



# City of Portland, Oregon - Bureau of Development Services



1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandonline.com/bds

## Type III Decision Appeal Form

LU Number: LU 11-124052 CUPR

### FOR INTAKE, STAFF USE ONLY

Date/Time Received <u>8/12/11 @ 11:18 am</u>	<input checked="" type="checkbox"/> Action Attached
Received By <u>5th Fl Reception</u>	Fee Amount _____
Appeal Deadline Date <u>8/17/11</u>	<input checked="" type="checkbox"/> Fee Waived
<input checked="" type="checkbox"/> Entered in Appeal Log	Bill # <u>326524</u>
<input checked="" type="checkbox"/> Notice to Auditor	<input checked="" type="checkbox"/> Unincorporated MC
<input checked="" type="checkbox"/> Notice to Dev. Review	

**APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.**

### The appeal must be filed by the deadline listed in the Decision

Development Site 4310 SW Macadam Avenue, Portland, OR  
 Address or Location \_\_\_\_\_  
 Date August 11, 2011 Land Use Number LU 11-124052 CUPR (HO4110014)  
 Appellant's Name Rodney Grinberg on behalf of Lindquist Development Company  
 Street Address c/o Garvey Schubert Barer, 121 SW Morrison St., 11th Floor, Attn: John Junkin  
 City Portland State OR Zip Code 97204  
 Day Phone 503.553.3131 FAX 503.226.0259 email jjunkin@gsblaw.com

Appellant's Interest in the case (applicant, neighbor, etc.) Applicant

**Appellant's Statement** Please describe how the proposal meets or does not meet approval criteria, or how the City erred procedurally. The statement must address specific approval criteria or procedures and include the appropriate code citation(s).

The Hearings Officer erred by determining that the proposed tenant, ICE-ERO's, direct release from the building  
of a few detainees a week constituted an unreasonable safety risk to nearby uses and residents (PCC 33.915.205B),  
when the only evidence presented established that such releases posed no safety threat to nearby uses and  
residents. The Applicant reserves the right to further supplement this appeal.

Appellant's Signature [Handwritten Signature]

To file this appeal, take the following to the Development Services Center

- This completed appeal form
- A copy of the Type III Decision being appealed
- An appeal fee as follows:
  - Appeal fee as stated in the Decision, payable to City of Portland
  - Fee waiver for ONI Recognized Organizations approved
  - Fee waiver for low income individual approved (attach letter from Director)
  - Fee waiver for Unincorporated Multnomah County recognized organizations is signed and attached

CASE NO. 11-124052  
EXHIBIT I

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

The appeal must be filed by the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1500, Portland, Oregon, between 8:00 a.m. and 3:00 p.m. on Tuesday through Friday. On Mondays, and between 3:00 - 4:30 p.m. on Tuesday through Friday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

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## Type III Appeal Hearing Procedure

A Type III Decision may be appealed only by the applicant, the owner, or those who have testified in writing or orally at the hearing, provided that the testimony was directed to a specific approval criterion, or procedural error made. It must be filed with the accompanying fee by the deadline listed in the decision. The appeal request must be submitted on the Type III Appeal Form provided by the City and it must include a statement indicating which of the applicable approval criteria the decision violated (33.730.030) or what procedural errors were made. If the decision was to deny the proposal, the appeal must use the same form and address how the proposal meets all the approval criteria. There is no local Type III Appeal for cases in unincorporated Multnomah County.

Appeal Hearings for Type III Decisions are scheduled by the City Auditor at least 21 days after the appeal is filed and the public notice of the appeal has been mailed.

Appellants should be prepared to make a presentation to the City Council at the hearing. In addition, all interested persons will be able to testify orally, or in writing. The City Council may choose to limit the length of the testimony. Prior to the appeal hearing, the City Council will receive the written case record, including the appeal statement. The City Council may adopt, modify, or overturn the decision of the review body based on the information presented at the hearing or in the case record.

### Appeal Fees

In order for an appeal to be valid, it must be submitted prior to the appeal deadline as stated in the decision and it must be accompanied by the required appeal fee or an approved fee waiver. The fee to appeal a decision is one-half of the original application fee. The fee amount is listed in the decision. The fee may be waived as follows:

#### Fee Waivers (33.750.050)

The director may waive required fees for Office of Neighborhood Involvement (ONI) Recognized Organizations and for low-income applicants when certain requirements are met. The decision of the director is final.

##### A. ONI Recognized Organizations Fee Waiver

Neighborhood or business organizations recognized by the City of Portland Office of Neighborhood Involvement (ONI) or Multnomah County are eligible to apply for an appeal fee waiver if they meet certain meeting and voting requirements.

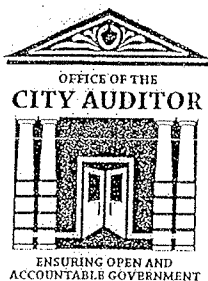
These requirements are listed in the Type III Appeal Fee Waiver Request for Organizations form and instruction sheet available from the Bureau of Development Services Development Services Center, 1<sup>st</sup> floor, 1900 SW 4<sup>th</sup>, Portland, OR 97201. Recognized organizations must complete the Type III Appeal Fee Waiver Request for Organizations form and submit it prior to the appeal deadline to be considered for a fee waiver.

##### B. Low Income Fee Waiver

The appeal fee may be waived for an individual who is an applicant in a land use review for their personal residence, in which they have an ownership interest, and the individual is appealing the decision of their land use review application. In addition, the appeal fee may be waived for an individual residing in a dwelling unit, for at least 60 days, that is located within the required notification area. Low income individuals requesting a fee waiver will be required to certify their annual gross income and household size. The appeal fee will only be waived for households with a gross annual income of less than 50 percent of the area median income as established and adjusted for household size by the federal Department of Housing and Urban Development (HUD). All financial information submitted to request a fee waiver is confidential. Fee waiver requests must be approved prior to appeal deadline to be considered for a fee waiver.

An information sheet on how to apply for a fee waiver for a low income individual is available at the Development Services Center, 1900 SW 4th Avenue, 1st floor, 503-823-7526

*Information is subject to change*



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

1900 SW 4<sup>th</sup> Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: [www.portlandoregon.gov/auditor/hearings](http://www.portlandoregon.gov/auditor/hearings)



## DECISION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File No.:** LU 11-124052 CU PR (HO 4110014)

**Applicants:** Rodney Grinberg, property owner  
Lindquist Development Company  
P.O. Box 43135  
Portland, OR 97242

Keith Skille, architect  
GBD Architects  
1120 NW Couch Street # 310  
Portland, OR 97209

Carrie Richter, attorney  
Garvey Schubert Barer  
121 SW Morrison Street, 11th Floor  
Portland, OR 97204

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Douglas Hardy

**Site Address:** 4310 SW Macadam Avenue

**Legal Description:** TL 500 1.24 Acres, Section 10 1S 1E

**Tax Account No.:** R991100800

**State ID No.:** 1S1E10CD 00500

**Quarter Section:** 3429

**Neighborhood:** South Portland

CASE NO. 11-124052  
EXHIBIT I.2

RECEIVED

AUG - 4 2011

GARVEY SCHUBERT  
BARER

**Business District:** South Portland Business Association

**District Neighborhood Coalition:** Southwest Neighborhoods Inc.

**Plan District:** Central City - South Waterfront

**Zoning:** CXd, Central Commercial with a Design overlay

**Land Use Review:** Type III, Conditional Use/Central City Parking Review

**BDS Staff Recommendation to Hearings Officer:** Approval with conditions

**Public Hearing:** The hearing was opened at 9:01 AM on July 6, 2011, in Suite 2500A, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 11:47 AM. The record was held open until 4:30 PM on July 13, 2011 for new written evidence and until 4:30 PM on July 18, 2011 for Applicants' rebuttal. The record was closed at that time.

**Testified at the Hearing:**

Douglas Hardy, BDS Staff Representative

Bob Haley, Portland Bureau of Transportation, 1900 SW 5th Avenue, Suite 500, Portland, OR 97201

John Junkin, Garvey Schubert Barer, 111 SW 1st Street, Portland, OR 97201

Keith Skille, GBD Architects, 1120 NW Couch, Suite 300, Portland, OR 97209

Elizabeth Godfrey, 511 NW Broadway, Portland, OR 97209

Matt Hughart, Kittelson and Associates, 610 SW Alder, Portland, OR 97225

Scott Matson, 400 15th Street SW, Auburn, WA 98001

Pat Prendergast, 3720 SW Bond, Portland, OR 97239

Jim Davis, Land Use Chair and Vice President of South Portland Neighborhood Association, 2337 SW 6th Avenue, Portland, OR 97201

William Danneman, 623 SW Caruthers Street, Portland, OR 97201

Jim Farzan, 0836 SW Curry Street, Portland, OR 97239

Shirley Pape, 3550 SW Bond Avenue, Portland, OR 97239

Irene Tinker, 3550 SW Bond Avenue #1508, Portland, OR 97239

Gustave Leonard Michon, Jr., 0841 SW Gaines Street, Unit 1906, Portland, OR 97239-3104

Diana Harris, 0836 SW Curry Street #300, Portland, OR 97239

Mark Siegel, 3601 SW River Parkway #200, Portland, OR 97239

Fred Gans, 0841 SW Gaines Street #608, Portland, OR 97239

Renee Fellman, 3570 SW River Parkway #1313, Portland, OR 97239

Millidge Walker, 3350 SW Bond Avenue #1508, Portland, OR 97239

Perry Walker, 3550 SW Bond Avenue #1503, Portland, OR 97239

Jim Luke, 3570 SW River Parkway, Portland, OR 97239

Kathleen Tooke, 3570 SW River Parkway #2003, Portland, OR 97239

Craig C. Ramsey, 3601 SW River Parkway #2308, Portland, OR 97239

Kristian Pearlman, 4614 SE 32nd Avenue, Portland, OR 97202



## **PROPOSAL**

The Applicants seek approval of a Type III Conditional Use to allow a Detention Facility at this address, which will be operated by two Immigrations and Customs Enforcement (ICE) agencies: Homeland Security Investigations; and Enforcement and Removal Operations (ERO). The Detention Facility will be located in an existing building that recently received Design Review approval (LU 10-145100 DZM) for a 64,948 square foot expansion. The Detention Facility will consist of four holding cells and support space occupying 5,198 square feet of the 114,279 square foot building. The facility will process an average of 10 to 15 detainees daily, with no detainee held at the facility for more than 12 hours. No detainees will be held overnight at the facility. No exterior alterations to the building or site that were not approved under the recent Design Review are proposed as part of this review.

The expanded building will contain a total of 106 parking spaces in a parking structure for use by office tenants of the building and the Detention Facility. Because there will be more than 60 parking spaces on-site, some of which will be used by the Detention Facility, a Type III Central City Parking Review is also required.

