighting and signage and 19 wireless communication poles; modify existing 20 utilities, temporary landing zones for 21 construction; construct temporary and permanent 22 access roads and offsite wetland mitigation. 23 The proposed development location -- the 24 project area begins at rail milepost 66.98 east of 25 the Wasco County line, approximately two miles west</p>	<p>1 today's agenda and also roll call. So a few things 2 are not here. 3 Let's start with roll call. Lynne. 4 MS. ERICKSON: Lynne Erickson, The Dalles. 5 MR. HANDLEY: Jeff Handley, The Dalles. 6 MR. DEHART: Brad DeHart, The Dalles. 7 MS. ASHLEY: Vicki Ashley, Bakeoven. 8 CHAIRMAN HARGRAVE: Russ Hargrave, Mosier. 9 MR. SCHANNO: Chris Schanno, Dufur. 10 MR. MYERS: Andrew Myers, The Dalles. 11 MR. DAVIS: Mike Davis, Tygh Valley. 12 CHAIRMAN HARGRAVE: Okay. Great. 13 Does anyone wish to speak or raise an issue 14 that is not on today's agenda, something not 15 relevant to what we have on the agenda? 16 Okay. Hearing none. 17 So does any Planning Commissioner wish to 18 disqualify themselves for any personal or financial 19 interest in this matter? 20 Does any Planning Commissioner wish to report 21 any significant ex parte or prehearing contacts? 22 Does any member of the audience wish to 23 challenge the right of any planning commissioner to 24 hear this matter? 25 Okay. Is there any member of the audience who</p>
Page 3	Page 5
<p>1 of the city of Mosier, and ends at milepost 72.35, 2 approximately three miles east of Mosier within 3 Memaloose State Park. 4 The project area roughly parallels the Columbia 5 River at Interstate 84. The portion of this 6 project located inside the urban area of Mosier is 7 exempt from National Scenic Area requirements and 8 is not subject to this review. 9 The procedure that I would like to follow is, 10 first, disclosure of interest, ex parte contact, or 11 potential conflicts; then the planning department 12 will present information received during the 13 extended period; then the Planning Commission will 14 begin deliberation. If enough information is 15 available, the Planning Commission will make a 16 decision today. 17 It's actually a recommendation. That should be 18 phrased differently in this script. The 19 commissioners would make the decision. I'm sure 20 that we will be making a recommendation. I can't 21 speak for the commissioners. Sorry if you can't 22 hear the questions here. 23 Okay. Then I think -- I think before we move 24 to the next agenda item, we should ask if anyone 25 wants to speak about business which is not on</p>	<p>1 wishes to question the jurisdiction of this body to 2 act on behalf of Wasco County in this matter? 3 Okay. Will the staff please present their 4 report. So do you want us to go through -- there 5 is some information that came in that we have not 6 had a chance to read. We're going to read it at 7 the beginning of this session. 8 Do you want us to do it before your report or 9 after, Angie? 10 MS. BREWER: That's really up to you. I'm 11 happy to give a high-level overview of what we did 12 get and then you can take a break. 13 CHAIRMAN HARGRAVE: I think that would provide 14 better context. 15 MS. BREWER: Okay. I'm going to have -- the 16 PowerPoint projector clicker here, if you will, is 17 not working, so I'm going to have to signal my 18 staff every time I want to change slides. 19 (Pause in proceedings) 20 MS. BREWER: So we received a handful of new 21 documents between the hearing on the 6th and the 22 cut-off timeline, the extended seven-day timeline 23 of September 13th. I'm going to go through them 24 briefly on a very high level because they are part 25 of the packet.</p>

<p style="text-align: right;">Page 6</p> <p>1 And for you -- for those of you in the 2 audience, what we were just talking about is, as it 3 turns out, the rebuttal comment received from Union 4 Pacific Railroad was left out of the last email to 5 the Planning Commissioners, so we're going to give 6 them a small period of time to review that before 7 they get into their deliberations here this 8 afternoon. 9 So, first and foremost, we received a letter 10 from the Confederated Tribes and Bands of the 11 Yakama Nation citing treaty rights impacts, natural 12 and cultural resource concerns, and increased risk 13 of derailments and spills, and interference with 14 Yakama Nation treaty rights, including access to 15 usual and custom areas and cumulative natural 16 resource impacts associated with regular long-term 17 use of and transport of commodities of concern and 18 also the sort of catastrophic derailment 19 incidents/accidents that could occur based on those 20 commodities of concern. 21 So along those lines, I just want to remind the 22 Planning Commission that there are very specific 23 criteria and language in the Scenic Area rules 24 about treaty right protections, and that if there 25 were any -- if it was concluded by the Planning</p>	<p style="text-align: right;">Page 8</p> <p>1 We received a letter from the Sierra Club 2 citing public -- again, public health and safety 3 concerns, specific resource impacts in the Scenic 4 Area subject to the protections of the scenic, 5 natural, cultural, and recreation resource 6 protections, as well as the treaty rights 7 protection clauses. They have some concerns about 8 ensuring those were implemented. 9 We received responses from Union Pacific 10 Railroad to items raised at the hearing on the 6th. 11 That is available on our website as well. There 12 were some very specific responses to each of the 13 individual comments and items raised at that 14 hearing, along with some additional information to 15 support their responses. 16 We received new information from the Friends of 17 the Gorge and a response to some of the items at 18 the hearing last -- excuse me, the September 6th 19 hearing. I think I was able to advance that 20 myself. 21 And then we received nearly 1800 new public 22 comments by email requesting the denial of the 23 proposed development; many of them were similar to 24 the comments we received the first time around. A 25 lot of them were template letters, but there were</p>
<p style="text-align: right;">Page 7</p> <p>1 Commission that there were adverse effects, or the 2 likelihood of adverse effects to treaty rights, we 3 would then have to prohibit the project. So I just 4 want to make sure that that's very clear. 5 We received comment from Mosier Fire. They had 6 provided comment for the last hearing and they came 7 and presented it personally. 8 And I'm looking in the audience to see if 9 anyone is here from them today, but they did 10 provide additional information asking specifically 11 to eliminate the west end of the project from the 12 proposal before moving forward. They feel strongly 13 that they cannot mitigate the impacts and increased 14 risk on the areas closest to the city of Mosier and 15 made some pretty specific requests on that. 16 I'm hoping that you all received that packet of 17 information and are familiar with that. I have 18 hard copies if anyone is interested in seeing that 19 again. 20 We received a letter from the Hood River Valley 21 Residents Committee citing public health concerns 22 and safety concerns not only from the existing 23 railroad traffic and uses on the railroad, but 24 expanded risks based on the potential expansion of 25 rail traffic.</p>	<p style="text-align: right;">Page 9</p> <p>1 some original and unique comments provided in 2 response to what they heard at the hearing on the 3 6th. 4 And then staff provided some responses to 5 planning commissioner questions, and so did our 6 County Counsel, Kristen Campbell. 7 We received questions from one planning 8 commissioner asking for clarification on several 9 items. It was Lynne Erickson. And staff wrote 10 that up and put it into the record so you could all 11 see what the questions were and what the answers 12 were from staff. 13 And then the rebuttal that we're going to take 14 a moment to pause and look through was provided by 15 Union Pacific Railroad on September 21st in 16 response to the comment received by the 13th. 17 So no new information has been submitted since 18 the 13th. The record has been closed on that date. 19 We have received a few other items, but they didn't 20 make the cut-off timeline. And if anyone has 21 questions about those, I can generally answer, but 22 I can't get into the information. 23 So that concludes my presentation of the new 24 information that has come in. I didn't get into a 25 lot of detail about the Friends comments, but I'll</p>

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<p style="text-align: right;">Page 10</p> <p>1 just quickly do that for you. It's a longer list. 2 They submitted a couple of documents. You should 3 be aware of that and hopefully you've all had a 4 chance to read it. 5 The Friends comments cite illegal 6 insufficiencies, zoning conflicts, inconsistent 7 with variance criteria and set-back requirements, 8 resource protection requirements. 9 It surmises -- well, it states that the staff 10 report fails to adequately address resource impacts 11 and cumulative effects. It has concerns expressed 12 in there that staff catered to the Applicant and 13 failed to address ordinance requirements, and that 14 the staff report is lacking language in the 15 conditions of approval to make them enforceable. 16 That's just something to be aware of. 17 Any questions before I turn it back over to you 18 for reading through the rest of it? 19 MR. DEHART: I have a question. You mentioned 20 that the City of Mosier had submitted a request 21 that a portion of the project be eliminated. 22 MS. BREWER: Yes. 23 MR. DEHART: We don't really have the ability 24 to -- I mean, that would require that we go back to 25 the beginning, so to speak, because the project</p>	<p style="text-align: right;">Page 12</p> <p>1 except on appeal. So we will be making a decision. 2 If we have enough information, we'll make that 3 decision today. 4 I ferreted this out. We are making a decision. 5 So I want to go ahead and open this for 6 deliberation. We will not take any questions 7 today. The first thing we're going to do in 8 deliberation is take a good 20 minutes at the 9 beginning and read through the response from Union 10 Pacific because we did not have that ahead of time. 11 (RECESS 3:15 to 3:35) 12 CHAIRMAN HARGRAVE: Have all of the 13 commissioners read completely through the document 14 at this point? 15 Okay. Good work on that. 16 Okay. What do you guys think? 17 MS. ASHLEY: We've all got questions. 18 CHAIRMAN HARGRAVE: If you have questions, 19 but -- yes, Lynne. 20 MS. ERICKSON: I think, given all of the 21 changes requested by Union Pacific, that I would 22 like to hear or see staff and legal counsel's 23 response to all of these changes. 24 CHAIRMAN HARGRAVE: Okay. Angie? 25 MS. BREWER: I'm sorry, I didn't hear that.</p>
<p style="text-align: right;">Page 11</p> <p>1 would be a different application then, wouldn't it? 2 MS. BREWER: In my personal opinion and 3 professional opinion, no, you can definitely place 4 conditions on anything in the application, 5 including the scope, size, location, design. Those 6 would be based on the need to be consistent with 7 resource protection requirements, and so 8 they -- there would need to be a nexus there for 9 the possible impact of concern and what is being 10 proposed. 11 MR. DEHART: Okay. 12 MS. BREWER: You can't just deny it because you 13 want to. There has to be a connection there with 14 real impacts addressed and cited by the proponent. 15 CHAIRMAN HARGRAVE: Do commissioners have any 16 other questions? 17 Okay. Thanks. 18 (Pause in proceedings) 19 CHAIRMAN HARGRAVE: Before we read through the 20 rest of this, I want to clarify, go back to 21 something that came up earlier. We will in this 22 case be -- it depends on the case as to whether 23 we're making a decision or a recommendation. In 24 this case we will be making a decision. This does 25 not automatically go to the County commission</p>	<p style="text-align: right;">Page 13</p> <p>1 CHAIRMAN HARGRAVE: Given the -- so the 2 document we've just read through is from Union 3 Pacific Railroad, written comments, and there are a 4 lot of specifics in here. And Lynne is requesting 5 that, given the amount of specific detail of 6 changes that they are alluding to in here, she 7 would like to hear from the planning department 8 what do you -- what do you think of these 9 recommended changes? 10 MS. BREWER: Well, so there are -- there are a 11 lot of comments in that letter and a lot of 12 responses, and I could go through them one by one, 13 but, really, truly, it's for the Planning 14 Commission's consideration and decision to evaluate 15 whether or not you would agree or you would like 16 additional information. Staff would have to do 17 some additional analysis to go back and compare a 18 lot of these things. It's quite lengthy, so I 19 don't know if you want to go through one by one or 20 just generally. 21 CHAIRMAN HARGRAVE: No, I don't. I think if 22 you have some sort of general reaction, that would 23 be really helpful at this point, or from legal. 24 MS. BREWER: Just to be clear, is this the 25 document that we just -- you guys just took some</p>

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1 time to read through?
 2 CHAIRMAN HARGRAVE: Yes, because that was
 3 late-breaking for us.
 4 MS. BREWER: Sure. So there are some legal
 5 questions in there and some project-specific
 6 questions in there. And I'll start by deferring to
 7 Kristen if she wants to talk about the legal
 8 questions first.
 9 MS. CAMPBELL: So the legal issues --
 10 (Multiple Speakers - Inaudible)
 11 MR. MYERS: So, Kristen, what's being asserted
 12 from what I can tell in that document is that we
 13 don't have authority to impose many of the
 14 conditions of approval that are suggested, so I
 15 guess that's what we're wanting to hear from you.
 16 MS. CAMPBELL: Right. Okay. So that's the
 17 essence of it. My initial memo took a broad-level
 18 approach to that analysis. Is that something that
 19 you would like me to reiterate now? Is that what
 20 you're asking?
 21 MR. MYERS: I guess we want to know do you
 22 agree or disagree that we have the authority to
 23 suggest that they cover coal cars or that they have
 24 a certain number of trains per day?
 25 CHAIRMAN HARGRAVE: Can everyone hear?

1 whether we say "yes" or "no" becomes an irrelevancy
 2 based upon federal law, that basically they state
 3 they can do this operation anyway. You see what
 4 I'm saying?
 5 MS. CAMPBELL: Give me a second to look where
 6 you have cited.
 7 Okay. So, again, this, in my opinion,
 8 dovetails what I just opined in that -- and to note
 9 also, I think more specifically maybe cite this,
 10 that the service transportation board has
 11 repeatedly held that nothing in -- in the sections
 12 that they cite is intended to interfere with the
 13 role of state and local agencies in implementing
 14 federal environmental statutes.
 15 And so beyond that, for example, the authority
 16 that they cite is distinguishable in that in those
 17 cases it wasn't the federal. Those local
 18 governments weren't implementing the federal
 19 environmental laws. They were implementing in
 20 those state laws or in another case the -- it
 21 preceded what I -- what I just recited.
 22 MS. BREWER: So one thing for us all through,
 23 just to refresh you guys, just a reminder that the
 24 scenic area ordinance that we implement is
 25 specifically implementing the Columbia River Gorge

1 GROUP SPEAKING: Sort of. Not really.
 2 MS. CAMPBELL: Okay. So it is my opinion that
 3 there is federal precedent that requires local
 4 government to administer particularly federal
 5 environmental laws through -- through Compact. And
 6 in this case the Compact requires the management
 7 plan, which is what -- what our authority in this
 8 case is -- is implementing.
 9 So it is my opinion that we -- that you have
 10 the authority to consider these items.
 11 CHAIRMAN HARGRAVE: Thanks, Kristen.
 12 Any other questions for Kristen?
 13 MR. DAVIS: Just one other question regarding
 14 the legality, because a number of statements in
 15 their letter basically states that they undertook
 16 this as a voluntary and that because state and
 17 local requirements cannot be applied as they are
 18 stating that, into, like, page two, the top of page
 19 two.
 20 So -- and also they are stating that -- if you
 21 look at page four, to be specific, it's basically
 22 they are saying that, hey, we don't have to abide
 23 by -- we can just do this anyway, but -- so the
 24 question I have is that -- is that the case in
 25 these type of -- this type of thing, meaning that

1 National Scenic Area Act which is signed by
 2 Congress through its federal authority. It is
 3 implemented through a five-state Compact in Oregon
 4 and Washington, created the Columbia River Gorge
 5 (inaudible) which is a five state regional agency
 6 and the Forest Service National Scenic Area Office,
 7 a federal agency, to create those rules and review
 8 our ordinances for consistency so that we -- when
 9 we adopt our ordinances and implement them locally,
 10 we are consistent with the federal requirements on
 11 a regional scale.
 12 So our rules do carry -- I'm looking to -- it
 13 was tested in court before that the rules are
 14 federal in nature. Even though they are
 15 implemented on a local scale, they do carry that
 16 full weight and authority, and staff feels strongly
 17 that we do have the authority to regulate this.
 18 CHAIRMAN HARGRAVE: Thanks, Angie.
 19 Lynne, did that answer your questions?
 20 MS. ERICKSON: Oh, well, I have various
 21 questions throughout.
 22 I guess one that really troubled me was the
 23 lengthy revision of the condition about access.
 24 And, to me, it looks more like an agreement rather
 25 than condition, the way it's proposed to be

1 revised.
 2 MS. BREWER: Just so we're on the same page,
 3 are you looking at the revised staff --
 4 MS. ERICKSON: Condition 21.
 5 CHAIRMAN HARGRAVE: From the staff?
 6 MS. BREWER: Oh, I'm sorry. Let me get there.
 7 CHAIRMAN HARGRAVE: I think that's fair to
 8 point out.
 9 MR. DAVIS: Page 6 of the memorandum.
 10 MS. BREWER: So their recommended changes to
 11 condition number 21. I can tell you that I
 12 disagree with this recommendation for a couple of
 13 reasons. I think that historically trying to
 14 address recreation and treaty rights access in the
 15 same location has not been successful.
 16 Let me just skim this for a second here and
 17 make sure -- yeah, so their suggestion is that the
 18 access concerns be addressed perhaps more
 19 comprehensively through a sort of unified approach,
 20 and they suggest a fund of \$2 million to support
 21 the planning, permitting and building of those
 22 access areas.
 23 In my opinion, this is a -- it's a bit
 24 premature to put a price point on it because we
 25 don't know what the -- what kinds of access will

1 Pacific at this point or not?
 2 CHAIRMAN HARGRAVE: Yes. I'm trying to get all
 3 the information on the table and then I'll tee up
 4 some actual deliberations. I'm going to ask you
 5 what do you think at this point and that will help
 6 you to move the discussion forward. If everyone is
 7 in one position, then we're going to have to manage
 8 the discussion accordingly. If people are all over
 9 the map, that would be different.
 10 So at this point I'm trying to get all the
 11 information out. What questions do you have?
 12 (Pause in proceedings)
 13 CHAIRMAN HARGRAVE: So if you agree to that
 14 kind of format, clarify or information-seeking
 15 questions. We do not want to open up new areas,
 16 but if you have clarifying questions about areas
 17 that are already open either in the previous
 18 meeting or during the period through September
 19 13th.
 20 Anyone?
 21 MR. SCHANNO: I want to ask the UPRR question.
 22 CHAIRMAN HARGRAVE: Go ahead, Chris.
 23 MR. BAKER: Nathan Baker, Friends of Columbia
 24 Gorge. Will the public be allowed to respond to
 25 the questions that are asked of Union Pacific?

