

No. 22-321

IN THE SUPREME COURT OF THE UNITED STATES

HEREDITARY CHIEF WILBUR SLOCKISH; CAROL LOGAN;
CASCADE GEOGRAPHIC SOCIETY; MOUNT HOOD
SACRED LANDS PRESERVATION ALLIANCE,

Petitioners,

v.

U.S. DEPARTMENT OF TRANSPORTATION, ET AL.,

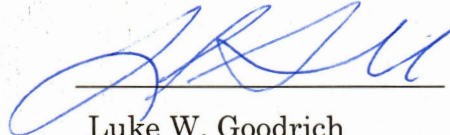
Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JOINT STIPULATION TO DISMISS

Pursuant to Rule 46.1 of the Rules of this Court, and in light of the parties' settlement reflected in the attached Settlement Agreement, all parties respectfully stipulate that this case be dismissed. All fees due to the Clerk have been paid, and each party will bear its own costs.

Respectfully submitted,



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Patterson Buchanan Fobes
& Leitch, Inc., P.S.
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Portland, OR 97204
(503) 200-5400

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Counsel for Petitioners



Elizabeth Prelogar
Solicitor General
United States Department of Justice
Washington, DC 20530-0001
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OCTOBER 5, 2022

Counsel for Respondents

Attachment 1:
Settlement Agreement

SETTLEMENT AGREEMENT

PARTIES

“Plaintiffs” shall mean Hereditary Chief Wilbur Slockish; Carol Logan; Cascade Geographic Society; and Mount Hood Sacred Lands Preservation Alliance.

“Defendants” shall mean the United States Department of Transportation, the Federal Highway Administration, the United States Department of the Interior, the Bureau of Land Management, and the Advisory Council on Historic Preservation.

Plaintiffs and Defendants are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS the individual Plaintiffs represent that for decades, and following in the footsteps of their ancestors, they practiced their ceremonial, cultural, and religious ways of life at a sacred site known to them as *Ana Kwna Nchi Nchi Patat*, or the “Place of Big Big Trees,” which was located north of U.S. Highway 26 in Oregon, and which was one of several sacred sites and usual and accustomed places in the area; and

WHEREAS the Defendants in 2008 authorized a project to add a center turning lane on a portion of U.S. Highway 26; and

WHEREAS Plaintiffs filed suit against Defendants in Civil Action No. 08-cv-1169, *Slockish et al. v. United States Federal Highway Administration et al.*, in the United States District Court for the District of Oregon (herein, the “Lawsuit”); and

WHEREAS Plaintiffs allege in that lawsuit that the 2008 road project resulted in the destruction of that sacred site; and

WHEREAS Plaintiffs and Defendants, through their authorized representatives, without any final adjudication of the issues of fact or law with respect to Plaintiffs’ claims in the Lawsuit, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in the Lawsuit; and

WHEREAS all Parties agree that settlement of this action in this manner is in the

public interest and is an appropriate way to resolve the dispute between them; and

WHEREAS Plaintiffs and Defendants desire to enter into this Settlement Agreement (the “Agreement”).

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

AGREEMENT

1. The United States agrees to provide a tree or plant barrier on the triangular shaped parcel of Wildwood National Recreation land north of U.S. 26, referred to by the United States as the “Dwyer Triangle,” and by Plaintiffs as *Ana Kwna Nchi Nchi Patat* or the Place of Big Big Trees, and depicted in **Exhibit 1**. The Dwyer Triangle is further identified as a parcel of land located in section 31, township 2 south, range 7 east, Willamette Meridian, Clackamas County, Oregon, containing 8 acres, more or less, and more particularly described as follows: “That portion of the south 1/2 of the northeast 1/4 lying north of the northerly right-of-way of U.S. Highway No. 26.” No later than May 1, 2024, the United States will provide a reasonable approximation of the tree or plant barrier as shown in the site plan in **Exhibit 2**, which indicates the location of the tree/plant barrier, and the chart in **Exhibit 3**, which lists the number and types of trees/plants which will be placed at the location. Prior to executing this Agreement, Plaintiffs Slockish and Logan provided the attached site plan to the Oregon Department of Transportation (“ODOT”), and ODOT confirmed via letter that it has no objection to the proposed site plan. See **Exhibit 4**.