## **Preliminary Comments**

### **Overview:**

The Hearings Officer is cognizant that many of the persons presenting testimony and comments are not regularly involved in the land use process in the City of Portland. The Hearings Officer, in these preliminary comments, briefly reviews various applicable laws/rules/standards applicable to this case.

Title 33 of the Portland City Code ("PCC") is often referred to as the City of Portland Zoning Code. PCC Title 33 contains most of the laws/rules/standards that a Hearings Officer must follow in making a land use decision. The City of Portland City Council is responsible for adopting all provisions found in PCC Title 33.

PCC 33.800.050 A states, in part, that:

"The approval criteria that are listed with a specific review reflect the findings that must be made to approve a request. The criteria set the bounds for the issues that must be addressed by the applicant and which may be raised by the City or affected parties. A proposal that complies with all of the criteria will be approved. A proposal that can comply with the criteria with mitigation measures or limitations will be approved with conditions. A proposal that cannot comply with the criteria outright or cannot

comply with conditions with mitigation measures will be denied.”<sup>1</sup>

The Hearings Officer interprets PCC 33.800.050 A as outlining the parameters of issues to be addressed in a land use hearing. In the case at hand, the BDS staff report (Exhibit H.2) indicated that the relevant approval criteria are PCC 33.815.205 and PCC 33.308.100. Therefore, the Hearings Officer is obligated to consider the evidence in the record relating specifically to approval criteria PCC 33.815.205 and PCC 33.805. Another way to view the Hearings Officer’s obligation, under PCC 33.800.050 A, is that the Hearings Officer should not make his decision based upon evidence and/or reasons that are not related to PCC 33.815.205 and PCC 33.805.

The Hearings Officer shall discuss, in the findings below, issues relating to relevant approval criteria that were raised by persons who testified or submitted written documents into the record of this case. The Hearings Officer will not discuss, in the findings below, issues that do not relate to the relevant approval criteria. For example, issues such as “property values” and “tax impacts” of the proposed project and “GSA” siting rules (related to proximity to schools) do not relate to applicable approval criteria and therefore will not be discussed in the findings below.

**Davis Argument that Application is “fatally flawed”:**

Jim Davis (“Davis”), Land Use Chair of the South Portland Neighborhood Association, presented an argument at the public hearing that the application filed in this case was “fatally flawed.” Davis, in written testimony (Exhibit H.56) stated that, “the application on its face is not complete and should have been rejected by staff.”

The Hearings Officer, lacking any additional evidence and/or argument from Davis, finds that Davis’ argument related to the “completeness” of the application is without merit.

PCC 33.730.030 deals with the processing of a Type III case such as exists in this instance. PCC 33.730.030 B relates to filing of a Type III case application. PCC 33.730.030 B states:

“The applicant must submit an application on the appropriate form and be accompanied by the correct fee. The application must contain all information required by 33.730.060, Application Requirements, and any additional information required for the specific type of land use review.”

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<sup>1</sup> The balance of PCC 33.800.050 is quoted below:

“B. The approval criteria have been derived from and are based on the Comprehensive Plan. Reviews against the goals and policies of the Comprehensive Plan are not required unless specifically stated. Fulfillment of all requirements and approval criteria means the proposal is in conformance with the Comprehensive Plan.

C. When approval criteria refer to the request meeting a specific threshold, such as adequacy of services or no significant detrimental environmental impacts, the review body will consider any proposed improvements, mitigation measures, or limitations proposed as part of the request when reviewing whether the request meets the threshold. All proposed improvements, mitigation measures, and limitations must be submitted for consideration prior to a final decision by a review body.”

PCC 33.730.030 does not contain any references to what happens if “all information required by 33.730.060” is not supplied by an applicant.

PCC 33.730.060 sets forth the application requirements for land use cases. PCC 33.730.060 C sets forth the particular application requirements for this case. In part, PCC 33.730.060 C.3 states:

“unless stated elsewhere in this Title, a complete application for all land use reviews except land divisions consists of all of the materials listed in this Subsection.”

PCC 33.730.060 C.3 states, in part, that the “site or development plan must be drawn accurately to scale and must show the following existing and proposed information:

“existing and proposed development with all dimensions”

For the purpose of the analysis of the Davis application argument, the Hearings Officer assumes that a possible interpretation of “existing and proposed development with all dimensions” requires the site/development plan to include dimensions of all spaces (i.e. holding rooms) within the Detention Area of the building on the Site.<sup>2</sup> If such interpretation is correct, and the Hearings Officer is not so persuaded, it becomes necessary to review the balance of PCC 33.730.060 to determine what happens if required information is not supplied by an applicant.

PCC 33.730.060 states that if an application is not “deemed complete” within 180 days the application will be “voided on the 181<sup>st</sup> day.” PCC 33.730.060 A.2.c provides that an application is deemed complete if the applicant supplies all of the missing information or, the applicant supplies some of the missing information with a writing indicating applicant will supply no additional information, or the applicant provides a writing to BDS indicating it will not provide any of the missing information. In this case, the Applicants provided a writing to BDS indicating it would not provide any additional information and “requests that the City deem these applications complete and schedule the matter for a hearing” (Exhibit H.65). BDS deemed the application complete on May 9, 2011 (date of Exhibit H.65).

The Hearings Officer finds that PCC 33.700.030 requires an application to be completed consistently with PCC 33.730.060. The Hearings Officer finds, even assuming an application requirement found in PCC 33.730.060 C.3 was not provided by the Applicants, that the application was deemed complete on May 9, 2011. The Hearings Officer finds that BDS was

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<sup>2</sup> The Hearings Officer finds that PCC 33.730.060 C.3 does not require detailed plans of the interior of the building to be located at the Site. This section of the code refers to the “site” and “development.” Both “site” and “development” are terms defined in PCC 33.910. The Hearings Officer finds that the PCC 33.910 “site” definition deals with characteristics of the land and not physical improvements such as buildings. The Hearings Officer finds that the PCC 33.910 definition of “development” refers generally to the physical improvements to land, including buildings, landscaping, paved and graveled areas, areas devoted to exterior display, plazas and walkways. The Hearings Officer does not find that either “site” or “development,” in the context of PCC 33.730.060 C.3, refer to interior dimensions or specifications of buildings located on land. The Hearings Officer finds that all bullet points identified in PCC 33.730.060 C.3 refer to “exterior” matters; not interior matters.

obligated to process this application and that the Hearings Officer was obligated to hold a hearing and take evidence in this case.

The Hearings Officer finds that the lack Applicants' submission of detailed plans of the Detention Area, while potentially important in determining if the relevant approval criteria were met, is not a procedural "fatal flaw."

#### **RELEVANT APPROVAL CRITERIA**

In order to be approved, this proposal must comply with the criteria of Title 33. The relevant criteria are:

33.815.205 Conditional Use Review for  
Detention Facilities

33.808.100 General Approval Criteria for  
Central City Parking Review

## **II. ANALYSIS**

**Site and Vicinity:** The application in this case relates to real property generally described as being bounded on the west by SW Macadam Avenue, on the north by SW Bancroft Street, on the east by a private tax lot with an existing rail line, and on the south by a tax lot owned by the Oregon Department of Transportation ("ODOT"). The above described real property is outlined on attached Exhibit B and shall hereafter be referred to as the "Site." The Site is approximately 52,963 square feet in size. Under development previously approved by LU 10-145100 DZM, a 20-foot wide public right-of-way dedication will be required in order to allow an extension of SW Moody Avenue south along the Site's east lot line. This extended right-of-way, which will also accommodate the streetcar line, will connect South Waterfront to the Macadam neighborhood to the south.

Existing development on the Site includes a three to four story building ("Existing Building") located in the northwest corner of the Site. The Existing Building was used by the Bank of America North Operations Center, with the bank vault included in the ground floor and surrounded by 18-inch thick concrete walls. The proposed 5,198 square foot Detention Facility will be located in this ground floor space, with office space in the rest of the Existing Building.

The Existing Building and proposed additions to the Existing Building received Design Review Approval (LU 10-145100 DZM). The Design Review process and decision will be discussed in greater detail in the findings for PCC 33.815.205 A.

Regarding development in the nearby vicinity, the Site is located at the south end of the South Waterfront Design District, and is immediately north of the Macadam Plan Design District. As noted in the findings for the 2010 Design Review case, these two areas have distinctly different contexts. In much of the South Waterfront Design District, development typically consists of relatively thin towers sitting on full or partial block plinths. Towards the southern edge of the South Waterfront Design District, as it transitions into the Macadam Design District,

development is largely characterized by older, more established industrial buildings that are typically one and two stories in height.

The property immediately south of the Site was a designated accessway in the original 2003 *South Waterfront District Street Plan*. With the revisions to the South Portal design sometime between 2003 and 2007, the accessway was relocated south to SW Hamilton Street. The Zoning Code has yet to be updated to reflect this new accessway location and thus still indicates an accessway in its original location – immediately south of the Site.

The streets surrounding the Site are identified in the City of Portland Transportation System Plan as follows:

- **Macadam Avenue:** Major City Traffic Street, Major Transit Priority Street, Local Service Bikeway, City Walkway, Major Truck Street, and Major Emergency Response Route. (Macadam Avenue is also a State highway located within City right-of-way.)
- **SW Bancroft Street:** Traffic Access Street, Transit Access Street, Local Service Bikeway, City Walkway, Truck Access Street, and Major Emergency Response.
- **SW Moody Avenue:** Traffic Access Street, Major Transit Priority Street, City Bikeway, Central City Transit/Pedestrian Street, Truck Access Street, and Major Emergency Response Street.

**Zoning:** The Site is located in a Central Commercial zone with a Design overlay (CXd). It is also located in the Central City Plan District.

The CX zone is intended to provide for commercial development within Portland's most urban and intense areas. The CX zone is not a residential zone, but rather a commercial zone where household living uses are permitted by right. Retail sales and service, offices, major event entertainment, schools, colleges, medical centers, religious institutions and daycare uses are also permitted by right. Detention Facilities may be permitted within the CX zone if approved as a Conditional Use (see PCC Table 130-1). Development within the CX zone is intended to be very intense with high building coverage, large buildings, and buildings placed close together. Development standards for the CX zone relating to height, floor area ratio ("FAR"), setbacks, building coverage, etc. are found in PCC 33.130.200 through and including PCC 33.130.250. (Table 130-3 is a summary of development standards for all commercial zones.)

The d overlay zone promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development are subject to Design Review.

The Central City Plan District implements the Central City Plan and other plans applicable to the Central City area. These other plans include the Downtown Plan, the River District Plan, the University District Plan, and the Central City Transportation Management Plan. The Central City Plan District implements portions of these plans by adding code provisions that address special circumstances existing in the Central City area.