1 satisfy the concerns provided by the Umatilla and
 2 now the Yakama Nation and we don't know what the
 3 outcome of the study for the recreation resource
 4 impacts will be. So to assume that we can address
 5 them in the same location and with a specific
 6 amount of money, I just don't think we have enough
 7 information to draw those conclusions to support
 8 this sort of very specific proposal. I appreciate
 9 it very much, but I think it's a bit premature to
 10 put a cap on it in both numbers of locations and
 11 the costs it will incur.
 12 MS. ERICKSON: And, also, assumes that the
 13 County is going to be the builder, which I think is
 14 not a problem.
 15 CHAIRMAN HARGRAVE: Any other questions for
 16 staff? I don't want to go through all of these one
 17 by one. I mean, we're going to do that when we
 18 deliberate.
 19 Did you have other big questions? What
 20 I'm -- let me explain my sort of thinking on the
 21 deliberation here. It will probably help. I'm
 22 trying to get information out first, so clarifying
 23 questions, maybe based on this document, clarifying
 24 questions back to UPRR or to Kristen or staff.
 25 MR. SCHANNO: Can we ask questions of the Union

1 CHAIRMAN HARGRAVE: We're asking clarification
 2 to them. There shouldn't -- there shouldn't be a
 3 response needed. What we're trying to do is
 4 clarify things that are already in the record up
 5 through September 13th. If it turns out
 6 differently, we'll certainly manage that, but my
 7 first line of managing it is to try and limit the
 8 questions to clarifications on issues that have
 9 already been presented and which have already been
 10 discussed.
 11 MR. BAKER: Hasn't the record technically been
 12 closed already?
 13 CHAIRMAN HARGRAVE: It is.
 14 MR. BAKER: Thank you.
 15 CHAIRMAN HARGRAVE: So clarifying questions
 16 around something that's already in the record?
 17 Chris.
 18 MR. SCHANNO: Do you guys currently run any
 19 covered coal cars anywhere now?
 20 MR. WYMAN: Thank you very much, Commissioner
 21 Schanno. Ty Wyman from --
 22 UNIDENTIFIED SPEAKER: We would like to object.
 23 That's a question of entering into -- evidence into
 24 the record. If you would like to reopen the
 25 record, then that would be fine to reopen the

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<p style="text-align: right;">Page 22</p> <p>1 record.</p> <p>2 MS. CAMPBELL: So we shouldn't be taking</p> <p>3 comment or questions at this point.</p> <p>4 CHAIRMAN HARGRAVE: I'm looking for more like</p> <p>5 something that you didn't understand because there</p> <p>6 was a smudge on the page.</p> <p>7 MR. DAVIS: Kristen, I just wanted to make sure</p> <p>8 that I'm understanding. I'm sorry to keep on about</p> <p>9 this, but the conditions of approval, at least</p> <p>10 several of them, Union Pacific has suggested that</p> <p>11 we don't have legal authority, not just that, they</p> <p>12 have suggested that they don't even have legal</p> <p>13 authority to agree to them really and your position</p> <p>14 is otherwise, that we do have the authority to</p> <p>15 impose those conditions. Is that correct?</p> <p>16 MS. CAMPBELL: That effectively -- effectively</p> <p>17 our ordinance carries the weight, it effectively is</p> <p>18 federal law.</p> <p>19 MR. DAVIS: Okay. The issue of covering coal</p> <p>20 cars, their response has been not only is that not</p> <p>21 a common practice, but it would essentially be</p> <p>22 impossible and that it would disrupt, you know, the</p> <p>23 economy, essentially.</p> <p>24 MS. CAMPBELL: Okay. So that does bring</p> <p>25 up -- that does bring up an issue for your</p>	<p style="text-align: right;">Page 24</p> <p>1 paper. We have to remember this is a land use</p> <p>2 issue, not an emotional issue. And I think</p> <p>3 that -- that's going to go a long ways to our</p> <p>4 decision.</p> <p>5 CHAIRMAN HARGRAVE: Okay. Lynne. Go ahead.</p> <p>6 MS. ERICKSON: A couple points of</p> <p>7 clarification. In several documents I read that we</p> <p>8 received -- the issue was raised that the Union</p> <p>9 Pacific did not address the fact that they did not</p> <p>10 get the land transfer from the parks in their</p> <p>11 application and how that would impact the project.</p> <p>12 Could I get some clarification on that from either</p> <p>13 staff or Union Pacific?</p> <p>14 MS. BREWER: I can respond to that.</p> <p>15 So there was quite a bit of discussion at the</p> <p>16 time when the Oregon State Parks and Recreation</p> <p>17 Commission was making a decision as to whether or</p> <p>18 not to move forward with the piece of the project</p> <p>19 on the -- proposed for their land.</p> <p>20 Their commission directed staff to discontinue</p> <p>21 conversations with Union Pacific on that proposal</p> <p>22 because they were waiting on a number of things.</p> <p>23 They wanted to make sure they fully understood the</p> <p>24 potential impacts to the landscape and the</p> <p>25 resources that they're offering to citizens but</p>
<p style="text-align: right;">Page 23</p> <p>1 consideration, that what I cited to you earlier, it</p> <p>2 does have -- hold on. Let me make sure I get the</p> <p>3 appropriate language here.</p> <p>4 CHAIRMAN HARGRAVE: And out of</p> <p>5 consideration -- you may sit back down, it turns</p> <p>6 out.</p> <p>7 MS. CAMPBELL: So when a local government is</p> <p>8 applying federal environmental law such as this, it</p> <p>9 still -- it cannot -- it cannot unduly restrict the</p> <p>10 railroad from conducting its operations or</p> <p>11 unreasonably burden interstate commerce. So that</p> <p>12 is the qualifying consideration and analysis here.</p> <p>13 And it really is a fact-driven analysis. Each</p> <p>14 case tends to be, you know, obviously different in</p> <p>15 that analysis. So applying the facts here to those</p> <p>16 qualifications.</p> <p>17 MR. SCHANNO: Thank you.</p> <p>18 MS. BREWER: I would just add that we're not</p> <p>19 asking them to discontinue a contract. We're just</p> <p>20 asking them to carry it safely to comply with the</p> <p>21 ordinances that we have.</p> <p>22 MS. ASHLEY: I would just like to make a</p> <p>23 statement before we get much further into this.</p> <p>24 We've heard a lot in the last few days. We've</p> <p>25 read tremendous number of treaties from reams of</p>	<p style="text-align: right;">Page 25</p> <p>1 also required to protect by state law.</p> <p>2 And, also, it did not get a lot of support from</p> <p>3 that commission in general, so they -- they did let</p> <p>4 us know that they had directed staff to stop</p> <p>5 working with Union Pacific on those negotiations.</p> <p>6 However, when we asked Union -- excuse me, when</p> <p>7 we asked Oregon State Parks, should we be modifying</p> <p>8 this proposal in any way, do I need a new proposal,</p> <p>9 they said no. Let it move forward. We need to</p> <p>10 know the outcome of that analysis in order to know</p> <p>11 what their next steps are.</p> <p>12 So the Applicant was asked if they had any</p> <p>13 preferences whether or not they wanted to change</p> <p>14 the scope. They said no, you know, best case for</p> <p>15 them would be to proceed with the full-scale</p> <p>16 project they had proposed in their alternatives</p> <p>17 analysis, and so we moved forward with confirmation</p> <p>18 from Oregon State Parks expressing a level of</p> <p>19 comfort with the land use and planning and</p> <p>20 permitting process, all the while knowing that as</p> <p>21 the land owner, they have the ability to -- to not</p> <p>22 allow that development to occur on their property</p> <p>23 at a future date if it did get approved.</p> <p>24 So staff felt comfortable moving forward with</p> <p>25 the scope and if for some reason they decide not to</p>

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1 build that piece of the project, it does not -- it
 2 does not change any of the other conditions of
 3 approval or changes that we have recommended for
 4 scope, design, public health and safety
 5 requirements. It wouldn't change any of those
 6 things. It just would be that that piece of the
 7 project would not be constructed.
 8 MS. ERICKSON: That being the access, access
 9 road?
 10 MS. BREWER: A portion of the access road is
 11 owned by the Applicant. And I should just start by
 12 saying the ownership in that area was a very
 13 complicated discussion for months and months early
 14 on. So -- and that was part of the Oregon State
 15 Parks and Rec Commission concern about what was
 16 happening there. There was a lack of clarity for a
 17 while as to who owned what. So there is a -- if I
 18 remember correctly, the access piece is mostly
 19 owned by Union Pacific Railroad, if not entirely
 20 owned by them, but there are quite a few pieces of
 21 the railroad right-of-way where they were looking
 22 to expand that were owned by Oregon State Parks.
 23 Does that answer your question?
 24 MS. ERICKSON: Let me think about it a minute.
 25 CHAIRMAN HARGRAVE: Okay. I'll tell you, let's

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1 launch into deliberations.
 2 So our job is to either approve the application
 3 or deny the application or approve it with
 4 conditions. Am I correct?
 5 MS. BREWER: Yes, you're correct, but you can
 6 also ask for modifications of findings or
 7 conditions.
 8 CHAIRMAN HARGRAVE: Right, absolutely. So we
 9 don't need to take the conditions exactly as they
 10 are in the staff's recommendation, and a number of
 11 modifications to those conditions have been entered
 12 into the record, so that's certainly an
 13 alternative, too.
 14 If we were to deny it, we need to do it based
 15 on which criteria, Angie?
 16 MS. BREWER: Any of the criteria you found to
 17 be inconsistent you would have that ability to deny
 18 based on that.
 19 CHAIRMAN HARGRAVE: With the management plan?
 20 MS. BREWER: With our ordinance. And the
 21 management plan is effective, too, but it's
 22 implemented through our ordinance.
 23 CHAIRMAN HARGRAVE: So is everyone clear on
 24 that? So I am curious -- to try and manage this
 25 and facilitate it in a reasonable amount of time,

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1 we could spend an awful lot of time discussing
 2 things which may not turn out to be important. So
 3 I want to ask for a straw vote. I don't want a
 4 binding vote. I'm hopeful that our deliberations
 5 will influence our thinking and that as we learn
 6 what each other has thought of all the stuff we've
 7 listened to and read, that we're all going to
 8 listen to each other and that that wisdom and
 9 knowledge from all of the material we've absorbed
 10 is going to influence our thinking.
 11 I want to facilitate that effectively. I'm
 12 curious right now, I want to take a quick straw
 13 poll to see where your head is at; accept, approve
 14 the application, deny the application, or with
 15 conditions, and those conditions could be as the
 16 staff recommended or modified.
 17 So starting with Mike.
 18 MR. DAVIS: Since this is a straw vote, after
 19 listening to the audio tapes twice over and going
 20 through everything, and keeping an eye on what we
 21 are here to do, at this stage I am -- if I had to
 22 vote right now, I would accept the application only
 23 based upon accepting all the conditions that have
 24 been outlined as written and not modified by our
 25 staff. That's where I'm positioned at this point.

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1 MR. MYERS: And for me it's tough to give a
 2 position at this point. What I want to do is -- we
 3 heard a lot from people in the community, and we
 4 heard I think specifically with regard to issues of
 5 concern that deal directly with the application,
 6 things such as vegetation, effect on recreation,
 7 noise, all of those considerations.
 8 And I think that what I would suggest is that
 9 we take each one of those things one by one and
 10 discuss them. If I was to vote right now, I would
 11 vote to deny the application.
 12 MR. SCHANNO: I would say my -- I'm probably
 13 leaning towards the same way Commissioner Myers is.
 14 I would vote -- I would lean towards denying it at
 15 this point until we talk more about it.
 16 CHAIRMAN HARGRAVE: My initial reaction, which
 17 is not at all initial. I've heard hours and hours
 18 of testimony; some of it expert and professional
 19 and a lot of it from people who aren't experts, but
 20 have a tremendous amount invested in this area of
 21 this community and the culture we have here.
 22 I have listened carefully to a lot of
 23 information and I really came in without any
 24 particular bias on this, but based on what I heard,
 25 at this point my inclination would be to deny it.

1 MS. ASHLEY: Okay. Based on what I have read,
2 what I listened to for hours, reread, considering
3 that it's a land use issue, I would be in favor of
4 it with conditions.

5 MR. DEHART: I don't think I need the
6 microphone. Can you hear me in the back?

7 I have never felt like our decision here was
8 more insignificant in the whole scheme of things,
9 but that being said, I mean, we're arguing about
10 legal matters that I believe are going to play
11 themselves out on a different stage. This has
12 become what I consider to be a relatively simple
13 and straightforward project application, has become
14 one where we're having more discussion around
15 whether we should be using fossil fuels on this
16 planet or not.

17 And for this body, for my portion of this, I've
18 listened to all that testimony and I don't believe
19 that we can wrap all of that into this. My
20 inclination has been to approve the application
21 with conditions, but not with the conditions as
22 they are exactly written in the staff report. I do
23 have actually some changes that I would want to see
24 in those conditions before I would be able to
25 approve it.

1 from people who came in and spoke to us.

2 And from what I can understand, the requirement
3 is that there not be any loss of plant habitat. Is
4 that what everybody -- okay. And I don't see how
5 the -- even the conditions of approval really would
6 effectuate that, that it's preserved to the
7 greatest extent practicable. I don't see how that
8 is ensuring that we're not having plant habitat
9 loss, you know, that a certain percentage -- 75
10 percent of vegetation be -- you know, survive after
11 a period of in one case five years, in another case
12 three years, depending on whether it's planted in a
13 different location or planted in the same location.

14 That kind of concerns me that there is not
15 really -- there is not really, in my view, a very
16 detailed or very carefully thought out way to
17 ensure that that condition is satisfied.

18 You know, I want to have conversation. I want
19 to hear the other commissioners' thoughts on how
20 this project might affect recreation in that area
21 and how it might, you know, might -- the noise
22 issue. That's something that's significant to me.

23 I also have some questions, I think, just with
24 regard to the staff report and I also -- I am with
25 Brad in that I'm trying to make -- this is a land

1 CHAIRMAN HARGRAVE: Thanks.

2 MR. HANDLEY: I would have to agree with Brad
3 on this. I have read through everything, including
4 every last letter that was sent by email that I
5 have received.

6 At this point I'm leaning towards approval but
7 with changes to the conditions.

8 MS. ERICKSON: I would be leaning towards
9 disapproval, but I don't get to vote today, but,
10 also, thinking about some additional conditions, if
11 we were to move in that direction, that would need
12 to be modified.

13 CHAIRMAN HARGRAVE: Okay. Thanks. That helps.

14 So, John, you were saying that -- I'm sorry, I
15 meant Andrew. Mr. Myers, you said you were leaning
16 towards denying it. I'm curious to learn a little
17 bit of your thinking on that. Try and relate your
18 thinking specifically back to our management plan.
19 What are the conditions in that that you see as
20 incompatible with this application?

21 MR. MYERS: Guess my thought, Russ, is that I
22 want to have more of a conversation about it and I
23 want to do it kind of one step at a time. So I
24 want to look at -- let's start with vegetation.
25 You know, that was something I heard a lot about

1 use decision and I'm not making it an emotional
2 decision. And I agree that the whole fossil fuel
3 issue is something that is a bit distractive. But
4 the question on the number of trains -- and I don't
5 think that that's really something that
6 would -- would warrant approval or denial, but at
7 the same time, I have questions about it because
8 our -- you know, I have heard from Union Pacific --
9 I have heard from opponents of the project that
10 we're going to have a lot more trains. I've heard
11 from Union Pacific that we're not going to have
12 either any more trains or many more trains, and
13 then in the staff report we have we're going to
14 have less trains. And I don't know how they got
15 that, because I didn't hear that from even Union
16 Pacific.

17 CHAIRMAN HARGRAVE: I would like to just
18 comment. You asked for a dialogue, so I'm going to
19 jump in.

20 In terms of, you know, more trains, I
21 think -- I understood UPRR's assertion that this
22 wouldn't affect the number of trains is being based
23 on business, which makes a lot of sense to me.
24 It's what's the demand and they are going to
25 facilitate the demand. I think that was

1 the -- what they were basing the response on.
 2 Okay. But as an engineer, what is clear is
 3 that they are increasing the capacity of the track,
 4 and they acknowledged that when I asked that
 5 specific question. There is a lot of debate about
 6 how much it increases it. And the increased
 7 capacity can also be phrased as increased
 8 efficiency, right, because if you have a given
 9 amount of track and you make it more efficient, you
 10 can move more trains on it, so we've heard it
 11 called both capacity and efficiency.
 12 It's clear that it increases the capacity.
 13 It's apparently not clear from all the experts we
 14 heard on exactly how much, but I wanted to separate
 15 that out from the supply and demand aspect because
 16 if the capacity is X, it can't be above that
 17 regardless of demand.
 18 MR. DEHART: What I recall from our discussions
 19 in the past was that the improvements by this
 20 additional length of siding could increase the
 21 efficiency of the overall corridor by, I believe it
 22 was five to six trains per day.
 23 So by us putting a restriction in there that
 24 says that -- that train traffic or the number of
 25 trains won't go beyond what we're seeing today,

1 self-report? I mean, we need to be realistic with
 2 some of the things we put in there.
 3 And also when it comes to the noise and train
 4 blocking the recreation access through Mosier, part
 5 of that's going to be actually decreased because if
 6 this is double track, they will be able to move on
 7 by it.
 8 So I'm also not doing it as a -- I'm trying to
 9 be unemotional and I agree totally with Brad's
 10 comments about the fossil fuels being -- clouding
 11 the -- what this is. So we just need to make sure
 12 we're doing it as best we can with the correct
 13 stipulations, I guess, and monitoring.
 14 MR. HANDLEY: I think for me with the number of
 15 trains and such, I look at it as if ODOT was
 16 going -- sorry to use ODOT, but if ODOT was going
 17 to increase the capability or capacity (inaudible)
 18 they look at ODOT and say, yeah, we'll let you do
 19 that, but you can only have so many cars pass
 20 through that corridor at any given time.
 21 I just don't see how -- how we can impose a
 22 standard on a private entity that we wouldn't
 23 probably likely not impose on another entity.
 24 And with the vegetation part, we've had other
 25 stuff come through, other applications come through

1 already the existing configuration provides for a
 2 lot more trains to pass through the Gorge than
 3 what's -- than what's occurring today.
 4 I don't see how we have the ability to impose a
 5 restriction on the efficiency of the rail based on
 6 just what I would consider to be somewhat of an
 7 arbitrary point in time, today, and what the train
 8 traffic is on UPRR's lines.
 9 MR. SCHANNO: I also agree with Brad on that,
 10 too, when it comes to the amount of trains that you
 11 are putting through. I don't know if we can put a
 12 number there because as a retired railroader,
 13 they -- you're not going to get -- four miles of
 14 double track, it's going to increase the velocity
 15 through that stretch. It's not going to be
 16 increasing the amount of trains that much.
 17 And, like Brad said, you are going to be able
 18 to reach far more higher numbers if they ran it
 19 correctly. And part of that, too, when it comes to
 20 number of trains, that's like -- it's hard to put a
 21 number on it today because of economic -- where we
 22 are economically as opposed to where we could be
 23 five years from now or ten years from now. And
 24 also who is going to hold them accountable to that
 25 from today until forever? You expect the UP to

1 us, where we have never even took a second look at
 2 the plants or vegetation. We just went with the
 3 recommendations. So I don't see how holding the UP
 4 to a higher standard than what we held previous
 5 applicants to would be appropriate.
 6 CHAIRMAN HARGRAVE: Not necessarily a higher
 7 standard, if I understood the comment right. It
 8 was relative to the conditions. So in those other
 9 ones you might be recalling, the conditions might
 10 have been quite different. I think that was your
 11 comment is that you didn't see how the conditions
 12 would achieve that, right, or how the proposal
 13 would achieve those conditions.
 14 MR. MYERS: Correct.
 15 MS. ASHLEY: I have a question. I have a
 16 question in the fact that what makes more noise,
 17 the train sitting idling on the siding waiting for
 18 a train to go by or two trains moving
 19 simultaneously in opposite direction? To me, it
 20 seems like there would be less pollution and
 21 exhaustion fumes if they kept moving. That is just
 22 one of my thoughts on the siding.
 23 MR. MYERS: Would they be sitting idling in
 24 that same location, though?
 25 MS. ASHLEY: They do. They do. They sit there

1 and wait for the other one to go by.
 2 MR. MYERS: Well, not if they go to double
 3 track.
 4 MS. ASHLEY: But they wouldn't be. With double
 5 track --
 6 (Multiple Speakers - Indiscernible)
 7 MR. DAVIS: In regards to the two topics, let's
 8 take the first one, which is about the train
 9 operations itself, is -- I think one of the
 10 questions why it was raised in regards to the --
 11 GROUP SPEAKING: Can you speak up?
 12 MR. DAVIS: On page four, I'm referring to the
 13 train operations which we were discussing here, it
 14 goes back to their original statement in regards to
 15 what I brought up and that was the carrier, the
 16 federal government basically saying that they have
 17 the right to carry.
 18 So the question would be is that I think that
 19 the number of trains that would go through there,
 20 how do we monitor, limit, whatnot, I think that
 21 we're going to be -- that's going to be shaken out
 22 on more of a legal condition. I don't see how we
 23 can put that in there, personally. So I think that
 24 if we carry this thing forward, we can't sit here
 25 and say, oh, by the way, you can only do so many

1 to pass safely and efficiently.
 2 The letters that we received from the Umatilla
 3 during the comment period, and again similar
 4 comments during the window of time after our last
 5 hearing from the 13th, the treaty rights concerns
 6 specifically discuss increases in rail traffic. We
 7 also received those concerns from others, but in
 8 order to comply with our treaty rights protection
 9 requirements and allow any kind of proposal to move
 10 forward, we have to attempt to regulate it. If we
 11 don't try to keep it at least somewhat similar to
 12 what it is now, then we would be allowing something
 13 that has a potential adverse effect to treaty
 14 rights to move forward and that would be in
 15 conflict with our resource protection requirements.
 16 MR. HANDLEY: I would like to say something
 17 about the treaty rights. It says right in their
 18 letter "may result in violation." It doesn't say
 19 that it will result in violation. It said it may.
 20 I imagine that if it would, we would have totally
 21 different documentation in there and it should say
 22 "shall" result in violations instead of "may." And
 23 there is a big difference in my opinion between
 24 "may," "it may do this," than "shall, it shall do
 25 this."

