

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

IN THE MATTER OF THE WASCO COUNTY BOARD )  
OF COMMISSIONERS LAND USE PLANNING ) ORDER  
CASE PLASAR-15-01-0004 ) #16-067  
)  
)

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

IT APPEARING TO THE BOARD: That on January 9, 2015, an application was received from Union Pacific Railroad and their consultants, CH2M Hill, for the expansion of an existing railroad siding on either side of Mosier, Oregon to create a new second mainline track and realign existing track; replace five equipment shelters; install drainage structures including ditches and culverts, a retaining wall, new lighting and signage, and wireless communication poles; modify existing utilities, temporary landing zones for construction; construct temporary and permanent access roads; and off-site wetland mitigation. Following the submittal of additional information requested by staff, the application became complete

November 17, 2015. The project area begins at rail MP 66.98, east of the Wasco County line, approximately two miles west of the City of Mosier, and ends at rail MP 72.35, approximately three miles east of Mosier, within Memaloose State Park. The project area roughly parallels the Columbia River and Interstate 84. More specifically, the project crosses Township 3 North, Range 12 East, Sections 31 and 32; Township 3 North, Range 11 East, Section 36; and Township 2 North, Range 11 East, Sections 1, 2, and 3. The replacement of a signal building and two signal lights are also proposed at MP 74.73, approximately 2.4 miles east of the contiguous project area and off-site wetland mitigation is proposed on Wasco County Parcel 2N 13E Section 8 Lot 200 (Account # 1274). The project will be predominantly located on lands owned by Union Pacific Railroad. Portions of the project are also proposed to occur on lands owned by Oregon Department of Transportation and Oregon State Parks and Recreation. Offsite wetland mitigation will occur on lands owned by Skylar and Kathleen Schacht.

IT FURTHER APPEARING TO THE BOARD: That notice of the complete application was sent to adjacent property owners, key stakeholders and affected agencies required by the Wasco County National Scenic Area Land Use and Development Ordinance. All parties receiving notice of the application, including the general public, was invited to submit written comments on the application; and

IT FURTHER APPEARING TO THE BOARD: That at 3:00 p.m. on Wednesday, November 2, 2016, the Wasco County Board of Commissioners met to conduct a public hearing on the compliance of the proposed development with the applicable statute and

administrative rules. Notice of the hearing was published on March 11, 2016, April 26, 2016, June 1, 2016, June 23, 2016, August 11, 2016, and October 19, 2016, in *The Dalles Chronicle*, and was mailed to owners of property within 750 feet of the subject parcel. The public hearing was opened, the staff report was presented, and testimony was received. The Board opened the hearing, considered the matter, and based upon evidence and testimony presented at the hearings, voted 3 to 0 to deny the application on the basis that the proposal affects Treaty rights, to add back in the stricken conditions of approval, and affirm the Planning Commission decision on all other grounds.

### **FINDINGS OF FACT**

Please see attached Board of County Commissioners Final Decision for PLAAPL-16-10-0001, 0002, and 0003 of PLASAR-15-01-0004.

### **CONDITIONS**

1. Noncompliance with any condition placed on a conditional use permit shall be grounds for revocation of the permit. Revocation of a conditional use permit shall be considered a land use action reviewed by the Planning Commission.
2. Section 2.140 of the Wasco County National Scenic Area Land Use and Development Ordinance requires all conditions attached to approval of uses shall be recorded in the County deeds and records to ensure notice of the conditions to successors in interest.
3. The proposed development shall not significantly deviate from the application materials reviewed for consistency.
4. Final engineering drawings shall be provided to the Wasco County Planning Director for review and confirmation prior to commencement of construction.
5. Grading, excavation and vegetation removal outside of previously disturbed areas shall be the minimum necessary to allow for construction. Best management practices shall be implemented to prevent excessive erosion.

6. All exposed graded areas shall be reseeded with the following native seed mix at the earliest planting season following construction (CRGNSA Botanist Robin Dobson can be contacted at 541-308-1700 or [rdobson@fs.fed.us](mailto:rdobson@fs.fed.us) with any questions about seed sources or modified mixtures to comply with this requirement).

Idaho fescue (*Festuca idahoensis*) 30%  
Bromus vulgaris 30%  
Blue wild rye 20%  
Blue bunch wheatgrass 20%

Add some herbaceous seed (1 -2 oz of each):  
Annual lupine (*L. bicolor*)  
Yarrow

7. Temporary traffic impacts during construction activities shall be coordinated with the Oregon Department of Transportation and the Wasco County Public Works Department.
8. A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on acceptable agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Agriculture-Special, Commercial Forest Land, or Large or Small Woodland.
9. New signal buildings on lands adjacent to agriculture zoned lands suitable for agriculture use, shall comply with the 30-foot setback from vineyards and 75-foot setback from orchards specified in the agriculture setbacks of Chapter 3.
10. To comply with Flood Hazard Overlay Section 3.243(C)(1)(a) new construction and substantial improvements shall be anchored to prevent flotation, collapse, and lateral movement of the structure in the event of a flood. The applicant is required to submit final specification sheets and an explanation of all building materials and methods utilized to demonstrate anchoring, flood proofing and flood damage resistance and minimization.
11. Certification by a registered professional engineer or architect that the flood-proofing methods for any non-residential structure meet the flood-proofing criteria in Section 3.243.D.6-Specific Standards is required.
12. Temporary construction site identification, public service company, safety, or information signs cannot be greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the Manual for

Uniform Traffic Control Devices. Removal of temporary construction site identification must be accomplished within 30 days of project completion.

