

Please note this is based on the information available at the time of the staff report. New information may be brought to the hearing that could change Staff's recommendation.

Appeal No. PLAAPL-16-10-0001 Friends of the Gorge, Columbia Riverkeeper, Physicians for Social Responsibility

Ground #		Staff recommendation (see staff report)	Board of Commissioners approve or deny appeal:	If you disagree with staff, please state why.
1	The Management Plan does not allow expansion of railroads in the GMA Open Space zone. However, about half of the proposed construction is in this zone. See Management Plan at II-3-5, NSA-LUDO § 1.070.	deny appeal		
2	This project cannot be lawfully permitted in the GMA Large-Scale Agriculture zone because the legally required resource-by-resource, parcel-by-parcel analysis of the affected resources was not done and because the applicant has not demonstrated that the new track is the minimum size necessary to provide the service as required by County code. See NSA-LUDO § 3.120(E)(20).	deny appeal		
3	The proposed new culvert cannot be legally placed in the GMA Open Space zone. See NSA-LUDO § 3.180(F).	deny appeal		
4	The temporary construction area in the GMA Water zone is not an allowed use. See NSA-LUDO § 3.020.	deny appeal		
5	Culverts in the SMA Public Recreation [sic] are not an allowed use. See NSA-LUDO § 3.170(F).	deny appeal		
6	The Decision unlawfully approves signage without adequate evidence and findings to support the decision. The Staff Report references Chapter 23 (Sign Provisions) but does not address it. In addition, the applicant has not specified signage locations in its application. Therefore, whether the signage meets scenic area criteria cannot be evaluated and the signage cannot be approved. See generally NSA-LUDO Chapters 14 & 23.	deny appeal		
7	All over-height structures must be denied or conditioned to meet the code. Based upon scenic resource review, the County may determine that the structures must be even shorter. See NSA-LUDO §§ 3.120(G)(6), 3.130(G)(5), 3.170(H)(4), 3.180(G)(4).	deny appeal		
8	For resources in the GMA, the Planning Commission unlawfully granted blanket exemptions from four different setback and buffer standards. In the GMA, each setback and buffer that is to be varied must be identified, the overlapping or conflicting setbacks and buffers must be identified, and then each instance must be analyzed to determine which buffers or setbacks should be varied to best achieve the protection of the affected resources. The evidence in the record does not demonstrate that this has been done. See NSA-LUDO § 6.020(B).	deny appeal		
9	The Planning Commission unlawfully granted variances to setbacks in the SMA. The applicant failed to adequately complete the Practicable Alternative Test which is a prerequisite to obtaining the requested variances. See NSA-LUDO §§ 6.020(D), 14.500(B)(5). In addition, for scenic resource variances, the scenic mitigation plan required in NSA-LUDO § 6.020(D) ensuring that "the development can be mitigated to ensure no adverse effects would result" has not been submitted by the applicant so the variances allowed in the Decision are unlawful. Also, the Planning Commission unlawfully removed a condition necessary to determine that the project was in the public interest and then unlawfully granted variances. See Staff Report at 114.	deny appeal		
10	The Decision unlawfully allows the applicant to violate general setback standards. See Staff Report at 21; NSA-LUDO §§ 3.120(G)(2), 3.120(G)(3), 3.130(G)(2), 3.130(G)(3), 3.170(H)(2), 3.170(H)(3), 3.180(G)(2), and 3.180(G)(3).	deny appeal		
11	Conditions of approval to enforce the Planning Commission's conclusions regarding the proposed rock blasting and crushing must be included. Condition 37, or a new condition, must ensure that the rock cannot be sold or used offsite.	deny appeal		

