

LAND USE APPEALS HEARING

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

Wednesday, November 2, 2016

3:00 p.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3           COMMISSIONER KRAMER: No.

4           COMMISSIONER HEGE: No.

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

8           COMMISSIONER KRAMER: No.

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

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

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

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

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

7 COMMISSIONER KRAMER: No.

8 COMMISSIONER HEGE: Not specifically.

9 CHAIRMAN RUNYON: Neither did I.

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

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

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

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

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

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

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

25           So let me skip through some of these. We

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Each of the zones are highlighted on the far

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

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

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

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

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

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

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

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

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

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

25 Chapter 11 is fire safety standards. This

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

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

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

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

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

25 So I will go through these quickly, unless

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           Chapter 14 is recreation resources. The

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 happens to be inside the Mosier urban area.

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

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

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

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

25           The Planning Commission voted 5 to 2 to

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

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

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

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

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

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

1 including any of those that might be optional.

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

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

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

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

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

1 elimination of a handful of others.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 recreation and treaty right provision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4                   MS. BREWER: Thank you.

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

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

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

25                   If the Board is not able to find that the

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

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

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

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

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

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

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

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

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

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

10 COMMISSIONER HEGE: Okay.

11 MS. BREWER: Yeah.

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

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

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

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

22 COMMISSIONER HEGE: Okay. Thank you.

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

25 COMMISSIONER KRAMER: Not at this time.

1 CHAIRMAN RUNYON: Okay.

2 Does that conclude staff report?

3 MS. BREWER: Yup.

4 CHAIRMAN RUNYON: Are you available for  
5 rebuttal?

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

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

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

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

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

25 We're also very grateful to your Planning

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23           MR. SCHELBITZKI: Thank you, Linnea.

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

1 department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 trailers that travel on the trains.

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

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

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

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

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

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

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

9 CHAIRMAN RUNYON: Questions?

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

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

15 MR. LUJAN: Yes.

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

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

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

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

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

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

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

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

16 MR. BAATZ: No.

17 CHAIRMAN RUNYON: That's not correct?

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

19 COMMISSIONER HEGE: So just clarification on  
20 that.

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

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

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

4           MR. BAATZ: Both of what apply?

5           COMMISSIONER HEGE: 40 and 30.

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

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

14           MR. BAATZ: No.

15           COMMISSIONER HEGE: That's not possible?

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

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

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

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

1 Interstate Commerce Commission Termination Act, the  
2 ICCTA.

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

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

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

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

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

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

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

5 Wes, did you want to add anything?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 COMMISSIONER HEGE: All right. Thank you.

25 So there were some comments and we heard a

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

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

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

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

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

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

3 Clint.

4 MR. SCHELBITZKI: Client Schelbitzki.

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

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

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

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

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

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

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

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

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

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

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

1 wheels hitting the side of the rail.

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

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

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

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

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

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

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

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

1 noise?

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

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

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

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

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

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

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

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

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

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

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

1 that.

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

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

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

15 MR. LUJAN: Understood, Commissioner.

16 COMMISSIONER HEGE: Okay.

17 MR. LUJAN: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10                   CHAIRMAN RUNYON: Okay.

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

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

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

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

25                   Economic regulation is now by the Surface

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

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

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

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

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

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

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

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

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

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

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

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

21 COMMISSIONER KRAMER: No.

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

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

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

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

4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The proposed rail expansion would increase

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

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

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

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

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

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

1 treaty rights shall be prohibited.

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

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

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

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

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

1 rights.

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

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

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

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

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

25 Accordingly, because the proposed rail

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

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

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

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

21 CHAIRMAN RUNYON: Questions?

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

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

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

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

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

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

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

1 something that might be possible?

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

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

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

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

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

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

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

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

4 COMMISSIONER HEGE: Okay.

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

7 CHAIRMAN RUNYON: Thank you very much.

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

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

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

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

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

21 MR. KAHN: Okay.

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

25 Today we submitted a lengthy narrative with

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

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

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

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

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

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

1 and all of its regulations.

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

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

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

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

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

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

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

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

1 that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           The applicant has sought a number of

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

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

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

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

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

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

25 Similarly, Section 14.200(g) of your

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

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

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

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

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

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

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

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

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

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

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

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

1 Washington state Route 142.

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

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

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

14 Okay. Thank you very much.

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

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

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

1 thoughts on that?

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

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

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

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

24 COMMISSIONER HEGE: Thank you.

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

1 staff, Angie.

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

4 MS. BREWER: Correct.

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

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

13 COMMISSIONER HEGE: Okay.

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

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

1 say?

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

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

6 MR. KAHN: Is that it?

7 Thank you very much.

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

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

16 AUDIENCE MEMBER: Could you speak up?

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

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

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

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

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

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

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

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

1 resources.

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

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

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

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

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

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

1 themselves to the risk of injury or death.

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

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

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

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

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

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

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

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

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

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

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

15 Please give us your name and your  
16 affiliation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 CHAIRMAN RUNYON: Thank you.

4 Sir, you can come forward.

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

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

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

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

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

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

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

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

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

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

1 allowing us to come and speak.

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

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

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

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

1 businesses have walked away since the derailment.

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

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

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

25 Access under or over the tracks at Mosier

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 MS. BURNS: Team Mosier.

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

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

1 these things can be addressed.

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

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

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

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

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

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

1 is the key to the viability of our town.

2                   And so we've done a lot of things in the  
3 time that I've been there. We've changed ordinances,  
4 we've planted trees. We painted murals. We've built  
5 benches and applied for a lot of grants. We really want  
6 to built a strong economy.

7                   And one of the big, big plans, as you know,  
8 is slo-mo. It's developing a downtown front street, so  
9 that is more walkable, more living. People can come and  
10 they can walk around and they can really enjoy our town.  
11 That's a key piece to our town.

12                   I think you can see that Mosier is the only  
13 town in the Gorge that has this rail system so  
14 integrated into our downtown. Every single other town  
15 in the Gorge has at least a block buffer and is -- with  
16 the downtown buffered off from the rail. The rail is  
17 very much a part of our downtown. So it is a big effect  
18 when you increase traffic.

19                   I want you to picture yourself -- I want you  
20 to picture yourself downtown and you're standing across  
21 from the totem and you're maybe having an ice cream. I  
22 want you to understand when you saw that visual, there  
23 was no sound there. I want to play what it's like if  
24 you're standing downtown, across the street, eating an  
25 ice cream cone.

1           This is what it sounds like.

2           (Recording of train playing.)

3           Can you hear that? It's very hard to talk  
4 over. It's very hard to have a conversation. You have  
5 to stop. You have to -- you have to pause and not have  
6 a conversation.

7           So I want you to imagine eating ice cream or  
8 having a beer at the Rack & Cloth. And what would that  
9 be like if it was doubled? It's hard to imagine. And  
10 yet, if you're down, right up against the train, it is a  
11 very visceral feeling. And I would love for this  
12 meeting to be there now because there's no way --  
13 there's no way that a recording can really capture the  
14 vibrations and the effect of that feeling on the town.  
15 It's very hard.

16           And I just -- basically what we're talking  
17 about, when you show that image of the two trains  
18 passing, that's our downtown. You have two  
19 30-mile-an-hour trains designed to pass each other now.  
20 You have designed the front of our downtown to be a  
21 fluid process, fluid flow, of two trains passing each  
22 other absolutely every moment that you can, in order to  
23 increase your efficiency. That's going to kill our  
24 town. I believe that with all my heart.

25           And I don't know why I'm on the council at

1 this point in time or it's my point -- job to stand up  
2 and say this. But I believe with all my heart that this  
3 will kill our town. There's so little difference  
4 between making it work. It's so close. You know, one  
5 coffee shop. One solid pub will make all the  
6 difference. You can feel it in town. There's a  
7 momentum that's wanting to happen, but it's just as easy  
8 to stop that momentum. And I believe this would do  
9 that.

10 I'm wondering -- my habitat, has my habitat  
11 been studied in that binder? Have you looked at the way  
12 this is going to affect our town with real estate prices  
13 and the downtown? I'm just wondering because that is  
14 going to really be a big deal to us. I wish I could  
15 have said that more eloquently, but that's my point.  
16 Thank you.

17 CHAIRMAN RUNYON: Thank you, Emily.

18 We'll continue on now with non-tribal  
19 elected officials. That's what we're doing at this  
20 point.

21

22 MR. McDERMOTT: Hi. I'm Don McDermott. And  
23 I'm not used to using microphones, so let me just adjust  
24 it a little bit. I'm the president of The Dallesport  
25 Community Council. And want to compliment the people on

1 this side of the river for coming forward and trying to  
2 stand up for their rights.

3 On the Washington side our community council  
4 objected to coal train traffic back in 2011. We were  
5 the first ones in the Gorge that did. We got no  
6 response from publicly elected officials to protect our  
7 public safety. I should do a little full disclosure  
8 here. I am a retired Conrail executive. And I was in  
9 damage prevention back east.

10 And lots of the coal from trains has been an  
11 issue since way, way long ago when I was working. The  
12 railroad wisely decided that the shippers should be  
13 responsible for containing their loads. With coal  
14 trains, the -- allowing the shipper to get by with a  
15 layer of Elmer's glue on top of the load to control the  
16 loss from the load, only prevents blow-off from the  
17 load. It doesn't prevent sift-through from the coal  
18 trains.

19 And the ballast and the infrastructure is  
20 compromised by the presence of coal in the ballast. And  
21 the railroad knows this. You guys know this. And the  
22 shippers don't want to pay for it. The railroad doesn't  
23 want to pay for it. And we're always a little risky on  
24 whether or not we are governing to have a derailment  
25 because some of your infrastructure is compromised.

1 Evidence of inadequate protecting of the  
2 public as evidenced by the recent derailment in Mosier,  
3 it is admitted. You guys have owned it. And on the  
4 Washington side, now we're getting a lot of oil train  
5 and coal train traffic. It's a political issue over on  
6 my side of the river and I think our elected officials  
7 think that anything they do that objects to business or  
8 commerce or traffic is -- somehow it's a lefty kind of a  
9 thing and they shouldn't stand up for that.

10 I want to commend Wasco County, and Scott,  
11 you in particular, with your questions and your  
12 comments. When an applicant for a development is  
13 appearing in front of a commission, their legal counsel  
14 is always going to say that, you know, we've got you.  
15 That, you know, we're doing this to be nice and you're  
16 going to rely on our compassion and our cooperation and  
17 being a good member of your community. But we're not  
18 going to admit or allow you to put any restrictions upon  
19 us because we think that if we went to court with you,  
20 that we'd win.

21 There is an implied threat there. But as  
22 publically elected officials, I think you have a  
23 responsibility to do the best you can, including  
24 surviving a lawsuit from a big corporation to protect  
25 the public. Thank you.

1 CHAIRMAN RUNYON: Next.

2 MR. CORNELISON: My name is Peter  
3 Cornelison. I'm an Hood River City elected official.  
4 I'm speaking today on my own. I live at 1003 Fifth  
5 Street, Hood River, Oregon. And I also work for Friends  
6 of the Columbia Gorge.

7 As has already been stated, the project is  
8 definitely inconsistent with the purposes of the  
9 National Scenic Act. It would adversely affect scenic,  
10 natural, cultural and recreation resources and endanger  
11 local communities.

12 My contribution here today is to tell you  
13 about a little boat trip I took. I did something  
14 called -- we are currently calling "kayaktivism."

15 I put it in at Rowena and kayaked down to  
16 Rock Creek to get an idea of what's involved, how much  
17 of a disturbance this would be. And I frankly was  
18 shocked. Because if I understand it correctly, it's  
19 going to be over 1,000 trees cut and tons and tons of  
20 rock. The rock cut that they've got to go through this  
21 basalt plateau is major.