1 trains every 15 minutes or whatever.
 2 So I think the likelihood of fairness of other
 3 places is we have to look at that as you're
 4 improving that rail for carrying more goods, more
 5 stuff through there, and I question whether we have
 6 the wherewithal to put that in successfully.
 7 As far as the wetlands and as far as the
 8 vegetation, et cetera, I think we have some areas
 9 to protect in the section of the natural resource
 10 conditions and that that should be looked at, and I
 11 think we have in the past looked at -- considered
 12 that irrelevant of who's in that process. So I
 13 feel comfortable as long as we keep the sections on
 14 those conditions to protect our wetlands and
 15 protect our vegetation growth.
 16 Anyway, that's my comment.
 17 CHAIRMAN HARGRAVE: I agree with the point
 18 about it not being feasible to put a condition on
 19 the number of cars or whatever, but -- Angie.
 20 MS. BREWER: Can I provide a little bit of
 21 context about the source of these conditions?
 22 So think about the existing bottleneck, if you
 23 will, in Mosier as a bit of a traffic-calming
 24 device. Right now it only allows so many trains to
 25 pass and so many -- and specific lengths of trains

1 MS. ASHLEY: Or will.
 2 MS. BREWER: So the -- I understand what you
 3 are saying. The rules in our ordinance discuss our
 4 ability to protect treaty rights from direct and
 5 indirect as well as cumulative effects. It is very
 6 difficult without being able to project market
 7 demands what the changes will actually be.
 8 So what they are doing is they are assuming the
 9 worst-case scenario, which is what we have to do as
 10 well, because, again, if you open up that
 11 bottleneck and it is subject to the demands on the
 12 market, you really don't know what the impacts of
 13 that traffic will be with certainty.
 14 So, again, that condition is specifically in
 15 there to address the treaty rights concerns as much
 16 as we can and the alternative is deny.
 17 MR. DAVIS: Could I have a question, Angie? So
 18 what you are saying is that we need to put in a
 19 moderate time, a number of trains, just because of
 20 the treaty and so we have to put something in
 21 there.
 22 MS. BREWER: There needs to be something that
 23 can address the concerns regarding increased rail
 24 traffic.
 25 MR. DAVIS: Okay.

1 MR. MYERS: My point with regard to that is it
 2 is UP's position that we can't do that.
 3 MR. DEHART: Can I make a comment on that?
 4 What I would like to say is I believe that if we
 5 were to consider things such as efficiency and
 6 pollution and all of those kinds of things, putting
 7 restrictions on the number of trains could actually
 8 have an adverse effect on some of the other tribal
 9 concerns or some of the other constituents'
 10 concerns around pollution in the Gorge.
 11 If you think about the efficiencies that this
 12 is reported as providing for rail traffic, then
 13 when we start talking about less smog, less noise,
 14 all of those other adverse impacts to inefficient
 15 trains traveling through the Gorge, we may be
 16 shooting ourselves in the foot by removing or
 17 by -- by actually making UP run less efficiently
 18 than they could if they built this project.
 19 CHAIRMAN HARGRAVE: Sure. It's a good point.
 20 And I think to some extent, Brad, maybe it's scale.
 21 If you look at it across the country, certainly
 22 improved efficiency is a good thing. If I look at
 23 it within the Gorge and realize that improved
 24 efficiency would increase capacity -- and I'm just
 25 going to take a minute to pontificate here to share

1 has been operating for a long time. If we went
 2 back 100 years, the capacity would be something
 3 different. And so, you know, why should we
 4 arbitrarily constrain it to what it happens to be
 5 today? I think that was kind of the gist of your
 6 point. I don't know.
 7 All I know is that we have an application in
 8 front of us today and we have to make a decision
 9 today. And while it might be an arbitrary point in
 10 time, it is the decision that we're faced with, and
 11 so that's some of my thinking. My concerns are
 12 safety, number one, and health, number two. And I
 13 don't see that any of the conditions adequately
 14 addressed that.
 15 MS. ASHLEY: I would like to address the point
 16 of safety. I think we need to break that out.
 17 Fire safety. I live off of the Deschutes
 18 River. We see fires from the trains there from
 19 brakes. If they would commit to putting one of
 20 those foam trailers permanently stationed in The
 21 Dalles or Hood River so that there is access for
 22 this mid Columbia Gorge area for the foam trailer,
 23 that, to me, would be -- that foam is so much
 24 better than just plain old water. And I know, I've
 25 used plain old water in a gunny sack and if I had

1 with you my thinking -- it would increase capacity
 2 in two ways, as I understand it. One is you could
 3 have more trains, more cars, but the other one is
 4 could have bigger trains. And so I realize as a
 5 land use person, I want to just look at it as a
 6 land use issue.
 7 If a factory were coming before us and asking
 8 to increase capacity, okay, how does that line up
 9 with our management plan and our county goals?
 10 With this application I see a safety issue and I
 11 see a health issue. And if the factory -- and, you
 12 know, most of the factories in our County don't
 13 have those issues to a high degree, at least not
 14 the ones that I've been made aware of in this
 15 capacity.
 16 So if I look at it through that lens, I am
 17 concerned about the safety issues that come with
 18 increased capacity and about the health issues.
 19 And that's why it's my thinking that regardless of
 20 this condition or that condition, none of these
 21 conditions adequately address those fundamental
 22 issues.
 23 And, Brad, you asked, you know, a good question
 24 around -- this is an arbitrary point in time. The
 25 capacity is X. If we went back -- this railroad

1 foam, it would be a whole lot better to put fires
 2 out.
 3 CHAIRMAN HARGRAVE: I agree with you that
 4 mitigation conditions could be -- there might
 5 definitely be effective mitigations. And, you
 6 know, the foam was key in the one scenario that
 7 we've had and, you know, staging foam would
 8 certainly be an important aspect of addressing
 9 safety concerns.
 10 Fundamentally, though, the topography and
 11 geography of the area is problematic with regard to
 12 safety. If you look at Mosier as an example, and
 13 that's where this application is centered, there is
 14 not a lot of routes out and in. It's
 15 extraordinarily dependent on routes that are
 16 adjacent to where this proposal is.
 17 MS. ASHLEY: The same thing could happen if a
 18 big truck carrying hazardous material on the
 19 freeway had a wreck, the same type of thing. It's
 20 going to close off wherever, or a barge.
 21 CHAIRMAN HARGRAVE: I agree. Well, a barge
 22 might be different.
 23 MR. SCHANNO: Or any train that they currently
 24 run.
 25 MS. ASHLEY: Yes, or any train that they

1 currently run.
 2 MR. DAVIS: I have a question for Angie, if you
 3 don't mind. This goes back to the train
 4 operations, the number of. And the concern that's
 5 been in my head since we started talking about this
 6 is that I feel we have a catch-22 on this between
 7 the tribes. And I think that there was a -- the
 8 catch-22 on this in regards to what we're obligated
 9 with the tribes to look at, as well as what they
 10 are stipulating in the memorandum of demand.
 11 When you have something like that, it makes me
 12 step back and say, wait a second, time-out. We
 13 have to have push-back on this whole thing because
 14 there is no win. There is no -- you know, it's
 15 wrong no matter if you step into it. Is that
 16 correct in regards to the operation?
 17 MS. BREWER: You were looking at her but
 18 talking to me?
 19 MR. DAVIS: I'm asking both of you for just
 20 some direction.
 21 MS. BREWER: I think, if I understand your
 22 question correctly, is there any way to move
 23 forward? Is that what you're asking?
 24 MR. DAVIS: Yes, right.
 25 MS. BREWER: So based on the information we had

1 front of me, if anyone wants me to read it, but
 2 essentially it says that if we do reach a different
 3 conclusion from what they have asked for, we need
 4 to be able to justify that. We can't -- we need to
 5 have some information to back that decision.
 6 And it goes on to say that -- let me see if I
 7 can find it here -- uses that would affect or
 8 modify any treaty rights, any such rights, shall be
 9 prohibited. It's a "shall." It's not optional.
 10 There is not a lot of discretion there.
 11 So staff feels that, you know, if you feel like
 12 there is a way to monitor this and you have some
 13 level of confidence in monitoring those numbers,
 14 then you could move forward. The physical
 15 restraint of the bottleneck now is the only sort of
 16 guarantee that the numbers won't change, but that
 17 doesn't mean that monitoring can't happen, and
 18 that's really your decision.
 19 Anything you want to add?
 20 MS. CAMPBELL: And with respect to some of
 21 these conflicted laws, provisions, with all due
 22 respect, those are issues that won't be settled by
 23 you here today.
 24 So it's my best advice in that regard that when
 25 in doubt, do your best to apply the facts, the

1 a week before the hearing is what you are seeing in
 2 the staff's recommendation, or a week before the
 3 first hearing, and we took up our sort of best stab
 4 in the dark at conditions of approval to address
 5 the concerns that we heard. We postponed this
 6 hearing several times asking for more feedback from
 7 our technical assistance partners. It was a
 8 struggle every time.
 9 And so you will notice that there are still
 10 some questions looming and that is, in part,
 11 because we could not get technical assistance that
 12 we were asking for and we needed to issue a
 13 unanimous decision based on the application that
 14 was provided to us, which was a complete
 15 application.
 16 They prepared several natural resource and
 17 cultural resource surveys to accompany that
 18 application. So we had a lot of information to
 19 look at and review but, again, there are some very
 20 specific treaty rights concerns that are
 21 essentially deal breakers. If we do not have a way
 22 to respond to them and mitigate them, we cannot
 23 move forward based on the proposal that would still
 24 protect those treaty rights.
 25 And I have the language from our ordinance in

1 criteria, and whether you think a particular
 2 condition is needed to address the standard.
 3 CHAIRMAN HARGRAVE: Does anyone else want to
 4 speak, share your thoughts?
 5 MR. HANDLEY: About just 20 to 30 trains?
 6 CHAIRMAN HARGRAVE: The whole thing.
 7 MR. MYERS: Just to kind of clarify to make
 8 sure I'm on the same page with what Mike and Angie
 9 were saying, are we all -- what's everybody's
 10 position on if we did -- we know we're increasing
 11 capacity. We don't know if we're increasing number
 12 of trains. If we did increase number of trains,
 13 are we saying that that's going to have an impact
 14 on treaty rights? Is everybody in agreement with
 15 that, or no?
 16 MR. HANDLEY: I'm saying that we don't know if
 17 it will or not. The tribes don't even know. They
 18 put in their letter to us they don't even know if
 19 they are going to impact their treaty rights. They
 20 said it may impact their treaty rights. They did
 21 not say it that will impact your treaty rights.
 22 That's what I'm saying.
 23 MR. MYERS: Can I ask Angie, what's your
 24 understanding at this point of how an increase in
 25 train traffic would or potentially could improve

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<p>1 treaty rights?</p> <p>2 MS. BREWER: So my understanding is based on</p> <p>3 the comment letter which you've all seen. And it</p> <p>4 is specific. It doesn't use -- so you're right,</p> <p>5 Commissioner Handley, it doesn't say "will." You</p> <p>6 know, there is no sort of definitive "This will</p> <p>7 happen. Beware." A lot of it -- and I have a hard</p> <p>8 copy of the Yakama letter in front of me, but not</p> <p>9 the Umatilla's.</p> <p>10 It's not just one thing or the other. They</p> <p>11 both cite multiple concerns revolving around</p> <p>12 increased traffic, but also just expansion of use.</p> <p>13 So there are concerns about trains not stopping</p> <p>14 would potentially increase deaths and accidents for</p> <p>15 their fisherman along the tracks trying to access</p> <p>16 the property. That's one of the conditions we've</p> <p>17 included in there which I think addresses some of</p> <p>18 those concerns.</p> <p>19 There are other concerns about a likelihood for</p> <p>20 irreparable harm to natural and cultural resources,</p> <p>21 which is based on the notion that with increased</p> <p>22 capacity, there is increased risk of any kind of</p> <p>23 derailment or incident that would cause impacts.</p> <p>24 So it doesn't need to be -- it doesn't need to</p> <p>25 be a doubling of the numbers. I mean, it's really</p>	<p>1 their number.</p> <p>2 MR. DAVIS: What was that?</p> <p>3 MS. ASHLEY: Okay. So we don't allow them to</p> <p>4 have more trains per day. Well, we don't have any</p> <p>5 say on the length of the train.</p> <p>6 MR. MYERS: But right now the length is</p> <p>7 restricted because of the track that's in there.</p> <p>8 MS. ASHLEY: Not really.</p> <p>9 MR. MYERS: I think it is.</p> <p>10 CHAIRMAN HARGRAVE: It is because the --</p> <p>11 MR. SCHANNO: If you stop in that section of</p> <p>12 track.</p> <p>13 CHAIRMAN HARGRAVE: It's not to say they</p> <p>14 couldn't run bigger trains than they do today, but</p> <p>15 there is certainly a limit because you only have so</p> <p>16 much bypass.</p> <p>17 MR. SCHANNO: (Inaudible) unless you connect</p> <p>18 all 176 miles with double track.</p> <p>19 CHAIRMAN HARGRAVE: I appreciate that. It</p> <p>20 wouldn't have to all have double track. It would</p> <p>21 all have to have long enough.</p> <p>22 MR. MYERS: I recall hearing that specifically</p> <p>23 from UP, that this project would allow them to</p> <p>24 increase the length of the trains.</p> <p>25 MS. ASHLEY: Yes.</p>
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<p>1 just a recognition from them that any increase is</p> <p>2 an increase in the existing risk because there is</p> <p>3 an existing risk right now.</p> <p>4 MR. MYERS: And our rule says any increase</p> <p>5 shall be prohibited.</p> <p>6 MS. BREWER: Well, it doesn't say any increase.</p> <p>7 MR. MYERS: Or any increase or any risk.</p> <p>8 MR. DAVIS: It says impact.</p> <p>9 CHAIRMAN HARGRAVE: Negative impact, right.</p> <p>10 MS. BREWER: The proposed uses must not affect</p> <p>11 or modify treaty rights or other rights of Indian</p> <p>12 tribes. Uses that would affect or modify such</p> <p>13 rights shall be prohibited.</p> <p>14 And our rules are a bit more expansive than the</p> <p>15 Corps of Engineers' rules and other federal rules,</p> <p>16 so our rules allow us to look at indirect impacts</p> <p>17 as well as direct impacts and also the cumulative</p> <p>18 effects of all of those -- all of our rules</p> <p>19 combined, what that means for the long-term outcome</p> <p>20 of our resources and our treaty rights.</p> <p>21 MS. ASHLEY: So I guess I go back to the fact,</p> <p>22 okay, we say no increase in number, so they are</p> <p>23 running ten trains with 100 cars, they will just</p> <p>24 run ten trains with 200 cars. They will increase</p> <p>25 their capacity, but they are not going to increase</p>	<p>1 CHAIRMAN HARGRAVE: I recall that also. And I</p> <p>2 think the number was one mile. It would increase</p> <p>3 it to one mile.</p> <p>4 MR. SCHANNO: The fact is that they can run a</p> <p>5 train in that siding now that's short enough. They</p> <p>6 can meet a three-mile train. They pull a short</p> <p>7 train in there, they could meet a three-mile train</p> <p>8 in there. On the four-mile stretch of track they</p> <p>9 will not be able to take two four-mile trains.</p> <p>10 They will only go four miles.</p> <p>11 CHAIRMAN HARGRAVE: I think we're down the rat</p> <p>12 hole because Vicki's point was that there is two</p> <p>13 parameters here and if you simply restrict the</p> <p>14 number of trains, that doesn't necessarily address</p> <p>15 the issue because you could have fewer longer</p> <p>16 trains. That was her point.</p> <p>17 MS. ERICKSON: Under the conditions proposed by</p> <p>18 staff, number 20 says there shall -- "Proposed</p> <p>19 development shall not directly result in</p> <p>20 significant increase in net volume of rail traffic,</p> <p>21 including number of individual trains, length of</p> <p>22 trains."</p> <p>23 That's been sort of addressed, but if -- Angie</p> <p>24 did also suggest some language to be added to</p> <p>25 ensure compliance with that in the memo that was</p>

1 sent out and that UP -- we could require UPRR to
 2 provide quarterly reports to the planning
 3 department to document that.
 4 CHAIRMAN HARGRAVE: So my feeling, I will
 5 just -- my thinking on this, having worked for a
 6 lot of large bureaucracies, it's just unmanageable.
 7 I'm not even sure it's measurable. I mean, maybe
 8 they could self-report. I just see so many issues
 9 with trying to micro-manage this thing.
 10 I think we need to decide, you know, as a
 11 commission, are we approving or denying it?
 12 Because if we're trying to deny it through a
 13 condition that's, you know, un -- if we really want
 14 to deny it, then let's do that and not try and have
 15 some crazy condition that, you know, that sort of
 16 does that, because I'm not sure this is manageable
 17 or the right way to put policy out there. It just
 18 seems really hard to measure or manage.
 19 MS. ASHLEY: I think some of these conditions
 20 need to be tweaked.
 21 CHAIRMAN HARGRAVE: Let me do this.
 22 MS. BREWER: Can I just add one piece of the
 23 timeline? I just want to make sure the timeline is
 24 straight in our mind. I just want to call out
 25 again, and I mentioned it earlier, that the

1 CHAIRMAN HARGRAVE: I would second that.
 2 All in favor? Well, hold on. Let's back up.
 3 Discussion, please.
 4 MR. DAVIS: I have now a concern over
 5 monitoring. I have been around very large
 6 companies before. I agree with you. You can't
 7 micro-manage the thing. I think it's unmanageable
 8 on some of the topics that we see. And so
 9 I'm -- based upon what I'm hearing now, I'm going
 10 to have to push back and I would have to agree with
 11 you to deny it. That's my feeling about this
 12 thing.
 13 CHAIRMAN HARGRAVE: I am in a similar space,
 14 which is a proposal could be put forward that would
 15 address the concerns that I have based on all the
 16 testimony we've heard and read, but this proposal
 17 doesn't. And so rather than go through some
 18 extraordinary machinations to recraft the proposal
 19 in a commission meeting by via really complex
 20 conditions, I would rather approve it or deny it.
 21 If we deny it, it could be resubmitted and then
 22 that would give much more time to recraft it much
 23 better than we can do here on the fly in a meeting.
 24 So similar thinking to yours, Mike, has led me
 25 to where my -- where I am. What do you guys think?