2. The United States will make all reasonable efforts to ensure that the tree or plant barrier takes root and thrives. Reasonable efforts shall include site analysis, procurement and installation of the trees/plants, and three years of appropriate maintenance (to include watering and manual maintenance as determined necessary by BLM specialists). The United States will also replace trees as necessary to maintain, at a minimum, the number and types of trees specified in Exhibit 3 for five years

after the first tree/plant planting.

3. Within 60 days of the Parties' execution of this Agreement, the United States will contact ODOT to determine if ODOT employees or contractors possess material associated with what Plaintiffs understand to be a stone altar or other artifacts previously located at the site. If, based on that contact with ODOT, the United States is able to recover material associated with the stone altar, this material shall be provided to Plaintiffs Slockish and Logan for re-construction of the stone altar at the location shown in **Exhibit 2**. If material is recovered which was not previously identified and considered through the Section 106 process of the National Historic Preservation Act (NHPA) for the project, the United States shall consult with federally-recognized Tribes and consulting parties regarding the appropriate disposition of those materials. The United States will notify Plaintiffs Slockish and Logan of any such recovery and consultation process. If no material is recovered and Plaintiffs Slockish and Logan still want to reconstruct the stone altar, they may re-construct it at the location shown in **Exhibit 2**. Within 60 days of the Parties' execution of this Agreement, the United States shall also provide \$1,000.00 to Plaintiffs Slockish and Logan jointly.

4. The United States agrees to promptly issue two keys to Plaintiffs Slockish and Logan to allow access through the existing gate to the Owl Mountain/Miller Quarry area for ceremonial and cultural uses. Nothing in this provision conveys any right, permission, or license to use private property or to make unauthorized uses of public property, including uses prohibited by statute, regulation land use plan, or other applicable law.

5. The United States agrees to work with Plaintiffs Slockish and Logan to develop and, within one year of the Parties' execution of this Agreement (subject to its duty of consultation with federally recognized tribal governments), install at the United States' expense one informational/interpretative sign within the Wildwood

Recreation Site reflecting the importance of the area to Native Americans. The final language provided for the sign is subject to review and approval by the United States. The Plaintiffs understand that the United States is required to consult with the federally recognized tribal governments connected to the area regarding the proposed sign language. In accordance with applicable law and in accordance with BLM's management of the area, the United States agrees to correct any damage or vandalism of the sign in accordance with the standards and schedule for recreational signs at the Wildwood Recreation Site. If the sign is located in a pay-for-entry area, the United States will provide Plaintiffs Slockish and Logan with cost-free access to view the sign.

6. Within 60 days of the Parties' execution of this Agreement, the United States shall send ODOT a letter requesting that Plaintiffs Slockish, Logan, and Cascade Geographic Society be notified of any future Title 23-funded widening or capacity projects within the following area: *From the City of Sandy on Highway 26 to its junction with Oregon Highway 35, and from Oregon Highway 35 to Hood River.* Plaintiffs' contact information is as follows:

Wilbur Slockish

[REDACTED]

Carol Logan

[REDACTED]

Cascade Geographic Society

[REDACTED]

Points of contact for the Plaintiffs within each defendant agency are as follows:

District Manager
Northwest Oregon District Office
U.S. Department of the Interior
Bureau of Land Management
1717 Fabry Rd., SE
Salem, OR 97306
Phone: 503-375-5646
Fax: 503-375-5622
BLM_OR_NO_Mail@blm.gov

Division Administrator
Oregon Division
Federal Highway Administration
530 Center St. NE, Suite 420
Salem, OR 97301
Phone: (503) 399-5749
Fax: (503) 399-5838
Oregon.FHWA@dot.gov

Javier Marques
General Counsel
Advisory Council on Historic Preservation
401 F St. NW., Suite 308
Washington, DC 20001
Phone: 202-517-0192
jmarques@achp.gov

The United States will ensure that these contacts have reviewed National Register Bulletin 38.