**Land Use History:** City records indicate that prior land use reviews include the following:

- **LU 10-145100 DZM:** On appeal, City Council affirmed in part the Design Commission's approval of a Design Review with Modifications for a two phase development that included a three-story addition to the Existing Building and other changes; and modified the Design Commission's decision by revising Design Commission's Conditions of Approval B and C, and designating a third primary use (Detention Facility), which requires Conditional Use Review, with a new Condition of Approval (D). As a result of Council's decision, the following conditions applied to the approval:

- "A. As part of the building permit application submittal, the following development-related conditions (A – E) must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE- Case File LU 10-145100 DZM. All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The applicant shall enter into a development agreement that will require property owner or designee to complete the proposed on-site SW Moody Avenue frontage improvements (noted in the approved plans as "Future Development" and including the proposed conversion of parking to ground level retail at the East Elevation and the kinetic water feature at the intersection of SW Moody and Bancroft) within 120 days of substantial completion of the adjacent half-street public right-of-way improvements. The development agreement must be executed and recorded prior to issuance of Phase I building permit.
- C. At such time as the City Council approves the street vacation of the SW Bancroft Street frontage adjacent to the subject site, the applicant will accept the vacated area and construct the proposed on-site SW Bancroft Street frontage improvements (noted in the approved plans as "Future Development") within 6 months of Council approval of the street vacation.
- D. If the building approved by this land use approval (LU 10-145100 DZM) includes a primary use subject to a Type III Conditional Use review per Table 130-1 (Detention Facility), the applicant may obtain and BDS may issue building permits only for the portion of the building addition, building renovation, and site work that includes the primary uses allowed by right (Office and Retail Uses) once this land use decision is final. The applicant may not obtain and BDS will not issue building permits for a Detention Facility with supporting office use and associated parking until a final City decision is made on the required Type III Conditional Use and Central City Parking Reviews.
- E. No field changes allowed."

- **LUR 01-00667 GW, DZ:** Approval with conditions of a Greenway Review and Design Review to make exterior alterations to an existing building and its site including: relocating three existing painted metal exit doors and adding one new similar door; replacing existing English ivy with a native species of groundcover; adding seven new planting islands at the east edge of the parking lot; locating a new generator with screening at the west edge of the site along SW Macadam Avenue.
- **LUR 01-00280 DZM:** Approval with conditions of a Design Review with Modifications for a proposal to construct a new trash enclosure as well as a new recycling storage enclosure on the east edge of the site, in an existing parking lot, and to locate three condensing units on a concrete pad against the building.
- **LUR 99-00279 DZM:** Approval with conditions of a Design Review with Modifications for a proposal to add fencing around an existing parking lot, including the addition of security gates and equipment; to add perimeter and interior parking lot landscaping; to provide bike parking, pedestrian walkways, and trash area screening.
- **LUR 93-00385 GW DZ:** Approval with conditions of a Design Review and Greenway Review for remodeled office building and new parking.

**Agency Review:** A Request for Response was mailed May 19, 2011. The following bureaus responded with no issues or concerns regarding the requested Conditional Use/Central City Parking Reviews:

- **Fire Bureau** (Exhibit E.1);
- **BDS/Site Development Section** (Exhibit E.2);
- **BDS/Life Safety Plans Examiner** (Exhibit E.3); and
- **Portland Police Bureau** (Exhibit E.4).

The **Water Bureau** (Exhibit E.5) responded that it had no issues with the requested Conditional Use Review, but did identify issues related to the payment of past due water charges. The Water Bureau comments are detailed later in this decision in the PCC 33.815.205.C.4 findings.

The **Bureau of Environmental Services** (“BES”) reviewed the proposal and recommended a condition of approval regarding stormwater management (Exhibit E.6). The BES proposed condition would require, prior to issuance of the building permit for work allowed under CO 10-188250, that the Applicants either receive permission to connect to the ODOT storm system, or extend/improve a public storm system to the satisfaction of BES Development Engineering. More detail on this condition is provided later in this decision in the PCC 33.815.205.C.4 findings.

The **Portland Bureau of Transportation** (“PBOT”)/**Transportation Engineering and Development** reviewed the proposal for its potential impact(s) on the public right-of-way, traffic

impacts, and conformance with adopted policies, street designations, Title 33 (Zoning Code), Title 17 (Public Improvements), and for potential impacts on transportation services (Exhibit E.7). PBOT's comments are referenced in PCC 33.815.205 C and PCC 33.808.100 findings. PBOT determined that the applicable transportation-related approval criteria for the two reviews are met with a recommended condition that the Applicants' Transportation Demand Management Strategies (Exhibit A.6) be implemented.

The **Bureau of Parks/Urban Forestry Division** responded with a comment that existing street trees should be protected (Exhibit E.8).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on June 3, 2011. Extensive testimony, relating to this application, was received at the July 6, 2011 public hearing and during the open record period. The Hearings Officer responds to comments/concerns/issues raised in the hearing testimony and submitted written evidence related to relevant approval criteria in the findings below.

## ZONING CODE APPROVAL CRITERIA

### 33.815.205 Detention Facilities

These approval criteria ensure that the facility is physically compatible with the area in which it is to be located and that the safety concerns of people on neighboring properties are addressed. The approval criteria are:

- A. Appearance.** The appearance of the facility is consistent with the intent of the zone in which it will be located and with the character of the surrounding uses and development; and

**Findings:** The Hearings Officer notes that the introductory language of PCC 33.815.205, as quoted above, states in part that "these approval criteria ensure the facility is physically compatible with the area it is to be located..." This language, in the Hearings Officer's opinion, establishes the focus and also the limitations of the "appearance" approval criteria. The Hearings Officer finds that this approval criterion requires a review/analysis of what the exterior of the proposed building, including landscaping, looks like in the context of other buildings in the general vicinity of the Site.

The Existing Building and proposed expansion of the Existing Building were recently subjected to a public land use review process (LU 10-145100 DZM; hereafter the "Design Review Case") (Exhibit G.2). The Hearings Officer carefully reviewed the Portland City Council Design Review decision (Exhibit G.2).

The relevant approval criteria reviewed by the City Council in the Design Review Case are found in PCC 33.825. PCC 33.285.010 (Purpose of Design Review) states the following:

"Design review ensures that development conserves and enhances special design values of a site or area. Design review is used to ensure the conservation, enhancement, and



continued vitality of the identified scenic, architectural, and cultural values of each design district or area. Design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area. Design review is also used in certain cases to review public and private projects to ensure that they are of a high design quality."

The Hearings Officer finds that City Council reviewed and issued findings, in the Design Review Case, for the relevant approval criteria in PCC 33.825.055 and PCC 33.825.040. The City Council, in its decision rendered February 23, 2011, found that if conditions of approval were imposed, the application met all relevant design review approval criteria. The City Council decision, in the Design Review Case, approved the design review elements of development described in this application.

The Hearings Officer finds that the City Council decision in the Design Review Case squarely addressed the appearance aspects of development proposed in this case. The Hearings Officer finds that the City Council decision in the Design Review Case concluded that the proposed development would conserve and/or enhance the special design characteristics of the surrounding area. The Hearings Officer finds that the City Council decision in the Design Review Case concluded that the proposed development was physically compatible with the neighborhood. In conclusion, the Hearings Officer finds that the City Council decision in the Design Review Case concluded that the appearance of the proposed development is consistent with the character of the surrounding uses.

Testimony at the public hearing and referenced in written submissions of opponents of the application suggested that the Detention Facility use was not consistent with the character of the neighborhood (See, for example, Exhibits H.5, H.12, H.21, H.55 and H.56). The Hearings Officer finds that this particular approval criterion is focused on "appearance" and not "use." The Hearings Officer finds character of the neighborhood relates only to the appearance of the development and not the uses occurring within the development.

The Hearings Officer finds, primarily based upon City Council's decision in the Design Review Case (Exhibit G.3), that the appearance of the development at the Site will be consistent with the intent of the CX zone and also will be consistent with the character of the surrounding uses. The Hearings Officer finds this approval criterion is met.

- B. Safety.** The facility and its operations will not pose an unreasonable safety threat to nearby uses and residents;

**Findings:** This approval criterion generated significant opposing testimony and evidence. Neighbors residing in the South Waterfront testified passionately that the proposed Detention Facility would create an unreasonable safety risk to their neighborhood. Applicants, in response, provided testimony that there is no historical evidence to support opponents' safety concerns. Applicants also provided a description of safety measures that would be employed

at the Site to ensure the safety of neighborhood residents, passersby and employees or other uses of the services offered at the Site.

This approval criterion references “the facility and its operations.” The Hearings Officer finds that the “facility,” for the purposes of this Conditional Use review, relates to the proposed 5,198-square foot Detention Facility to be located in the Existing Building. No person submitting testimony or written evidence suggested that areas outside the Detention Facility would pose any safety threat to nearby uses and residents. The findings for this approval criterion relate to whether or not an unreasonable safety threat would flow from approval of this application (Detention Facility and associated components).

The Hearings Officer summarizes “safety” issues raised by opponents during their testimony and in written submissions:

- inadequate level of detail of the physical characteristics of the Detention Facility (“**Lack of Architectural Detail**”);
- release of detainees directly from the Site (“**Direct Release of Detainees**”);
- presence of guns at the Site and in transport vans serving the Site (“**Presence of Guns**”);
- proximity of the Detention Facility to a Charter School (“**School Proximity**”)
- compatibility of the Detention Facility to the surrounding neighborhood (“**Compatibility**”);
- possibility of demonstrations and/or protest activities, related to immigration activities, occurring in the neighborhood (“**Demonstrations**”);
- proposed security plan not enforceable (“**Security Plan**”);
- contradictory evidence with respect to the number of detainees that could/would be processed at the Detention Facility per day (“**# of Detainees**”);

Below the Hearings Officer sets forth his initial findings related to each of the above opposition issues.

**Lack of Architectural Detail:** The Hearings Officer determined, in the preliminary comments, that the application in this case was not “fatally flawed” because detailed drawings/plans were not available for review by the general public and Hearings Officer. This finding by the Hearings Officer, however, does not preclude the Hearings Officer from considering the evidence that is in the record (or lack thereof) in rendering findings for this “safety” approval criterion.

The Hearings Officer reviewed the public file in this case (all documents with exhibit numbers referenced at the end of this decision and also any documents without exhibit numbers contained in the “staff file”). The Hearings Officer reviewed the application submitted in this case (Exhibit A.1). The Hearings Officer also reviewed Applicants’ “narrative and conceptual floor plan” (Exhibit A.2). The Hearings Officer found no “conceptual floor plan” attached to Exhibit A.2. The Hearings Officer reviewed the C

Exhibits and found no "conceptual floor plan" in those exhibits. The Hearings Officer reviewed Exhibit H.63 (with subparts) that was submitted by Applicants and found no "conceptual floor plan" therein.

The Hearings Officer reviewed the public file and found copies of a "Landscape Materials Plan – Initial Development" and "Landscape Materials Plan – Future Development" (C Exhibits). The Hearings Officer also took note of an "Aerial Perspective Initial Development" (Exhibit H.63d) and a "View to the East" (Exhibit H.63e).

The Hearings Officer finds that there are no conceptual or detailed diagrams/plans showing the Detention Facility and associated areas within the public file. As such, the Hearings Officer is left with only the oral testimony and written submissions from Applicants upon which a decision regarding safety can be made.