22 So it's going to be visible from any boat on  
23 the Columbia. And I don't think the staff report or  
24 what the (indiscernible) submitted really takes that  
25 into account from the river, which is a key viewing

1 area. There's also a fishing platform along that  
2 section of the river. So it's definitely used for  
3 fishing.

4 So that's what I had to say. And I would  
5 just second Don's comments. I really appreciate the  
6 intelligent questions that you guys have been asking.  
7 Thank you.

8 MR. NELSON: Hi. I'm Don Nelson, elected  
9 school board member for D-21. For full disclosure, I'm  
10 also on the board of Friends of the Gorge and their land  
11 trust president.

12 The National Scenic Act requires that each  
13 of the six Gorge counties, including Wasco County, adopt  
14 land use ordinances that are consistent with the  
15 Management Plan. In order to be compliant with that  
16 plan, the County is held to a higher standard.

17 The primary purpose of the creation of the  
18 National Scenic Act and the act, which authorized it, is  
19 to protect and provide for the enhancement of the  
20 scenic, cultural, recreational and natural resources of  
21 the Gorge.

22 I attended the Planning Commission hearing  
23 on this matter on September 26th. Numerous times during  
24 that hearing, Director Brewer cautioned commissioners  
25 not to eliminate any of the planning staff's proposed

1 conditions written to address this application. She  
2 said, "If the Commission chose to eliminate any of the  
3 conditions, that would potentially put us out of  
4 compliance with our ordinance. The planning staff wrote  
5 these conditions to address our obligations to the  
6 National Scenic Act." Director Brewer advised the  
7 commissioners that they could modify the conditions, but  
8 not eliminate them. And they were there for a reason.

9           The Planning Commission then proceeded to  
10 disregard the staff's advice and eliminated all the  
11 conditions that you've heard. So I'm not going to  
12 repeat that.

13           It's these very conditions, which were  
14 eliminated, are all crucial to addressing the County's  
15 compliance to the Management Plan. By law, you must  
16 find that the railroad's proposal is consistent with the  
17 goals and objective of the Management Plan for the  
18 Columbia River National Scenic Area and consistent with  
19 the provisions of the County's implementing ordinances.

20           I believe that Union Pacific's attempt here  
21 to expand their facilities and create a longer stretch  
22 of double track in a National Scenic Area is more than  
23 an attempt to create fluidity and efficiency of train  
24 movement and improve regional service.

25           If, as in testimony tonight, it's not for

1 safety; that's not going to change. It's not for noise;  
2 the railroad said that's not going to change, if it's  
3 not for increasing the volume of traffic, they're not  
4 going to add any more trains to the route, then what's  
5 it for? Why are they doing that?

6 Well, I think it's also something that  
7 nobody has talked about. It's about increasing their  
8 share of profits earned by moving cargo in a more  
9 efficient and fluid way. Now, the problem with that  
10 idea in our region is that the expansion of their  
11 traditional use of this land corridor, is -- it's  
12 changed here.

13 If they do this thing, as Arlene was saying,  
14 it will hugely impact Mosier. If they do this thing, it  
15 will hugely impact the area upon which they're going to  
16 blast rock, remove trees. So, you know, this has all  
17 been said. So I think this proposal actually flies in  
18 the face of the intention of the Scenic Act itself.

19 And I have one last thing to say. In our  
20 pursuit, in general, of human commerce as human beings,  
21 let me remind you of a small poem that Alanis Obomsawin,  
22 a native American, who lives in Canada. This is his  
23 (sic) poem, it sort of speaks to this issue.

24 "When the last tree is cut down and the last  
25 fish eaten and the last stream poisoned, you'll realize

1 you can't eat money."

2 So, you know, we're all in that predicament,  
3 from the richest, most powerful man and woman in the  
4 world to the opposite of that, we're all constrained by  
5 that fact. Money isn't all.

6 CHAIRMAN RUNYON: Okay. We've been here for  
7 three hours. And we're going to take a ten-minute  
8 break, if that's okay.

9 (Break taken.)

10 MR. OLSEN: Then next speaker will be Jim  
11 Appleton and then I have Regna Merritt and Dr. Theodorea  
12 Tsongas.

13 MR. APPLETON: Good evening and thanks for  
14 everyone, thanks Union Pacific. Good to see some of my  
15 old heros here.

16 I want to be real quick and point out that  
17 we do have some existing testimony, both written and  
18 verbal before. I want to focus on something that wasn't  
19 highlighted in Angie's presentation of what we said  
20 before, which was a letter that I sent that really  
21 focused on two issues that relate so much to the idea of  
22 fluidity, Union Pacific's goal.

23 If you remember that animation, it showed  
24 two trains, at speed, going on the two tracks side by  
25 side. If I think about it, Mosier is right in the

1 middle of that. And so the sweet spot is two trains  
2 passing in the middle of Mosier.

3 And my biggest concern is the fire safety  
4 and EMS provider is mainly the tracks to the west. So  
5 that's Segment 1 on the map. That's our upwind segment.  
6 And the one of your criteria and the conditional use  
7 criteria, two of them touch on fire service. Forgive  
8 me. "Must not significantly burden public service,  
9 including fire and EMS, and secondly, must not  
10 significantly increase fire hazard suppression costs or  
11 risk to personnel."

12 That fluidity creates a whole new class of  
13 risk by having two trains in motion at the same time.  
14 And, Scott, I appreciate your questions about that.

15 That doesn't exist now in that area. And  
16 the idea of holding trains, which is the -- the goal  
17 that you're trying to eliminate, creates -- introduces a  
18 whole new class of risk. So that's something that as  
19 the provider of emergency services, that creates a big  
20 problem for me.

21 The second one is I have jurisdiction for  
22 the fire district, including the City of Mosier and 22  
23 square miles around it. I want -- echo and concur with  
24 the economic arguments that Arlene and Emily raised and  
25 that that is the effect on my fire district. If our

1 property values decrease because of this second track,  
2 my ability to provide services throughout the district  
3 is impacted negatively. That's money out of our pockets  
4 that we no longer have to provide our services.

5 So although that's a city issue, it's my  
6 district and that's a negative impact on our services.  
7 I'll leave it there. Any questions?

8 COMMISSIONER KRAMER: Thanks, Jim.

9 CHAIRMAN RUNYON: Next we have Regna Merritt  
10 and on deck is Theodora Tsongas and Alona Steinke.

11 MS. MERRITT: Good evening. My name is  
12 Regna Merritt. I'm here representing Oregon Physicians  
13 for Social Responsibility and over 2,000 health  
14 professionals and public advocates who oppose this  
15 project.

16 We stand with the fire chief and with the  
17 Mosier City Council and echo their concerns. We also  
18 stand with the Yakama Nation in support of tribal treaty  
19 rights and non-treaty tribes, which also should be able  
20 to exercise rights held in time immemorial.

21 For years I provided primary care in the  
22 emergency department of a regional trauma center. I can  
23 attest to the fact that terrible accidents happen. And  
24 that with greater speed of any wheel bridge or tankers,  
25 the damage to life and limb is vastly increased.

1 Indeed, the risk to the lives and safety of Wasco County  
2 residents and to tribal members are vastly increased  
3 with greater speed, longer trains and greater numbers of  
4 unit oil trains and coal trains proposed for these  
5 tracks. We're talking about trains that are 125-cars  
6 long.

7 I'd like to share with you some thoughts  
8 from Dr. Maria McCormack, who is with her patients  
9 tonight.

10 "I'm a mother, I'm a farmer's wife, I'm a  
11 family physician. My family farm is in Mosier. You all  
12 know what happened in Mosier five months ago. The oil  
13 train derailed and caught on fire at the community  
14 school. My husband and I were particularly fearful that  
15 day, not just because of the environmental disaster that  
16 was happening in our small town, but we recall that in  
17 the mid '80s, a passing train on the UP line sparked the  
18 fire that raced up the hill just east of downtown  
19 Mosier. A quick-spreading fire destroyed the family  
20 home on what is now our land. Accidents can happen and  
21 that one was devastating.

22 But with Bakken Oil trailing our tracks, we  
23 cannot describe what happened in Mosier on June 3rd or  
24 any other oil-by-rail derailment by simple accident.  
25 These are predictable catastrophes. And there will be

1 more and worse catastrophes, like the one in  
2 (indiscernible) that killed 47 people, displaced 2,000  
3 people from their homes and destroyed much of the  
4 downtown.

5 The risk of another catastrophic oil  
6 catastrophe in Mosier, or anywhere else and allow the UP  
7 line means the lives of our children. It means our  
8 livelihoods, it means the lives of my patients and their  
9 families.

10 In Planning Commission documents UP reported  
11 that commodity traffic is not expected to increase in  
12 the Gorge as a result of the rail expansion in Mosier.  
13 This is the equivalent of relying on foxes to report  
14 that they do not intend to eat more chickens, even if  
15 the hen house is expanded. Of course commodity traffic  
16 will increase and of course speed will increase. That  
17 means more oil traveling through the Gorge, putting the  
18 health and safety of all of us at risk.

19 Please do not allow the expansion of this UP  
20 line. Thank you." From Dr. Maria McCormack.

21 MR. OLSEN: And the next person up after  
22 these two is Don Steinke.

23 BY MS. TSONGAS: Good evening. I'm Dr.  
24 Theodora Tsongas. I'm an environmental scientist. I'm  
25 a member of the environmental health working group of

1 Oregon physicians for social responsibility and I'm a  
2 member of the Multnomah County (indiscernible)  
3 Committee.

4 Since the project will be reviewed as a  
5 conditional use under the National Scenic Act, it must  
6 comply with the Chapter 11 Fire Safety Standards, as  
7 well as all other standards.

8 The project application does not address the  
9 fire safety standard in Chapter 11. Given the history  
10 of wild fires started by railroads in the Gorge, this  
11 omission is particularly glaring and requires the denial  
12 of application.

13 The new track would allow longer, faster and  
14 more frequent trains carrying highly volatile Bakken  
15 crude oil. The failure of the applicant to address  
16 Chapter 11 is basis to deny the application.

17 The additional trains that would be enabled  
18 by the efficiency improvement proposed by the applicant,  
19 no longer the train -- no matter the train contents --  
20 would have impacts on the National Scenic Area.

21 The Rowena Plan describes the fire  
22 conditions through this stretch of track. Given the  
23 slow (indiscernible) predominant wind patterns and  
24 wildland urban interface, any fire within the planning  
25 area between late May and late October is potentially

1 significant.

2 Light flashing fuels, such as cheek grass  
3 coupled with (indiscernible) and strong west winds  
4 combined to generate explosive fire behavior  
5 characterized by rapid rates of spread.

6 Such fire behavior within the wild land  
7 urban interface generates significant public and  
8 firefighter safety concerns.

9 The Rowena Plan also described the incidence  
10 of the wildfires in only the small part of the NCA. A  
11 review of fire statistics from 1992 through 2004  
12 indicates that some 34 fires burned in the planning unit  
13 within that time period.

14 These fires were all human caused and ranged  
15 in source from fireworks and cigarettes to railroad,  
16 farm equipment and power lines. Of these 34 fours, nine  
17 fires would be classified as significant, based on size  
18 and/or complexity.

19 CHAIRMAN RUNYON: One minute.

20 MS. TSONGAS: The new facility proposed by  
21 UP railroad would allow five to seven or more longer  
22 trains to pass through the National Scenic Area per day.  
23 This would necessarily result in more fires started  
24 thought length of the National Scenic Area.

25 Fires often result in degradation of the

1 scenic, natural, cultural and recreational resources of  
2 the NSA and damage to property.

3           These cumulative adverse effects on the  
4 protected resources of the Columbia River, National --  
5 River Gorge National Scenic Area must be taken into  
6 account. Please deny this application.