1 Yakama's letter came in after they had a chance to
 2 see our conditions of approval. I just want you
 3 guys to know that. They are still citing concerns
 4 that are not addressed by those conditions of
 5 approval.
 6 CHAIRMAN HARGRAVE: Right. I appreciate those.
 7 Back to Vicki's comment around trying to manage
 8 lengths of trains and number of trains. So how
 9 about if I facilitate it like this, why don't we
 10 first decide as a commission what our thinking is
 11 on approve or deny. If we're definitely going to
 12 go ahead -- I mean, where does the majority lie on
 13 that? Because if we're going to deny, then this
 14 debate isn't really needed, right?
 15 If we're going to approve, then let's figure
 16 out are we going to approve with the conditions as
 17 recommended or are we going to modify it? If we're
 18 going to modify it, then I'll facilitate that and
 19 we will get through this in a timely manner.
 20 Does that make sense? Okay.
 21 MR. MYERS: Another straw poll.
 22 CHAIRMAN HARGRAVE: We could do it via straw
 23 poll or via motion, either way.
 24 MR. MYERS: I would make a motion to deny the
 25 application in its entirety.

1 MR. DEHART: I don't agree with denying it.
 2 MS. ASHLEY: I don't either.
 3 MR. HANDLEY: I don't either.
 4 CHAIRMAN HARGRAVE: Well, tell us why.
 5 MR. DEHART: I have got a list of nine
 6 revisions to the conditions that we have right now
 7 that, for me, if these revisions were made, I would
 8 easily be able to approve the application. Some of
 9 them are extreme, complete elimination of
 10 conditions, because I don't -- and those are
 11 related to some of these restrictions around the
 12 covering of coal trains or the number of trains.
 13 I don't believe that we want to put Wasco
 14 County in a policing position making sure that
 15 Union Pacific Railroad or any carrier coming
 16 through our County is abiding by conditions that I
 17 don't feel we have the ability to enforce.
 18 So many of my changes that I would recommend
 19 are complete elimination --
 20 CHAIRMAN HARGRAVE: To remove those.
 21 MR. DEHART: -- conditions. Others are less
 22 extreme, subtle changes in some language to better
 23 clarify, I believe, what we're trying to achieve.
 24 MS. ASHLEY: I move that --
 25 MR. HANDLEY: That's the direction I'm in.

1 MS. ASHLEY: I can't agree with the motion in
2 the fact that I think we can work with it. I think
3 a bunch of these conditions need to be tweaked.
4 Some need to be totally removed. Some need to be
5 tweaked, but I think we could approve it on a land
6 use issue quite simply with some revision.

7 CHAIRMAN HARGRAVE: Okay. And, Jeff.

8 MR. HANDLEY: I agree with what Brad had to
9 say. There is some stuff in there I would like to
10 completely remove, some I would like to change the
11 wording of, but we have been working on this for a
12 long time. We have gone through everything. I
13 think it would be kicking the bucket down the road
14 to another -- another section to go and redo all
15 this and I think it's taking the easy way out.

16 CHAIRMAN HARGRAVE: Any other discussion or
17 comments?

18 MR. SCHANNO: I'm starting to lean towards the
19 way Brad is thinking in the sense that if we send
20 them back to the drawing board, we're going to be
21 back all again, whereas the drawing board has been
22 there. We know what we want. We know the majority
23 of it right now. We're all here. It seems like we
24 can go through and talk about the revisions that
25 need to be made or what we agree or don't agree.

1 we're kind of falling into with the tribes and with
2 the land use, with what we are -- in our management
3 plan of what we shall conform with. Okay?

4 If we -- if we decide to -- and I'm all for it,
5 by the way, that if we want to go through each item
6 by item and start tearing into it, you know, that's
7 fine. That may or may not change, you know, how I
8 feel, but I'm fine with that if we want to take the
9 time to do that. We may take Brad's suggestion and
10 go through those modifications.

11 But if I had to vote right now, based on this,
12 I'd still have to say that I would have to push
13 back.

14 CHAIRMAN HARGRAVE: Okay. And there is a
15 motion open. Any more discussion on the motion?
16 Okay.

17 All in favor of denying the application, say
18 aye.

19 GROUP RESPONSE: Aye.

20 CHAIRMAN HARGRAVE: Against?

21 GROUP RESPONSE: Aye.

22 CHAIRMAN HARGRAVE: The motion is not carried.

23 MR. SCHANNO: We're going to keep talking about
24 it, right? I'm not opposed to voting to denying.

25 CHAIRMAN HARGRAVE: We will probably vote many

1 Part of it comes, even when you talk about the
2 treaties with the tribes, they don't have a maximum
3 amount of train traffic they can run through there
4 right now, so how can we -- we're not a
5 law -- we're not the sheriff's office. You know
6 what I mean? We can't go and say, well, they are
7 violating that because in the Treaty of 1800 it
8 says no more than 50 trains.

9 CHAIRMAN HARGRAVE: I mean, I totally agree, if
10 I understand what you're saying, and what Brad
11 articulated pretty clearly, that we can't get in
12 that business. Our business is approval of land
13 use applications. You know, and that -- that's
14 kind of where my head is at, too.

15 It might lead me to a different vote on this
16 motion, but, you know, I'm like, hey, we don't want
17 to get in the business of monitoring trains. We're
18 approving applications or denying them or modifying
19 them. Right?

20 Is there more discussion or do you want to vote
21 on this? Okay. Mike.

22 MR. DAVIS: I guess so what I'm hearing is that
23 -- there is some fundamental things that I'm
24 wrestling with. One, of course, is safety and the
25 other one is, is this a catch-22 that I feel that

1 times. Don't worry.

2 MR. DEHART: Can I make a suggestion, a
3 platform to discuss this from. I'm not going to
4 make a motion, but I would like to share my
5 thoughts on the changes, the nine -- I believe it
6 was nine changes and maybe it can be a starting
7 point for the discussion. I don't know that we
8 need to walk down through all of those conditions,
9 but I think if I've heard all the conversation and
10 deliberations and stuff, I believe that we kind
11 of -- they are circling around these conditions
12 that I've got written down. Okay?

13 And I'm not going to look at what the
14 conditions are. I just called them out by number
15 when I wrote this down, but I just want to
16 reiterate that I believe this is a lot of my
17 thought around this is based upon whether we want
18 to put Wasco County in a position of policing the
19 Union Pacific Railroad on so many issues that I
20 don't believe -- I understand what you have said,
21 Angie, but I don't believe we have the ability to
22 do, to police that.

23 So I'm just going to walk down through these.
24 I want to eliminate condition number 13. I want to
25 clarify --

1 MR. MYERS: Can you slow down a bit?
 2 MR. DEHART: I want to clarify condition number
 3 14 to specify whether the spill plan -- and this
 4 may be just something we can do in
 5 discussion -- but whether the spill plan that's
 6 being called for there is for derailments or
 7 whether it's a spill plan for construction
 8 activities. I think that's an important
 9 clarification because I wasn't sure.
 10 The next one was to eliminate condition number
 11 15; eliminate condition number 16.
 12 In condition number 17, I would like to see
 13 something a little bit more objective in the
 14 requirement than "make a good faith effort." I
 15 feel like that's -- maybe we could talk about that
 16 one a little bit more, but I just don't know -- I
 17 think we need to get a little bit more objective
 18 about what that looks like.
 19 I would like to eliminate condition number 20.
 20 I would like to eliminate condition number 21 and
 21 replace it with something that is collectively
 22 crafted that includes something along the lines of
 23 Union Pacific's proposal for \$2 million. Maybe the
 24 figure isn't the right figure, but that there is
 25 some sort of collective proposal around how those

1 MS. ASHLEY: 22, 31, and 33.
 2 MR. MYERS: Could you say that again?
 3 MS. ASHLEY: 22 --
 4 MR. MYERS: No. What you said about them.
 5 MS. ASHLEY: Well, they are all conditions
 6 dealing with the color and to the Scenic Area.
 7 Make them one condensed condition. It's just kind
 8 of a little wordy in there.
 9 CHAIRMAN HARGRAVE: Do you have any?
 10 MR. HANDLEY: Yes, 33. UP calls out 33 saying
 11 that if we throw that condition on them, it's going
 12 to violate their -- the federal standards that they
 13 have for lighting for track management.
 14 MS. ASHLEY: Safety.
 15 MR. HANDLEY: Safety and track management.
 16 CHAIRMAN HARGRAVE: It's just confusing because
 17 it's not consistent along that line.
 18 MR. HANDLEY: Right. And that's why I have a
 19 problem with 33. I want safe transportation on the
 20 railroad. That would be like asking the city to
 21 change two of their traffic lights to a different
 22 pattern because of whatever reason. I think that
 23 it should be consistent throughout their system.
 24 CHAIRMAN HARGRAVE: Yes, I agree with that.
 25 MR. HANDLEY: So I propose just eliminating

1 crossings are going to be determined. And I would
 2 also like to restrict those specifically to
 3 occurring within Wasco County.
 4 I would like to revise condition number 23 to
 5 remove, to the extent practicable, with a more
 6 objective requirement, perhaps something along the
 7 lines of half cast would be removed or something.
 8 And this has to do with the visual appearance of
 9 rock faces that are blasted. I think we could
 10 be -- put something in there that's a little bit
 11 more objective rather than just saying "to the
 12 extent practicable." There are ways that you can
 13 line drill and shoot and then go back in and chip
 14 away at those drilling half casts, they call them,
 15 and get a more natural-looking face.
 16 And then the last one was I would suggest that
 17 we make number 47 a recommendation, just like we
 18 have made 48 a recommendation.
 19 MS. ASHLEY: Okay. Going along that same line,
 20 if we're doing a few revisions, I would combine
 21 conditions 22, 31, and 33 all to be combined -- I
 22 mean, we just kind of reiterate the thing over and
 23 over on coloring stuff, combine all of that to one
 24 restriction -- condition, I mean.
 25 UNIDENTIFIED SPEAKER: Which numbers again?

1 condition 33.
 2 CHAIRMAN HARGRAVE: Oh, I would propose they
 3 change the rest of the system.
 4 MR. DEHART: I appreciate what you are talking
 5 about there. And then I also read that and I felt
 6 like -- let me use an example from projects that we
 7 do within ODOT, within the Scenic area. We color
 8 signal poles in our projects, the pole, the mast
 9 arm, those parts of it are colored a specific
 10 color, browns and stuff, to blend in better.
 11 I took this as meaning coloring of the support
 12 structure and stuff and not changing the colors of
 13 lights or anything like that so the face of the
 14 signals would still be rail standard, but --
 15 MR. HANDLEY: It says the shielding and
 16 coating.
 17 MS. ASHLEY: I took it as the coloring.
 18 MR. HANDLEY: I wouldn't either. And, again,
 19 we don't -- we don't paint brown around the face of
 20 a signal, the signal itself. There are standard
 21 requirements of what the face of that signal look
 22 like and it's got some reflectiveness and stuff
 23 like that.
 24 I think that we can work --
 25 CHAIRMAN HARGRAVE: It sounds like we all have

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1 the same -- we might just want to clean this up.
 2 MR. HANDLEY: Clean 33 instead of removing it.
 3 CHAIRMAN HARGRAVE: Not changing the face of
 4 the signal.
 5 MR. DEHART: We're wanting it to still be --
 6 MS. BREWER: If I might just give some comment
 7 on that. They did provide elevation drawings of
 8 standard lighting that they use throughout their
 9 railroad already. And those standard fixtures do
 10 have a little bit of a shield over the top of them.
 11 They have a little bit of a lip because they are
 12 trying to funnel that light down the track,
 13 basically.
 14 So this lighting standard is a standard
 15 condition of approval we include in every single
 16 land use decision, and staff feels that they are
 17 complying with the lighting that they have proposed
 18 already. So this isn't trying -- this is trying to
 19 do exactly what Commissioner DeHart just explained,
 20 is require the colors of the structures and the
 21 material of the structures to comply, but not in
 22 any way trying to undermine the safety that the
 23 existing lighting has.
 24 MR. HANDLEY: Or the consistency of Union
 25 Pacific.

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1 CHAIRMAN HARGRAVE: But in reaching their
 2 response -- I think we're all on the same page. It
 3 apparently wasn't clear to Union Pacific, based on
 4 their response.
 5 MS. BREWER: Sure. So I would be for a
 6 revision to be more clear, but not an elimination.
 7 CHAIRMAN HARGRAVE: So that is still a
 8 subsection of the conditions would be open for
 9 surgery. Any other conditions that we haven't
 10 talked about that the commissioners feel need to be
 11 modified?
 12 MS. ERICKSON: I had raised an issue -- I had
 13 raised an issue about one of the safety issues
 14 related to Chief Appleton's comments last time.
 15 And I wondered if UPRR can be required to
 16 notify fire districts in advance of hazardous
 17 materials being shipped through their areas? And
 18 Angie said yes, but it's possible that it's already
 19 available to fire districts through an app, but
 20 that we could suggest that condition be added as
 21 well.
 22 MR. DEHART: I believe that's already -- some
 23 regulations are being worked. I think it's already
 24 become a condition in Washington state. I know I
 25 can't ask Union Pacific what they could share with

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1 us about that right now but, again, I feel like
 2 something like that is being resolved on a larger
 3 stage at a state-wide level. Whether we want to
 4 specifically require something like that, we may be
 5 able to get some feedback.
 6 CHAIRMAN HARGRAVE: Do you know, Angie?
 7 MS. BREWER: I participated in a meeting a few
 8 weeks ago with railroad staff and that question
 9 came up and that's how I was able to respond to
 10 Commissioner Erickson's question is that the app is
 11 apparently something you can download on your phone
 12 and the only concern that was expressed is that
 13 there is a disclaimer at the bottom of it that sort
 14 of states that it could be accurate, you know, it's
 15 as accurate as it can be, basically, and that
 16 last-minute changes to that list might not be
 17 captured. And I'm really not -- I don't have that
 18 app. I haven't viewed it, but that was the
 19 discussion around that app.
 20 CHAIRMAN HARGRAVE: I'm kind of in the same
 21 space as Brad, which is if Wasco County doesn't
 22 need to get in and manage it, you know, let's try
 23 and avoid that. I'm not clear where this one is.
 24 MS. ASHLEY: I talked to two Wasco County
 25 different fire departments about this particular

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1 type of thing; one is already monitoring it and the
 2 other one is implementing it. So I don't think we
 3 need to police it. I think it's being done or is
 4 going to be shortly.
 5 CHAIRMAN HARGRAVE: Why don't we do this, to
 6 talk to the specific recommendations in the time we
 7 have left.
 8 I think we've got all the conditions on the
 9 table at this point that people are wanting to
 10 modify, right? So --
 11 MR. DAVIS: Excuse me. Did we address -- one
 12 of the things I think Vicki brought up, and that is
 13 the safety in regards to some kind of -- would you
 14 say foam.
 15 MS. ASHLEY: Oh, the foam tanker?
 16 MR. DAVIS: Was there going to be any kind of
 17 modification to the safety clauses in here that
 18 addresses that or are we passing that by? Are you
 19 recommending --
 20 MS. ASHLEY: I would like to make a
 21 recommendation that it be positioned in the mid
 22 Columbia, whether it be The Dalles or Hood River,
 23 but I don't know how we can totally put it in
 24 another county.
 25 MR. DEHART: Condition 17 says, "UPRR shall

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1 provide regular training in the Gorge fire
2 department to include the mid Columbia fire
3 (inaudible)" --
4 (Pause in proceedings)
5 MR. DEHART: Sorry. "Condition 17, UPRR shall
6 provide regular training to Gorge fire departments
7 included in the Mid Columbia Five County Mutual Aid
8 Agreement and requires UPRR to solicit feedback
9 about local needs for combatting a railroad-related
10 fire incident and make good faith effort to assist
11 in meeting those needs."
12 The revision that I had suggested was to make
13 something a little bit more objective in there
14 around what "good faith effort" would constitute,
15 but I would rather rely upon that interaction
16 between Union Pacific and our fire departments and
17 allow them to make requests for where they might
18 want to see foam trailers or training or allow that
19 discussion to occur between them. We still have
20 the condition in here.
21 MR. DAVIS: So that needs to be modified to add
22 some more specifics to that point.
23 CHAIRMAN HARGRAVE: Thanks for pointing that
24 out, Mike. What I was going to do was kind of
25 march through each one of these that we want to

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1 modify; agree, if we can, on wording and then if we
2 are successful at that, then we can back up and
3 make a motion. To try and have each person make a
4 motion and in that motion express their idea of how
5 the condition should be reworded I think is too
6 cumbersome.
7 So why don't we go through the first section,
8 which is -- which is -- let's see, the first one I
9 think that we tripped up on was 13, right?
10 MS. BREWER: I'm sorry. Can I interrupt just
11 one thing before you get into that? I just would
12 ask that you all keep in mind that when we
13 eliminate a condition, we're potentially coming out
14 of compliance with the ordinance itself. So if
15 we're going to take something away, we need to be
16 conscious of what that means for the findings in
17 the staff summary and our overall
18 compliance -- finding of compliance.
19 MR. MYERS: Can you let us know if you have any
20 concerns?
21 MS. BREWER: The only reasons those conditions
22 of approval are in there is to ensure compliance
23 and consistency with the rules, so all of them are
24 considered by staff to be necessary. They can be
25 modified, but if you are going to eliminate them

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1 completely, just please be aware that that could
2 cause some issues and inconsistencies throughout
3 the rest of it.
4 CHAIRMAN HARGRAVE: They are in there for good
5 reasons.
6 MR. DEHART: I believe that's a risk we're
7 going to have to take.
8 CHAIRMAN HARGRAVE: So let's dive in and look
9 at 13. I think that 1 through 12 nobody wanted to
10 change, right?
11 So 13, should coal cars be covered? What do
12 you want to do with that? Brad?
13 MR. DEHART: Eliminate it.
14 CHAIRMAN HARGRAVE: Okay. Does anyone disagree
15 with Brad?
16 MS. ASHLEY: And I think the reason behind that
17 is statistics basically that were presented by
18 Union Pacific Railroad that if Wasco County did it,
19 we would be the only one in the nation and we
20 probably would fight clear to Congress to get it
21 accomplished.
22 MR. HANDLEY: I have a couple thoughts on that.
23 I agree to go ahead and eliminate it, and here is
24 my reasoning. At this time Union Pacific doesn't
25 even run coal through Wasco County. They stop at

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1 Boardman. They put that in there, in their stuff,
2 in the packet to us.
3 Second, is that Friends of the Gorge footnoted
4 Burlington Northern website that talked about coal
5 trains and the covering of coal with chemicals and
6 a soapy substance, and I think I remember reading,
7 to eliminate the coal, and that seems to be the
8 industry standard. The industry standard isn't to
9 cover coal trains. It's to apply this soapy
10 substance to the top of the trains to limit the
11 coal dust from blowing out of the train cars as
12 they are going down the track. Up to 80 percent, I
13 think is what I read in there, that it eliminates,
14 the coal dust.
15 MS. ASHLEY: Also covered coal trains, as I
16 remember reading, can have internal combustion.
17 MR. HANDLEY: This was testified by somebody
18 that said that they have the --
19 CHAIRMAN HARGRAVE: So my concern with the
20 condition the way it is worded is -- my concern
21 similar to what has been expressed is that it is
22 too prescriptive. You know, we're not in the
23 business of figuring out what's the best way to
24 protect from coal dust, if that's the main intent
25 of the covers.