BDS staff, in an open-record written submission, commented on the need for "plans" in determining if the relevant approval criteria were met (Exhibit H.52). In relevant part, BDS stated in Exhibit H.52, the following:

"Several comments were made at the hearing that questioned the ability to determine whether the land use review approval are met given the record does not contain a floor plan of the proposed detention facility. As demonstrated in the BDS Staff Report, it is not necessary to have a floor plan in order to determine whether the applicable Conditional Use approval criteria (in Zoning Code Section 33.815.205) are met. The Conditional Use approval criteria are generally limited to the appearance of the facility, the safety of the facility, and the availability of public services to accommodate the facility. The applicant included information in the record regarding how the detention facility will be secured, including details about the facility design that would promote safety. These details are included in the Security Plan, identified as Exhibit A8 in the BDS Staff Report...Given the information in the record on the limited size of the detention facility, and how the facility will be secured, BDS staff does not find that a floor plan is necessary to determine whether the applicable approval are met."

Applicants, in their open-record final argument (Exhibit H.64) addressed the lack of submission of a "site plan." In relevant part, Applicants argue, in Exhibit H.64, the following:

"The processing area, being an interior function of the building, will not be visible from the outside. There is a sally port through which detainees' transporters will enter before the detainees are removed from the transporter. Detailed elevation plans, both after Phase I and Phase II, including the sally port, have been provided. The processing area will not have any exterior windows, and none of the processing functions, from the unloading to the

reloading of detainees, will be visible from anywhere outside of the structure...Interior building circulation or how the processing will be laid out either in relation to individual processing components or the larger office uses is not germane to any of the approval criteria and no opponent has made an assertion otherwise...Among other things, the opponents argue that without a site plan they are helpless to evaluate whether the use changes over time because the area will not be accessible to visitors. Having a site plan of the detention facility would not alter this concern. Rather, like any other building subject to land use review, the permit request is limited to a 5,198-square foot detention facility. If, at the time of receiving building permits or anytime thereafter, ICE or the lessor decides to increase the size of the detention facility, a conditional use modification approval must be obtained."

The Hearings Officer agrees with both BDS staff and Applicants that a detailed plan of the Detention Facility is not legally necessary to reach a decision of approval in this case. That said, the Hearings Officer, as discussed in the findings below, determined that the lack of architectural detail makes the Hearings Officer's analysis of the safety aspects of the Detention Facility more difficult.

#### **Direct Release of Detainees:**

Applicants, in their application "narrative and concept plan" document provided a relatively detailed description of activities expected to occur at the Detention Facility (Exhibit A.2, Zoning Code Analysis 33.815.205 B.). The Hearings Officer's review of Exhibit A.2 found no reference to the release of detainees directly from the Detention Facility. Applicant testimony at the hearing (Ms. Godfrey) reiterated/confirmed ICE activities associated with the Detention Facility. Ms. Godfrey also stated that "some detainees would be released from the site." Ms. Godfrey estimated, in her hearing testimony, that three detainees released, directly from the Detention Facility, per week could be expected. Ms. Godfrey testified that ICE considers a number of factors when considering releasing a detainee directly from the Detention Facility, including but not limited to the following:

- danger to the community
- criminal history
- flight risk
- ties to the community
- health and humanitarian reasons.

Ms. Godfrey stated that when a detainee is released, assistance may be provided (transportation). Ms. Godfrey stated, at the hearing, that ICE does not desire the detainee to be stranded in the vicinity of the Detention Facility.

Ms. Godfrey provided additional comments regarding the direct release of detainees from the Detention Facility (Exhibit H.63b, pages 2 and 3). Ms. Godfrey's Exhibit H.63b comments, related to "Release on Bond or Agreement" are included, in their entirety, below:

"The release of some detained persons is prohibited by statute, regulation or policy due to their immigration status and/or history, their criminal history and/or for national security reasons. Those that are considered to be a flight risk or danger to the community are detained pending the resolution of their immigration proceedings. Some persons arrested who are not a public safety threat or flight risk, or for significant humanitarian or medical reasons, are subsequently released on bond or a release agreement pending the resolution of their immigration proceedings. We probably release an average of about 3 persons per week from custody. Decisions to release detained persons are made on a combination of factors, which may include but are not limited to the following:

- Danger to the community [criminal history including crimes of domestic or other forms of violence, public safety (i.e. pending or convicted of DUII)];
- Criminal history checks for any outstanding warrants, and, if there is an out of state warrant, we then contact[ing] the issuing agency and see if they want to extradite the detainee;
- Flight risk (likelihood will appear at future proceedings, failure to appear history, etc.);
- Length of time in the United States (ties to the community);
- Status of immediate relatives (parent, spouse and/or minor children);
- Eligibility for relief from removal; and
- Health and other humanitarian considerations [serious medical condition of self or immediate relative(s)].

It is not ICE policy to routinely provide those released with assistance in the form of bus fare, etc. However, as part of the release process and in keeping with common human decency, assistance making transportation arrangements for the individual is always provided (i.e. phone call(s) to friend or relative, ride to the Greyhound Station if necessary, directions, etc.) to ensure that he or she is not stranded in an unfamiliar area with nowhere to go and no means by which to return to his or her residence.

Under very limited circumstances, additional assistance may be provided on a case-by-case basis for persons that otherwise do not have the means to garner basic necessities incident to release following long-term detention in ICE-ERO custody. However, because the ERO Portland Office is not a detention facility, a person

released from our office qualifying for this type of assistance is highly unlikely.

Although it is not currently done and has never been requested, if a mechanism can be easily established by which ICE-ERO notifies the Portland Police Bureau when we are releasing an individual from custody on bond or through agreement, we should be able to do that."

Applicants, in their final argument written submission, stated (in part) that:  
"it is highly unlikely that 'wanted criminals' would be released. No evidence was submitted that individuals released from ICE custody at the 511 SW Broadway Building have committed crimes within the Pearl District or that they are more likely to commit crimes when released at South Waterfront. Rather, the Portland Police have received no complaints about ICE release policies and the Police Bureau testimony is that ICE 'operations will not pose an unreasonable safety threat'."

BDS provided written comments, during the open-record period (Exhibit H.52), directed to the "release of Detainees from the Facility." The BDS comments from Exhibit H.52, related to release of Detainees, are set forth below:

"At the hearing, the applicant indicated some detainees would be released on bond at the subject site in accordance with federal guidelines. There was no information or discussion included in the applicant's written narrative submitted as part of the land use review regarding this practice. Absent any information regarding what specific criteria are used in making a determination to release detainees on bond, BDS staff cannot comment on whether this practice will pose any unreasonable safety risk to nearby uses and residents."

The Hearings Officer finds that the issue dealing with "release of detainees" from the Detention Facility (as opposed to transporting detainees to/from the Detention Facility in vans) was first brought to the attention of BDS staff and the Hearings Officer at the public hearing. The Hearings Officer finds this the "release of detainees" from the Detention Facility to be relevant to this approval criterion. The Hearings Officer finds credible the description by Ms. Godfrey of the factors considered in determining whether a particular detainee will be released on bond or agreement (Exhibit H.63b). However, the Hearings Officer notes that BDS staff specifically declined to comment on the safety aspects of release of detainees directly from the Detention Facility (Exhibit H.52) and that there is no response from the Police Bureau.

Opponents mentioned, in oral testimony at the public hearing (i.e. Harris and Siegel) and written testimony (i.e. Exhibits H.13 and H.19), concerns about the safety aspects of releasing detainees from the Detention Facility.

The Hearings Officer takes note of two earlier Conditional Use applications/decisions involving this approval criterion (LU 00-00554 CU and LU 10-146928 CU). These applications/decisions involved the Wapato Corrections Facility ("Wapato Facility") located in the Rivergate industrial area of the City of Portland.

These applications/decisions, in the opinion of the Hearings Officer, provide general guidance in the interpretation and application of this approval criterion. In particular, the issue of release of prisoners from the Wapato Facility was addressed in both applications/decisions. The Hearings Officer's decision, in LU 00-00554 CU, was appealed to City Council where it was upheld. In City's Council's decision, it specifically noted that safety components of the applicant's proposal included:

"booking will occur downtown, not at this facility"

and

"there will be no release of offenders at the corrections facility site."

The Wapato Facility is located in an Industrial area and "as the crow flies" about 1.5 miles from the nearest residentially zoned property. The Wapato Facility was proposed, in LU 00-00554 CU, as a 525-bed detention facility where prisoners would be housed for up to 1 year.<sup>3</sup>

Despite the distance of the Wapato Facility from residential uses:

"virtually all persons who testified or wrote letters in this case expressed concern about 'where' the processing of prisoners/inmates occurred. The unanimous opinion was that safety of persons working, residing, recreating would be placed in an unreasonable safety risk if intake/release (booking and release) of prisoners/inmates occurred at the Wapato Facility." (LU 10-146928 CU, page 15).

The Hearings Officer found, in LU 10-146928 CU, that "with new conditions that (1) prohibit intake and release of prisoners/inmates at the Wapato Facility" that this approval criterion could be met. Condition of approval B.1 (LU 10-146928 CU, page 19) prohibits the release of prisoners/inmates at the Wapato Facility.

The Hearings Officer finds that Applicants' proposed security plan (Exhibit A.8) does not include any reference to releasing detainees directly from the Detention Facility. However, even if the security plan had included the factors identified in Godfrey's comments (Exhibit H.63a) the Hearings Officer would not feel comfortable in finding that this approval criterion is met. At a minimum, to ensure that the release of detainees directly from the Detention Facility does not create an unreasonable safety risk to nearby uses and residents, the Hearings Officer would have required a supportive recommendation from the Police Bureau, recognizing that plans to be utilized by ICE are adequate.

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<sup>3</sup> LU-00-0054 CU involved detention of prisoners/inmates for up to one year. LU 10-146928 CU included a request to amend LU 00-0054 CU to allow detention of prisoners/inmates for longer than one year.

In addition, to grant approval, the Hearings Officer would require greater assurances from Applicants that released detainees would be provided consistent transport (i.e. trolley tickets, bus tickets, taxi vouchers, ICE provided transport to downtown transportation facility, or similar actions) out of the South Waterfront area.

The Hearings Officer considered whether or not it would be appropriate to approve this application with a prohibition on direct release of detainees from the Detention Facility. The Hearings Officer is uncertain as to the viability of this application without providing for a direct release of detainees from the Detention Facility. The Hearings Officer also considered the imposition of a condition incorporating Ms. Godfrey's release factors (Exhibit H.63a) and her suggestion that ICE be required to inform the Police Bureau on each and every direct release. The Hearings Officer was unwilling to draft such a condition.

The Hearings Officer finds that this approval criterion cannot be met, based upon the evidence in the record, if detainees are released directly from the Detention Facility.