7           CHAIRMAN RUNYON: Thank you.

8           COMMISSIONER HEGE: I have a question for  
9 staff. There was a comment about Chapter 11 and how the  
10 project doesn't address that.

11           Is that accurate?

12           MS. BREWER: On page 38 of the staff report  
13 in the final Planning Commission decision and report,  
14 there is a finding that the applicant provided the  
15 required, signed and certified fire safety  
16 self-certification application that we require of all  
17 applicants. They did prove that as part of their  
18 complete application.

19           This is also a condition of approval that  
20 requires the development of a spill response plan for  
21 derailments and other railroad accidents and to provide  
22 regular training to Gorge Fire Department, included in  
23 the Mid Columbia Five-County Mutual Aid Agreement and  
24 requires the railroad to solicit feedback about the  
25 local needs for combating a railroad-related fire

1 incident and assisting in meeting those needs.

2 That is the actual findings of that chapter.

3 MS. STEINKE: Good evening. My name is  
4 Alona Steinke. I'm a retired RN from Vancouver. Our  
5 beautiful Columbia River is the third largest river in  
6 the nation. In April of 2015, it was listed by American  
7 Rivers as the second most endangered river in the U.S.  
8 And these are rivers that have the most to lose or to  
9 gain.

10 This project most definitely would result in  
11 an increase in rail traffic, according to rail traffic  
12 experts, maybe as by as much as tenfold. You can expect  
13 to see more unit trains of crude oil and coal,  
14 especially if the current projects in Longview and  
15 Vancouver are approved.

16 Coal can easily be found along the tracks  
17 and even in the river, where it is poisoning the fish  
18 and its other inhabitants. The coal doesn't only just  
19 come off the top of the uncovered cars, but from the  
20 bottom through the weep holes. And I'm sure you don't  
21 need to be reminded, once again, of the effects of the  
22 oil spill that leaked into the river in Mosier.

23 The Columbia River Gorge is already home to  
24 the worst haze in the western United States. As -- as  
25 pollution kills. It kills people. It kills wildlife.

1 It kills ecosystems. A wise Native American once said  
2 that with every decision one makes, we must ask  
3 ourselves, How will this affect the water? How will  
4 this affect the water? Please ask yourselves that  
5 question. Water is life.

6 MR. OLSEN: After Mr. Steinke, we have  
7 Sheila Dooley, Reverend John Boonstra.

8 MR. STEINKE: I'm John Steinke from  
9 Vancouver. I have some new information. There is no  
10 such thing as an oil spill cleanup. Also, there's no  
11 such thing as a safe tank car. Most of the tank cars on  
12 the road now, on the railroad now were built before  
13 2011. And those would resist puncture up to nine miles  
14 an hour.

15 The new tank car standards resist puncture  
16 up to 12 miles an hour. And I don't think there's any  
17 that resist it up to more than 17 miles an hour  
18 available. Most of the tank cars that are on the road  
19 now would rupture. And the ones that are planned, the  
20 2015 standards, they would rupture, at least -- if not  
21 at 18 miles an hour or less.

22 I'd also like to say that I believe that  
23 treaties have precedent over regulations of Congress. I  
24 believe it takes a two thirds vote of the Senate to  
25 change a treaty, but only a 51 percent vote of Congress.

1 So I believe that the tribes have higher rates to the  
2 Commerce Clause.

3 The tribes shouldn't have to be all running  
4 around all over the country defending their treaties.  
5 They were up in Seattle eight days ago asking the Army  
6 Corps of Engineers to -- to enforce the law better. I  
7 encourage you to enforce the law better too. Enforce  
8 the law. Protect their treaty rights.

9 What about their reputation of the fish if  
10 there was an oil spill in the Columbia Gorge? I  
11 attended a meeting recently in the Portland Planning and  
12 Sustainability Commission. They want to limit the  
13 increased storage and handling of fossil fuels to eight  
14 million gallons at any one facility. They chose that  
15 number, specifically, to discourage unit trains of crude  
16 oil, which carry three million gallons. The  
17 recommendation goes to the city council on November 10.

18 In 20 days I -- I attended 20 days of public  
19 hearings at an adjudicated hearing for the Energy  
20 Facilities Site Evaluation Council, and I estimate that  
21 the attorneys for Vancouver, Washougal, Clark County,  
22 Spokane spent a half million dollars, trying to keep oil  
23 trains out of the Gorge. The tribes, in particular,  
24 placed the most evidence into the record. I urge you to  
25 listen to the Yakama Nation. Respect treaty rights.

1 Obey the law.

2 Many communities through the Gorge have  
3 passed resolutions of concern about oil trains. In  
4 spite of that, the executive director at the Port of  
5 Vancouver asked the Energy Facilities Site Evaluation  
6 Council counsel to ignore the impact to -- to oil trains  
7 on rail communities.

8 In spite of the greater good, the Freight  
9 Mobility Board in the state of Washington is lobbying  
10 the legislature right now to require that environmental  
11 studies be limited to the immediate vicinity of a  
12 proposed project.

13 CHAIRMAN RUNYON: Sir, we're out of time.  
14 If you could come to a conclusion.

15 MR. STEINKE: They're lobbying the  
16 legislature to ignore the impacts to the communities  
17 such as the Dalles, (indiscernible) Celilo Falls and  
18 Cascade Locks. Please obey the law. Thank you.

19 MS. DOOLEY: As a Wasco County resident, I  
20 am especially concerned that this application would be  
21 approved by the Planning Commission, even though none or  
22 next to none of the Chapter 5 had conditional use  
23 criteria.

24 In fairness, if this application is  
25 approved, then any future conditional use application by

1 anyone should be approved, regardless of whether it  
2 meets the criteria or not. There are no enforceable  
3 conditions of approval that have made this application  
4 meet the criteria.

5 My reaction to the Planning Commission's  
6 approval was not unlike my reaction to the verdict in  
7 the Malheur Occupiers trial; one of disbelief.

8 The Planning Commission was told these  
9 conditions may be acceptable to the tribes and treaty  
10 rights, they approved the application anyway, knowing it  
11 didn't meet the criteria.

12 For these reasons and the other items  
13 contained in the appeals by Friends of Gorge, et cetera  
14 and the Confederated Tribes of Yakama Nation, the --  
15 Union Pacific Railroad's application should be denied.

16 MR. OLSEN: All right. Next up we have  
17 Peter Frothingham and Lena -- is it Jacob or Jacor? And  
18 Sherrin Ungren.

19 MR. BOONSTRA: Thank you for being here. My  
20 name is John Boonstra. I'm the creation justice  
21 minister of the Center Pacific Conference United Church  
22 of Christ, former administer of the Washington State  
23 Association of Churches and a resident of Hood River,  
24 with the Columbia Gorge Climate Action Network.

25 On September 26th, a long lineup of legal,

1 environmental, health public safety, spirit and  
2 indigenous leaders spoke passionately, informatively and  
3 unanimously from their areas of expertise against the UP  
4 Railroad's proposed double tracking project.

5 Today I support appeals raised by the  
6 Friends of the Columbia Gorge, Columbia Riverkeepers,  
7 Physicians of Social Responsibility and our friends at  
8 the Confederated Tribes and Bands of the Yakama Nation.

9 I find the decision of the Planning  
10 Commission unconscionable and in a very grave violation  
11 of public trust to attend to all of our common good. I  
12 am struck by the apparent disregard of issues protecting  
13 the well-being and integrity of our regional life.

14 The decision violates the Yakama Nation's  
15 treaty protected rights. It fails dozens of times to  
16 comply with the Wasco County National Scenic Area land  
17 use and development ordinance. It ignores provisions of  
18 Management Plan for the Columbia River Gorge National  
19 Scenic Act.

20 The Planning Commission had sufficient  
21 access to an overwhelming articulation place of  
22 irrefutable and convincing evidence about the dangers  
23 and shortsighted foolishness of this track expansion  
24 proposal.

25 Their decision needs to be overturned in a

1 dutiful and responsible defense of the social interests  
2 of the community, of the ecological interests of the  
3 Columbia River and its Gorge, and the sustainable,  
4 economic interest of our local commerce and health  
5 interest of every living, breathing form of life that  
6 inhabits our region.

7           This is the opportunity for the Wasco County  
8 Board of Commissioners to exercise ethical and  
9 forward-thinking leadership about the long-term  
10 interests that bind us justly together in a connected  
11 society. It's an occasion to say with a firm,  
12 well-researched and educated voice, We will no longer  
13 grant any legal and social license to corporate  
14 interests that cripple our communal ability to build a  
15 viable future.

16           MR. OLSEN: Next up we have, after Mr.  
17 Frothingham we have Sherrin Ungren and Chris Turner.

18           MR. FROTHINGHAM: Good evening,  
19 Commissioners. Thank you for the opportunity to speak  
20 to you tonight. My name is Peter Frothingham. And I  
21 second the many different things that you've heard this  
22 evening in support of granting the appeal of the Friends  
23 of the Gorge and the others, who are in opposition to  
24 this plan.

25           And I would simply add my voice to say that

1 the proposed plan by the Union Pacific Railroad that was  
2 unfortunately approved by the Planning Commission,  
3 grossly violates the Scenic Area Act by -- among the  
4 many other things that you've heard today -- visibly and  
5 unnaturally scarring the Gorge from all viewpoints on  
6 Washington Highway 14 and along many places on I-84, as  
7 well.

8 This, as you've heard already, and many  
9 other things, are certainly valid grounds to deny this  
10 proposal. Thank you.

11 MR. OLSEN: Okay. Sherrin Ungren and Chris  
12 Turner.

13 MS. TURNER: My name is Chris Turner. And  
14 live in Longview. Please reverse the Planning  
15 Commission's decision on this project and deny the  
16 project in its entirety. I think this project needs to  
17 be brought back to the basics.

18 Approving this project would ignore the more  
19 than 50 percent variances required. It would fill in  
20 wetlands that aren't mitigated in the Gorge. It ignores  
21 the buffers and the setbacks, constructing tracks in the  
22 buffer zone directly next to the Columbia River. Using  
23 tracks in the National Scenic Area as a train yard,  
24 storage yard, train parking lot and trains that would be  
25 visible from view points and the roadways, absolutely

1 foreseeable significant train traffic increases.  
2 Longview's proposal for the coal terminal alone is 18  
3 additional coal trains a day.

4           The Gorge is the most undeniably direct  
5 route from the mines to Longview. Trains will be  
6 located so close to the river as to deliver the coal  
7 dust and sledge directly into the river. All the  
8 railroads are prepared for the proposed project in  
9 anticipation of these projects being permitted.  
10 Unfortunately, they are all fossil-fuels oriented for  
11 the oil and coal and will bring additional pollution and  
12 additional safety concerns to Wasco County.

13           Without these proposed projects, there  
14 wouldn't be a need to expand the railroad in the  
15 National Scenic Area nor would it be required in the  
16 Longview area junctions, which is already in the  
17 process, by the way. This expansion is necessary in the  
18 Gorge to reduce the bottleneck in the Gorge for these  
19 projects that are coming up.

20           The railroad wants to say no coal in the  
21 Gorge, full well knowing that the proposed coal terminal  
22 in Longview will add those 18 trains a day. In order to  
23 approve this project, the Commission must ignore  
24 applicable Wasco County ordinances, multiple the rules  
25 of law regarding the National Scenic Area, and the

1 treaty rights.

2 Please deny this project's application. My  
3 main concern is that track being put right next to the  
4 river. The railroad companies are not willing to  
5 mitigate the coal dust or to help you out by not  
6 polluting the river and this permit should be denied.

7 MR. OLSEN: Next we have Linda Kremin, Louie  
8 Knightly and Gina Fuller. Any of those folks here?

9 Linda Kremin?

10 MS. KREMIN: I'm Linda Kremin of Hood River,  
11 Oregon and I concur with many of my neighbors that have  
12 spoke before me. This proposal needs to be denied. We  
13 need to uphold the appeal of the Friends of the Gorge  
14 for the safety and the health of myself, my family, my  
15 neighbors. I thank you for considering our position.