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1 So if the issue is health and environment, I'm
2 not sure we're in a good position to specify a
3 specific remedy, especially as technology evolves
4 over time. You know, the commission doesn't --
5 MR. HANDLEY: Can I ask a question of Angie
6 then really quick?
7 Angie, can you share with us, if coal trains
8 don't even come through the Gorge right now on
9 Union Pacific's lines, how could that be put in
10 there as a condition of approval?
11 MS. BREWER: Sure. Good question.
12 Just because they don't come now doesn't mean
13 they won't come later. Everything, as the
14 Applicant has described in their materials, is --
15 everything is market-driven. Just because it's not
16 here now doesn't mean it won't happen later. We
17 received concerns from several entities, including
18 the tribes, about accumulation of coal dust and
19 relied on a recent study at the University of
20 Washington that addressed coal accumulation on the
21 Washington side of the Columbia River where they do
22 use that spray on the coal that's being carried
23 through.
24 The lead author on that study happens to be the
25 Columbia River Gorge Air Quality Strategy lead

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1 author and is very familiar with the rules that
2 apply in the Scenic Area and the resources that
3 we're trying so hard to protect and balance these
4 projects with.
5 So I hope that makes sense. We can't assume
6 that they will never come. And when we have
7 comments at hand, we are trying our best to address
8 them. I did confirm with Union Pacific staff that
9 covering coal was an option and that there were no
10 internal instantaneous combustion or any combustion
11 risks associated with covering coal. When I heard
12 that at the hearing, I was a little panicked, so I
13 made sure to follow up on that.
14 And it's just the understanding that things
15 might change in the future and what we're looking
16 at right now is a land use decision based on the
17 physical development that's proposed, not knowing
18 what's coming on those rails 50 years from now.
19 CHAIRMAN HARGRAVE: Did that answer your
20 question?
21 MR. HANDLEY: Yes.
22 MR. DAVIS: So I guess my question, based on
23 her response, do we even have to take it out or
24 should it be more properly modified more towards
25 the open-endedness of the future that there should

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1 be considerations if coal --
2 CHAIRMAN HARGRAVE: Put something in like
3 employ the best industry practices to control coal
4 dust or something.
5 MR. DEHART: That puts us back in a position,
6 or the County back in a position of having to try
7 and police something like that when it's already
8 going to be policed. The best industry practices
9 and those sorts of things are policed by larger
10 entities than Wasco County.
11 MS. BREWER: I agree with you completely. And
12 just, again, the reasons these are in there is this
13 is the only path forward. Treaty rights impacts
14 are pretty black and white. So that's why they are
15 in there. I'm not trying to advocate.
16 MR. DEHART: With all due respect, Angie, when
17 impacts to treaty rights are stated with "mays" and
18 "maybes" and "might," I have a hard time saying
19 that -- you know, saying that there isn't some
20 other avenue to address those.
21 CHAIRMAN HARGRAVE: Maybe we should vote on
22 this condition. I mean, people have legitimate
23 differences of opinion. I understand your concern.
24 I actually share it, to a large degree. I
25 understand Angie's point, which is, if you want

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1 this to move forward, there are certain things that
2 it needs to address and that's why she has put this
3 in here.
4 So I --
5 MS. ASHLEY: I have a suggestion. Change the
6 word "are" to "may be."
7 CHAIRMAN HARGRAVE: Well, I have a serious
8 concern about --
9 MS. ASHLEY: That isn't going to help anything.
10 CHAIRMAN HARGRAVE: -- about specifying a
11 particular recommendation as technology changes
12 very quickly.
13 MR. DAVIS: If we take 13 completely out, does
14 that put an end to the whole thing?
15 CHAIRMAN HARGRAVE: Why would you take it out?
16 The problems with it can be fixed. I think, to me,
17 the problem is specifying a particular remedy. I
18 would be quite happy with a statement around "using
19 industry best practices to control coal dust."
20 And, to your point, you know, maybe that is
21 also monitored by other agencies at higher levels,
22 but what's the harm? It is an issue that we need
23 to address in this proposal. That's Angie's point.
24 I would be interested in a motion to reword
25 this to -- along the lines of industry best

1 practices.
 2 MR. HANDLEY: I think I just want to make a
 3 motion to remove it altogether.
 4 CHAIRMAN HARGRAVE: Go ahead. Motions are --
 5 MR. HANDLEY: Let's take a vote on that and see
 6 how that goes.
 7 I'm going to make a motion to remove condition
 8 13 from this application.
 9 CHAIRMAN HARGRAVE: Anyone want to second that?
 10 MR. DEHART: I second.
 11 CHAIRMAN HARGRAVE: Okay. Discussion.
 12 MR. SCHANNO: Can we ask Angie, if 13 is taken
 13 out, does it automatic -- I mean, does it put an
 14 end to it?
 15 MS. BREWER: So, again, it's the Planning
 16 Commission's decision as to whether or not you
 17 reach -- if you reach a different conclusion about
 18 treaty rights impacts than staff has, you are
 19 certainly allowed to do, but based on our analysis,
 20 staff feels that that's a necessary condition.
 21 CHAIRMAN HARGRAVE: My input, Chris -- and I
 22 have studied this far less than Angie, so I pay
 23 attention to what she is saying. I have sat here
 24 for a very, very long time, though, well over a
 25 decade. It does not seem like a deal breaker to

1 for construction activity.
 2 MS. BREWER: My intent was for a derailment
 3 incident, an emergency, spill response plan for an
 4 emergency event. We are requiring the use of best
 5 management practices and other -- not just spill
 6 prevention and (inaudible) concerns for
 7 construction specifically, so the intent was to be
 8 emergency-related.
 9 CHAIRMAN HARGRAVE: So I would be interested in
 10 a motion to -- sorry.
 11 MR. SCHANNO: I was just asking Brad if he just
 12 wanted to add that language?
 13 CHAIRMAN HARGRAVE: Yes, that's where I was
 14 going.
 15 MR. DEHART: I think that's something that's
 16 probably already been developed or is being
 17 developed in cooperation, hopefully with our fire
 18 departments in the area, you know, based on number
 19 17.
 20 CHAIRMAN HARGRAVE: So did you want to take it
 21 out then?
 22 MR. DEHART: No. I would like to clarify that
 23 it's a spill response plan for derailment and it's
 24 not --
 25 CHAIRMAN HARGRAVE: You might want to say

1 me. If I understand the way the treaty is worded
 2 and the way the concern is, taking this condition
 3 out doesn't feel like a deal breaker to me.
 4 MS. ASHLEY: I agree. I can't see how -- when
 5 I read the treaty, I have gone back and forth,
 6 there weren't even coal trains when the treaties
 7 were written, but I can't see how -- I'm sorry.
 8 I'll just -- let's vote. I'll get myself in more
 9 trouble.
 10 CHAIRMAN HARGRAVE: Any other discussion?
 11 Okay. All in favor of the motion to take out
 12 condition 13, say aye?
 13 GROUP RESPONSE: Aye.
 14 CHAIRMAN HARGRAVE: Against?
 15 GROUP RESPONSE: Aye.
 16 CHAIRMAN HARGRAVE: I'm against it.
 17 Okay. The motion is carried.
 18 The next one we tripped on was 14, which is
 19 "Spill response plan is prepared or made available
 20 prior to the commencement of construction." Who
 21 wanted to do something with that?
 22 MR. DEHART: All I was asking for -- and maybe
 23 Angie could answer this. I wasn't clear on whether
 24 that spill response plan was for derailments on the
 25 railroad or whether it was a spill response plan

1 "derailment or other accident," but that's the
 2 idea.
 3 MR. DEHART: That's the idea.
 4 CHAIRMAN HARGRAVE: I would be interested in a
 5 motion to that effect.
 6 MS. ASHLEY: I move that condition 14 be
 7 reworded to indicate for a derailment or accident.
 8 CHAIRMAN HARGRAVE: Or other train accident.
 9 A second?
 10 MR. HANDLEY: I'll second that.
 11 CHAIRMAN HARGRAVE: Okay. Any more discussion
 12 on it?
 13 Okay. All in favor?
 14 GROUP RESPONSE: Aye.
 15 CHAIRMAN HARGRAVE: Against?
 16 Okay. 15. "UPRR shall stay within the
 17 existing range of 20 to 30 trains per day as stated
 18 in the application materials."
 19 So, Brad, maybe you wanted to kick off
 20 the -- you wanted to take that out, right?
 21 MR. DEHART: I did.
 22 MR. SCHANNO: I wonder if we can change the
 23 wording on that to say, you know, within reason.
 24 Put some sort of -- to keep them within where they
 25 are now within reason, you know.

1 MS. ASHLEY: Like a percentage?
2 MR. DEHART: Here is how I have looked at that
3 one. We have already heard that the track as it
4 sits today could accommodate more trains than what
5 we're saying today and that market conditions could
6 increase traffic with or without any control by us.

7 There is no doubt in my mind that wherever
8 the -- whether this track gets installed or this
9 project goes through or not, that rail traffic is
10 likely going to increase on Union Pacific's line
11 and whatever they can't carry is going to get there
12 by some other means, probably on the highway or by
13 barge or other means.

14 I believe that -- that rail is an efficient way
15 to transport goods and there is going to be a lot
16 of goods to be transported, not just the ones that
17 people don't want, but the ones that everybody
18 wants as well. I just don't want Wasco County to
19 get in the role or be in the position of having to
20 potentially revoke a permit based on the volume of
21 trains that goes up and down Union Pacific lines.

22 CHAIRMAN HARGRAVE: Thanks. Here's my thinking
23 on it. You know, I think -- I think we need to
24 understand where we are on the issue of increased
25 capacity. I have two problems with this really.

1 but not necessarily through the Gorge, which has a
2 very peculiar topography.

3 Running extra capacity through the Gorge is
4 much more problematic in terms of a disaster than
5 running it somewhere else. There are probably
6 other places that are worse, too, so I share your
7 thinking that it is going to get from point A to
8 point B some other way; if there is a supply demand
9 in place, that's going to make that happen, but all
10 routes are not equally safe. That's the other
11 aspect that I'm factoring in.

12 Nevertheless, I don't think this condition
13 makes sense in that it defies the basic, you know,
14 nature of the application. And it also -- I don't
15 think it's manageable.

16 Lynne.

17 MS. ERICKSON: I just wondered how we get at
18 the issue of the Umatilla Indians say that any
19 increase in rail traffic would have an adverse
20 effect to treaty rights protected -- that are
21 protected under the Scenic Area Act.

22 MR. SCHANNO: In my opinion, I don't know that
23 we're -- by approving this four miles, I don't know
24 that you are increasing the amount of rail traffic
25 that can go of the tracks. So I don't know if it

1 It's one Brad mentioned, that they are not using
2 all the capacity that's there today so the
3 restriction seems not well-aligned with the project
4 in that respect. That's my first problem.

5 My second problem is -- are we approving or
6 not? Because the application is to improve the
7 efficiency, i.e., to be able to have more capacity
8 because you have improved efficiency. That's the
9 application.

10 So if we don't think that the capacity should
11 be increased, and that's really what this condition
12 says. It says, I don't think the capacity should
13 be increased. That would be -- to me, denying it
14 would be the straightforward way to do that rather
15 than this, you know, sort of backdoor way of
16 limiting capacity.

17 The application, to me, is an application to
18 increase capacity of the track and this condition
19 defies that, so that's my second problem with it.

20 I -- you know, I don't agree that if you
21 constrain this capacity as it is currently
22 constrained, although they are not running as many
23 trains as they could, they are not running as many
24 trains as they could with increased capacity, if
25 you constrain it, it will get there by other means,

1 would be in violation of the treaty to begin with
2 because maybe there is a bottleneck in Mosier at
3 this point. Putting this double track in is only
4 going to move that bottleneck to The Dalles or to
5 somewhere else. I mean, wherever that may be. I
6 don't know where, but there -- there is a finite
7 amount of train traffic that can run over the train
8 tracks.

9 Unless you were completely to go double track
10 for 176 miles, it's going to double that amount of
11 traffic. There is only so much that can get -- you
12 can only fit so much through a bottleneck and it
13 will be somewhere until you double track the whole
14 thing.

15 So I don't know that we're in violation of the
16 treaty if we keep that in there because we're
17 probably --

18 CHAIRMAN HARGRAVE: Take it out.

19 MR. SCHANNO: Yeah, if we take it out, sorry,
20 because I don't know if we're anywhere near the
21 maximum capacity that they could run if they
22 decided to do it, which they could decide to do it
23 just because.

24 CHAIRMAN HARGRAVE: Any other -- so did you
25 make a motion -- I have lost track -- to remove it?

1 Does someone want to make a motion one way or the
2 other?
3 MR. SCHANNO: I move to remove item 15.
4 MR. MYERS: Second.
5 MS. JENKINS: I'm sorry, I didn't see who
6 seconded.
7 Thank you.
8 CHAIRMAN HARGRAVE: So what other discussion?
9 We have talked about this extensively. I want to
10 make sure that everyone has had a chance to state
11 their position or point or ask questions.
12 MR. MYERS: Well, my position is how it affects
13 the overall project as opposed to this particular
14 issue. I mean, we're hearing from our planning
15 director that removing this condition makes it so
16 we're not going to be in alliance with our
17 ordinance, and some of the other conditions that
18 are being removed, but at the same time -- so
19 that's a concern I have.
20 At the same time, you know, disregarding that
21 concern, I agree it's not something that's
22 manageable and very well might not be something
23 that's enforceable in the first place. So if it's
24 going to be approved, I suppose I -- I agree with
25 taking it out, but I also -- my position would be

1 all ERA" --
2 MS. ASHLEY: FRA.
3 CHAIRMAN HARGRAVE: "FRA safety standards,
4 including any safety improvements that are
5 optional."
6 MS. ASHLEY: It's pretty vague to me.
7 MR. HANDLEY: I can't imagine making anybody
8 adhere to something that's optional. If it's
9 optional, it's because there is a reason it's
10 optional. Its not -- it doesn't make any sense to
11 me.
12 I don't mind leaving that wording in. Just get
13 rid of "any improvements that are optional." Get
14 rid of that.
15 MS. ASHLEY: So strike from the comma on.
16 CHAIRMAN HARGRAVE: So, Angie, was there a
17 specific optional requirement that --
18 MS. BREWER: So the reason this is in here is
19 because in the conditional use findings there is a
20 lot of discussion about public health and safety,
21 and a lot of the information provided for staff's
22 review and also from the Applicant and from other
23 stakeholders who have public comments is that some
24 of the safer cars, specifically for oil transport,
25 are not necessarily required yet, but they may be.

1 that, you know, it very well might be that we're no
2 longer in alliance with our ordinance.
3 CHAIRMAN HARGRAVE: Yeah, I'm in a similar
4 space, Andrew. I would agree with taking it out
5 because I think it's unmanageable. I also think
6 it's a backdoor way -- you know, if you have an
7 application to increase capacity and you put a
8 condition on it that you can't increase capacity,
9 it's kind of schizo.
10 I do think it might move us out of -- into an
11 issue with the treaty. I absolutely do. And
12 that's why I voted to deny it, which, to me, is the
13 straightforward land use way of addressing the
14 issue. The condition is not manageable to me.
15 MS. ASHLEY: I move that we vote.
16 CHAIRMAN HARGRAVE: You move we vote? We can't
17 quite do that.
18 Are we done with the discussion then? Any more
19 discussion?
20 So all in favor of the motion to remove, say
21 aye.
22 GROUP RESPONSE: Aye.
23 CHAIRMAN HARGRAVE: Against?
24 Okay. Super.
25 Which brings us to 16. "So UPRR to adhere to

1 You know, with new technology comes new safer,
2 better things, but it takes time to make those
3 changes for federal requirements.
4 So some of the safest possible ways to
5 transport these commodities of concern are not
6 necessarily requirements yet. They are likely to
7 be in the future and we were suggesting this
8 condition to ensure that it is as safe as it
9 possibly can be if we're going to allow an increase
10 in these commodities coming through.
11 MR. MYERS: Can I ask you how is that something
12 that's enforceable or how is that something that's
13 determined? I feel like you're always going to
14 find somebody out there who is going to say you
15 could do something safer. Unless it's a generally
16 accepted --
17 CHAIRMAN HARGRAVE: These are specific FRA --
18 MR. DEHART: And, as such, as specific Federal
19 Rail Administration requirements, I prefer to leave
20 it in their lap to oversee them than to put us in
21 the middle of it as Wasco County in trying to
22 police something like that.
23 MS. BREWER: It will, admittedly, be difficult
24 to track and monitor and enforce compliance. I
25 would agree with that. But I would also say that

1 every application and land use decision that we
 2 work through and send out decisions on come with
 3 their own compliance issues, and that's part of our
 4 job is trying to track down all of these little
 5 things and big things that come out of compliance.
 6 CHAIRMAN HARGRAVE: It's a burden, though.
 7 MS. ASHLEY: I would make a recommendation to
 8 modify this to just say, UPRR is to adhere to FRA
 9 safety standard purely.
 10 CHAIRMAN HARGRAVE: That's already the law.
 11 MS. ASHLEY: If she wants to leave it in there
 12 for compliance, just leave it at that.
 13 MR. HANDLEY: There is already federal law that
 14 says they have to have that.
 15 MS. ASHLEY: I know there is a federal law, but
 16 if you want to leave it in there, just leave it
 17 like that and not put the optional thing in there.
 18 CHAIRMAN HARGRAVE: Okay. Is there a motion
 19 around this? Who wants to make a motion either to
 20 take it out or to modify it?
 21 MR. HANDLEY: I will go ahead and make a
 22 motion.
 23 CHAIRMAN HARGRAVE: Or to leave it in.
 24 MR. HANDLEY: I will be quick on the motion.
 25 I'm going to make a motion we just take condition

1 CHAIRMAN HARGRAVE: Any other discussion or
 2 questions?
 3 You had similar thinking, Vicki?
 4 MS. ASHLEY: Well, I had similar thinking that
 5 if we wanted to leave it as a compliance factor,
 6 just -- I didn't like the part that was optional.
 7 And I was going to just say they must adhere to all
 8 safety standards and leave it at that if we didn't
 9 completely strike it.
 10 CHAIRMAN HARGRAVE: Okay. Any other discussion
 11 on it? Okay. All in favor of the motion, say aye.
 12 GROUP RESPONSE: Aye.
 13 CHAIRMAN HARGRAVE: Against?
 14 Okay. The motion is carried.
 15 So no issues on 17?
 16 MS. ASHLEY: Yes.
 17 MR. DEHART: There was just a little bit of a
 18 concern that I had shared.
 19 CHAIRMAN HARGRAVE: So did you want to change
 20 that?
 21 MR. DEHART: I don't know. I don't have a
 22 recommendation or a suggestion of how to make that
 23 last sentence more objective, but it just concerns
 24 me to leave it -- I mean, what one side would
 25 consider making a good faith effort versus what the

1 16 out completely.
 2 CHAIRMAN HARGRAVE: Okay. Is there a second?
 3 MR. HANDLEY: It's already covered by a federal
 4 law.
 5 CHAIRMAN HARGRAVE: Is there a -- excuse me,
 6 guys. You need to use the microphone because we
 7 don't want to miss any of yours words of wisdom.
 8 We're looking for second.
 9 MS. ASHLEY: I'll second it.
 10 MR. HANDLEY: You want me to restate it?
 11 CHAIRMAN HARGRAVE: Please.
 12 MR. HANDLEY: I'm going to make a
 13 motion -- sorry, a lot going on -- make a motion to
 14 completely remove 16 from the application.
 15 CHAIRMAN HARGRAVE: And?
 16 MS. ASHLEY: What?
 17 CHAIRMAN HARGRAVE: Vicki, you were going to
 18 second it.
 19 MS. ASHLEY: I will second that.
 20 CHAIRMAN HARGRAVE: Okay. And discussion.
 21 MR. HANDLEY: Discussion. I think it's already
 22 covered by federal law and we don't need to be
 23 doubling or adding more cumbersome items into
 24 something. It just muddies the water, in my
 25 opinion.