**Presence of Guns:** Opponents expressed concerns about the presence of guns on armed persons in transport vans, at the security gate and within the Detention Facility. While agreeing with opponents that the mere presence of a person carrying a gun may be disturbing, the reality is that a person lawfully carrying a gun in the City is both legal and not uncommon. Persons with concealed weapons permits are allowed to carry guns in many public venues, including parks, on sidewalks and in many buildings. Persons carrying guns, such as police officers and armed security guards may lawfully travel in the South Waterfront neighborhood. The Hearings Officer finds that the mere presence of guns carried by security guards within the neighborhood and at the Site is not reason enough to deny a land use application.

The Hearings Officer notes that the Police Bureau did review the application and opined that the proposed Detention Facility (not including direct release of detainees) did not create an unreasonable safety risk. The Hearings Officer finds that the "presence of guns" on security personnel working at or in conjunction with the Detention Facility does not create an unreasonable safety risk to nearby uses and residents.

**School Proximity:** Opposition testimony at the public hearing (i.e. Gans, Pearlman) and in written submissions (i.e. Exhibits H.5, H.21, H.23, H.24, H.57, H.59 and H.62) raised, primarily, two issues. The first was that federal regulations prohibit the Detention Facility being located within a defined distance from a school. The second issue was that, irrespective of federal regulations, the proposed location of the Detention Facility created unreasonable safety risks to the Southwest Charter School.

The Hearings Officer finds compliance with federal regulations (the first issue noted above) is not a relevant approval criterion and is, therefore, beyond the scope of review by this Hearings Officer. The close proximity issue (school and Detention Facility) is relevant to this approval criterion and must be addressed by the Hearings Officer.



The Hearings Officer finds that security measures outlined by Applicants (Exhibits A.2 and H.63a), the Security Plan (Exhibit A.8) and the support of the Police Bureau (Exhibit E.4) and Multnomah County District Attorney (Exhibit H.63m) are substantial evidence that the Detention Facility operation will not create an unreasonable safety risk to nearby uses and residents so long as detainees are not released directly into the surrounding community. The Hearings Officer finds the following factors also provide evidence that the Detention Facility can be operated in a reasonably safe manner:

- relatively small number of holding cells (four)
- relatively few detainees processed per day (approximately 15 per day)
- short holding time (12 hours or less)
- existence of a security gate
- existence of a sally port
- detainees being restrained during transport (waist bands, leg restraints and seat belts), restrained during transfer from transport vehicles (waist bands and leg restraints) and while in the Detention Facility holding/processing area (leg restraints)
- two locked doors separating detainees in the processing area and unsecured area.

The Hearings Officer finds the evidence in the record supports the conclusion that the Detention Facility will not pose an unreasonable safety threat to the nearby school so long as detainees are not directly released into the community from the Detention Facility.

**Demonstrations:** Opponents submitted a relatively large volume of written evidence raising the possibility of immigration related rallies and/or demonstrations occurring in close proximity to the Detention Facility (i.e. Exhibits H.5, H.46, H.53, and H.54). The Hearings Officer takes notice that rallies and/or demonstrations may occur at any government or even private office building when persons wish to take issue with a particular government or business practice/policy/activity (i.e. protests over homeless issues at Portland City Hall, protests related to insurance practices at ODS offices in downtown Portland). The Hearings Officer finds that immigration related rallies and/or demonstrations *could* happen at the ICE facility even if there were no Detention Facility located on the premises. The Hearings Officer finds that the nexus between safety and security and the *possibility* of rallies and/or demonstrations is remote and speculative. The Hearings Officer finds the argument by opponents that the *possibility* of demonstrations at or around the Detention Facility does not pose an unreasonable safety risk to the nearby uses and residents.

**Security Plan:** Opponents, in testimony at the public hearing (i.e. Davis) and written submissions (i.e. Exhibit H.56) argued that the Detention Facility would create an

unreasonable safety risk even if a condition of approval is included to incorporate a Safety Plan (i.e. Exhibit A.8). The argument, by these opponents, is that any condition of approval imposing adherence to a Safety Plan would, as a practical matter, be unenforceable by the City. The Hearings Officer disagrees that a Security Plan would be unenforceable as a matter of law. However, opponents' argument may have merit in the real world of municipal governance.

As the Hearings Officer has found that this approval criterion is not met (see findings for Direct Release of Detainees above) it is not appropriate to craft a condition of approval addressing the enforcement of the Security Plan. However, if this Hearings Officer's decision is appealed to City Council and Council reverses this decision, the Hearings Officer suggests Council consider the inclusion of a condition requiring any "certification" of the Security Plan by the Police Bureau.

**Number of Detainees:** A few opponents argued that Applicants failed to accurately quantify the number of detainees that would be processed at the Detention Facility on a daily basis (i.e. testimony of Dannen and Davis and written statements in Exhibits H.21 and H.43). The Hearings Officer's review of Exhibits A.2 and H.63b and the testimony of Ms. Godfrey consistently indicated that an average of 15 detainees per day would be processed at the Detention Facility. The Hearings Officer notes that a higher number of detainees may be processed on a given day and also a lower number may be processed another day. The Hearings Officer appreciates that the maximum capacity of the holding cells exceeds 15 detainees.

The Hearings Officer finds that the persuasive evidence in the record is that 15 detainees, on an average workday, will be processed at the Detention Center. The Hearings Officer finds that the design, operation and safety plan, as described by Applicants (average 15 detainees processed per day) was deemed acceptable, from a safety perspective by BDS staff, the Police Bureau and the Multnomah County District Attorney. The Hearings Officer finds that so long as an average of 15 detainees are processed, per day, the proposal will not pose an unreasonable safety risk to nearby uses and residents so long as detainees are not directly released from the Detention Facility.

#### **General Findings:**

The Hearings Officer incorporates into these findings the evidentiary aspects related to the operation of the Detention Facility found in Exhibits A.2 (Project Summary), A.8 and H.2 (pages 7 and 8), and H.63b. By such incorporation, the Hearings Officer is not adopting final conclusions or opinions expressed in these documents.

With the exception of Applicants' proposed direct release of detainees from the Detention Facility, the Hearings Officer finds that the operation of the Detention Facility, as described in the incorporated documents above, will not pose an unreasonable threat to safety to nearby uses and residents. Integral to the preceding finding would be the imposition of safety

related conditions of approval, including but not limited to proposed Condition C (Exhibit H.2, page 28 – operation in conformance with a Security Plan) and an additional condition requiring annual certification by the Police Bureau that the Detention Facility was being operated in accordance with a Security Plan. As noted above, the Hearings Officer found that Applicants’ proposed direct release of detainees from the Detention Facility would, based upon the evidence in the record as of the date of this decision, create an unreasonable risk to the safety of nearby uses and residents.

The Hearings Officer finds this approval criterion is not met.

**C. Public services.**

1. The proposed use is in conformance with the street designations shown in the Transportation Element of the Comprehensive Plan;

**Findings:** PBOT has reviewed the proposal for conformance with the street designations shown in the Transportation Element of the Comprehensive Plan. The following is a summary of PBOT’s comments related to this approval criterion.

Table 3 summarizes the street classifications as identified in the City of Portland Transportation System Plan (TSP).

**Table 3 City of Portland Street Classifications for Area Roadways**

	Street Classifications		
	Macadam Avenue	SW Bancroft Street	SW Moody Avenue
Traffic	Major City Traffic Street	Traffic Access Street	Traffic Access Street
Transit	Major Transit Priority Street	Transit Access Street	Major Transit Priority Street
Bicycle	Local Service Bikeway	Local Service Bikeway	City Bikeway
Pedestrian	Central Walkway	City Walkway	Central City Transit/Pedestrian Street
Freight	Major Truck Street	Truck Access Street	Truck Access Street
Emergency	Major Emergency Response	Major Emergency Response	Major Emergency Response

Phase I

*Note: Phase I, or the “Initial Development” and Phase II, or “Future Development,” were approved in LU 10-145100 DZM by City Council. The substantive difference between the two phases is Phase II includes the extension of SW Moody Avenue along the*

*Site's east frontage, and subsequent changes to Site details along this frontage, including the incorporation of a small retail space. See Exhibits C.1 and C.2*

*Macadam Avenue (west frontage):* The existing sidewalk that extends to the face of curb will be removed. The entire frontage will be redeveloped according to current PBOT standards, complete with a 4-foot wide planting area between with new concrete sidewalk and curb. The existing street trees will be retained. A 3-1/2 foot wide, 688 square foot right-of-way property dedication immediately adjacent to the building addition will occur.

*Bancroft Street (north frontage):* A temporary easement to allow development of a 1,197 square foot, 6-foot wide sidewalk will be placed to provide pedestrian access where there is none currently present. The existing frontage will be redeveloped with new landscaping that will include raised planters and stepping stones. The existing street trees will be retained. A new driveway and entry plaza will be developed using stone pavers and raised planting areas.

#### Phase II

*Moody Avenue (east frontage: Phase II* is necessary to accommodate the planned extension of SW Moody Avenue south of SW Bancroft Street as part of the proposed South Portal entrance into the South Waterfront Subdistrict. As part of the project, Portland Streetcar is planning to utilize the existing railroad right-of-way. When that project occurs, the east site frontage will be transferred from private ownership to a public right-of-way. A 4,923 square foot right-of-way property dedication will be made and the frontage redeveloped to implement the South Waterfront Subdistrict Street Standards. A kinetic water feature will be placed at the corner of SW Moody and Bancroft Street. The Moody Street frontage will be reconstructed into a layered landscaped area that includes district standard street lighting, planting and furnishing zone at the curb, and a series of raised planting beds, trees, shrubs and seating areas interspersed between L-shaped brick piers and infill fencing.

*Bancroft Street (north frontage):* At such time as City Council conveys back to the property owner a portion of the street at the intersection of Bancroft and Macadam, the west portion of the frontage will be redeveloped into a landscaped pocket park, complete with district standard lighting, sidewalks and furnishing/planting areas. A water feature and planting areas will be developed over the current street.

These improvements will be completed when the City has substantially completed half-street public right-of-way improvements along SW Moody and realigns the SW Bancroft Street frontage.

The Hearings Officer finds that the above-referenced public right-of-way improvements, as identified by PBOT as requirements in LU 10-145100 DZM, are needed to address Section 17.88.010. PBOT noted as part of that review that conformance with these

requirements will be enforced during the review of building permits for the approved development.

With these right-of-way improvements, PBOT finds the proposal is in conformance with the adopted street classifications, and this criterion is met.