7. No later than one year after execution of this Agreement, the United States agrees to arrange for one meeting between Plaintiffs or their designees and the land acquisition offices of the relevant federal agencies (i.e., the Bureau of Land Management and the Forest Service) to look at parcels in the Mount Hood Area that the Plaintiffs believe are important and need to be protected by the agency buying these parcels. The Plaintiffs understand that such a meeting does not guarantee that any land would be purchased by the agency.

8. Within 10 days of the Parties' execution of this Agreement, the Parties shall

file a joint motion to dismiss Supreme Court Case No. 22-321 under Supreme Court Rule 46.1, indicating that each party will bear its own fees, costs, attorney's fees, and expenses.

9. All land use actions contemplated by this settlement agreement shall be subject to compliance with all applicable federal laws and regulations.

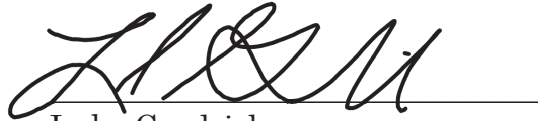
10. This Agreement may be modified by written stipulation among the Parties, which must be signed by the Parties and their counsel. In the event that any Party believes that another Party has failed to comply with any duty owed to that Party under this Agreement, the Party seeking enforcement shall provide the other Party with written notice of the claim. The Parties agree that they will meet and confer (in-person not required) at the earliest possible time in a good-faith effort to resolve the claim before seeking any judicial remedy.

11. The Parties agree that this Agreement was negotiated in good faith and constitutes a settlement of claims that were vigorously contested, denied, and disputed by the Parties.

12. The undersigned representatives of each Party certify that they are fully authorized by the Party or Parties they represent to execute this Agreement.

13. This Agreement shall become effective following execution by the undersigned representatives of Plaintiffs and Defendants. This Agreement may be signed in counterparts and all the signed counterparts together shall be considered the original of the single and same agreement with the terms as set forth herein. An electronic signature shall be considered a valid signature. Copies of the Agreement transmitted by facsimile or in PDF shall be as binding as an original copy.

FOR PLAINTIFFS HEREDITARY CHIEF WILBUR SLOCKISH, CAROL LOGAN,
CASCADE GEOGRAPHIC SOCIETY, AND MOUNT HOOD SACRED LANDS
PRESERVATION ALLIANCE:



Luke Goodrich
The Becket Fund for Religious Liberty
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Portland, OR 97204

James J. Nicita
302 Bluff Street
Oregon City, OR 97045

Attorneys for Plaintiffs

FOR DEFENDANTS THE UNITED STATES DEPARTMENT OF TRANSPORTA-
TION, THE FEDERAL HIGHWAY ADMINISTRATION, THE UNITED STATES
DEPARTMENT OF THE INTERIOR, THE BUREAU OF LAND MANAGEMENT,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION:

JOAN PEPIN Digitally signed by JOAN PEPIN
Date: 2023.10.03 14:37:56
-04'00'

Joan M. Pepin
Environment and Natural Resources
Division
United States Department of Justice
950 Pennsylvania Ave. N.W.
Washington, D.C. 20530

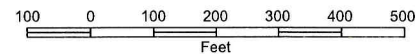
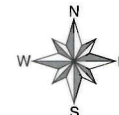
Attorney for Defendants