13. Coal cars are required to be covered.
14. A spill response plan for derailment or other railroad accident is prepared or made available prior to the commencement of construction.
15. UPRR shall stay within the existing range of 20 to 30 trains per day as stated in the application materials.
16. UPRR to adhere to all FRA safety standards, a including any safety improvements that are optional.
17. UPRR shall provide regular training to Gorge fire departments included in the Mid-Columbia Five County Mutual Aid Agreement and requires UPRR to solicit feedback about local needs for combatting a railroad related fire incident and assist in meeting those needs.
18. UPRR is required to comply with Chapter 11 for wildfire safety and prevention. Required compliance with fire safety standards shall be disclosed to future land owners prior to sale of any parcel.
19. UPRR must verify the use complies with all applicable federal, state, and local laws.

**Treaty Rights Conditions:**

20. The proposed development shall not directly result in significantly increased net volume of rail traffic, including number of individual trains, length of trains, or speed of trains.
21. UPRR shall provide two (2) safe crossings for National Scenic Area treaty tribe members within Wasco County. The safe crossings will each include a minimum of new crossing lights and crossing arms for safety. The safe crossings must occur in locations deemed appropriate by the four treaty tribes. Following the appeal period, but within 45 days of the final decision, UPRR shall establish contact to begin this work. The safe crossings shall be completed within two years of the commencement of second mainline development; extensions of this timeline may be requested by the tribes. Please note a subsequent review may be required depending on the scope and location of proposed safe crossings.

22. Prior to construction, UPRR shall work with the Confederated Tribes of the Umatilla Indian Reservation on the development of a study to analyze the impacts of trains on tribal fishing. The study shall identify uncontrolled crossings tribal fishers use and the number of train fatalities related to train traffic in the Gorge - both recent and those projected to occur in the future. The study shall include identifying and designating funding necessary to mitigate the impacts of additional trains. As a result of the study, crossings must be improved to better protect tribal members lawfully accessing the river under treaty rights established in 1855 and protected by the National Scenic Area Act.

**Scenic Resource Conditions:**

23. Colors approved for new structures include the colors identified in the *Interstate 84 Corridor Strategy Plan* for the eastern Gorge, including: Sherwin Williams “Otter” for signal buildings, any railing, support structures for signage, and retaining walls; and Federal Color 30099 for any new painted fences, lighting, and other associated equipment. The color palette for eastern stone facades (retaining walls) provide that “Otter” shall be the predominant base color, and that Sherwin Williams “Black Fox” and Miller Paint “Dapper” shall be used as highlights. If different brands are used, they shall match the color codes of these paint colors. To achieve a more natural appearance, colors are to be applied to the retaining wall surface as a multi-step, multi-colored staining process applied in the field. The Oregon Department of Transportation implements these requirements and may be source of technical assistance.

If the communications poles are untreated, they shall be painted “Otter”.

24. Rock blasting shall occur in irregular patterns to produce a natural appearing cut face. Half casts shall be removed.
25. Clearing of 6.62 acre SMA Open Space area landing zone identified on the site plans east of the rock blasting site is prohibited.
26. Concrete retaining walls shall be stamped with a natural basalt rock pattern to emulate the surrounding landscape;
27. Existing trees north of the retaining wall and temporary construction areas shall be retained and maintained for screening to the maximum extent practicable;
28. Revegetation of the temporary construction areas shall occur within the first planting season immediately following completion of construction. Revegetation shall occur in compliance with the conditions of approval for natural resources below.

29. Ends of exposed culverts in the SMA shall be a dark earth-tone color listed above.
30. Guardrail repair shall be in-kind to continue the visual aesthetic of the existing guardrail system. In the event of an entire guardrail system replacement, corten pre-weathered guardrail material shall be used, consistent with the *Interstate 84 Corridor Strategy*.
31. All sign support structures and the backs of single sided signs to be dark brown or black with a flat, non-reflective finish, consistent with the *Interstate 84 Corridor Strategy*.
32. The surfaces of equipment buildings shall be treated with an approved polyacrylic paint and sand mixture to add texture and thus reduce reflectivity.
33. No new screening vegetation is required, but a condition of approval is included to require the retention of existing screening vegetation, existing backdrop vegetation, and the prohibition of the clearing in the 6.62-acre SMA Open Space landing zone.
34. Where it does not interfere with UPRR Uniform Signal Systems and Standards, all signal lights and affiliated structures are to be treated with a dark earth tone color. Outdoor lighting shall be directed downward, sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways, and the Columbia River as well as preventing the lighting from being highly visible from Key Viewing Areas and from noticeably contrasting with the surrounding landscape setting. Shielding and hooding materials shall be composed of non-reflective opaque materials. There shall be no visual pollution due to the siting or brilliance, nor shall it constitute a hazard for traffic.