2. If the proposed use will be located in an industrial zone, it will not have a significant adverse effect on truck and freight movement;

**Findings:** As the Site is not located in an Industrial zone, this criterion is not applicable to the proposal.

3. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, or other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; and safety for all modes; and

**Findings:** This approval criterion generated significant opposition testimony. The Hearings Officer characterizes the opposition comments as follows:

- the methodology applied by the Applicants, BDS and PBOT to estimate traffic generated by development contemplated by the application is flawed (**Traffic Estimate Methodology**)
- the intersection at SW Bancroft Street and SW Macadam Avenue is currently congested and approval of the application will compound that problem (**Bancroft/Macadam Intersection**)
- the queuing estimate, for access into the Site, is not accurate and/or explained (**Queuing Estimate**)
- on-street parking impacts resulting from an approval of the application are underestimated (**On-street Parking**)

**Traffic Estimate Methodology:** Opponents testified that the methodology used by Applicants, PBOT and BDS to calculate the size of an office building that could be constructed on the Site, as a matter of right, was flawed (Davis and Dannen). The Hearings Officer finds Applicants' final argument to most concisely summarize the approach used to evaluating transportation capacity of an intersection (Exhibit H.64, page 4). The Hearings Officer quotes a portion of Exhibit H.64 below:

"The Portland Bureau of Transportation adopted ARB-TRN 10.27 for evaluating transportation capacity in land use cases. Where a transportation facility already performs below identified adequate levels of service, the development may be approved so long as 'the development is limited to result in no net increase in vehicle trips over what is allowed by the existing zoning.'

Therefore, the relevant question is not whether various transportation facilities are failing, but rather whether the trips generated from the proposed use, either focusing just on the number of trips generated by those working exclusively within the processing area or expanding the analysis to consider trip generation for all of the ICE / ERO employees, will generate more trips than the trips generated by a use that would be allowed outright. The initial transportation study compared the trip generation of the ICE / ERO employees against a reasonable worst-case full buildout under current CX zoning of a 241,475-square foot building (40,000 square feet of ground floor retail and 201,475 square feet of office uses). This is a stepped down FAR of 5:1 called for in the SW Waterfront Plan."

Exhibit H.16 is a copy of the PBOT administrative rule that is referenced above (ARB -- TRN - 10.27). The Hearings Officer reviewed the Exhibit H.16 and finds Applicants' characterization in the preceding quote to be accurate.

Davis asserted, at the public hearing, that the PBOT and BDS calculation of the size of allowed building at the Site was incorrect because such calculations did not take into consideration the South Waterfront Plan provisions relating to the Site (a step-down in allowed building height would result in a lower maximum building height). BDS staff, in an open-record submission (Exhibit H.52) responded to the Davis contention that the maximum building size used and referenced in the BDS staff report (Exhibit H.2) was incorrect. The Hearings Officer quotes relevant portions of Exhibit H.52 below:

"In addressing the transportation impacts of the proposed detention facility, the BDS Staff Report included figures on the amount of floor area that could be built on the site under a reasonable worst case scenario (pages 10 and 11). This scenario was based on a maximum floor area ratio (FAR) of 5:1 allowed on the site by the Central City plan district regulations. Information on the maximum allowed height of development at this site (125 feet) was also included in PowerPoint presentation BDS staff presented at the hearing.

Testimony provided at the hearing contested the allowed building height and FAR figures that BDS staff included in the Staff Report and PowerPoint. The testimony indicated plans for the South Waterfront advocate a 'stepped down' approach to development within the district, with the height and density of buildings tapering at the edges. BDS notes that the testifier is correct that the plans for South Waterfront do advocate for a stepped down density and height of development in this district, and this policy is reflected in Maps 510-2 and 510-3 of the Central City plan district (Zoning

Code Chapter 33.510). These maps indicate that the largest FAR and height allowances tapering down along the river frontage, and the area south of SW Bancroft Street. Also evident on these maps is that the subject site does have an allowed FAR of 5:1 (even without any bonuses permitted by the plan district), with an allowed height of 125 feet. This compares to a maximum allowed FAR of 6:1 and maximum allowed building height of 250 feet at the core of the district. Therefore, statements made in the BDS Staff Report and in the PowerPoint presentation related to maximum allowed height and FAR are accurate."

The Hearings Officer finds the analytical approach taken by Applicants, PBOT and BDS related to traffic capacity (Exhibits A.3, A.4, A.5, A.6, E.7 and H.2) is proper and reflects the Portland City Code, relevant area plans and PBOT administrative rules.

The Hearings Officer also notes that this application is for a Conditional Use approval for the Detention Facility (5,198 square feet) and associated components. This application is not a request for approval for a much larger office building. But for the request for Conditional Use of the Detention Facility, the level of inquiry into trip generation and traffic capacity would not have included a public hearing process.

The Hearings Officer finds the Trip Generation computations included in Exhibits E.7 and H.2 are correct. The Hearings Officer, by this reference, adopts the BDS staff Trip Generation Comparison comments in Exhibit H.2, pages 10 and 11.

**Bancroft/Macadam Intersection:** Opposition testimony referenced current congestion at the SW Bancroft and SW Macadam intersection (i.e. Tinker, Walker and Luke). The Hearings Officer finds that ADM-10.27, referenced above, provides the analytical methodology when dealing with intersections. The Hearings Officer finds that Applicants, PBOT and BDS properly addressed issues related to the SW Bancroft and SW Macadam intersection.

**Queuing Estimate:** Opposition testimony expressed disagreement with Applicants' queuing analysis and conclusions (oral testimony of Dannen and Exhibits H.23, H.26, H.42 and H.43). Ms. Gray, in Exhibit H.26, clearly stated the opponents' concerns regarding queuing when she said, "Traffic turning into an ICE guard station will cause delay, backing up traffic onto Macadam, a highway! This is a dangerous junction NOW with no traffic turning into the bank vault building."

Applicants, in their final written argument (Exhibit H.64, page 7) state that:

"Opponents raised concerns about a lack of sufficient off-street vehicle queuing areas given the secured accessway. The Kittelson Report dated July 5, 2011 explains that 55 feet of available storage area is adequate to accommodate two vehicles. This distance is

adequate to accommodate the arrival of 75 fleet vehicles. This queuing area analysis for the AM peak need not consider the 55-foot long passenger bus, as it will remain within the garage, being used for transporting detainees out of the facility at the end of the day and will not alter AM peak hour flow."

Vehicle delays associated with gated entries can cause vehicle queues when there is a high vehicular demand and an inefficient entry mechanism. To ensure that the proposed gated entrance operates as efficiently as possible, specific design elements and operational controls are being implemented into the building design. As previously mentioned, access to the Site and the parking structure will be dictated by a manned gatehouse and a retractable security gate. It is anticipated that all vehicles accessing the Site during normal business hours will pull up at the gatehouse to present their credentials. The security gate will then be opened for access.

With respect to the entry procedure, service times were estimated based on observations at other guarded entry facilities and from the manufacturer's specifications on the security gate. As a result, it is estimated that the entry procedure can take upwards of 20-30 seconds for a vehicle to pull up to the gatehouse, present credentials, wait for the security gate to open, and then clear the threshold.

Using the estimated peak entering volume of 75 vehicles during the weekday AM peak hour, Kittelson opined that the expected vehicle queues during the peak entry period were calculated as summarized in Table 2 (Exhibits H.8 and H.63a).

The only regularly anticipated large vehicle that will access the site is a 55-foot long passenger bus that will be used to transport detainees once a day to other off-site detention facilities. As documented in the previous section, there is sufficient on-site stacking distance for this bus type such that it will not impact vehicle or pedestrian movements along SW Bancroft Street while it is awaiting access at the entry gate. Once on the Site, the driveway layout adequately accommodates maneuvering room for this bus type to enter and exit the sally port.

The Hearings Officer characterizes testimony and comments made by opponents as made by persons expressing lay opinions and observations. The Hearings Officer characterizes the submissions by Kittelson to be made by industry-recognized transportation planners/engineers. The Hearings Officer, not being a trained transportation planner or engineer, typically gives more weight to trained experts in specialized and technical fields. This would include transportation planners and engineers. The Hearings Officer, from a lay perspective, can see some logic and common sense in the opponents' comments. However, the Hearings Officer simply has no authoritative data and/or analysis in the evidentiary record of this case to dispute the Kittelson analysis. The Hearings Officer finds the queuing analysis provided by Applicants to be credible and



indicate that the transportation system is capable of serving the existing and proposed uses.

As a final note, the Hearings Officer reiterates that this application is for a 5,198 square foot Detention Facility and associated components. This application is not for a significantly larger office building. The Applicants, PBOT and BDS all reviewed traffic impacts, including vehicles arriving and departing the Site, in the context of the entire building (Detention Facility, associated components and office building). The Detention Facility, which the application in this case must review, would obviously generate significantly less than 75 total trips and the queuing impacts would be significantly less.

**On-street Parking:** It is important for the Hearings Officer to make clear that under current CX zoning (the regulations under which this decision must be made) no on-site parking is required (PCC 33.130, Table 130-3). Under the current PCC, therefore, if Applicants' had not provided on-site parking, all persons arriving at the Site in motor vehicles, excepting for public transit vehicles, would park off-site (likely on-street parking).

Applicants provided, through Kittelson, analysis of parking associated with the Detention Facility and office uses to be located at the Site (Exhibits A.3, A.6, H.8 and H.63a). PBOT reviewed the Kittelson reports and concluded that on-street parking impacts were not significant and that the transportation system is capable of supporting the Detention Facility and office uses (Exhibit H.52).

Applicants, in Exhibit A.6, described the proposed uses at the Site (Detention Facility and office uses ("ICE Transportation Operations Summary"). Applicants updated operational information in Exhibit H.8. Based upon the testimony of a Kittelson representative at the public hearing and submitted documents, the Hearings Officer finds that 75 ICE staff will be issued take-home government vehicles that will be used for daily commuting purposes. There will be no other on-site parking available for ICE employee use on a consistent basis. Given the lack of long-term public parking opportunities in the South Waterfront District, it is anticipated that the majority of all remaining employees will commute to/from work via public transportation, bicycling, or walking. The subsidization of employee transit costs, the inclusion of secured/covered bicycle parking and shower/changing facilities within the building, and the Site's proximity to transit opportunities (Streetcar, TriMet bus routes #35 and #36) and popular walking/bicycling trails all help support this requirement.

Central City policies discourage the provision of on-site parking and encourage the use of alternative modes of transportation. If parking were required, the same level of development assumed for the reasonable worst case scenario would have required a minimum of 483 on-site spaces (a 241,475 square foot building, with one parking space per 500 square feet). The argument could then be made that a project allowed outright could be constructed that created a demand for 483 parking spaces without providing any

spaces on-site. Since the ICE building will be less than half the size of the reasonable worst case, and provide 106 on-site spaces, the on-street parking impacts will be less compared to the level of development allowed outright.

Applicants indicated that an average of three visitors per day could be expected to come to the Site. Applicants estimated that most visitors would be attorneys in matters related to the representation of detainees temporarily held in the Detention Facility. Applicants estimated most visits would be of short duration and that the visitors would utilize on-street parking in the area. Applicants noted that there is on-street parking, in close proximity to the Site, available along SW Moody, SW Bond, and SW Bancroft. Kittelson concluded, "It is reasonable to assume that the on-street parking supply in the vicinity of the building is adequate to accommodate these infrequent visitors" (Exhibit H.8).