Exhibit 1

Exhibit prepared at the request of the Salem District office- Slokish Settlement



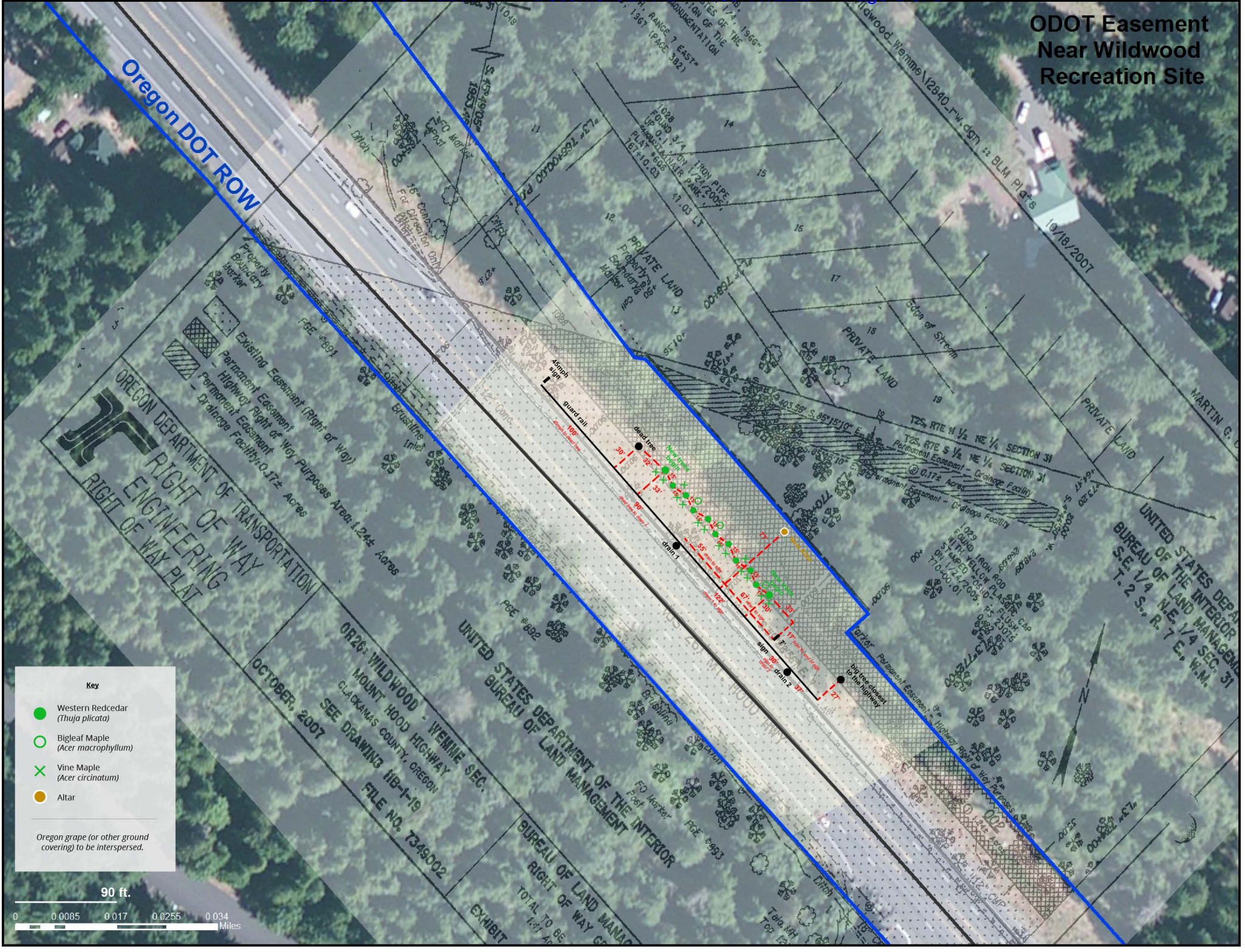
All that portion of the S 1/2 of the NE 1/4 of Section 31, T. 2 S., R. 7 E. lying north of the northerly right-of-way of U.S. Highway No. 26