**Natural Resource Conditions:**

35. The proposed clearing of SMA Open Space Areas identified as the “6.62-acre site near project MP 71.53” for temporary construction is **prohibited** due to the sensitive natural resources that exist in that area and the environmental constraints that prevent the proposed impacts from being temporary.
36. In all other locations, the wetland mitigation plan shall be implemented as specified in the Tooley Lake Wetland Mitigation Update (dated November 17, 2015); Implementation of the Sensitive Species and Wildlife Habitat Protection and Rehabilitation Plan (dated January 2015).
37. Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used. Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement

vegetation must survive. The project applicant shall monitor the hydrology and vegetation of the replacement wetland for five years and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

38. Blasted rock materials must be moved from the project area for off-site crushing at an existing quarry, in Urban Area, or outside of the NSA.
39. Avoid areas of identified special-status plant populations, priority habitats, sensitive wildlife and plant areas, and their buffer areas to the maximum extent practicable.
40. Implement micrositing slight relocations of proposed project facilities to avoid special-status plant populations or habitats if practicable.
41. Remove and conserve plants that will be directly affected; replant immediately following construction.
42. Implement weed control procedures to prevent spread of noxious weeds to native plant habitats.
43. In the Special Management Area, any Oregon white oak trees removed for the project shall be mitigated at a ratio of 8:1. New trees shall be planted in a natural appearing configuration at a spacing of at least 15 feet between trees. Newly planted trees and existing Oregon oaks near the affected area, shall be monitored for a minimum of four years following the completion of construction to ensure survival. Monitoring reports shall be prepared and provided by a qualified professional in conjunction with the annual monitoring reports required for the approved wetland mitigation plan and habitat mitigation plan.

### **Cultural Resource Conditions**

44. UPPR shall comply with Section 14.500(G) provides requirements for the protection of cultural resources discovered after construction begins; and Section 14.500(H) for the protection of human remains discovered during construction.
45. If cultural resources or human remains are discovered during construction, development shall cease immediately and the owner shall notify Wasco County Planning Department (541-506-2560), the Columbia River Gorge National Scenic Area Heritage Program Manager, the Columbia River Gorge Commission (509-493-3323), the four treaty tribes, and the State Historic Preservation Officer. If human remains are found, law enforcement shall be contact immediately.

## **Recreation Resource Conditions**

46. UPRR shall work with the Oregon Parks and Recreation Department to develop a Columbia River access feasibility study to ensure long term impacts of the railroad do not impact established recreation uses or sites. Improved access from State Parks properties to the Columbia River shall be the outcome of this study and any resulting action items. The study shall be initiated with the Director of Oregon State Parks following the appeal period, but within 45 days of the final decision. Improved access, as identified and agreed upon by UPRR and Oregon State Parks as a result of this study shall be accomplished within two years of the commencement of development; extensions may only be requested by Oregon State Parks.
47. Construction activities on the road shared with OPRD for the Memaloose State Park Campground must occur either outside of the peak recreation season, or trucks used for hauling the blasted and crushed materials must be covered to minimize dust and related impacts to visitors at the park.

## **Miscellaneous Conditions:**

48. Staff recommends but cannot require UPRR to work with the Oregon Department of Transportation to commence seismic stability studies and verify structural safety at the development sites located within the Mosier Urban Area.

## **CONCLUSIONS OF LAW**

1. This request is for the expansion of an existing railroad siding on either side of Mosier, Oregon to create a new second mainline track and realign existing track; replace five equipment shelters; install drainage structures including ditches and culverts, a retaining wall, new lighting and signage, and wireless communication poles; modify existing utilities, temporary landing zones for construction; construct temporary and permanent access roads; and off-site wetland mitigation.
2. With findings of fact in the Summary of Information and Board of Commissioner's Final Decision Report published on November 10, 2016, the Board's decision is consistent with The Columbia River Gorge National Scenic Area Act, The Management Plan for the Columbia River Gorge National Scenic Area, the Wasco County National Scenic Area Land Use and Development Ordinance, Oregon Revised Statute, and Oregon Administrative Rules.

NOW, THEREFORE, IT IS HEREBY ORDERED: That the Wasco County Board of Commissioners denies the proposed development on the basis that the proposal affects treaty rights, to add back in the stricken conditions of approval, and affirm the Planning Commission decision on all other grounds.

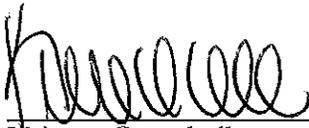
SIGNED THIS 10th DAY OF November, 2016.

WASCO COUNTY BOARD  
OF COMMISSIONERS

  
\_\_\_\_\_  
Rod L. Runyon, Commission Chair

  
\_\_\_\_\_  
Scott C. Hege, County Commissioner

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kristen Campbell  
Wasco County Counsel

  
\_\_\_\_\_  
Steven D. Kramer, County Commissioner