The Applicants also identified Transportation Demand Management (TDM) Strategies that, in combination with the variety of alternative transportation options in the immediate vicinity of the Site, would reduce reliance on the single-occupant vehicle. These strategies and alternative transportation modes are described later in this decision in response to 33.808.100.D.

The Hearings Officer finds the Kittelson analysis and PBOT comments to be persuasive. The Hearings Officer finds that the Detention Facility and associated components will not place an unreasonable demand upon on-street parking. The Hearings Officer finds that even when the Detention Facility and associated components (the subject of this application and decision) are combined with the associated office use to be made of the Site, the on-street parking impacts will not be significant. The Hearings Officer finds that with the imposition of a condition of approval requiring the TDM strategies identified in Exhibit A.5, this approval criterion can be met.

4. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

**Findings:** The referenced City service bureaus have reviewed the Conditional Use proposal for a Detention Facility at this Site and provided the following comments:

Water Supply

The following are quoted sections from The Water Bureau response (Exhibit E.5):

"The Water Bureau has no concerns regarding the Conditional Use request, but does have a comment that will need to be addressed prior to the Water Bureau signing off on any building permit on this site.

There are two existing services which provide water to this location. These include:

1. 2" metered service - Serial #20032592, Account #2969664600

It should be noted that this 2" domestic service is shut off and has had its meter locked for non-payment of the account and that there is currently no domestic water provided for occupancy of this building.

2. 4" metered fire service - Serial #5968, Account #2968647000

The above two listed services are provided water from the existing 8" DI water main in SW Bancroft Street. The estimated static water pressure range for this location is 65 psi to 82 psi at the existing service elevation of 229 feet.

The property owner must pay any current/outstanding water charges and any required additional fees to re-establish a current water service for this property before the Water Bureau will approve any building permit and enable legal occupancy of this building."

The Hearings Officer finds that the Water Bureau concluded that the City was capable of serving the Applicants' proposed use.

#### Police Protection

The Police Bureau reviewed the proposed Detention Facility and indicated that with the implementation of the Applicants' Security Plan (Exhibit A.8), the proposed use would not pose an unreasonable safety threat to nearby uses (Exhibit E.4). The Hearings Officer finds that the Police Bureau is capable of serving the Applicants' proposed use.

#### Fire Protection

The Fire Bureau noted that Applicants will be required to meet all Fire Code requirements at time of building permit review (Exhibit E.1). The Fire Bureau expressed no concerns with the requested Conditional Use review. The Hearings Officer finds that the Fire Bureau is capable of serving the Applicants' proposed use.

#### Sanitary Waste and Stormwater Disposal

BES reviewed the Applicants' proposal and provided comments (Exhibit E.6). BES' review concluded that sanitary and stormwater disposal systems were acceptable so long as a condition of approval be included that required Applicants to either obtain ODOT approval for a proposed storm connection or, in the alternative, extend a public storm sewer prior to the issuance of a building permit. BDS staff included, in its Staff Report and Recommendation to the Hearings Officer, such a condition (Condition E).

Applicants submitted an email to BDS staff indicating that its Hydraulics Engineer determined that the proposed site drainage facility appears to be adequate "and appears to be an improvement of the existing stormwater system, with respect to water quality." The email went on to say that the "size of the outfall pipe (8-inch at 1% slope per sheet C300

note #2) was checked for capacity, and it is properly sized for the purpose (10-year peak storm)" (Exhibit H.15).

BDS staff submitted, during the open-record period, comments related to Applicants' stormwater disposal proposal (Exhibit H.52). BDS staff stated the following:

"Subsequent to the publication of the Staff Report and Recommendation, the applicant submitted an e-mail, dated July 5, 2011..The Bureau of Environmental Services has reviewed the e-mail and determined that this provides sufficient confirmation that the ODOT storm-only facility can be used to address stormwater management needs of the site. As such, BES has commented that Condition E is no longer required."

The Hearings Officer finds that public services, based upon comments received from the appropriate bureaus listed in this approval criterion, are capable to serve the proposed use. Further, based upon Exhibits H.15 and H.52, the Hearings Officer finds BES has found the proposal acceptable with respect to sanitary and stormwater disposal systems. The Hearings Officer finds this approval criterion is met.

### **33.808.100 General Approval Criteria for Central City Parking Review**

The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

- A. The proposal will not by itself, or in combination with other parking facilities in the area, significantly lessen the overall desired character of the area. The desired character of the area is determined by City-adopted area, neighborhood, or development plans; by Comprehensive Plan designations and zoning, and by allowed densities.

**Findings:** As indicated in this approval criterion, the "desired character" of the area is determined by City-adopted area, neighborhood, or development plan; and by the Comprehensive Plan and Zoning Map zoning designations.

*Hearings Officer Note:* The Hearings Officer found that the BDS staff report (Exhibit H.2, pages 16-27) contained a thorough analysis and review of the Central City Parking Review approval criteria. The Hearings Officer, with only a few modifications, utilized the BDS staff report analysis (Exhibit 2, pages 16-27) below.

#### City Adopted Plans

For purposes of this criterion, the Hearings Officer reviewed the proposal against the following City-adopted plans: *1998 Central City Plan*; the *2003 South Waterfront Plan*; and the *2009 South Waterfront District Street Plan Criteria and Standards*.

*1998 Central City Plan*

This plan was intended to establish a 20-year guide for growth in the Central City. The Plan established land use designations that promoted the highest and best use of land within the Plan boundaries, with these designations reflected in the Comprehensive Plan. The Plan included strategies for economic development, transportation, recreation, human services, public safety and urban design. It should be noted that the Plan pre-dates later planning efforts and adopted policies that were specific to the South Waterfront, such as the *2003 South Waterfront Plan* and the *2009 South Waterfront District Street Plan Criteria and Standards*.

In the *1998 Central City Plan*, the transportation system was envisioned as supporting Central City growth, while not dominating the environment of the area. Light rail and other forms of public transit were seen as a key element of the Central City, with a recognition that parking is an important element in the overall transportation system. Regarding parking, the Plan sought to ensure that each district had adequate parking, balanced by a desire to improve air quality and traffic flow.

Urban design policies included in the Plan sought the creation and adoption of urban design guidelines appropriate to each district, with the intent of ensuring that the Design Review process resulted in development of a human scale that relates to the character and scale of the area.

The Plan also established zoning regulations that would implement the desired goals and policies for the area. These regulations were reflected in the newly established Central City Plan District, which was included as a chapter in the Zoning Code. Included in this new plan district were regulations that implemented the Downtown Parking and Circulation Policy (33.702.130). Toward implementing the Downtown Parking and Circulation Policy, the Central City Plan District required a land use review for proposed off-street parking, with the approval criteria intended to preclude proposed parking facilities in "such quantity, concentration, or appearance that they detract from the desired...character of the zone" (33.700.130.B.4).

The proposed 106-space parking facility is consistent with the stated goals and policies of the *1998 Central City Plan*. In recognition of the desire to develop a strong public transportation system that serves as a backbone to the larger Central City transportation system, the proposal seeks to balance a need to provide parking for some of its 134 employees, with encouraging the use of public transportation. Instead of providing a larger parking facility that would accommodate the parking demand needs for all users of the building, the Applicants' approach is consistent with the desire of 33.702.130.B.4 to limit the quantity, concentration, and appearance (of larger) parking facilities.

Additionally, it should be noted that current Central City Plan District parking regulations require no minimum parking for uses in the South Waterfront subdistrict, and the Central City Parking Review is required only when providing larger amounts of parking. If the

subject proposal provided 60 or fewer parking spaces on-site, no Central City Parking Review would be required.

Regarding the consistency of the parking proposal with the urban design policies included in the Plan, the development proposal will replace an existing surface parking lot with floor area; the proposed 106 parking spaces will be located internal to the new addition. The addition has been reviewed by both the Portland Design Commission and City Council against relevant design guidelines through Land Use Case 10-145100 DZM, and found to be consistent with these guidelines.

Based on these findings, the proposal is consistent with the *1998 Central City Plan*, and therefore the proposal will not significantly lessen the overall desired character of the area as defined by this Plan.

#### *2003 South Waterfront Plan*

This Plan builds off the vision and goals of the *North Macadam District Framework Plan*, which was intended to guide urban renewal and other investments in the area. The *2003 South Waterfront Plan* seeks to encourage a mixed-use, highly urban character for the district, with surface parking being limited. The promotion of a variety of alternative transportation modes is desired. The stated "Vision" for the district includes a desire for mixed-use development that is well served by a transit system, with parking that is adequate but limited in quantity and designed to be subordinate to a high quality urban environment.

Similar to the *1998 Central City Plan*, the *2003 South Waterfront Plan* includes zoning regulations (in the Central City Plan District) that directly addressed parking in the district. These regulations are intended to reduce excess parking and increase reliance on alternative modes of transportation. To this end, the Plan included amendments to the Zoning Code that placed maximum parking ratios on most uses in the district.

The Hearings Officer finds that the proposal is consistent with the vision and desired character described in the *2003 South Waterfront Plan*. The proposal will replace an existing surface parking lot with structured parking. The structured parking will accommodate some of the needs for the users of the expanded building, while relying on the area's well-established alternative transportation modes. While the Central City Plan District parking ratios require no minimum parking for the proposed development on the Site, the Applicants propose 106 spaces for a use that will have approximately 134 employees. (Given the nature of the proposed use, Applicants indicate there will be a minimal number of visitors to the Site, approximately three per day.) The maximum parking ratio of the Central City Plan District would allow approximately 164 parking spaces for the proposed office use. (There is no maximum parking ratio for Detention Facility uses, or for retail uses.) As the vast majority of the expanded building will be for office use, and as the number of parking spaces proposed is well beneath the maximum parking ratio for office use, the proposal is consistent with the desire of the *2003 South Waterfront Plan* to limit parking in this district.

*2009 South Waterfront District Street Plan Criteria and Standards*

This Plan provides design criteria and standard details for the public right-of-way within the South Waterfront district. It is an update to earlier street plans developed for the area, including the 1998 *North Macadam District Street Design Standards and Criteria Plan*. The 1998 Plan considered the issue of limited access to the South Waterfront district and identified three portal intersections, one of which was at SW Bancroft Street and SW Macadam Avenue, where the Site is located. However, in a 2006 plan (*South Portal Study*), the identified south portal shifted south to the intersection of SW Hamilton Street and SW Macadam Avenue.

There is nothing in the proposal that would be inconsistent with the goals and policies of the *2009 South Waterfront District Street Plan Criteria and Standards*. The proposal, including a parking facility containing 106 spaces that is accessed from SW Bancroft Street, will be consistent with the intended “development/design emphasis” factors identified for both SW Bancroft Street and SW Moody Avenue in the Street Classification and Function table of this Plan. Additionally, to address the intended street design, several required improvements to the adjacent public rights-of-way were identified as part of the approved 2010 Design Review for the proposal. These include sidewalk improvements along SW Bancroft Street and a future extension of the SW Moody Avenue right-of-way along the east side of the Site.