16 MR. OLSEN: Thank you. After Ms. Knightly,  
17 we have Gina Fuller and Dave -- it's either Berger or  
18 Bergen.

19 MS. FULLER: My name is Gina Fuller. I've  
20 lived and worked in the Gorge since 1991. I make my  
21 home in Home Valley.

22 Over the past few years we've seen an  
23 increase in rail traffic in the Gorge. It's had a  
24 negative impact on people's lives already. I think the  
25 tolerance level for rail traffic is already at a maximum

1 in the Gorge. I have friends who have had to sell their  
2 home because they couldn't get any sleep. I think the,  
3 you know, the rail traffic is sort of turning the Scenic  
4 Area into an industrial area and into a fossil-fuel  
5 corridor that is facilitating the acceleration of global  
6 warming. These are important things to consider.

7 I don't think that we can continue to have  
8 corporate profits; the only sole factor that you  
9 consider in important decisions like this.

10 In the past hearing, one of the UP  
11 representatives stated that currently, the single track  
12 limits the size of the trains to one mile long. And  
13 that the expansion will allow longer trains.

14 I don't think that it's a good idea to  
15 increase the capacity of rail traffic in the Gorge.  
16 Especially with no -- there's no restrictions on that,  
17 you know. It's -- so, anyway, the danger of larger  
18 trains that are volatile, explosive oil is, you know,  
19 it's hard to comprehend what the consequences of that  
20 could be with a four-mile long train.

21 I think this application will be appealed  
22 over and over again until it is finally denied. And I  
23 think this will be a very expensive, time consuming  
24 process for a lot of people. And I think it's really  
25 the right thing to dismiss this at this point. Thank

1 you.

2 CHAIRMAN RUNYON: Thank you.

3 MR. OLSEN: After Mr. Berger we have Kalama  
4 Royder.

5 MR. BERGER: Hi. I'm Dave Berger from  
6 Klickitat County, Washington. Thank you for all your  
7 work, especially Angie, who I know is like herding cats  
8 times.

9 I'm here to oppose this -- this -- basically  
10 to say that this shouldn't even happen at all. At a  
11 minimum, the railroad, if they were really sincere,  
12 should be coming out with an emergency evacuation plans  
13 for every town they go through after this. Where they  
14 have emergency response plans, they should have  
15 emergency evacuation plans.

16 I just want you to think about considering  
17 the alternatives for a site. All alternative locations  
18 should be looked at with regard to wildlife, cultural  
19 and botanical issues.

20 There should be truly a good faith effort  
21 made with the BNSF on the other side to look at a  
22 circular pattern as an alternative. As well, they  
23 should be considering -- you should be considering  
24 mitigation as strict as mine was for my solar panels,  
25 which required trees for the length of them. For the

1 length of any project such as this, mitigation should be  
2 considered.

3           No part of this state park should be taken  
4 away. No usefulness at all without adding more to the  
5 state park. Cumulative impact. One of you guys said  
6 that climate change is not part of this. Well,  
7 unfortunately, the Act does address cumulative impact.  
8 Cumulative impact of fossil fuels coming in from Asia  
9 regarding ground level ozone, beryllium, mercury,  
10 selenium and others, as well as particulate all are  
11 issues that need to be addressed, as well as those from  
12 diesel trains, particulate as well.

13           Also, there is more of a cumulative impact  
14 from climate change to anyone we've ever known in the  
15 Gorge. So it is on the agenda.

16           And let me remind you, the Yakama Nation  
17 considered it part of a violation of treaty rights. The  
18 trains are -- are -- are and still move through here and  
19 we're looking at a serious in expansion. In fact, the  
20 railroad in Mr. Wyman's statement that he wrote to you  
21 says that if we don't get the trains through here, we're  
22 going to need more -- more shipping by trucks. Well, if  
23 that's true, obviously, more trains are coming through.

24           And then regarding some of the comments  
25 made. The Scenic Act is a federal law. Tribal rights

1 are a federal law. Someone said there's no impacts.  
2 Well, walking and breathing is an impact on the land, if  
3 you know anything about the environment.

4           Clearly since the number of trains is based  
5 on the economy, there will be more trains. That  
6 statement has been very clearly made. What I see on the  
7 Washington side is far more than one percent oil trains  
8 coming past my house every day.

9           Concerning speed, not being -- not based on  
10 what the communities that the trains are going through  
11 is kind of ridiculous. You have to lower the speed of  
12 the explosive nature of the trains in each and every  
13 community, regardless of what the turns are on the  
14 track. More capacity means more trains, which means  
15 more noise. And very disingenuous to say a few more  
16 decibels is all that's going to happen from two trains  
17 passing each other. Guess what? That stuff is  
18 logarithmic. A few more decibels is a huge increase in  
19 the sound you hear. It's logarithms. They know it.  
20 They just don't think you do.

21           And so I want to thank you for your time and  
22 I want you to think about the things that we're all here  
23 for. The goodness in human beings and what we can do to  
24 make the world better and safer for each other.

25           And I have a deep respect for the tribes.

1 And I'm not sure that 10,000 years is right. I believe  
2 it's more like 20. Thank you.

3 MS. ROYDER: My name is Kalama Royder. I'm  
4 a resident of the Gorge. And I commend your planning  
5 department for holding a comprehensive oversight on this  
6 project. This took into consideration all the  
7 requirements of law and they called on the expertise of  
8 many agencies on what could be done to mitigate this  
9 project.

10 Their original well-thought conditions were  
11 protective and all encompassing. The revised approved  
12 version is less comprehensive and should not be  
13 compromised further, further especially in regards to  
14 tribal treaty rights.

15 With their original stipulated conditions,  
16 the County Planning Department was attending to tribal  
17 concerns around risks to resources and access-deficient  
18 sites.

19 How can the Board determine this expansion  
20 of tracks and the resulting increase in trains and speed  
21 would not increase the risk of polluting the Columbia  
22 River from any of the toxic commodities that are being  
23 transported by rail.

24 There are plenty of other chemicals that are  
25 very hazardous to the waterway. And this really needs

1 to be considered. Especially with the risks that have  
2 been exemplified by my friends and neighbors.

3 Increased traffic equals increased risk and  
4 Union Pacific does not have a good track record.  
5 Allowing the railroad -- and this is -- this part  
6 specifically addresses their appeal, the railroad  
7 appeal -- allowing the railroad to split the access  
8 issues apart from the permitting process is yet another  
9 way of discounting the importance of the impact on  
10 native livelihoods. Creating safe crossings needs to be  
11 an integral part of this project.

12 Voluntary discussions, as suggested, is a  
13 way of sidelining this issue. I urge the Board to  
14 require the applicant to work with the tribes to  
15 identify and implement improvements for river access.

16 As your statement says, compliance must be  
17 demonstrated before concluding that there will be no  
18 adverse effects to sensitive and protected resources.  
19 Voluntary compliance does not afford any guarantee that  
20 the tribal concerns will be addressed adequately and in  
21 a timely way.

22 I stand with the tribes, for the health and  
23 safety of all railroad communities. Thank you.

24 MR. OLSEN: That's all of the persons that  
25 we have signed up. Does anyone wish to testify that did

1 not sign up or?

2 Ma'am? Did you sign up?

3 (Indiscernible.)

4 We'll have you sign up when you come up to  
5 the desk.

6

7 MS. BARKER: My name is Jill Barker and I  
8 live in Mosier or outside of Mosier, Oregon. And I  
9 won't repeat what's been said over and over again, but I  
10 concur fully with the entirety of the appeal that the  
11 Friends of Gorge, the Physicians For Social  
12 Responsibility and the Columbia Riverkeepers have filed.

13 And the only thing I want to add to a lot of  
14 really excellent testimony today, is that one thing that  
15 hasn't been mentioned is that these oil tankers are  
16 highly volatile and can spontaneously combust, simply  
17 due to the high temperatures, which are so common in the  
18 Gorge in the summer.

19 If you have increase of traffic or trains  
20 passing one another, especially in the city limits of  
21 Mosier, where they will pass one another, it's not a  
22 matter of a derailment and then explosions and fires.  
23 But often these oil tankers will just explode  
24 spontaneously through combustion, spontaneous  
25 combustion. And then they will derail and then the fire

1 will follow.

2                   So I don't think that has been talked about  
3 at all. And I think that was one of the causes -- I  
4 believe it was Kentucky or West Virginia where there was  
5 a derailment and explosion and it was a spontaneous  
6 combustion. The train didn't derail. It was just  
7 traveling along in the high temperatures, exploded the  
8 tanker.

9                   So that has to be taken into consideration  
10 here in the Gorge where we have such high temperatures  
11 in the summertime. And the danger of wildfire is just  
12 unbelievable. So I have nothing more to add and I  
13 concur with everybody. Thank you.

14                   CHAIRMAN RUNYON: Thank you.

15                   MR. OLSEN: Is there anyone else who wishes  
16 to testify that hasn't signed up?

17                   AUDIENCE MEMBER: My name is (indiscernible)  
18 and I live in Hood River.

19                   The only thing that hasn't been addressed is  
20 that rather than expanding the railroad, dealing with  
21 the problems that happen when tanks explode, as it  
22 happened in Mosier, it could have been a much, much  
23 bigger disaster. And we all know that. But it's not  
24 been talked about at all today. That the highways were  
25 closed. They couldn't get the foam, which is the only

1 thing you can put on burning Bakken oil. It took  
2 11 hours to finally get some foam down here.

3 Who is taking up the expense of that? Why  
4 isn't there foam at every municipal -- any town along  
5 the river, on both sides of the river, they should have  
6 foam available and trained firefighters to do it. The  
7 fact you've not done that is a very irresponsible sign,  
8 ma'am.

9 MR. OLSEN: Anyone else?

10 MR. SWAIN: Hi, Commissioners. My name is  
11 Phil Swain. I own property in Mosier. I live outside  
12 of Mosier. My thought always was that I would probably  
13 retire to the City of Mosier when I wanted to get off  
14 the hill. And if the double tracks -- if this double  
15 track project is approved, I would seriously doubt I  
16 would do that.

17 I also own property that is commercially  
18 zoned in Mosier. So the effect on the City of Mosier is  
19 rather grave. I don't think it's the role of the  
20 Planning Commission to help improve the efficiency of  
21 the Union Pacific Railroad. They're saying Mosier is a  
22 pinch point. But there's a ten-mile double track in The  
23 Dalles. Mosier is the next passing track which is now  
24 rather short, of course. But then to Portland, you  
25 would have a five-mile double track in Mosier, ten miles

1 in The Dalles. And I don't think there's another  
2 section of five-mile track between what would be Mosier  
3 and Portland. So they're putting the pinch point down  
4 the road, if you're saying this is important to the  
5 efficiency of the railroad.

6 So I concur with the Friends of the Gorge.  
7 I concur with the Yakama treaty appeal. And I guess  
8 another thing to consider is, you know, the Indians have  
9 treaty rights and they signed it in 1855. But usually  
10 that's just pushed out of the way, always ignored. And  
11 I don't think we should ignore it. Thank you.

12 MR. OLSEN: Please make sure you sign in.  
13 Is there anyone else that wishes to speak but did not  
14 sign in?

15 Seeing no one else, Mr. Chairman.

16 CHAIRMAN RUNYON: Any objections of staff?

17 MR. OLSEN: Mr. Chairman, I didn't observe  
18 anyone raising an objection regarding testimony.

19 CHAIRMAN RUNYON: So we'll move to rebuttal.  
20 We'll now hear rebuttal. You shall not include any new  
21 evidence. Each appellant will have 10 minutes and it  
22 looks like, first up, representative of the tribes. And  
23 looks like you wish to provide rebuttal.