12	The proposed findings unlawfully allow the applicant to violate conditional use criteria because of fire and traffic safety issues; because it would significantly impair sensitive wildlife habitat and riparian vegetation; because there will be adverse effects on the air, water, and land; because of the visual impacts that it will cause; and because the use is not compatible with surrounding uses. See NSA-LUDO § 5.020, Staff Report at 32.	approve appeal		
13	The approval was unlawful because the applicant acknowledges that it failed to include a landscaping plan that meets the requirements of the Scenic Area ordinance, the application lacks adequate elevation drawings, the record does not reflect the location, size, and shape of all existing and proposed buildings and structures.” [sic] See NSA-LUDO § 14.020(D—E) & (B)(2).	deny appeal		
14	The application and the Decision fail to disclose and evaluate details about the surface area of the proposed project that would be visible from key viewing areas (KVAs) and the linear distances along the KVAs from which the project would be visible making it impossible to conclude that the scenic resource standards will be met. See NSA-LUDO §§ 14.200(A)(1)(f), 14.200(A)(1)(c). The Decision also does not address or even mention some the KVAs from which the proposed development is topographically visible. See NSA-LUDO § 14.020(A)(5).	deny appeal		
15	The project violates the scenic protection requirements of County code because the applicant has failed to propose any new trees to screen the new development from key viewing areas and the conditions of approval unlawfully fail to ensure the retention and replacement of existing trees. See, e.g., NSA-LUDO § 14.400(I)(1).	deny appeal		
16	The applicant fails to demonstrate that the proposed development is sited to achieve the applicable scenic standards including that the development must be sited on each parcel so as to use the existing topography and vegetation for screening. See NSA-LUDO § 14.200(R)(4).	deny appeal		
17	The not visually evident and visual subordination standards are often impermissibly discussed interchangeably and/or conflated in the Decision. This leads to violations of the not visually evident standard in the zones in which it applies. See Staff Report at 57.	deny appeal		
18	The application and Decision unlawfully fail to analyze and address the cumulative adverse impacts of the proposed project to scenic resources. See, e.g., NSA-LUDO §§ 14.200(L), 1.200 (definition of “cumulative effects”); Staff Report at 50 (removing a condition that purported to minimize cumulative effects).	approve appeal		
19	In Condition 33, the Planning Commission unlawfully defers to Union Pacific standards that are not in the record and are under the control of the applicant, allowing it to violate scenic resource protections.	deny appeal		
20	The Decision fails to adequately ensure that the proposed development would comply with the protection measures for recreation resources in the Management Plan and in the County code. See Management Plan I-4-25; NSA-LUDO §§ 14.700(F), 14.710.	deny appeal		
21	The conditions of approval unlawfully defer determination of mitigation measures until after project approval or omit mitigation measures entirely. See NSA-LUDO § 14.710(E).	deny appeal		
22	The application and Decision unlawfully fail to analyze and address the cumulative adverse impacts of the proposed project to recreation resources. See, e.g., Management Plan at I-4-25.	deny appeal		
23	The applicant unlawfully proposes to intrude on both water resources and their buffer zones. See, e.g., NSA-LUDO § 14.610(A)(2)(g)(2).	deny appeal		
24	The applicant has failed to meet its burden to demonstrate compliance with the natural resource protection requirements. See NSA-LUDO § 14.610(D)(1—2).	deny appeal		
25	The Decision unlawfully substitutes the applicant’s standards for the legal standards found in the Management Plan and the County code for the protection of sensitive wildlife and plants. See NSA-LUDO § 14.610(B)(2).	deny appeal		
26	The application and Decision unlawfully fail to analyze and address the cumulative adverse impacts of the proposed project to natural resources. See, e.g., Management Plan I-3-3, I-3-31, I-3-36.	deny appeal		

27	The applicant failed to complete adequate cultural resource reconnaissance surveys and therefore failed to meet its burden to demonstrate compliance with the cultural resource protection requirements. See NSA-LUDO § 14.500.	deny appeal		
28	The application and Decision unlawfully fail to analyze and address the cumulative adverse impacts of the proposed project to cultural resources. See Friends of the Columbia Gorge v. Columbia River Gorge Comm'n, 346 Or 366, 213 P3d 1164 (2009).	deny appeal		
29	The Planning Commission unlawfully removed a condition to protect treaty rights and acknowledged this would bring the Decision out of compliance with the law. See Staff Report at 120.	approve appeal		

Appeal No. PLAAPL-16-10-0002 Union Pacific Railroad

Ground #		Staff recommendation (see staff report)	Board of Commissioners approve or deny appeal:	If you disagree with staff, please state why.
1	Public Interest in River Access is Best Accomplished by a Voluntary Process. Conditions 21 and 47 require UPRR to address tribal access demands that extend well beyond this project. They mandate a Gorge-wide study that includes consideration of impacts well beyond construction of four miles of track. They also put an arbitrary deadline on UPRR to bring other parties to the negotiating table. Several policy considerations support our request that the Board decouple the tribal river access solution from the construction of four miles of track.	deny appeal		
2	<p>The Law Precludes Conditions 21 and 47. Beyond these policies, several legal considerations demonstrate that the County may not enforce mandates set forth in Conditions 21 and 47. Repeatedly, we observe that the conditions rest on misconstruction of the law. We further observe in several instances that, even under the project opponents' vision of the law, the record does not support these conditions. At the top of this legal heap stands the Commerce Claus of the U.S. Constitution. A bedrock of federalism is that state and local governments not be able to impede transcontinental trade..."</p> <p>The Law Precludes Conditions 21 and 47</p> <p>Beyond these policies, several legal considerations demonstrate that the County may not enforce mandates set forth in Conditions 21 and 47. Repeatedly, we observe that the conditions rest on misconstruction of the law. We further observe in several instances that, even under the project opponents' vision of the law, the record does not support these conditions. At the top of this legal heap stands the Commerce Claus of the U.S. Constitution. A bedrock of federalism is that state and local governments not be able to impede transcontinental trade..."</p>	deny appeal		
3	<p>...In sum, then, there is simply no evidence that the project would affect or modify treaty rights. Without such evidence, NSALUDO 14.800(D) provides no basis on which to compose Conditions 21 and 47.</p> <p>The County's authority to condition approval of the subject application is further limited. As UPRR noted in its September 21 memo, the record before the Planning Commission included no evidence of "any project impact that necessitates or even supports a condition requiring to provide this Access." Such evidence is required by Nollan v. California Coastal Commission...and Dolan v. City of Tigard...The record still lacks it.</p>	deny appeal		

Appeal No. PLAAPL-16-10-0003 Confederated Tribes and Bands of the Yakama Nation

Ground #		Staff recommendation (see staff report)	Board of Commissioners approve or deny appeal:	If you disagree with staff, please state why.
1	The decision violates the Yakama Nation’s Treaty protected rights.	approve appeal		
2	The decision violates the National Scenic Area Land Use and Development Ordinance.	approve appeal		