1 other side would consider the good faith effort
 2 seems pretty subjective. And we know that there
 3 are definitely sides here.
 4 So I was looking for some way that we could
 5 make that a little bit more clear or objective
 6 about what the expectations were. I don't have a
 7 recommendation.
 8 CHAIRMAN HARGRAVE: Yeah, so I agree with you.
 9 This is wishy-washy. So it's a wordsmithing thing.
 10 If someone has the capacity to think of a better --
 11 MR. MYERS: Is it a wordsmithing thing or is it
 12 -- I think the first time you mentioned it, Brad,
 13 you were talking about maybe allowing the fire
 14 department to --
 15 CHAIRMAN HARGRAVE: How do you word that?
 16 MR. MYERS: That UP shall comply with and take
 17 part in trainings requested by Gorge fire
 18 departments.
 19 MR. SCHANNO: And to solicit local needs for
 20 combatting the railroad with fire incident and meet
 21 those needs.
 22 CHAIRMAN HARGRAVE: Yes. To me, that sounds a
 23 lot meatier and more where this was going.
 24 MR. DEHART: Okay. So maybe it is so simple as
 25 to just remove the "and make a good faith effort."

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1 MS. ASHLEY: Stop it after "fire incident."
2 MS. BREWER: I'm just trying to track these as
3 we work on them. Are you saying that you also
4 would like to take out the word "insist" or would
5 you like -- so is it that they will meet this need
6 or they will assist?
7 CHAIRMAN HARGRAVE: That's what I'm hearing is
8 remove "make a good faith effort to assist in."
9 MR. SCHANNO: And then change the word
10 "meeting" to "meet" so it's going to say "and meet
11 those needs."
12 CHAIRMAN HARGRAVE: I think the issue with that
13 wording, Chris, is that they don't meet it alone,
14 they meet them in collaboration with the local fire
15 department.
16 MR. SCHANNO: That is still consistent.
17 CHAIRMAN HARGRAVE: I think however we word it,
18 they are not to be held wholly responsible for
19 meeting the needs. What I liked about the wording
20 once you removed that wishy -- what I see as
21 wishy-washy stuff is you are soliciting feedback.
22 So now you have got something tangible, something
23 hopefully in writing that specifies what the needs
24 are.
25 So maybe, you know, something like "providing

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1 sufficient assistance to adequately meet the
2 needs," something like that that says you
3 adequately -- you solicited the needs, you are
4 adequately meeting them. You are not doing it by
5 yourself, but your assistance is sufficient to meet
6 the needs. You know, that's kind of how I --
7 MS. ASHLEY: Let's go with Chris's suggestion
8 of how to word it.
9 MR. SCHANNO: Just make it "and assist in
10 meeting the needs." They are not assisting them.
11 CHAIRMAN HARGRAVE: How much assistance?
12 That's where I was choking on it. Everybody is
13 going to help do a little bit.
14 MR. SCHANNO: You give them a window, they are
15 going to take the least amount, so you got to -- I
16 mean, I don't know how you do that.
17 CHAIRMAN HARGRAVE: Provide sufficient
18 assistance to adequately meet the needs.
19 (Multiple speakers - indiscernible)
20 MR. MYERS: I like the idea of just eliminating
21 that language.
22 CHAIRMAN HARGRAVE: You want to make a motion?
23 MR. MYERS: I would make a motion to modify
24 condition number 17 to remove the language "make a
25 good faith effort." So it should read "Related

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1 fire incidents and to assist in meeting those
2 needs." It would read that way.
3 MR. SCHANNO: I second that motion.
4 CHAIRMAN HARGRAVE: Any more discussion? Who
5 wants to -- any opinions on that motion?
6 Okay. All in favor, say aye.
7 GROUP RESPONSE: Aye.
8 CHAIRMAN HARGRAVE: Against?
9 Okay. So, look, it's 5:30 plus. We have been
10 going since 3:00. Some of us started a little
11 earlier than that. I want to take a ten-minute
12 break so we have sufficient energy to do a good job
13 in what we're trying to do here. Is ten minutes
14 adequate?
15 (RECESS 5:29 to 5:39)
16 CHAIRMAN HARGRAVE: Let us reconvene. For the
17 record, it's exactly 5:40.
18 Okay. We were up to condition --
19 MS. ASHLEY: 18.
20 CHAIRMAN HARGRAVE: Okay. Condition 18. UPRR
21 is required to comply -- Brad mentioned 18.
22 MS. ASHLEY: I think I had it. Well, we
23 mentioned compliance with fire safety standards so
24 many times, but the one that I got that I just
25 didn't fully understand, and I wanted more of a

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1 clarification on this, "with all future
2 landowners." I didn't understand that.
3 MS. BREWER: That is standard language of this
4 condition for all land use decisions. It just
5 means that that requirement returns with the land.
6 CHAIRMAN HARGRAVE: Successors and assigns kind
7 of thing.
8 MS. ASHLEY: Okay. That's fine.
9 CHAIRMAN HARGRAVE: All right. That brings us
10 to 20, right?
11 20. "The proposed development shall not
12 directly result in significantly increased net
13 volume of rail traffic, including number of
14 individual trains, length of trains, or speed of
15 trains." This seems a little déjà vu.
16 MR. SCHANNO: Is that one that we could leave
17 in that wouldn't necessarily be a restricted number
18 that we could --
19 MR. DEHART: I think it goes completely against
20 what we know to be the purpose of the project.
21 CHAIRMAN HARGRAVE: Let's manage it this way.
22 Why don't you make a motion and then we can discuss
23 the motion.
24 MR. DEHART: I make a motion that we eliminate
25 condition number 20 entirely.

1 CHAIRMAN HARGRAVE: Is that seconded?
 2 MR. MYERS: Second.
 3 CHAIRMAN HARGRAVE: Okay. So discussion.
 4 MR. SCHANNO: I think Brad already answered my
 5 question.
 6 MS. ASHLEY: It's redundant.
 7 CHAIRMAN HARGRAVE: You think it's redundant
 8 with what we already dropped.
 9 How do the rest feel?
 10 MR. MYERS: It is the same as the other. I
 11 agree with -- I understand how we're talking about
 12 it and I understand why it would be removed. I
 13 don't know if it's something that's enforceable
 14 anyways. I think that, in my view, big picture on
 15 the project, I think it takes us out of compliance
 16 with our ordinance.
 17 CHAIRMAN HARGRAVE: Angie, could you maybe
 18 explain a little bit why that was put in, what's
 19 different about it compared to the previous one.
 20 MS. BREWER: Well, again, this is in regards to
 21 treaty rights conditions. This one is specifically
 22 listed underneath the treaty rights conditions.
 23 CHAIRMAN HARGRAVE: This wording is?
 24 MS. BREWER: Well, you know, let me go up to
 25 the other one.

1 CHAIRMAN HARGRAVE: Is there a difference -- so
 2 that explains why they are separate and why the
 3 wording is a little different.
 4 Is there a specific difference that's material
 5 that you see?
 6 MS. BREWER: So the reason that there is more
 7 detail in condition number 20 is because it's
 8 specifically responding to the letter from the
 9 Umatilla. The Umatilla had concerns about volume
 10 of traffic increasing and the impacts to being able
 11 to cross the tracks safely. They had concerns
 12 about the number of trains, the length of trains --
 13 a couple of concerns were brought up -- the
 14 inability to pass them safely, but also that if
 15 they are longer, they may block multiple access
 16 points instead of just -- maybe they block a few
 17 now, but they might block more if there are longer
 18 trains.
 19 CHAIRMAN HARGRAVE: Okay.
 20 MS. BREWER: It's in direct response to the
 21 Umatilla's letter provided prior to the September 6
 22 hearing.
 23 CHAIRMAN HARGRAVE: Thanks, Angie. And there
 24 is a motion on the table to remove it, right? And,
 25 you know, my thinking on this is just the same as

1 CHAIRMAN HARGRAVE: Because the other one said
 2 is not going to increase the number of trains
 3 beyond what it is today.
 4 MS. BREWER: So there is -- the first chunk
 5 of -- first category of conditions are general
 6 conditions and number 15 was that they stay within
 7 the existing range of 20 to 30. That was us
 8 keeping them at their word. That's what their
 9 application states that they would like to do, and
 10 so we were simply saying, all right, if that's what
 11 you would like to do, we're going to put in a
 12 condition to confirm that that's exactly where you
 13 are going to be.
 14 And so an example would be if someone proposed
 15 to build a house and we would have a condition of
 16 approval that says, you will build exactly what you
 17 proposed and if anything deviates, come back to us
 18 for a revised -- with a revised site plan, revised
 19 proposal, so we can assess the impact and make a
 20 decision. So that was just a general -- it was
 21 intended to be a general requirement.
 22 CHAIRMAN HARGRAVE: That's 15.
 23 MS. BREWER: 15. Number 20 is specific to the
 24 treaty rights concerns. Both of them address
 25 similar concerns.

1 it was on 15. I do appreciate the differences
 2 you've pointed out, but, to me, it's an application
 3 to increase the volume and this condition says
 4 shall not increase the volume. I think if we were
 5 going to do that, we should be more straightforward
 6 and simply deny the application to increase the
 7 volume. So that was my thinking on 15. It's still
 8 my thinking on this one.
 9 MR. SCHANNO: That being said, I don't know
 10 that we're increasing volume over what it is. We
 11 don't know what the maximum volume is. We know
 12 what the volume is today. Was it -- three years
 13 ago, was it 50 trains? 2007 was it way higher than
 14 20 or 30?
 15 CHAIRMAN HARGRAVE: We do know that with the
 16 increased track that they are proposing, they
 17 could -- that their maximum capacity would be
 18 greater than it is today. We do know that. No, it
 19 would be. The capacity would absolutely be greater
 20 and they did agree with that.
 21 The point that they made, which sounds a little
 22 different, is that the actual volume is going to be
 23 driven by supply and demand, which is a separate
 24 equation. The capacity would be increased. I
 25 think we do know that.

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1 MR. MYERS: So it's not a condition that really
 2 you can have because -- I think UP's position was
 3 the capacity, if I remember right, and I could be
 4 wrong, capacity-wise this would be like five to
 5 seven trains per day or something like that.
 6 CHAIRMAN HARGRAVE: Yes.
 7 MR. MYERS: It goes against the proposal. I
 8 thought it was significantly higher than that, but
 9 either way.
 10 CHAIRMAN HARGRAVE: Either way it's more.
 11 Okay. Is there more discussion?
 12 Okay. All in favor, say aye.
 13 GROUP RESPONSE: Aye.
 14 CHAIRMAN HARGRAVE: All against?
 15 Okay. The motion to pull it out is carried.
 16 21.
 17 MR. DEHART: I was suggest that 21 be removed,
 18 but I guess really in listening to Angie, we're
 19 trying to address concerns of the tribes around
 20 access to the river. And I believe that through
 21 some form of this condition, whether it be as it's
 22 stated here or as Union Pacific has proposed it in
 23 a -- you know, I'll call it the \$2 million
 24 proposal, or some meshing of those two, I believe
 25 that that's how we can get to addressing the

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1 concerns from the tribe, by requiring that there be
 2 effort put towards providing additional crossings,
 3 safe crossing locations, as opposed to all of the
 4 crossing that the tribes say is occurring now in
 5 undesignated locations.
 6 So I would like to see some -- I haven't
 7 crafted what it might look like, but in reading the
 8 Union Pacific's response, I think there is
 9 some -- some benefits to some things that they put
 10 in there in their proposal as well as some of the
 11 stuff that we have got in this original condition.
 12 MS. BREWER: Can I ask or recommend one
 13 additional change for your consideration? The
 14 Yakama Nation's comment was received after this,
 15 after I prepared the recommended changes that are
 16 listed below. So the Yakama Nation, you might want
 17 to add them to this condition so the language is
 18 clear that it's both tribes, not just one, if you
 19 all decide to keep that condition.
 20 MR. DEHART: Right. I believe that there are
 21 four treaty tribes who have some rights in the
 22 Gorge.
 23 MS. BREWER: There are.
 24 MR. DEHART: I wouldn't want to exclude any of
 25 them.

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1 MR. SCHANNO: I think we should leave it in
 2 there because I don't think that even if it cost
 3 them \$4 million per crossing, that's really none of
 4 our concern. This says they have to supply it and
 5 that's -- that's their cost and that's part of them
 6 doing business. They need to supply safe crossings
 7 for the tribes to access the river.
 8 MR. HANDLEY: There is no good crossing on the
 9 east side or the west side.
 10 MR. SCHANNO: Then they can't do it.
 11 MR. DEHART: Well, I think you bring up a good
 12 point that there are a lot of other issues that
 13 could come into play around the best locations for
 14 crossing, like access from I-84 even. I don't
 15 know.
 16 MR. SCHANNO: I guess what I'm trying to say is
 17 this is a condition of them meeting it. If they
 18 can't meet it, then they can't -- they won't be
 19 able to do it. So whatever that requires, if it's
 20 going to cost them -- I don't care if it costs them
 21 \$100 million, if that's what they want to put in to
 22 doing it, then they are going to have to do it in
 23 order to meet it because they have to give the
 24 tribes access to the river. They can't block it.
 25 MR. HANDLEY: With a train every 40 minutes, is

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1 that blocking access to the river?
 2 MR. SCHANNO: They are going to have to make
 3 that determination with the tribes, per option 21.
 4 They have to get in touch with them and they have
 5 to talk to them and make sure -- within 45 days,
 6 they have to talk to them and come up with all the
 7 plans; and if they don't meet it, then they can't
 8 do it.
 9 So I would be against taking that out. I don't
 10 know about changing the wording or anything,
 11 changing it to make sure it has all the tribes
 12 listed.
 13 CHAIRMAN HARGRAVE: Does anyone want to make a
 14 motion?
 15 Well, Brad, it was on your list initially.
 16 MR. DEHART: My sense is that Union Pacific has
 17 shown that they are willing to work on this to a
 18 certain extent, you know, to a value at least.
 19 What that -- what the appropriate value or cost is,
 20 it's hard to say. I have a hard time --
 21 MR. DAVIS: I do think that the cost --
 22 CHAIRMAN HARGRAVE: Sorry, Mike.
 23 What was the next word? You are having a hard
 24 time with?
 25 MR. DEHART: I don't want to strike it

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1 entirely, I guess, because I do believe it serves a
 2 purpose in showing that we are taking into
 3 consideration those access rights and this is a way
 4 of achieving those. It's like providing a couple
 5 of safer locations, but those -- each one of those
 6 locations is going to be a project in and of itself
 7 and we're going to be here probably having a
 8 discussion similar to this on -- on those
 9 applications for those crossings. I don't know.
 10 MR. MYERS: That's a good point.
 11 CHAIRMAN HARGRAVE: Mike.
 12 MR. DAVIS: I guess the point I was going to
 13 mention is that, as with Chris, what Chris
 14 mentioned, is that the cost shouldn't be part of
 15 our decision. To me, what this is is hey, you guys
 16 got to get together, you got to talk about the two
 17 crossings, and it's not for us to decide that cost
 18 or for the location, but what we're really saying
 19 on land use is that -- through the tribes, is to
 20 get together and you guys figure it out and do this
 21 in an immediate sort of way. That's really all I'm
 22 hearing here.
 23 MR. DEHART: So one of the things I thought
 24 about as I read or considered this condition was,
 25 you know, all of the discussion and the letters and

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1 stuff like that have been around pedestrian
 2 crossings of the tracks, right? Why did we elevate
 3 -- in this recommendation why did we elevate it to
 4 at grade vehicular crossings when -- when what they
 5 are -- what they are doing today is just pedestrian
 6 crossings?
 7 I guess that's a question, Angie.
 8 MS. BREWER: The concerns expressed by the
 9 Umatilla and the Yakama were specific to the safety
 10 of their fisherman accessing traditional fishing
 11 grounds. Most of those locations are not -- did
 12 not meet the standard of existing safe crossings,
 13 right? They don't have light. They don't have
 14 arms. There is no formal crossing. It's even
 15 discussed as though it's trespassing in some ways
 16 because they are accessing at various points along
 17 the tracks.
 18 The tribes feel very strongly that that is part
 19 of their treaty rights is to be able to cross
 20 wherever they are -- you know, their usual and
 21 customary areas are for fishing rights. And so
 22 this was our response to ensure a safe crossing.
 23 It specifically references lights and crossing arms
 24 for safety, but it doesn't say anything about
 25 vehicle access.

