



IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF VACATING THE DECISION IN THE WASCO COUNTY BOARD OF COMMISSIONERS LAND USE PLANNING CASE PLASAR-15-01-000

**RESOLUTION #21-008**

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

WHEREAS, on January 9, 2015, Union Pacific Railroad Company (“UPRR”) submitted an application (“Application”) to Wasco County for the expansion of an existing railroad siding on either side of Mosier, Oregon (“Mosier Project”); and

WHEREAS, on September 26, 2016 the Wasco County Planning Commission approved the Application subject to certain conditions of approval; and

WHEREAS, on November 2, 2016, the Wasco County Board of Commissioners (“Wasco County BOC”) determined that the Mosier Project adversely affected the subject Treaty Tribes’ treaty-reserved rights in violation of the Columbia Gorge National Scenic Area Act and its corresponding Wasco County National Scenic Area Land Use Development Ordinance and denied the application on that basis (“Wasco County’s Decision”); and

WHEREAS, UPRR appealed Wasco County’s Decision to the Columbia River Gorge Commission (“Gorge Commission”) which affirmed Wasco County’s Decision; and

WHEREAS, UPRR appealed the Gorge Commission’s decision to the Oregon Court of Appeals (“COA”) in Case No. 166300 (pending); and

WHEREAS, UPRR also commenced United States District Court (“District Court”) Case No. 3:17-cv-00038 seeking further review of the Mosier Project. The District Court dismissed the action based on the failure to join the Treaty Tribes as parties, whom the court determined were necessary and indispensable to the action; and

WHEREAS, UPRR commenced the Ninth Circuit Case No. 17-35207 (pending) challenging the District Court’s decision; and

WHEREAS, the COA appeal and the Ninth Circuit appeal have been stayed and/or abated while the Parties participated in mediation; and

WHEREAS, pursuant to the mediation, the Parties entered into a Settlement Agreement (“Agreement”) dated September 1, 2021 to resolve the claims between them pertaining to Mosier Project;

WHEREAS, pursuant to the Paragraph 2.3(a) of the Agreement, UPRR has withdrawn the Application; and

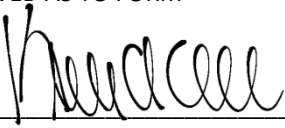
WHEREAS, pursuant to Paragraph 2.5(a) UPRR has requested that the Wasco County BOC vacate its November 11, 2016 decision and the September 26, 2016 decision of the Planning Commission.

NOW, THEREFORE, IT IS HEREBY RESOLVED: Pursuant to Paragraph 2.3(a) of the Agreement, the Wasco County Board of Commissioners hereby recognizes that the Application has been withdrawn; and


IT IS HEREBY FURTHER RESOLVED: Pursuant to Paragraph 2.5(a) of the Agreement, the Wasco County Board of Commissioners hereby vacates its November 11, 2016 decision and the September 26, 2016 Planning Commission decision.

DATED this 6<sup>TH</sup> day of October, 2021.

APPROVED AS TO FORM

  
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Kristen Campbell, County Counsel

Wasco County Board of Commissioners

  
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Scott C. Hege, Chair

  
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Kathleen B. Schwartz, Vice-Chair

  
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Steven D. Kramer, County Commissioner