24 MS. PENN-ROCO: Quickly. I'll attempt to  
25 keep this brief. So these comments will address the

1 applicant's appeal, both their written appeal and then  
2 their oral comments today.

3           So the applicant's appeal seeks removal of  
4 the few conditions that were included to protect treaty  
5 rights. The appeal papers claim that the tribes are  
6 arguing that we have absolute access, able to cross at  
7 all locations at all times.

8           We wish to make it clear that that is not  
9 what we are arguing. We were arguing that we have  
10 treaty rights and those include property rights in the  
11 adjacent land.

12           Courts routinely struck down impediments and  
13 obstruction to access to those treaty fishing rights.  
14 The issue is not whether tribes have an absolute access  
15 right, but whether the proposed rail expansion would  
16 affect or modify treaty rights as prohibited by the  
17 ordinance.

18           They also claim that the tribes have no  
19 evidence supporting their impact on treaty rights.  
20 Again, as I said earlier, our comments are a  
21 distillation of many hours of work, meetings with  
22 fishers and fisheries' employees, specifically to  
23 discuss the impact of rail on tribal fishermen.

24           Yakama Nation has participated in the review  
25 of multiple projects all along the Columbia River.

1 Testimony provided by the government and government  
2 officials is usually sufficient to these agencies. Four  
3 letters were submitted in combination of Umatilla and  
4 Yakama Nation.

5           The fact that Umatilla did not appeal should  
6 not be used as evidence that it doesn't believe there  
7 will be impacts. The Umatilla didn't appeal the  
8 application as it was approved with the conditions that  
9 they are seeking to remove. I will also point out that  
10 tribes have limited resources. Our treaty rights are  
11 challenged on a wide variety of basis and projects.

12           We often have to pull resources to defend  
13 our treaty rights. And the decision to appeal isn't  
14 limited to just whether we have the resources to defend  
15 our treaty rights, but whether we want to subject our  
16 treaty rights to potential litigation.

17           The application urges voluntary compliance  
18 in our experience relying on railroads on their word  
19 that it will work with tribes is not a viable method of  
20 protecting treaty rights. It fails. As many people  
21 have commented, we are often ignored.

22           This is especially because its position is  
23 that it is not legally required to provide access. So  
24 it urges you to have them interact with us on an  
25 individual basis, cutting the other governments out, but

1 it doesn't think that it has any responsibility to  
2 protect those rights.

3 It implies that studies on archeological and  
4 historical sites, where the conclusion is that there are  
5 no impacts and there's no impact on treaty rights.  
6 That's a misunderstanding of treaty rights. A  
7 collection of historical sites, as I said earlier, does  
8 not reflect the impact on treaty fishing rights.

9 CHAIRMAN RUNYON: Thank you. Next would be  
10 rebuttal, if desired, by the representatives of Friends  
11 of the Gorge, Riverkeepers and Physicians for Social  
12 Responsibility.

13 MR. KAHN: Thank you, Mr. Chair. For the  
14 record, Gary Kahn representing Friends of the Columbia  
15 Gorge, Columbia Riverkeepers and Physicians for Social  
16 Responsibility.

17 I will keep my comments very brief. I'm  
18 going to address the issue of preemption, which involves  
19 both the tribes' appeal and UP's appeal, is very -- in  
20 essence, largely the flip side of each other.

21 With respect to the legal issue of  
22 preemption, you've got several competing principles,  
23 several competing laws.

24 First you have the ICCTA, which admittedly  
25 does preempt some local land use laws. You also have

1 the National Scenic Area Act, which is a federal  
2 environmental law and then you have the tribal treaties,  
3 which are in a separate class all by themselves.

4 According to the railroad, in essence, the  
5 ICCTA preempts everything. They have no business being  
6 before you. You have no right to restrict them. You  
7 have no right to do anything that is counter to their  
8 desires.

9 It's not so black and white. In your  
10 staff's response to their appeal, which is in the  
11 record, there is an excerpt of -- I don't know. It must  
12 be a written opinion -- we haven't seen it -- but a  
13 written opinion from your counsel Ms. Campbell -- sorry.  
14 I couldn't think of your name there for a second -- in  
15 which she rebuts that and she rebuts that very well.  
16 And says that when you have a federal environmental law  
17 involved, you have to harmonize the two. It is not as  
18 black and white a preemption as UP would have you  
19 believe.

20 And as one of the public commenters -- I  
21 don't remember which person it was -- said very  
22 eloquently, you should not run from the threat of a  
23 lawsuit. If you think that the application is not  
24 consistent with the Act, then you should deny it and let  
25 the chips fall where they may.

1           And I can tell you, going out on a limb  
2 here, but if that's the situation and you get sued by  
3 UP, my clients will almost certainly join in that  
4 lawsuit to help defend you.

5           I also find it kind of interesting. UP says  
6 today they don't have to be here, but they're doing so  
7 out of a desire to be a good neighbor, to work with you.

8           Well, same situation exists with the City of  
9 Mosier. They haven't applied for any permits under  
10 their land use ordinances. I just wonder whether they  
11 knew that they weren't going to get them and they would  
12 run into a bigger problem.

13           In conclusion, we fully support the Yakama  
14 appeal. We believe that they do have treaty rights,  
15 which trump the ICCTA and UP's application. We also  
16 think that none of this really matters, because this  
17 application is inconsistent with the Scenic Area Act,  
18 the Management Plan, the Wasco County ordinances and  
19 should be denied in its entirety. Thank you.

20           CHAIRMAN RUNYON: Does the applicant wish to  
21 provide rebuttal?

22           MR. WYMAN: Well, thank you very much,  
23 members of the Board.

24           I want to start our rebuttal -- lots of  
25 comments were made on the safety issue. And Wes Lujan

1 spoke directly to the Planning Commission on that issue.  
2 I just wanted him to reiterate the remarks that he  
3 provided there.

4 MR. LUJAN: Thank you, Ty, Commissioners.

5 So I just wanted to reiterate that we've  
6 been working since the derailment to correct some of the  
7 situations that happened. So when the derailment  
8 occurred on June 3rd, basically a leg screw broke in the  
9 Mosier area. That created a wide-gate situation.

10 What we have don't since then is we have  
11 done a full replacement of eight miles of curves of leg  
12 screws in the Gorge. That was completed October 15th.  
13 So I just wanted to update you on that. I had  
14 referenced in my earlier testimony before the Planning  
15 Commission and just wanted to let you know that it  
16 happened.

17 Also, there was kind of a -- you know, I  
18 should have done a little better job of describing some  
19 of the things we've been doing proactively on safety,  
20 you know, with respect to positive train control.

21 So there's a mandate in place now with the  
22 federal government as a result of an incident that  
23 happened in Southern California in 2008, that requires  
24 the railroads to implement positive train control, which  
25 is essentially a predictive braking system. It's

1 intent -- intended to eliminate human error or  
2 drastically reduce it.

3 So what's happened is we're in the process  
4 implementing that between now and 2018. And that will  
5 be implemented on this corridor, as I understand it. So  
6 that basically creates a situation where if there's a  
7 red-signal situation on the track.

8 So if there's a switch at each and there's a  
9 signal; green, red to go into that siding, if the  
10 operator of that locomotive does comply with that  
11 signal, it will stop the train. So it's intended to  
12 back up and help correct that. That's really it.

13 MR. WYMAN: Yeah, thanks so much, Wes. I  
14 just have -- obviously, we can't be comprehensive at  
15 this point, but a couple remarks that you heard tonight  
16 I wanted to touch on on rebuttal.

17 Friends of the Gorge, as I understood it,  
18 asserted that this application was not in the public  
19 interest. It was noting that it was an increase in  
20 efficiency. We firmly believe the increased efficiency  
21 of the movement of freight on that railroad is in the  
22 public interest, absolutely.

23 Secondly, Friends mentioned just at the very  
24 end made a comment about -- suggested that we did not  
25 seek approval from the City of Mosier because we knew

1 wouldn't get it.

2                   Counsel is apparently not aware. We went  
3 immediately to the City of Mosier. And I believe that  
4 the city has actually acknowledged this in its most  
5 recent letter. We got a ruling of the City of Mosier  
6 that it simply did not have jurisdiction. We went first  
7 to them. That's how we wound up with the letter  
8 agreement with the city that is in the record and I  
9 would commend to your reading.

10                   I'll finish with the testimony by the Yakama  
11 Nation. And -- and absolutely, I salute them. They  
12 sent, obviously, a very compelling, excellent speaker  
13 out here tonight. I just wish that they had been here  
14 on September the 6th.

15                   We heard a lot -- we've heard a lot over the  
16 last hour or so about your Planning Commission, that  
17 your Planning Commission didn't do its job. I don't --  
18 I -- clearly, we don't agree completely with what the  
19 Planning Commission decided.

20                   However, the Planning Commission listened to  
21 far more testimony than you have. They went about six  
22 hours. They deliberated for many hours. And the Yakama  
23 Nation was first -- I believe the record is the Yakama  
24 Nation was first provided notice of this project in  
25 April 2015. They were provided multiple notices

1 afterward. They were provided notice of the  
2 September -- clearly of the September Planning  
3 Commission hearing.

4 That hearing drew Friends of the Gorge first  
5 submitted written comment in June. Thousands of people  
6 found the time, the inclination to comment. But they --  
7 but the Yakama did not come and testify to the Planning  
8 Commission. And it's somewhat difficult for me to hear  
9 them throwing that Planning Commission decision under  
10 the proverbial bus whey they weren't here to present  
11 their case to them then and submit to questions, as --  
12 as we have done and as others have done.

13 Going back to where I started and  
14 particularly again, characterizations about your  
15 Planning Commission and the job that they did. I simply  
16 don't believe that the Planning Commission decision was  
17 unconscionable in any way. What I saw here were  
18 volunteers acting in completely the opposite, acting  
19 with remarkable conscientiousness about the job that  
20 they had, the very difficult job that they had that  
21 evening.

22 So with that, we conclude. We would  
23 appreciate a vote in favor of not just the application,  
24 but our appeal. And we may be beyond questions, but  
25 we're always happy to take them from you.

1                   COMMISSIONER HEGE: I just have a quick  
2 question.

3                   So there was a lot of questions but the  
4 issue of the foam and basically the fire fighting stuff,  
5 I'm just curious, obviously, it's not just your problem,  
6 but do you have any comments on how that can be  
7 addressed and how that will be addressed to make sure  
8 that the materials needed to deal with these kind of  
9 issues -- because I think that was a bit of a concern in  
10 the Mosier issue.

11                   MR. OLSEN: Mr. Chairman, before we have the  
12 applicant respond to that question, I -- during the  
13 applicant's rebuttal, we received three objections to  
14 new evidence in the rebuttal. And I'm going to try to  
15 characterize those because I think I know what they are.

16                   And Mr. Kahn can correct me if I'm wrong,  
17 but the first one is to testimony about the predictive  
18 brake systems coming into place on the trains. You're  
19 alleging that. That's not in the record.

20                   The second one is that the Mosier -- the  
21 status of the Mosier decision and not having  
22 jurisdiction, they're alleging that that's not in the  
23 record. And now we just got an objection that --  
24 indications about what the railroad is doing regarding  
25 foam are not in the record.

1           So your Board has two choices here. One  
2 choice would be to make a ruling on these objections,  
3 based on what you perceive to be in the record. And  
4 staff may be able to help you out with that.

5           The second would be to accept the testimony,  
6 but allow other parties to rebut that testimony.  
7 Basically, be we'd be providing Friends an opportunity  
8 to rebut that testimony.

9           MR. KAHN: I just want to spend a little bit  
10 on the first point you made, my objection included what  
11 you mentioned, but there was also some additional  
12 statement by Mr. Lujan about not just -- broader aspects  
13 of the safety issue that I think constitute new  
14 evidence.