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1 And it does say that this is a minimum of
 2 crossing lights and arms for safety. So it doesn't
 3 -- it's not specifically saying you need a new
 4 overpass or underpass or anything like that. It's
 5 something that needs to be determined through that
 6 process in discussions with the tribes.
 7 MR. SCHANNO: And they could put in a walking
 8 crossing with arms.
 9 MR. DEHART: I was just thinking about that.
 10 There is a case where there are pedestrian
 11 crossings on BNSF's lines.
 12 CHAIRMAN HARGRAVE: And this doesn't really say
 13 vehicular.
 14 MR. DEHART: It doesn't. You're right.
 15 CHAIRMAN HARGRAVE: I think we could just leave
 16 it in.
 17 MR. HANDLEY: Okay. I was looking at this and
 18 I don't like to limit just east and west of the
 19 project just due to the fact there is no
 20 traditional fishing spots in there, why would we
 21 make them put in an east access point that no one
 22 is going to use or a west access point that no one
 23 is going to use? Why don't we strike that and
 24 strike the single tribe and just put the four
 25 treaty tribes they have to confer with and put two

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1 crossings in somewhere to help with access.
 2 MR. DEHART: Within Wasco County.
 3 MR. HANDLEY: Within Wasco County, yes, sir.
 4 CHAIRMAN HARGRAVE: Are we ready for a motion?
 5 MR. HANDLEY: I make a motion to revise number
 6 21. My motion is to strike the language "one east
 7 of the project area and one west of the project
 8 area" and replace that with "in Wasco County."
 9 And then I also move to strike "Umatilla Fish
 10 and Wildlife Commission" with "Treaty tribes."
 11 CHAIRMAN HARGRAVE: Replace that with?
 12 MR. HANDLEY: "The four treaty tribes."
 13 CHAIRMAN HARGRAVE: The four treaty tribes,
 14 okay.
 15 MR. HANDLEY: And then leave the rest alone.
 16 CHAIRMAN HARGRAVE: Is there a second?
 17 MS. ASHLEY: I will second it.
 18 CHAIRMAN HARGRAVE: Any more discussion? Come
 19 on. Okay. All in favor?
 20 GROUP RESPONSE: Aye.
 21 CHAIRMAN HARGRAVE: Against? Okay. It's
 22 carried.
 23 23. "To the extent practicable" --
 24 MS. BREWER: Sorry, just one quick
 25 clarification on number 21. I just want to make

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<p style="text-align: right;">Page 110</p> <p>1 sure that that revision included a replacement of 2 the -- the second-to-last sentence has references 3 to CTUIRR for being the only ones that can request 4 an extension. Was it intended that that was 5 replaced with all four tribes? 6 MR. DEHART: Good clarification. 7 MS. BREWER: Thank you. 8 CHAIRMAN HARGRAVE: Thank you, Angie. "To the 9 extent practicable, rock blasting shall occur in 10 irregular patterns to produce a natural -- a 11 natural-appearing cut face." 12 Okay. Brad, you had a -- you were thinking we 13 could modify that? 14 MR. DEHART: When we have projects where we're 15 doing line blasting or split facing and stuff like 16 that and you drill at a very tight frequency in a 17 line, like every two to three feet, or something 18 like that, to get a nice clean face, we usually 19 include a requirement in there that the half cast, 20 which are the half -- the half that's left in that 21 face of the drill line, be chipped away. I think 22 it's a common requirement when you are looking for 23 a natural appearing face and it's a little bit more 24 objective than saying "to the extent practicable." 25 CHAIRMAN HARGRAVE: So how would you word that</p>	<p style="text-align: right;">Page 112</p> <p>1 Chris, you seconded it? Mike did. Okay. 2 Okay. Any more discussion? Does somebody want to 3 ask what a half cut -- 4 MS. ASHLEY: It just makes it look natural. 5 CHAIRMAN HARGRAVE: Any questions or comments? 6 Mike? Angie? Chris? 7 Okay. All in favor of the motion? 8 GROUP RESPONSE: Aye. 9 CHAIRMAN HARGRAVE: Against? 10 Okay. Did you want to talk about 25, Vicki? 11 MS. ASHLEY: I wanted to include under this 12 scenic resource condition, I thought we could 13 combine 22, 30, 31, not so much -- and possibly 32. 14 We got -- or 33 we agreed we were going to tweak on 15 it, but it's all associated with color and patterns 16 and nonreflective. I thought maybe we could clean 17 all that up and put it into one. 18 MS. BREWER: Can I respond to that? 19 MS. ASHLEY: Sure. 20 MS. BREWER: The reason they are split apart 21 now is because they are in response to different 22 findings throughout the document. So if combining 23 them all into one, if you decide to change other 24 items in the document, it might make it difficult 25 to parse out, how to modify a condition later.</p>
<p style="text-align: right;">Page 111</p> <p>1 then? 2 MR. DEHART: Maybe -- I'm just going to take a 3 shot at it because I didn't write down anything, 4 but maybe just striking "to the extent practicable" 5 and saying "rock blasting shall occur in irregular 6 patterns to produce a natural-appearing cut face. 7 Half cast shall be removed." That's a -- I think 8 that's a statement that provides an indication of 9 the expectations a little bit better. 10 CHAIRMAN HARGRAVE: You want to make that as a 11 motion? 12 MS. JENKINS: If you do, can you say it slower, 13 please? 14 CHAIRMAN HARGRAVE: I think he will. 15 MR. DEHART: I make a motion to strike from 16 condition 23 the wording at the beginning "to the 17 extent practicable" and just state "rock blasting 18 shall occur in irregular patterns to produce a 19 natural-appearing face. Half cast shall be 20 removed." 21 MS. JENKINS: Okay. Thank you. 22 MS. ERICKSON: Natural-appearing face or cut 23 face? 24 MR. DEHART: Cut face is fine. 25 CHAIRMAN HARGRAVE: Is there a second?</p>	<p style="text-align: right;">Page 113</p> <p>1 MS. ASHLEY: Okay. 2 MS. BREWER: There is some reason for it. I'm 3 happy to consolidate. 4 MS. ASHLEY: It just seemed like a lot of 5 wording on one thing, but if it's all in separate 6 findings, then that's fine. 7 But 33 we do need to tweak. 8 CHAIRMAN HARGRAVE: Yes. Can you talk about 9 the tweaking, Vicki? 10 MS. ASHLEY: Well, I think Brad brought 11 up -- we were questioning whether it was the color 12 of the signpost shrouding and all or if it was the 13 coloring -- 14 CHAIRMAN HARGRAVE: We wanted the signal 15 face -- 16 (Indiscernible - simultaneous speech) 17 MR. DEHART: I didn't see it as being a concern 18 until it was clear from Union Pacific's response 19 that they had an issue with it, but I believe 20 that -- I mean, we talked about it. We're all in 21 agreement that we're not expecting them to make 22 changes to their signal lights or to the standards 23 for how those signal lights appear from the train 24 perspective, but from the opposite direction or 25 from the side, you know, the support structure and</p>

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1 stuff like that is what we were trying to color,
 2 you know, paint.
 3 MS. ASHLEY: Make everything earth tone to
 4 comply with the Scenic Area.
 5 MR. DEHART: So maybe -- maybe we could address
 6 Union Pacific's obvious concern by stating
 7 something as subjective as when it does not
 8 interfere with rail safety standards, or something
 9 like that.
 10 MS. ASHLEY: Yes, something simple. It doesn't
 11 need a lot.
 12 MR. DEHART: They obviously had an issue
 13 thinking that what we were going to do or what we
 14 were requiring was going to actually make it less
 15 safe.
 16 CHAIRMAN HARGRAVE: You know, doesn't interfere
 17 with the train operator's ability to operate the
 18 train safely, or something like that.
 19 MS. ASHLEY: I think just rail safety.
 20 MR. SCHANNO: I think that's another FRA deal.
 21 They are going to put up the signals.
 22 (Indiscernible - simultaneous speech)
 23 MR. SCHANNO: But painting the stands and stuff
 24 like that, I don't see a problem.
 25 CHAIRMAN HARGRAVE: It could be -- I mean, if

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1 you read this, it's not clear. I think our intent
 2 was more to address viewers, not operators, right?
 3 And we don't say that in here.
 4 MR. SCHANNO: "All signal lights and affiliated
 5 structures," so maybe that's what's throwing them
 6 off. And you can't -- outdoor lighting, so they
 7 are saying --
 8 CHAIRMAN HARGRAVE: You could say something,
 9 you know, from a viewer's perspective all signal
 10 lights, you know, and then have another sentence
 11 that says this is not intended to interfere with
 12 the operator's ability -- is not intended to change
 13 the consistency of navigation up and down the line,
 14 or something like that.
 15 MS. ASHLEY: It just should be all rail lights
 16 should comply with the National Rail Safety
 17 Standards and that all standards for lights.
 18 MR. SCHANNO: I think her point is that their
 19 signals and stuff are already in this section.
 20 MS. ASHLEY: The standard masts and all that
 21 will be colored, whatever they had, darker tones.
 22 MR. DEHART: If I could ask Angie, you had
 23 mentioned when we were talking about this one
 24 earlier, Angie, that this is pretty much a standard
 25 statement around trying to keep down light

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1 pollution.
 2 MS. BREWER: It is a standard condition of
 3 approval. And if you would like me to suggest a
 4 revision, the language that I think might be
 5 easiest to insert is just right upfront say "where
 6 it does not interfere with Federal Railroad
 7 Administration safety standards, all signal
 8 lights."
 9 CHAIRMAN HARGRAVE: My concern -- but my
 10 concern around that is that very likely -- I'm not
 11 a railroad expert, by any means, but very likely
 12 the system of consistency they have up and down the
 13 rail is their own and that they made their own so
 14 that it is -- so that it does comply with those
 15 standards, but those standards alone, you know,
 16 probably wouldn't get them all the way to where
 17 they are. There is probably a company standard
 18 that's far, far more specific. So if you use that
 19 kind of language, you are not really defeating the
 20 problem that I see with this.
 21 MR. SCHANNO: The FRA has a set of signals that
 22 is standard throughout the federal railroad, all
 23 railroads, so same lights mean the same thing.
 24 CHAIRMAN HARGRAVE: But would that completely
 25 specify the front face of all their signal

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1 machinery? I mean, there is probably -- you know,
 2 probably at their level they are saying green means
 3 this, red means that, but when you get down to the
 4 specific company, they are saying this shape, this
 5 size, this --
 6 MR. SCHANNO: No. They are all covered by FRA.
 7 MR. DEHART: I'm reading through Union
 8 Pacific's response and instead of referencing at
 9 the beginning, like Angie proposed, that it meet
 10 federal rail standards, their response says "Staff
 11 proposes here a condition that would require
 12 changes to UPRR's uniform signal systems and
 13 standards."
 14 So how about if we just revise that, Angie, to
 15 say "Where it doesn't conflict with UPRR's uniform
 16 signal systems and standards."
 17 CHAIRMAN HARGRAVE: Yes.
 18 MS. BREWER: That's certainly a motion that you
 19 guys can entertain.
 20 CHAIRMAN HARGRAVE: Here is where I'm kind of
 21 going with it because we do want to make sure that
 22 the concern Angie was trying to address in putting
 23 this in is still there and, obviously, we don't
 24 want them to drive off the rail because they can't
 25 read the signals, right?

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1 So I think we're going to have to invest two
2 sentences in this. I think we need a sentence
3 right upfront that says "From the viewer's
4 perspectives," and then it goes into this.
5 MS. ASHLEY: Which viewer?
6 CHAIRMAN HARGRAVE: Any viewers, right? It's a
7 scenic area. You've got viewpoints. You've got
8 viewers. You've got people that might be hiking or
9 windsurfing or whatever. But they are not
10 operating trains. They are viewers. That's the
11 distinction I'm trying to introduce.
12 So you could say from viewers' perspectives and
13 then launch into all this stuff.
14 MR. SCHANNO: (Inaudible) where it says key
15 viewing areas from noticeably contacting the
16 surrounding (inaudible).
17 CHAIRMAN HARGRAVE: Right. And then at the end
18 of it I would add a sentence -- just what Brad
19 said, right? Not to be inconsistent with the
20 railroad uniform standards. If you put those two
21 sentences -- so the first one qualifies all of
22 these remedies to be from the viewer's perspective,
23 and then the second one makes it really clear that
24 we don't want you to change your uniform
25 signalling.

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1 MS. BREWER: Chair, for clarification, the key
2 viewing areas are the only things that we can
3 protect the views from. So adding a sentence "the
4 viewers," it makes it a little bit complicated
5 because we often get calls with concerns from
6 people who can view things from their yard or their
7 deck or something and we really don't have the
8 authority to protect those views, only those views
9 from the Scenic Area, which is why the language is
10 crafted the way that it is in that standard
11 condition.
12 CHAIRMAN HARGRAVE: Well, then let's start off
13 with "from key viewing areas," right? I mean, if
14 that phrase was sufficiently qualifying all of
15 these remedies, we wouldn't have gotten that
16 feedback. So that's fine. We can go with "key
17 viewing areas" rather than "viewers."
18 Technically it's in there, but somehow, you
19 know, you read their response and I understand the
20 way this is written. It doesn't leave out that all
21 of these remedies are under that qualification,
22 right? I mean, is that perfectly clear to everyone
23 else?
24 MS. ASHLEY: I think if we leave this alone and
25 just add --

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1 CHAIRMAN HARGRAVE: Just add the sentence Brad
2 said.
3 MS. ASHLEY: Then we're fine.
4 CHAIRMAN HARGRAVE: You probably forgot it. So
5 you want to read it out as a motion then?
6 MS. ASHLEY: I recommend that we add a sentence
7 at the very beginning of condition 33 to state
8 "Union Pacific Railroad has uniform signals and
9 systems and standards across its network." And
10 then just go with "all signal lights."
11 CHAIRMAN HARGRAVE: I thought we were going to
12 say --
13 MS. ASHLEY: Did I miss it?
14 CHAIRMAN HARGRAVE: -- not intended to
15 interfere with UPRR's uniform signal standards.
16 MS. ASHLEY: Okay.
17 MS. BREWER: Would you like me to read it back
18 to you? So the way that we had set it forward was
19 "where it does not interfere with Union Pacific
20 Railroad's uniform signal and systems" -- I think I
21 have an extra "and" in there -- "signal systems and
22 standards. All signal lights" --
23 CHAIRMAN HARGRAVE: Just launch into the rest
24 of it.
25 (Pause in proceedings)

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1 MS. ASHLEY: I withdraw my motion.
2 MR. SCHANNO: I move that we amend 33 to read,
3 "Where it does not interfere with the UPRR's
4 uniform signals systems and standards," and then
5 continue into "all signal lights and affiliated
6 structures."
7 CHAIRMAN HARGRAVE: Okay. Second? Okay. How
8 do you feel about that wording? Any discussion?
9 No? We've had it all, haven't we?
10 Okay. All in favor, say aye.
11 GROUP RESPONSE: Aye.
12 CHAIRMAN HARGRAVE: Against? Okay. It's
13 carried.
14 All right. That was the ones that people were
15 passionate about that I captured.
16 MR. DEHART: 47.
17 CHAIRMAN HARGRAVE: 47, okay.
18 MR. DEHART: Actually, I would like to ask for
19 some clarification from Angie about 48, first of
20 all.
21 MS. BREWER: 48 is in response to the comment
22 letter we received from ODOT in time to discuss the
23 September 6th hearing. They specifically
24 referenced their request to the Applicant for a
25 seismic study, a feasibility study. And we have

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1 since learned that that's actually inside the
 2 Mosier urban area. So we had discussed it at the
 3 hearing as though it was something we could
 4 require, but as it turns out, the location of that,
 5 of that request, is actually inside the Mosier
 6 urban area and we would strongly encourage it to
 7 happen, but we cannot require it.
 8 MR. DEHART: I see.
 9 MS. BREWER: And it's not uncommon to put in
 10 recommendations, sort of encouraging words.
 11 MR. DEHART: I was looking at it or wondering
 12 whether -- whether it was because it was a request
 13 for a study like 47 is a study, but it's because of
 14 where it -- where (inaudible) within the city.
 15 MS. BREWER: Correct.
 16 MR. DEHART: So my thinking on 47, I was -- I
 17 believe that that would be easier as a
 18 recommendation, but I'm afraid that that
 19 might -- you might have problems with that.
 20 Can you share with us a little bit more about
 21 the details about what we're trying to address with
 22 that new recommendation or that new condition?
 23 MS. BREWER: Sure.
 24 MR. SCHANNO: Are you talking about 47?
 25 MR. DEHART: Yes. While you're thinking about

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1 that, I'm wondering whether -- whether the
 2 crossing, you know, the work that we're requiring
 3 be done with the tribes around the crossing
 4 locations can somehow be used to capture or address
 5 condition 47.
 6 MS. BREWER: So condition number 47, the
 7 language came directly from the Umatilla. And, I
 8 apologize, I don't have that letter in front of me.
 9 It was a specific request that they made. And it
 10 may be something that needs to happen anyway to
 11 inform those crossing locations moving forward.
 12 MR. SCHANNO: 21 and 47 are going to end up
 13 being hand in hand pretty much.
 14 MS. BREWER: They will be -- I mean, they are
 15 related, but this is a request specifically made by
 16 the Umatilla and not the Yakama or any other tribe.
 17 And so whether or not you want to require that
 18 study to address all four treaty tribes or just the
 19 Umatilla's concerns would certainly be within your
 20 discretion.
 21 MR. DEHART: I'm going to leave it alone. I am
 22 anyway.
 23 CHAIRMAN HARGRAVE: So what about -- you know,
 24 the Umatilla tribe wrote the letter, but similar to
 25 our thinking before, should we limit it to the

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1 Umatilla tribe? Vicki says no.
 2 MR. DEHART: I can't speak on behalf of the
 3 tribes by any means, but I don't believe
 4 that -- that they would agree that if you include
 5 one, you need to include them all.
 6 CHAIRMAN HARGRAVE: Do other tribes have the
 7 same interest here? Yakama would, wouldn't they?
 8 MS. BREWER: There are four treaty tribes in
 9 the National Scenic Area. There is Warm Springs
 10 and Umatilla, Nez Perce and the Yakama. We have
 11 only heard from two of them for treaty rights
 12 concerns. I would say that they are all very
 13 interested, but we have only heard from two of
 14 them. We have only received treaty rights concerns
 15 from two of them.
 16 MR. DEHART: I'm sorry that I raised the issue.
 17 Angie addressed my question. Angie addressed my
 18 question around whether this was a recommendation
 19 or just clarifying why we were using a
 20 recommendation for one study and not for another
 21 request for a study. That being answered, I'm
 22 okay.
 23 CHAIRMAN HARGRAVE: All right.
 24 Lynne.
 25 MS. ERICKSON: I just had a question relating

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1 to 47. At the bottom it says, "Study shall
 2 identify and designate funding necessary to
 3 mitigate the impacts of additional trains." And I
 4 wondered what is the baseline for additional?
 5 Additional beyond what number are we using.
 6 MR. BREWER: So we're looking at the date of
 7 the application submitted. That's where we're at
 8 right now. Those are the kinds of impacts we're
 9 evaluating and is a change from what we currently
 10 have today and what we are doing moving forward.
 11 As part of the completeness review and part of
 12 our analysis, we did request proprietary
 13 information from the railroad and did receive it.
 14 It's confidential information, but it does verify
 15 that they do, indeed, have an average of 20 to 30
 16 trains as their approximate average.
 17 MS. ERICKSON: So it would be above 30?
 18 MS. BREWER: Correct.
 19 CHAIRMAN HARGRAVE: And so, Lynne, were you
 20 thinking that it should be more specifically stated
 21 here?
 22 MS. ERICKSON: Perhaps. It raised my
 23 attention. Anything that's somewhat nebulous.
 24 CHAIRMAN HARGRAVE: As an engineer, what do we
 25 normalize things by?