No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification. M14-05-07

Exhibit 2

ODOT Easement Near Wildwood Recreation Site



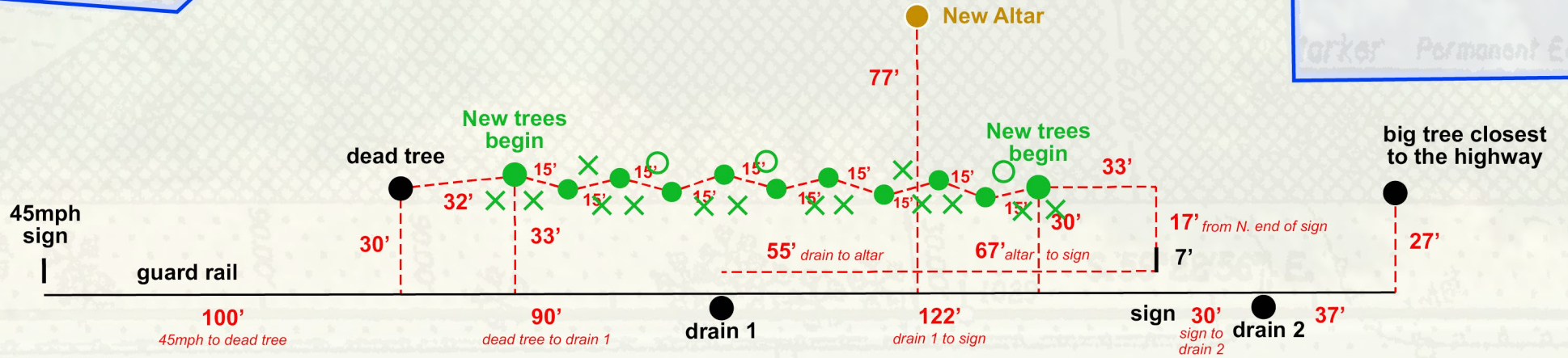
Key

- Western Redcedar (*Thuja plicata*)
- Bigleaf Maple (*Acer macrophyllum*)
- ✕ Vine Maple (*Acer circinatum*)
- Altar

Oregon grape (or other ground covering) to be interspersed.



(Detail)



Oregon DOT ROW

Key

- Western Redcedar (*Thuja plicata*)
- Bigleaf Maple (*Acer macrophyllum*)
- ✕ Vine Maple (*Acer circinatum*)
- Altar

Oregon grape (or other ground covering) to be interspersed.

Exhibit 3

Site Plan List of Trees

Species	Quantity*
Western Redcedar (<i>Thuja plicata</i>)	11
Bigleaf Maple (<i>Acer macrophyllum</i>)	3
Vine Maple (<i>Acer circinatum</i>)	14

**All trees to be at least 5-gallon size or equivalent.*

Exhibit 4



Oregon

Tina Kotek, Governor

Department of Transportation

District 2C

2225 NW Campus Dr.

Estacada, OR 97023-7748

Phone: (503) 665-4451

FILE CODE:

June 12, 2023

Via Email

Mr. Luke W. Goodrich

Vice President and Senior Counsel

The Becket Fund for Religious Liberty

1919 Pennsylvania Ave. NW, Suite 400

Washington, DC 20006

lgoodrich@becketlaw.org

Re: Replanting Trees and Rebuilding Stone Altar along U.S. 26

Dear Mr. Goodrich,

Thank you for consulting with my office about your clients' desire to replant trees and rebuild a stone altar north of US 26 near the Wildwood Recreation Site. I understand that you represent the Plaintiffs in *Slockish v. United States Department of Transportation*, and that as part of a settlement of that litigation, your clients are seeking the replanting of trees and rebuilding of a stone altar as shown on the attached site plan. On May 16, I visited the area with you, your clients, and Joseph Allen (our District 2C Permits Specialist) to discuss the project. I have also carefully reviewed the attached site plan.

This letter serves as formal confirmation that the Oregon Department of Transportation has no objection to the proposed site plan for the replanting of trees or rebuilding of the stone altar. Your plan would not interfere with traffic or impair the use or safety of the highway.

If you reach a settlement and wish to proceed with the site plan, please contact our office for further coordination. And if you have any questions or if I can be of any further assistance, please do not hesitate to let me know.

Sincerely,

Shawn A. Stephens

District 2C – Asst. District Manager

Oregon Department of Transportation