15           CHAIRMAN RUNYON: The issue of foam was  
16 brought up in testimony by a citizen.

17           MR. OLSEN: Correct. But there's -- and  
18 that's why you would need to open the record if you want  
19 to listen to new evidence in response to that.

20           So you have that choice. If you feel like  
21 this evidence is important to you, that's been objected  
22 to, then my recommendation would be that you allow it in  
23 so you can provide an opportunity to rebut.

24           If you feel like it's either already in the  
25 record or you couldn't wish or need to consider it, then

1 you can just exclude it.

2 CHAIRMAN RUNYON: I'm here to listen. I  
3 don't know about the other two.

4 COMMISSIONER HEGE: I think we're all here  
5 for -- to address whatever questions you have, we're  
6 happy to have anybody else who wants to speak to these  
7 assertively new issues. Apparently we don't have time  
8 to climb through -- to comb through the 12,000 pages of  
9 the record to figure out where we did discuss -- he did  
10 discuss safety issues at length at the Planning  
11 Commission orally.

12 So is there -- did you want to hear a  
13 response on the foam issue?

14 CHAIRMAN RUNYON: On the foam, for sure.

15 MR. LUJAN: Great.

16 CHAIRMAN RUNYON: It was more of a foam, but  
17 it was talking about individual towns along the route,  
18 that sort of thing. Fire safety issues, in general.

19 MR. LUJAN: Okay. So with respect to the  
20 foam trailers, as a result of legislation that I believe  
21 was passed in 2014, (indiscernible) can give a specific  
22 reference, but basically compelled us to work  
23 voluntarily with the state of Oregon to enter into a  
24 memorandum of understanding to purchase six foam  
25 trailers, which we have done and they are in possession

1 of the state fire marshall.

2           So they are being disbursed throughout the  
3 different areas of the state. I'm not sure, with  
4 respect to the location, in the Gorge or near the Gorge,  
5 but that's something that we have done. I executed an  
6 agreement with the state fire marshal. And we have  
7 purchased the trailers. They are onsite here in Oregon.  
8 So that's something we worked towards as a result of  
9 prior legislation.

10           With respect to training, we worked very  
11 hard. I don't have the exact number in front of me, but  
12 it's roughly about 340 firefighters have been trained in  
13 their stations, I believe throughout northern Oregon,  
14 with respect to fire HAZMAT response.

15           We also have voluntarily, as part of this  
16 memorandum of understanding with the state on the foam  
17 trailers, we have volunteered to provide training to the  
18 state, to send them to Pueblo, Colorado for training  
19 courses for first responders.

20           Gresham, Oregon had just sent, I believe,  
21 some firefighters to that training prior to the incident  
22 on June 3rd. Since the incident on June 3rd, I believe  
23 Chief Appleton, if he has not gone already with a couple  
24 of other firefighters in his community, will be going  
25 shortly to Pueblo, Colorado for that training. Thank

1 you.

2 MR. WYMAN: I think we're done.

3 MR. OLSEN: I think it would be appropriate  
4 to provide the party that made the objection an  
5 opportunity to rebut.

6 CHAIRMAN RUNYON: That's fine.

7 MR. KAHN: This -- this will be very brief  
8 since we weren't expecting this and the evidence came in  
9 during the rebuttal phase.

10 But I believe at the first Planning  
11 Commission hearing on September 6th, I think it was,  
12 that Mr. Appleton testified that foam would not have  
13 worked because of the intense heat from the fire, foam  
14 would have evaporated. They would have had to pour  
15 water on it to keep it cool, so foam is not the panacea.

16 Without any opportunity to go through the  
17 record, I can't respond any differently than that.

18 CHAIRMAN RUNYON: Okay. So at this point,  
19 that takes care of those things.

20 Any final comments, but not evidence from  
21 staff?

22 MS. BREWER: I can respond to some of the  
23 items that have been raised this evening, if you'd like  
24 me to, yes.

25 So I have a couple notes here. If I've

1 missed anything and you'd like me to answer any  
2 questions, specifically, please just let me know.

3 And Kristen and Dan, please chime in if I'm  
4 speaking out of turn in any of these things.

5 But in response to the testimony provided by  
6 Pacific Railroad, their comments about how voluntary  
7 compliance is easier in some ways because the devil is  
8 in the details and, you know, being mandatory is easy up  
9 front, but difficult in the long run.

10 It's definitely difficult in the long run,  
11 no matter how you slice and dice it, essentially. So in  
12 order for us to ensure that we have absolutely met our  
13 ordinance requirements, we do need to require something.  
14 We can't allow that to be voluntary.

15 I just want to point out, for the record,  
16 that there was comment provided that fluidity does bring  
17 potentially five to seven additional trains within that  
18 existing range of traffic.

19 I want to highlight Mr. Wyman's testimony  
20 about his preemption assertions about how a County would  
21 be implementing County rule to regulate federal  
22 legislation. And I want to point out that, yes, we are  
23 a County and we are implementing the local rule. But we  
24 are -- we're more than that in the Scenic Area. We are  
25 a designated implementing agency of the national act,

1 the National Scenic Area Act. So it's more than just a  
2 town implementing a county code.

3 Just in the rebuttal testimony, there was a  
4 note about it would have been nice if the Yakama Nation  
5 had provided comment earlier on in the process. And I  
6 just want to point out that our rules do specifically  
7 say that -- let's see, "failure of an Indian tribe to  
8 comment or consult on (indiscernible) as provided in  
9 these guidelines shall in no way be interpreted as a  
10 waiver of those rights." So I just want to make sure  
11 you knew that rule. It's very specific.

12 In response to the Yakama Nation's comments,  
13 I just want to make sure that you all understand that  
14 the cultural and natural resource provisions are  
15 separate from the treaty rights' provisions. So  
16 although there was a lot of conversation about how  
17 cultural, natural resource surveys were provided, those  
18 don't satisfy the treaty rights' provision on their own.  
19 They can't substitute the treaty rights.

20 And then there was some discussion about  
21 whether or not, as a response to a question from the  
22 Commission, whether or not the tribe would be willing to  
23 work with the applicant on negotiating a different  
24 alignment or a different scope of project. I just want  
25 to voice concerns about the -- that idea because we

1 would not have had a chance to evaluate whatever that  
2 outcome would have been as part of this review. And if  
3 that was something to be pursued in the future, it  
4 should be its own new application for full review.

5           The Friends of the Gorge provided comments,  
6 Mr. Kahn made some statements about how rules were not  
7 applied. All of the applicable rules are referenced in  
8 the staff reports in the final decision and made  
9 findings as to whether or not they complied or not.

10           And also, one other item, Mr. Kahn noted  
11 that there were four key viewing areas not within our  
12 scenic resource assessment. He is referring to a GIS  
13 layer provided by the Forest Service, Scenic Area Office  
14 and the Gorge Commission called the scene areas layer,  
15 which is created by a GIS tool using topographic maps  
16 and computer models to identify what might be visible  
17 from designated key viewing area points.

18           It is not 100 percent accurate that staff  
19 always starts every evaluation with that scene area  
20 layer and then we confirm in the field site visit to  
21 verify whether or not we can actually see the proposed  
22 development, based on topography. So I just want you to  
23 know that we did start with that layer and we went from  
24 there.

25           My last comment is just want to highlight

1 the significance of Warm Springs Tribal Chairman Austin  
2 Green attending this evening. You've now heard from  
3 three of the four treaty tribes for this project.

4 Any questions for me?

5 COMMISSIONER HEGE: I have a question. So  
6 the letter that we got from the counsel representing  
7 Friends of the Gorge, we just got it. We actually --  
8 I'm asking questions -- we haven't reviewed it and do we  
9 need time to review what's stated in there for both you  
10 and legal counsel to review that to see if there is any  
11 impact?

12 MS. BREWER: I have not seen it yet. And  
13 I'm seeing on Kristen's face, we would need some time to  
14 review it to be able to respond.

15 COMMISSIONER HEGE: Okay.

16 CHAIRMAN RUNYON: Any other comments from  
17 staff?

18 MS. BREWER: No.

19 CHAIRMAN RUNYON: And basically with that  
20 last answer there, I think we received our marching  
21 orders.

22 COMMISSIONER HEGE: A few questions. I lost  
23 my thought. Maybe this question is to legal counsel.  
24 But I guess what I heard UP say is that there -- it's  
25 clear that there is federal laws and regulations that

1 give them rights and so on.

2                   And I also heard other comments about, like,  
3 the treaty-related stuff that give -- well, we have laws  
4 and rules that we are mandated to require -- that  
5 require things. It seems to me -- and this is a  
6 question -- there's conflicts between those two legal  
7 conflicts. I understand theirs and I accept that. But  
8 we also have our things and they don't agree.

9                   Am I saying that right or am I not saying  
10 that right?

11                   MS. BREWER: Conflicts between the  
12 applicable federal rules?

13                   COMMISSIONER HEGE: Basically, yeah.

14                   MS. BREWER: I would say that's not uncommon  
15 and, yes, there are some conflicts.

16                   COMMISSIONER HEGE: So if that was to be the  
17 case, I mean, it doesn't seem like we can necessarily  
18 rule on that. I mean, it's not -- we're not a court of  
19 law.

20                   MS. BREWER: My recommendation would be that  
21 our job is at home and our rules. And where there's  
22 conflict, there may be challenges in the future. But  
23 our job is to implement our rules to the best of the  
24 ability.

25                   COMMISSIONER HEGE: Okay. And one thing

1 that I forgot, I think there was a comment about how  
2 thousands of trees were going to be taken down.

3 Was that an accurate statement? Do we know  
4 the numbers of trees at all?

5 MS. BREWER: So the applicant provided a  
6 very detailed tree survey. All of the individual trees  
7 were cataloged and GPS'd and mapped. And if you include  
8 all the proposed clearings, yes. There were many, many  
9 trees proposed removed. The Planning Commission  
10 prohibited the most significant clearing that was  
11 proposed.

12 COMMISSIONER HEGE: That was that six acre?

13 MS. BREWER: Mm-hm. There will still be  
14 trees removed, but not nearly as many as the original  
15 proposal requested.

16 COMMISSIONER HEGE: Okay. And I'm assuming  
17 that there's -- if the trees are removed, there's some  
18 requirement to, like, replace or do something?

19 MS. BREWER: Yes. There is a mitigation  
20 issue specified in the Commission's approval,  
21 specifically for Oregon White Oaks.

22 COMMISSIONER HEGE: Okay. And one other  
23 thing I heard was this issue of a landscaping plan and  
24 that we require one. None was submitted. Can you  
25 address that?

1 MS. BREWER: In this particular application  
2 because we knew that due to the location of the railroad  
3 corridor, being up against the river, and the fact that  
4 there simply is no location to plant new screening  
5 vegetation along most of the project area, especially  
6 where the new development was going to included.

7 We felt it was most informative for our  
8 scenic resource analysis to better understand what trees  
9 and screening vegetation were coming out so that we  
10 could address all of the structural development with the  
11 scenic resource evaluation; the colors and materials and  
12 siding and minimizing cut faces as fill as much as we  
13 could to ensure that the development was able to meet  
14 the scenic visual standard, the visual quality  
15 objectives for each landscape setting.

16 Vegetation is supposed to be sort of a last  
17 resort when it comes to complying with your landscape  
18 setting and your ability to comply with the scenic  
19 resource criteria. That said, we took a different  
20 approach. We didn't call it a landscaping plan, but it  
21 was essentially satisfying the same requirement and the  
22 same needs for our ability to analyze the effects.

23 It's called a tree inventory instead of  
24 landscaping plan. And part of the reason why we felt it  
25 was not possible to plant new vegetation is, again,

1 because of the physical constraints, but also because  
2 any vegetation within there -- the vegetation would have  
3 needed to be in and around those properties to comply  
4 with our regulation.