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1 MR. DEHART: As an engineer also, I would
 2 normalize it by what the capacity of the existing
 3 configuration is, not what today's train count is.
 4 And the capacity, as I recall from what Union
 5 Pacific has stated, the capacity of the rail of the
 6 system that's in place now was -- I believe it was
 7 in the 407 trains per day.
 8 CHAIRMAN HARGRAVE: 40 is what --
 9 MR. DEHART: 40 to 50 trains per day. And,
 10 again, the efficiency increase by this project
 11 would allow for -- I believe it was five or six
 12 more trains per day.
 13 CHAIRMAN HARGRAVE: There were different
 14 estimates in that.
 15 MS. BREWER: So the information that the
 16 Applicant provided to staff was that there is an
 17 existing range of 20 to 30 trains. And, as you
 18 have seen in some of our staff summaries, this
 19 proposed project would essentially put more days
 20 closer to 30 than 20. That is -- and they have
 21 said that that is likely to be an increase in five
 22 to -- up to five to seven trains, but it would be
 23 within that 20 to 30 range.
 24 So I think -- and I can't speak for the tribes,
 25 but in their comment letters and in our

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1 conversations with them they have said that that is
 2 still an increase in capacity in their perspective,
 3 the five to seven additional trains, you could
 4 include it to the 30, but the way that staff has
 5 almost -- you know, what we are able to address is
 6 the current capacity and all we really have to base
 7 that on is their average number of daily trains.
 8 And so, Brad, I'm hearing you say something
 9 different.
 10 MR. DEHART: We're talking two different
 11 things. We're talking capacity, which is a
 12 theoretical or an engineering value, I guess,
 13 versus current volume. I think that's an important
 14 difference.
 15 MS. ERICKSON: I thought we were talking about
 16 the impact to tribes. And if the -- if we're used
 17 to seeing 20 to 30 trains per day, then anything
 18 above that is additional impact. Is that what the
 19 tribes would be saying?
 20 MR. SCHANNO: I tend to not agree with that
 21 because I think capacity would be -- because if
 22 they have the ability to run the 70 trains, only --
 23 because they are only running 20 to 30 doesn't mean
 24 that they can't run the 70 and that has nothing to
 25 do with this decision today. The capacity and then

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1 the current volume are -- are two separate things.
 2 MS. ERICKSON: True, but I'm -- I'm trying to
 3 get to the concern of the tribes and how do we
 4 address that.
 5 MR. DEHART: For me, I'm trying to address it
 6 in my -- I'm trying to address it by putting
 7 conditions in there that will hopefully result in
 8 some additional safer locations for the tribes to
 9 get access.
 10 CHAIRMAN HARGRAVE: So where you're sitting
 11 right now, you're willing to leave this as it is?
 12 MR. DEHART: I am.
 13 CHAIRMAN HARGRAVE: And I am also. I totally
 14 appreciate the ambiguous -- the language is
 15 ambiguous and -- however, you know, I think if you
 16 do a study on it, part of the study will certainly
 17 quantify, you know, what's the baseline and what's
 18 the -- you know, that's what the study does, so I
 19 would kind of rather do that scientifically rather
 20 than up here at the end of a long meeting. That's
 21 my thought on that. I like the idea of doing such
 22 a study.
 23 MR. HANDLEY: Which might be done --
 24 (Multiple speakers - indiscernible)
 25 CHAIRMAN HARGRAVE: So I am content to leave it

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1 as it is. Is there somebody who wants to make a
 2 motion about this?
 3 MS. ERICKSON: For what?
 4 CHAIRMAN HARGRAVE: That would be someone that
 5 wants to change it or take it out. Certainly not
 6 Brad or I.
 7 MR. DEHART: I brought it to table, so if I
 8 don't want to make a motion --
 9 CHAIRMAN HARGRAVE: I'm thinking we might be
 10 good. Okay.
 11 So we have gone through all the conditions that
 12 people had concerns about.
 13 Lynne, yes.
 14 MS. ERICKSON: I still have concerns about
 15 number 44 and 45.
 16 CHAIRMAN HARGRAVE: Please.
 17 MS. ERICKSON: I was concerned about the way
 18 that it was -- I was concerned about the way it was
 19 worded, about UPRR shall work with Oregon Parks and
 20 Rec to develop a feasibility study, et cetera.
 21 That there was no -- to look at the impacts, but it
 22 doesn't have to occur in any set time.
 23 So I asked Angie what, you know, we could do
 24 about that and she suggested we could add a
 25 temporal component to that as we did one of the

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1 other previous conditions.
 2 CHAIRMAN HARGRAVE: That makes sense. Good
 3 catch.
 4 MS. ERICKSON: And so she provided the
 5 suggested wording on the memo that was sent out on
 6 September 13th to add to that condition number 44.
 7 CHAIRMAN HARGRAVE: Okay. And is that wording
 8 short, like you can read it out and we can remember
 9 it?
 10 MS. ERICKSON: Yes. It says, "The study shall
 11 be" -- after the end of that sentence, "The study
 12 shall be initiated with the director of Oregon
 13 State Parks following the appeal period within 45
 14 days of the final decision. Improved access, as
 15 identified and agreed upon by UPRR and Oregon State
 16 Parks as a result of this study, shall be
 17 accomplished within two years of the commencement
 18 of development. Extension may only be requested by
 19 Oregon State Parks."
 20 CHAIRMAN HARGRAVE: Okay. And so I agree with
 21 adding a temporal component. That makes sense. I
 22 wasn't clear on which of that is new language
 23 versus old language, but nevertheless, since you
 24 are not voting today, does one of the voting
 25 commissioners want to make a motion around this?

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1 MS. ASHLEY: I move that we accept -- that on
 2 condition 44 we add to the end of the existing
 3 condition the wording, "The study shall be
 4 initiated by the director of Oregon State Parks
 5 following the appeal period but within 45 days of
 6 final decision. Improved" -- was that part of it?
 7 "Improved access as identified and agreed upon
 8 by UPRR and the Oregon State Parks as a result of
 9 this study shall be accomplished within two years
 10 of the commencement of development. Extensions may
 11 only be requested by Oregon State Parks."
 12 CHAIRMAN HARGRAVE: So I had a question on that
 13 wording.
 14 You made a motion. Is there a second?
 15 MR. MYERS: I'll second it.
 16 CHAIRMAN HARGRAVE: Okay. So discussion. My
 17 question is, it seems as if the Applicant is not in
 18 the driver's seat here. It has to be initiated by
 19 Oregon State Parks. What if they don't, what does
 20 that mean to the Applicant? Do they not meet the
 21 conditions and their permit gets pulled?
 22 MR. MYERS: No, I think they wouldn't have to
 23 do anything.
 24 MR. HANDLEY: They don't do anything.
 25 MS. BREWER: The intent was that they would

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1 initiate, just mirror the language in the other
 2 condition. So it says, "The study shall be
 3 initiated with the director of Oregon State Parks."
 4 CHAIRMAN HARGRAVE: Okay. "With." I didn't
 5 hear "with." Okay. Sorry. I misheard. I thought
 6 I heard "by."
 7 MS. ASHLEY: "With."
 8 CHAIRMAN HARGRAVE: "With." Okay. Okay.
 9 Any other discussion on that?
 10 Did you capture that, Brenda?
 11 MS. JENKINS: I can get it off the memo. I'm
 12 good.
 13 CHAIRMAN HARGRAVE: Any other discussion?
 14 MR. HANDLEY: My only concern is state parks
 15 didn't ask for this.
 16 CHAIRMAN HARGRAVE: That's kind of the way it
 17 feels to me.
 18 (Indiscernible - simultaneous speech)
 19 MS. BREWER: State parks provided two comment
 20 letters with a laundry list of concerns about noise
 21 and access and overall recreation impact to
 22 existing established recreation sites. They
 23 provided a long list of references to their Gorge
 24 unit park plan, which is their comprehensive plan
 25 for all the Gorge parks.

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1 And in there there are several references to a
 2 desire to initiate a study such as this. And I did
 3 try to use the same language that they had in their
 4 Gorge unit comp plan and it specifically is to
 5 address improved access and address some of the
 6 noise concerns.
 7 CHAIRMAN HARGRAVE: Okay. That feels better.
 8 MR. DEHART: So in their comprehensive plan
 9 there were specific locations that were mentioned;
 10 I believe throughout the Gorge there were five or
 11 six specific locations.
 12 MS. BREWER: Yes. And Memaloose was one of
 13 them.
 14 MR. DEHART: So are we saying that this study
 15 could entail review of all of those locations up
 16 and down the Gorge or are we going to focus this in
 17 on our county?
 18 MS. BREWER: So the second comment letter we
 19 received from them was a more regional approach to
 20 the impacts that they are anticipating from a
 21 potential increase in rail capacity or traffic.
 22 The scenic area rules allow us to look
 23 regionally and we are required to address the
 24 cumulative effects. So they are starting with the
 25 direct impacts at Memaloose State Park, but also

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1 acknowledging that if there is, indeed, going to be
 2 an increase in rail traffic, this would affect all
 3 of their parks throughout the Gorge. So the study,
 4 again, once it's initiated, it would really come
 5 down to what are the effects of the existing
 6 established recreation sites? And the focus should
 7 be Memaloose, but because of the way the scenic
 8 area rules are written and the requirements of
 9 those, it would be a cumulative assessment as well.
 10 And that's similar to some of the treaty rights
 11 impact concerns we have received is, you know, if
 12 there is an increase in rail traffic, you may see
 13 that at multiple locations throughout the Gorge,
 14 not just at the site of the development itself.
 15 MS. ASHLEY: I don't have any problem with it
 16 as long as they requested it in their letter that a
 17 study be done. We're just putting a time limit on
 18 it, basically.
 19 MS. BREWER: The study is referenced in a
 20 couple of their -- their references to their comp
 21 plan.
 22 MS. ASHLEY: We're just adding the time limit.
 23 CHAIRMAN HARGRAVE: Can they support the
 24 timeline, I wonder, Angie? The 45 days is pretty
 25 fast in the world of government.

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1 MS. BREWER: So they have seen this recommended
 2 condition of approval and did not provide any
 3 additional response.
 4 CHAIRMAN HARGRAVE: But it didn't have the time
 5 component.
 6 MS. BREWER: Oh, you're right. I really don't
 7 know, but the language would allow them to request
 8 an extension if they needed it.
 9 CHAIRMAN HARGRAVE: That's true. All right.
 10 Super.
 11 All in favor?
 12 GROUP RESPONSE: Aye.
 13 CHAIRMAN HARGRAVE: Against?
 14 Okay. So carried. So that's 44.
 15 MS. ERICKSON: Yes. 45. I wondered -- you
 16 know, they talked a lot about -- in their comments
 17 about impacts to the recreation uses and that they
 18 would have to close the park for part of the time
 19 this construction is going on.
 20 And I wonder if the wording on 45 should be
 21 "campground must" -- wait a minute. "Construction
 22 activities on the road shared with OPRD for the
 23 Memaloose State Park campground must occur outside
 24 the peak recreation season and trucks used for
 25 hauling the blast and crushed materials must be

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1 covered." In other words, removing "either" and
 2 removing the "or" and substituting "and" so there
 3 is no either/or.
 4 CHAIRMAN HARGRAVE: Well, I think doing it off
 5 peak makes --
 6 MR. SCHANNO: There is not going to be really
 7 anybody at the park during the process.
 8 CHAIRMAN HARGRAVE: Does one of the
 9 commissioner want to make a motion?
 10 MR. HANDLEY: I don't care to make a motion and
 11 this is why. It is a shared access point. They
 12 have right-of-way through there already. Why are
 13 we limiting their right-of-way?
 14 MR. DEHART: I also believe that we need to be
 15 realistic in providing some alternatives on when
 16 the construction should actually occur. I'm okay
 17 with it as it's written.
 18 MR. HANDLEY: (Inaudible).
 19 CHAIRMAN HARGRAVE: Brad said he is okay as
 20 it's written and I said what about the part where
 21 it says the trucks removing the excavated material
 22 need to be covered? Similar to a lot of the
 23 discussions that we have had earlier in this -- in
 24 this dialogue, we don't want to get out of
 25 our -- the business we're in, which is land use,

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1 and how trucks are to run down the highway with
 2 material in them is already regulated by ODOT and
 3 others. I would just -- why would this be
 4 different?
 5 MR. HANDLEY: Tarping trucks is a common
 6 practice.
 7 CHAIRMAN HARGRAVE: Sure, okay.
 8 MS. ERICKSON: I think it would be a good idea
 9 coming up through the park.
 10 CHAIRMAN HARGRAVE: Does anyone want to make a
 11 motion to change this in any way?
 12 MR. MYERS: So we're talking about changing
 13 from "or" to "and," is that essentially what
 14 we're --
 15 MR. SCHANNO: If you change "or" to "and," then
 16 you are saying that they can only do the
 17 construction outside of peak recreation season.
 18 MS. BREWER: Please keep in mind that they are
 19 further constrained by (inaudible) and things like
 20 that.
 21 CHAIRMAN HARGRAVE: I think it's fine. Okay.
 22 Lynne, did you have other --
 23 MS. ERICKSON: No, that's it.
 24 CHAIRMAN HARGRAVE: Okay. We have now gone
 25 through all of the conditions. And I think where

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1 we are is that we have decided, based on prior
 2 vote, that we're going to approve it with modified
 3 conditions. I believe at this point we have now
 4 agreed on the modifications that we want to all the
 5 conditions.
 6 So my thinking is that we could have Brenda
 7 read that back so we're clear on what we might be
 8 voting for and someone might make a motion to
 9 approve --
 10 All right. Fine. I'll back off on that,
 11 Brenda. That's not going to happen but, hopefully,
 12 for the last three or four hours everyone was here
 13 and recalls what it was we agreed.
 14 We have specific --
 15 MS. JENKINS: I can give it a shot, if you want
 16 to know what they were.
 17 CHAIRMAN HARGRAVE: Well, if you can, I would
 18 be concerned how this would work afterward.
 19 MR. MYERS: All of the motions have been very
 20 clearly stated on the record.
 21 CHAIRMAN HARGRAVE: I thought so. I'm okay
 22 with that, if you guys are clear.
 23 MR. MYERS: What do you think?
 24 COURT CLERK: I can read back what the motions
 25 were, if you guys want them.

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1 MR. MYERS: Do you think it's necessary?
 2 CHAIRMAN HARGRAVE: No. Do you think it's
 3 necessary?
 4 MS. JENKINS: I'm not the one voting on it.
 5 CHAIRMAN HARGRAVE: Right. Brenda is not
 6 voting on it.
 7 MS. ASHLEY: I'm happy with it.
 8 CHAIRMAN HARGRAVE: If you're all happy, that's
 9 fine. So does someone --
 10 Sorry, what was that, Angie?
 11 MS. BREWER: Just so you all know, I have them
 12 captured completely, so if there was any questions
 13 about any one of them, I can read it back to you.
 14 CHAIRMAN HARGRAVE: Okay. Does someone wish to
 15 make a motion?
 16 MR. DEHART: I'll make a motion to
 17 approve -- are you going to make me read something?
 18 I'll make a motion to approve the proposed
 19 development with the revisions to the conditions
 20 that we have gone through tonight and all other
 21 conditions that we haven't specifically made
 22 changes to. Is that adequate?
 23 CHAIRMAN HARGRAVE: So it includes all the
 24 conditions except as modified in these discussions.
 25 Are you clear on Brad's motion?

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1 MS. JENKINS: I have got his motion. I'm good.
 2 CHAIRMAN HARGRAVE: Is there a second?
 3 MS. ASHLEY: I'll second it.
 4 CHAIRMAN HARGRAVE: Okay. So what are your
 5 thoughts? Any discussion?
 6 MS. BREWER: May I ask a question for
 7 clarification?
 8 CHAIRMAN HARGRAVE: You sure can.
 9 MS. BREWER: Are there any findings in the
 10 staff summary related to these conditions that you
 11 would like staff to modify as a result of these
 12 revised conditions?
 13 CHAIRMAN HARGRAVE: Perhaps. Are there some
 14 you are thinking of specifically?
 15 MS. BREWER: There are quite a few references
 16 limiting traffic. And I, you know, the staff -- if
 17 you are going to revise one document, it will
 18 impact the other one. So just when you make a
 19 motion to move forward, just please be clear about
 20 whether or not you would like staff to go back and
 21 revise those conditions.
 22 CHAIRMAN HARGRAVE: Those findings?
 23 MS. BREWER: I'm sorry, yes, thank you. Those
 24 findings.
 25 CHAIRMAN HARGRAVE: So do you need to

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1 (inaudible)?
 2 MS. BREWER: I at least need to acknowledge
 3 where they reference a condition of approval that's
 4 been struck, I need to go back and acknowledge.
 5 CHAIRMAN HARGRAVE: I would think that they
 6 should modify the findings because otherwise you
 7 have got kind of spaghetti codes where it says one
 8 thing in one place and another in another. So, you
 9 know, my thinking is that they should, which I
 10 guess would modify the motion a little bit,
 11 wouldn't it?
 12 We're saying to approve it with the conditions
 13 as modified. I think we should also add to that
 14 motion that -- to modify the findings to be
 15 consistent with the modified conditions.
 16 MR. DEHART: What we're asking Angie or staff
 17 to do then is to go back and rewrite those to --
 18 CHAIRMAN HARGRAVE: Because when they make a
 19 finding, it's based on this and we have changed
 20 this, so the finding needs to be tweaked.
 21 MR. DEHART: Angie has already made it clear
 22 that she may have a difficult time actually
 23 getting -- revising the findings to be in line with
 24 the modified recommendations or the modified
 25 conditions that were --

1 CHAIRMAN HARGRAVE: She will. That's why she
2 gets paid the big bucks.

3 I think, you know, this happens -- this happens
4 a lot, right? And Angie's job is to map that out.
5 And I think that she will struggle to make -- to
6 make that complete and convincing. So be it, but I
7 don't think that's any reason to leave it untouched
8 and, you know, completely at odds with different
9 parts of the document. She may go in and at least
10 align them.

11 MR. DEHART: Understood.

12 MS. BREWER: So I'm happy to capture what you
13 guys have discussed to date in those findings.
14 Ultimately it's the discretion of the planning
15 commission, not me, for what those findings will
16 say. So I will be capturing what I have heard here
17 and adding those to the findings based on the
18 motions and decisions.

19 CHAIRMAN HARGRAVE: Yes. So do we need to
20 modify the motion to reflect that?

21 MR. DEHART: She is going to go ahead and take
22 care of it.

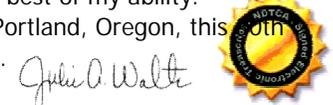
23 CHAIRMAN HARGRAVE: Okay. Any more discussion?
24 All in favor, say aye?

25 Lynne? Sorry.

1 C E R T I F I C A T E

2
3 I, Julie A. Walter, CSR No. 90-0173, do hereby
4 certify that the proceedings were taken down by me
5 in stenotype and thereafter reduced to typewriting;
6 and, that the foregoing transcript, Pages 1 to 143,
7 both inclusive, constitutes an accurate record of
8 said proceedings, to the best of my ability.

9 Witness my hand at Portland, Oregon, this
10 day of September, 2016.



11
12 Julie A. Walter
13 CSR No. 90-0173
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1 MS. ERICKSON: Just a point of clarification.
2 The variances that were included in the
3 application, is that a separate action or is that
4 incorporated in this action?

5 CHAIRMAN HARGRAVE: That would be incorporated.

6 MS. ERICKSON: Okay.

7 CHAIRMAN HARGRAVE: Okay. That's a good
8 question.

9 Any other questions? Okay. All in favor of
10 the motion, say aye.

11 GROUP RESPONSE: Aye.

12 CHAIRMAN HARGRAVE: Against?
13 I'm against.

14 MR. MYERS: Against.

15 CHAIRMAN HARGRAVE: Okay. Motion is carried.
16 The meeting is adjourned.

17 (Proceedings adjourned 6:40)
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