5 Because the corridors were so narrow, we  
6 were concerned that planting new trees that close to the  
7 tracks would actually increase fire risk. And that was  
8 not something we were willing to taking the risk for.

9 CHAIRMAN RUNYON: Anything else?

10 So, Commissioner Hegge, you brought up the  
11 last batch of letters and Angie made a comment, as well  
12 as Ms. Campbell apparently agreed with that comment that  
13 you haven't had a chance to review it. And --

14 MS. CAMPBELL: I haven't seen it.

15 CHAIRMAN RUNYON: So I scanned. It seemed  
16 like it was substantial like many of the others we've  
17 gotten in the short time we had to look at it. And I  
18 have not read it thoroughly. But yeah. After a few  
19 weeks of this, you start making up things.

20 So what are you thinking, Scott? Are you  
21 looking to continue since you brought that up? And if  
22 we're going do to that, we have to think about a date.  
23 I know we had one tentative date out there, but there  
24 was some problems with that, so.

25 COMMISSIONER HEGGE: I guess I would look to

1 staff and counsel to advise us on what they think the  
2 approach, given this information, what the approach is  
3 going on from here.

4 I have some thoughts about the where I think  
5 we're going to go, but I'm just wondering, do we need to  
6 take not, you know, not do -- there's some options in  
7 here that we can look at. But should we not do that at  
8 this point and take time and deal with that later? Or  
9 you think we have enough to move forward at this point  
10 or should we wait to review that?

11 MR. OLSEN: Mr. Chairman, members of the  
12 Board. You've got a few options. First of all, if your  
13 Board is inclined to agree with the Friends and deny the  
14 application, then you may not need that letter because  
15 you feel that there's enough evidence already without  
16 having enough detailed opportunity to review that letter  
17 to deny it.

18 Conversely, if you're inclined to approve  
19 the application, you may also conclude that you got  
20 enough evidence and that there's really nothing that's  
21 likely to be in the letter that would be -- change your  
22 mind. The applicant or the opponents had an opportunity  
23 to summarize their testimony during testimony. And, you  
24 know, this is not uncommon to get a lot of documents at  
25 the last minute. And it doesn't always mean that you

1 have to have a continuance.

2 And then your third option is, of course, to  
3 continue to give you more opportunity to review and have  
4 to come back to conduct -- to deliberate at another  
5 time.

6 I would want to make sure we have staff  
7 weigh in on that because if you want to continue this,  
8 to have an opportunity to spend more time reviewing the  
9 record, we would then need you to do that, have a  
10 meeting where you indicate your tentative decision, at  
11 least, perhaps, a final decision, but if not, then a  
12 tentative decision.

13 And if it is a tentative decision, then you  
14 would need to hold it over yet again to provide staff  
15 with an opportunity to finish up the findings and adopt  
16 that. So we could be looking at a couple continuances.  
17 And I know we're running up against the deadline. I'm  
18 not sure exactly what that deadline is.

19 MS. BREWER: November 17th.

20 Mr. Olsen: So November 17th. Under the  
21 state law, the statute says, basically, you have to make  
22 a decision within 356 days. The problem with the  
23 statute is it doesn't say what happens if you don't.

24 There are other statutes that say that the  
25 decision is void. But that's in a different context.

1 There's another statute that says the applicant can file  
2 in a Circuit Court proceeding. It's not clear whether  
3 that applies in this case. And of course, the applicant  
4 can always waive, if they chose to.

5 So you are running up against it. So if you  
6 do desire to continue this matter to have more time to  
7 review the record, we would need to try to do that on a  
8 pretty quick time frame.

9 COMMISSIONER HEGE: Okay. So I guess I can  
10 tell you where I'm at. So when I look at this whole  
11 project, I think my -- my -- my perspective is I look at  
12 it from a standpoint of safety. It's critical that the  
13 operation railroad, you know, anywhere, but certainly  
14 here in Wasco County, we want it to be operated safely.  
15 We're going to require it to be operated safely. So I  
16 think with our rules, as our staff has said, you know,  
17 that's a key issue.

18 I think the other thing is impacts to our  
19 citizens. And, obviously, all of these things are  
20 addressed in all of the conversations, in the testimony  
21 and the staff report. I think in terms of impact to me,  
22 the primary one is noise and how we deal with that and  
23 how that's responded to.

24 So when I look at everything that we've seen  
25 and I can tell you I have not read every single page.

1 There's thousands and thousands of pages, but I've read  
2 many of them, my tendency is staff report that they  
3 provided to us today and the comments that they made,  
4 the presentation that Angie made, my tendency is to  
5 agree with what she's saying, follow the rules, our  
6 rules.

7 And so the conditions that were, you know,  
8 largely removed, I think that I stand probably with her  
9 opinion, that those need to be added back in, in terms  
10 of the staff report.

11 I think the challenge that I see right now,  
12 though, is in staff recommendation, which says if the  
13 Board is not able to find the proposed development would  
14 not adversely affect treaty rights, then staff  
15 recommends option C, reverse Planning Commission's  
16 decision and deny the proposed development.

17 And right now I cannot see how this, based  
18 on the comments that we had, you know, I don't see how  
19 it doesn't adversely affect treaty rights, based on the  
20 discussions I've had with staff and how we deal with  
21 these and how to respond.

22 It doesn't seem like that issue was really  
23 vetted out. And it seems like we're kind of at a  
24 standstill. And I understand Ups position to be, you  
25 know, we have all these rights and rules and stuff. And

1 I don't disagree with that, but I also think we have a  
2 responsibility to deal with our rules and laws and  
3 judgment based on that and then someone else has to  
4 really decide who's right in those two parties.

5 So that's kind of where I'm at right now in  
6 terms of just for deliberation standpoint.

7 CHAIRMAN RUNYON: One the options, though,  
8 is to put the planning director, planning staff  
9 conditions back into the document. In other words, go  
10 against the Planning Commission where -- where they took  
11 some things out that were recommended. And a couple of  
12 those had to do with treaty rights and whatnot. And I'm  
13 leaning in that direction. That is a more reasonable  
14 approach, I think, no matter what we do.

15 It's going to be appealed either way. It's  
16 going to be around awhile. I have a lot of faith in our  
17 Planning Department and plus the fact that our planning  
18 director was a former planning director for the Gorge  
19 Commission. So she's pretty darn thorough. And I think  
20 the railroad knows that.

21 I have been reading, at least since last  
22 Wednesday. So although we may have gotten more paper  
23 today, after six years as a County commissioner and  
24 eight years as a Port of the Dalles commissioner, I know  
25 you get things late in the game. But they're, for the

1 most part, they did not appear, in my scan, appear to be  
2 substantially different. But at this point, that's kind  
3 of where I'm at, is I would take the comment of the  
4 planning director and her staff and put those back into,  
5 if we were to approve.

6 COMMISSIONER KRAMER: Agree with most of  
7 that. But I was listening to what we've heard with the  
8 increase in rail traffic five to seven more. I think  
9 that it does adversely affect. And so I'm -- I'm  
10 leaning to -- I'm leaning to No. 4, to reverse and deny.  
11 So something like maybe we're at odds here. You know,  
12 we may need more time to deliberate.

13 CHAIRMAN RUNYON: Any comments?

14 COMMISSIONER HEGE: Well -- and I would  
15 agree with Chair Runyon. I think that it's clear to me  
16 that in order to fulfill, stand by and really be with  
17 our law, you know, I think that even though I understand  
18 the reasons for taking them out, I think they need to be  
19 put back in.

20 So I think I agree with that. I think when  
21 you get to the issue of treaty rights, I'm troubled with  
22 how that plays out. And it seems to me like there are  
23 impacts and they haven't been addressed. And it's not  
24 really -- based on the discussion I have had, it's not  
25 necessarily our call to say whether they are or not.

1 It's really our partners, which is the tribes, to say if  
2 the treaty rights are okay or not. And if they're not,  
3 it's pretty difficult for me to go against that.

4 So somehow, I think that issue needs to be  
5 resolved, should be resolved. And I'm not sure how to  
6 do that, but it's certainly not a call I'm going to make  
7 to say, I don't -- the treaty rights are not impacted.  
8 I think it's clear that they are. It sounds to me from  
9 some of the testimony, there's possibilities for that to  
10 be worked out. But it hasn't been worked out, so it's  
11 hard for me to say I approve.

12 I think it's certainly something that is  
13 going to have to be dealt with outside of this body, in  
14 my opinion.

15 And maybe the other question I would ask  
16 Angie, your thoughts on these discussions? I mean, do  
17 you have any thoughts to add to this? Or even Kristen,  
18 I'd be interested in your thoughts. Or Dan.

19 MS. BREWER: Dan had a good suggestion that  
20 I clarify the recommendation on the staff summary that  
21 you have in front of you.

22 It really comes down, from staff's  
23 perspective, based on the analysis with the grounds of  
24 appeal, and I haven't seen the Friend's new information.

25 But based on information we have, what it

1 really comes down to for staff is treaty rights. We  
2 feel very strongly about everything else in our analysis  
3 and in our recommendations. Adding those conditions of  
4 approval back in would address a lot of the conditional  
5 use provisions and other provisions we were concerned  
6 about.

7           However, the treaty rights impacts are --  
8 they are -- without information to defend an alternate  
9 or opposing perspective, which we do not have, it's  
10 difficult for us to disagree with our partners and our  
11 experts and the treaty rights that there may be an  
12 impact. And our rules require us to consider any  
13 effects on modification of those rights very seriously.

14           So my recommendation is if you feel that  
15 there is a treaty rights impact that could result from  
16 this project, then the project must be denied.

17           If you feel you heard that there is no  
18 treaty rights impact, then I would recommend adding  
19 those conditions of approval back in and affirming the  
20 Planning Commission's decision.

21           So, D (2) which is the conclusion of the  
22 treaty rights protection process specifically says, "The  
23 treaty rights protection process may conclude if the  
24 County determines that the proposed uses would not  
25 affect or modify treaty rights of other or other rights

1 of any Indian tribe. Uses that would affect or modify  
2 such rights shall be prohibited." So I guess --

3 COMMISSIONER HEGE: Could you read that one  
4 more time?

5 MS. BREWER: Sure.

6 "The treaty rights protection process may  
7 conclude if the County determines that the proposed uses  
8 would not affect or modify treaty rights of other or  
9 other rights of any Indian tribe. Uses that would  
10 affect or modify such rights shall be prohibited."

11 So I guess I would ask you, if you feel you  
12 heard a treaty rights impact with the evidence provided  
13 to you, do you even need to consider any of the  
14 additional information to make your decision?

15 CHAIRMAN RUNYON: But at the same time, one  
16 of your possible motions or whatnot includes adding back  
17 in the conditions that were taken out. And of those,  
18 there were treaty rights.

19 MS. BREWER: Yes, you're correct. Quite a  
20 few of the ones removed were specifically included to  
21 address treaty rights. But the Yakama Nation's letters  
22 received after that staff report was prepared have  
23 specifically said those conditions of approval were not  
24 sufficient.

25 Again, the Board has the discretion to reach

1 a different conclusion from staff.

2 COMMISSIONER HEGE: So Kristen, you're our  
3 counsel, and Dan. Can you please give us some advice.

4 MS. CAMPBELL: I agree with Ms. Brewer's  
5 summary of the law. And I agree with your ultimate  
6 assessment that it's your role to apply all of the facts  
7 that you've heard to our ordinance, which Angie just  
8 recited.

9 MR. OLSEN: I think what we're saying is if  
10 you decide that there is not an impact on treaty rights  
11 or that the conditions that the Planning Commission  
12 removed, if you reimpose those, that would adequately  
13 take care of the impacts on treaty rights, you need to  
14 articulate that fairly carefully to staff, so they can  
15 be put in the findings.

16 And if you feel that you can't articulate  
17 that, then, that obviously forms your decision.

18 COMMISSIONER HEGE: So the question I have  
19 is, I understand that. But, like, how is that  
20 determined and how is that articulated? I've had  
21 conversations about a myriad of things, like wildlife  
22 issues. We aren't the judge and jury. We go off to our  
23 partners. We ask them. You do this study. You look at  
24 the study and tell us whether there's impacts.

25 And so, this is a similar situation, where

1 you know, we are not necessarily the ones, but we're  
2 looking for our partners to tell us. And in this case,  
3 it seems like -- tell me if I'm wrong -- our partners  
4 have made it very clear in a pretty unanimous situation  
5 that the treaty rights have not been addressed with  
6 what's proposed here. They didn't suggest it could  
7 never occur, but they suggested as it is now, it's not  
8 being addressed and there's -- the mitigation is not  
9 adequate.

10 So I guess the question is, how do we  
11 determine what mitigation -- and is it our decision or  
12 how do we get to that point?

13 MS. BREWER: So the letter actually says  
14 that there is no mitigation that would be adequate. So  
15 I don't feel comfortable inserting potential mitigation  
16 and assuming that it would be adequate when we've heard  
17 it is not, it could not.

18 Again, I agree there might be different  
19 versions of this project in the future that are proposed  
20 that may be maybe more proactive to address this issue  
21 and could resolve some of those concerns, but they  
22 haven't been for this particular proposal.

23 COMMISSIONER HEGE: Okay. Yeah. And that's  
24 why I asked the follow-up question was -- is there  
25 something -- and what I heard was "perhaps." Because it

1     seemed like the issue, there's a track out there now.

2     There's dangers and issues out there now.

3             So, the question really is, is this going to  
4     make it worse or make it better? The question was, if  
5     it's not worse, then maybe the tribes would be okay with  
6     it. But right now we don't have an answer. And what's  
7     proposed, the tribes have said no, this will be worse  
8     and it will impact them. That's what I heard.

9             MS. BREWER: That's what I heard as well.

10            MR. OLSEN: I do think it's important to  
11     make sure you understand. The tribes don't have a veto  
12     here. It's your decision. But they're the experts.  
13     And you need to find something in record -- if you feel  
14     that they are wrong. You need to find something in the  
15     record that supports that decision.

16            CHAIRMAN RUNYON: On the other hand, we've  
17     been told here tonight our actions don't mean a whole  
18     heck of a lot. I'm having a hard time putting all that  
19     together.

20            I can make a real quick motion here if we're  
21     done with the questioning.

22            Steve, do have anything to add?

23            COMMISSIONER KRAMER: Not right now.

24            CHAIRMAN RUNYON: How about this? I'll make  
25     a motion to deny the application. Is there a second?

1 COMMISSIONER HEGE: Can I ask a question?

2 CHAIRMAN RUNYON: You can ask a question  
3 once we get the second.

4 COMMISSIONER HEGE: I'll second.

5 COMMISSIONER KRAMER: Mr. Chair, I think to  
6 reverse and deny would be more appropriate due to the  
7 fact that I think that we need to add the findings and  
8 options back in, so as this moves forward it's not  
9 remanded back to us. I think that we need to do our due  
10 diligence here and make sure that we've done all that we  
11 can. And I think that we need to -- we need to give  
12 staff time to put those back in for -- before can -- so  
13 anyway, that's my thoughts on that.

14 CHAIRMAN RUNYON: Further to that  
15 discussion, I don't disagree. I just wanted to get  
16 moving.

17 COMMISSIONER HEGE: So I guess I would ask  
18 staff and counsel for comments on what Commissioner  
19 Runyon just said in regards to that.

20 MR. OLSEN: Mr. Chairman, members of the  
21 Board, what we're looking for, I think, is for the --  
22 anyone who would be interested -- well, before you vote  
23 on a motion before -- for you to articulate in the  
24 record what evidence either leads you to support the  
25 motion or what evidence leads you to oppose the motion,

1 so that it gives the -- assuming, for example, the  
2 motion passed. It would give us some guidance for  
3 preparing the findings so that we can capture your  
4 reasoning.

5 If denied, then we would have basis to go  
6 onto the next motion.

7 COMMISSIONER HEGE: So I'm wondering, this  
8 issue where we talked about at our work session the idea  
9 of tentatively doing this and giving time to staff to  
10 work through the findings and then come back for a  
11 final. And that's not the motion on the floor right  
12 now, but that's -- is that something we should consider?

13 MS. BREWER: You're certainly welcome to  
14 consider it. But either way, you're still going to have  
15 to provide what Dan just described, so that we can  
16 articulate the findings on the report.

17 MR. OLSEN: I recommend that you either  
18 tentatively deny or tentatively approve and set it over  
19 for final adoption of findings. Again, having first  
20 provided staff some guidance for those findings.

21 CHAIRMAN RUNYON: So what was asked by me a  
22 moment ago was reasons for the motion and they were  
23 pretty well explained right here at the table, in my  
24 opinion about treaty rights and so forth. So that's why  
25 I made the motion. I don't know that I will vote for

1 it. But it's out there.

2 So we have a motion on the table. Is there  
3 any more discussion?

4 MR. OLSEN: I would ask in aid of  
5 understanding a motion, does that include continuing it  
6 for final adoption of findings?

7 CHAIRMAN RUNYON: No, it does not.

8 MR. OLSEN: So just a final decision  
9 tonight?

10 CHAIRMAN RUNYON: As we were told earlier,  
11 it that was a decision we didn't need to read anymore  
12 paper.

13 Or the reverse of it, if a different motion  
14 was made. For example, if this one fails, another  
15 motion is made. We can either read more paper or we can  
16 make an affirmative decision to approve it. I'm not  
17 swaying the vote here at all.

18 All in favor of hearing no more discussion?  
19 All in favor of the motion to deny the application?

20 MS. BREWER: I ask a clarifying question.  
21 You did say you wanted to include those conditions of  
22 approval back in or original --

23 CHAIRMAN RUNYON: No. This was just deny.

24 MR. OLSEN: Just deny the application on the  
25 treaty rights grounds.

1 CHAIRMAN RUNYON: All those in favor? All  
2 those opposed?

3 COMMISSIONER HEGE: Aye.

4 CHAIRMAN RUNYON: Aye.

5 COMMISSIONER HEGE: Okay. I would make a  
6 motion to reverse and deny to allow staff time to make  
7 necessary changes and findings and conditions before  
8 adoption.

9 I move to accept option C, to tentatively  
10 deny the application and continue this matter to a point  
11 in the future to be determined.

12 CHAIRMAN RUNYON: There is a date?

13 COMMISSIONER KRAMER: November 10th.

14 COMMISSIONER HEGE: Okay. And the basis for  
15 the denial is simply the fact that the treaty rights  
16 have been affected.

17 COMMISSIONER KRAMER: Second.

18 CHAIRMAN RUNYON: Motion a second. Any  
19 further discussion?

20 COMMISSIONER HEGE: Quick question.

21 So, Counsel, I'm curious, your comment, is  
22 that motion acceptable? Do you think it's going to  
23 work? What are your thoughts?

24 MR. OLSEN: Mr. Chairman, members of the  
25 Board, what I wrote down from your previous comments

1 were that there were concerns about impact on treaty  
2 rights relating to safety, increasing the rail traffic,  
3 and there might be the potential to work out those  
4 impacts, but there were proposals before you that  
5 adequately address the impact.

6 That's what I've got so far. To the extent  
7 you can add anything to that, based on your  
8 consideration of the evidence, the more the better.

9 COMMISSIONER HEGE: I would concur with  
10 that. I think it's relatively simple. And I think  
11 you've captured it, yes.

12 CHAIRMAN RUNYON: Anything else?

13 COMMISSIONER HEGE: One thing.

14 CHAIRMAN RUNYON: Of course.

15 COMMISSIONER HEGE: Sorry.

16 The motion that we read, we're going to  
17 revise the staff? Is that right?

18 MS. BREWER: What I'm hearing you say is  
19 we'll revise the staff based on treaty rights alone.  
20 I'd love some clarification of the submission of  
21 approval that previously addressed the treaty rights and  
22 whether or not you want those.

23 MR. OLSEN: If it's a denial, it's not a --

24 MS. BREWER: Right, no conditions. But I  
25 just want to make sure we're all on the same page.

1 Because I heard Commissioner Kramer mention that the  
2 conditions should come back to minimize a remand risk.

3 So I'm hearing you say we're denying just on  
4 treaty rights. The bulk of our work would be spent on  
5 revising the finding, specifically addressing that.

6 CHAIRMAN RUNYON: As we heard before, we had  
7 specific wording in our own ordinances in the County  
8 regarding treaty rights, correct?

9 MS. BREWER: Correct.

10 CHAIRMAN RUNYON: So those are the things  
11 that I'm thinking we're talking about.

12 COMMISSIONER KRAMER: Yes.

13 COMMISSIONER HEGE: But then my question  
14 would be in terms of remanding, do we need to address  
15 the rest of the staff report or not?

16 MR. OLSEN: The rule is you only need one  
17 ground to deny. But to the extent that you can address  
18 the other issues, it certainly -- you know, if there are  
19 more reasons to deny that you feel are appropriate, then  
20 certainly, it is useful to have those. If you feel that  
21 all of the other standards have been met, to the best of  
22 your understanding, then you can articulate that as  
23 well.

24 COMMISSIONER HEGE: I think my motion to  
25 deny is based on treaty rights, period. But I also

1 agree with the recommendations to the staff report, the  
2 changes basically to remove all of what the staff said,  
3 I agree with those too.

4 But I think the denial is based purely on  
5 the tribal issue. So I do want those other things  
6 changed, but the denial is not based on those, it's  
7 based on the treaty issue.

8 MS. BREWER: Okay. So adding back in what  
9 was removed and denying based on treaty rights?

10 COMMISSIONER HEGE: Yes, based on your staff  
11 recommendation.

12 COMMISSIONER KRAMER: Those numbers would be  
13 13, 15, 16 and 20? Those were the four that were  
14 struck?

15 COMMISSIONER HEGE: And the reason for that  
16 was based to comply with our (indiscernible) and based  
17 on staff recommendation, we must do that in order to  
18 comply with our own (indiscernible).

19 CHAIRMAN RUNYON: I thought I heard in the  
20 report, the modifications are 14, 17, 21, 23. Are those  
21 the other ones that had modifications to them?

22 MS. BREWER: The modifications don't bring  
23 them out of compliance. There is a correction, two  
24 corrections I noted that I would be happy to go ahead  
25 and make.

1                   CHAIRMAN RUNYON: And to clarify one more  
2 thing before we vote, does this preclude any new  
3 information, new evidence or are we good with what we  
4 got here, the review of what's received?

5                   MR. OLSEN: It precludes new evidence, Mr.  
6 Chairman, but when you see the revised findings, then  
7 you can certainly modify those. You can even change  
8 your mind on the decision. But it does preclude new  
9 evidence. Because this is a tentative decision.

10                  CHAIRMAN RUNYON: Okay. Good. All in favor  
11 signify by saying aye.

12                  COMMISSIONER HEGE: Aye.

13                  COMMISSIONER KRAMER: Aye.

14                  CHAIRMAN RUNYON: Chair says aye. Thank you  
15 everyone.

16                  (Whereupon, the proceedings adjourned at  
17 8:10 p.m.)

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1 I, Mary C. Soldati, Registered Professional  
2 Reporter, do hereby certify that the proceedings were  
3 taken down by me in stenotype and thereafter reduced to  
4 typewriting; and, that the foregoing transcript,  
5 constitutes an accurate record of said proceedings, to  
6 the best of my ability.

7 Witness my hand at Portland, Oregon, this 10th  
8 day of November, 2016.

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Mary C. Soldati, RPR