Comprehensive Plan/Zoning Map Designations

The desired character of development on the Site and in the area is also determined by the Comprehensive Plan Map designation and Zoning Map designation. The Comprehensive Plan Map designation on the Site (and surrounding South Waterfront district) is Central Commercial, which is reflected on the Zoning Map with the CX base zone. The Comprehensive Plan describes the Central Commercial designation as the City’s most physically intense commercial designation, and is intended for the most developed areas of the City that have well developed public services. The purpose of the CX zone is described in the Zoning Code as promoting development that has high building coverage, with large buildings placed close together. Development is also intended to be pedestrian oriented.

The Hearings Officer finds that the proposed 106-space parking facility, which is part of an 114,279 square foot mixed-use development, is consistent with the Central Commercial Comprehensive Plan Map and Zoning Map designations. Existing development on the property is limited to a building, approximately 40,000 square feet in area, that covers less than 20 percent of the Site. The majority of the Site is currently covered with a surface parking lot. Under the proposed development, the vast majority of the Site will be covered with a building that was reviewed for conformance with the *Central City Fundamental Design Guidelines* and the *South Waterfront Design Guidelines*. The building will replace the existing surface parking lot and locate all proposed parking within the structure. Unlike the existing development, the expanded building will have a clear, inviting pedestrian entrance from SW Bancroft Street to the building’s south façade, with landscaping and decorative pavement within the building setback.

The Hearings Officer finds the proposal as designed is consistent with the intent of the Comprehensive Plan Map and Zoning Map designation on the Site.

Summary

Based on the Hearings Officer's findings above, the Hearings Officer finds that the proposed on-site parking will not significantly lessen the overall desired character of the area as defined by City-adopted plans, the Comprehensive Plan Map designation and the Zoning Map designation. This criterion is met.

- B. The transportation system is capable of safely supporting the proposed facility in addition to the existing uses in the area. Evaluation is based on the transportation impact analysis and includes factors such as street capacity and level of service, on-street parking impacts, access requirements, impacts on transit operations and movement, impacts on the immediate and adjacent neighborhoods, and pedestrian and bicycle safety.

**Findings:** PBOT reviewed the proposal for conformance with this approval criterion, and provided the following comments (Exhibit E.7):

"Kittelson & Associates, Inc. has completed a review of the trip generation and transportation related impacts of the proposed access driveway off of SW Bancroft Street. As previously noted in the TIS section of this letter, the combination of trips associated with the proposed Conditional Use and approved development is significantly less than the trips associated with a reasonable worst case full build scenario of the site under the existing CXd zoning. As a result, the potential traffic impacts to the surrounding roadways and intersections are substantially minimized with the proposed Conditional Use and approved development. This will help to preserve capacity in the South Waterfront District and minimize peak hour traffic congestion in the Portland region. The proposed driveway and access gate are adequately designed to support the estimated vehicle queues during the peak ingress period. Finally, the number of parking garage spaces are adequate to support the estimated number of government take-home vehicles and transport vehicles that are anticipated to park at the site on a daily basis.

From a pedestrian perspective, the SW Bancroft Street frontage will be improved in the interim with a 6-foot pedestrian sidewalk behind the existing curb (no sidewalk currently exists today) until the South Portal Project is complete. At that time, the full 11-foot pedestrian corridor will be established. Along the east side of the building, the South Waterfront Circulation Plan calls for the southerly extension of SW Moody Avenue south of SW Bancroft Street. The Applicants will not be required to construct frontage improvements at the outset of the



building construction, but will be required to sign street and storm sewer waivers of remonstrance for participation in future improvements. The south side of the development area is an existing ODOT storm sewer line that extends from I-5 east toward an outfall in the Willamette River. During the Design Review phase, a conflict between existing Planning and Street Design Standard maps was discovered. Map 510-7, updated March 2010, indicated the presence of a Pedestrian Access way in approximately the same location as the ODOT easement. The South Waterfront Street Plan and Standard update dated May 2009, does not show that link. During the Design Review, PBOT and BPS determined that the Street Plan over-rode the Zoning Map and no pedestrian link/access way is required.

In summary, all of the noted improvements or agreements to make future improvements demonstrate that the project will improve pedestrian circulation and safety and that the parking structure will have no impact.

Lastly, the proposed building/parking structure is not located adjacent to an existing light-rail or streetcar line. As such, it is not anticipated to have any impacts on transit operations."

The Hearings Officer notes that the findings related to Applicants' Transportation Impact Study ("TIS") are addressed in the findings for approval criterion PCC 33.815.205 C.3. The Hearings Officer finds that the number of vehicle trips associated with Applicants' proposed use are significantly less than the worst-case scenario build-out of the Site and, therefore, the potential traffic impacts to the surroundings are minimized. The Hearings Officer finds that the proposed driveway and access gate are designed to adequately support the estimated vehicle queues. The Hearings Officer finds that proposed sidewalks will fill gaps in the pedestrian system.

Based on a review of the findings provided by the Applicants, PBOT has determined that this criterion is met.

- C. The parking facility is in conformance with the street classifications of the Central City Plan District and the Central City Transportation Management Plan.

**Findings:** As indicated above findings for PCC 33.815.205.C.1, Applicants' TIS includes information on the classifications of streets adjacent to the Site and how the parking facility is in conformance with these classifications. With proposed improvements to the public right-of-way that will be required at time of building permit review by PBOT pursuant to Title 17 (Public Improvements) along SW Macadam Avenue, SW Bancroft Street, and SW Moody Avenue, PBOT determined that the facility will be in conformance with the street classifications of the Central City Plan District and the Central City Transportation Management Plan. (The improvements required along these three streets are described above

in response to 33.815.205.C.1.) The Hearings Officer concurs with PBOT's determination that Applicants' proposal in this case is in conformance with the street classifications of the Central City Plan and the Central City Transportation Management Plan.

This Hearings Officer finds this criterion is met.

- D. If the proposal will generate more than 100 vehicle trips during the peak hour commute; and is Growth Parking or is Preservation Parking where the parking area is created through internal conversion of a building, by excavating under the building, or by adding gross building area to the building: The Transportation Management Plan includes measures to increase the number of trips taken by alternatives to the single-occupant vehicle during the peak hour commute.

**Findings:** An estimated 85 vehicles trips generated by proposed development on the Site (including both the office and Detention Facility) during the AM and PM peak hour periods. While the proposal will not generate more than 100 vehicle trips during either the AM or PM peak hour periods, Applicants have proposed a TDM (Exhibit A.5) Plan that includes three strategies that are intended to increase the number of trips taken by alternative modes of transportation during the peak hour commute. These include:

- As part of the Department of Homeland Security's Commuter Transit Subsidy Benefits Program, all employees that do not have on-site parking privileges can participate in the transit subsidy program. This program provides transit subsidies to employees of up to \$230 per month. This amount is sufficient to cover TriMet and C-Tran monthly transit passes.
- The facility will include a minimum of 22 bicycle parking spaces. These spaces will be located within the parking garage, providing covered and secure parking. In addition, four bicycle parking spaces will be located near the building's front entrance on SW Bancroft Street for general public use. With the facility's location adjacent to the Willamette Greenway Trail and other developing infrastructure in the South Waterfront District, it is anticipated that a large number of employees will take advantage of this infrastructure.
- The office and/or Detention Facility will include changing rooms and showers that can be used by employees who walk or bicycle to work.

PBOT recommended that implementation of these three strategies be a required condition of approval.

In addition to these TDM strategies, Applicants note that there are a number of transportation amenities in the immediate area that promote alternative modes of transportation. These include:

- the Portland Streetcar, with stops along SW Moody and SW Bond Avenues every 13-20 minutes depending upon the time of day and day of week;
- a future streetcar line extension located immediately adjacent to the site and providing service to the south;
- TriMet #35 (Macadam/Greeley) and #36 (Southshore) bus lines; the #35 line provides daily service between Oregon City and north Portland with area stops along SW Macadam and SW Moody Avenues; line #36 provides weekday rush hour service between Tualatin and Portland City Center with area stops also along SW Macadam and SW Moody Avenue;
- dedicated carpooling parking spaces provided by the City along SW Bancroft Street and SW Bond Avenue;
- the Willamette Greenway trail, located immediately adjacent to the Site, and providing regional walking/bicycling access;

The Site's urban location, combined with these transportation amenities and proposed TDM strategies, help reduce the reliance on single-occupant vehicles.

Based on vehicle trips generated by the proposed use during the peak hours, in combination with the requirement that the TDM strategies are implemented, the Hearings Officer finds this criterion is met.

- E.** If the site is in the RX zone, the parking will not by itself or in combination with other nearby parking, decrease the desirability of the area for the retention of existing housing or the development of new housing.

**Findings:** The Site is located in a CX zone. The Hearings Officer finds this criterion is not applicable.

- F.** If the site is within the areas shown on the "CCTMP Hot Spot Area Map," the carbon monoxide hot spot analysis meets Federal air quality standards, as determined by the Portland Office of Transportation and Oregon Department of Environmental Quality. The map is maintained by the Parking Manager.

**Findings:** The PBOT Parking Manager has confirmed that the Site is not located in a CCTMP Hot Spot Area (Exhibit H.66). The closest Hot Spot Area is located north of the Site at the western terminus of the Morrison Bridge. As such, this criterion is not applicable.

- G.** If the proposal is for Preservation Parking, and the parking is not under the same ownership as the buildings for which the parking is provided, criteria G.1 and G.2, below, apply. If the proposal is to convert Visitor Parking to Preservation Parking, criteria G.1 through G.3, below, apply.

1. The agreements between the garage operator and the owners of the buildings for which the parking is provided are for at least 10 years; and
2. For initial approval, the agreements cover 100 percent of the Preservation Parking.
3. The parking demand analysis shows there is not a need for Visitor Parking at this location.

**Findings:** The proposal does not include Preservation Parking; only Growth Parking is proposed. The Hearings Officer finds this criterion is not applicable.

- H.** If the proposal is for Visitor Parking, the parking demand analysis shows a need for this parking at this location. The analysis must show the following criteria are met:
1. At least 65 percent of the short term parking demand is from uses within 750 feet of the parking structure or lot; and
  2. At least one of the following is met:
    - a. There is a cumulative increase in short-term parking demand due to an overall increase in activity associated with existing or new retail or other visitor-related uses; or
    - b. The parking will serve major new attractions or retail development, or
    - c. There has been a significant loss of on-street parking due to recent public works projects, or
    - d. There has been a significant loss of short-term parking spaces.
  3. If the site is in an I zone, all of the following are met:
    - a. The parking will primarily serve industrial firms;
    - b. The parking facility will not have significant adverse effects on nearby industrial firms; and
    - c. The parking facility will not significantly alter the overall industrial character of the area, based on the existing proportion of industrial and non-industrial uses and the effects of incremental changes.

**Findings:** The proposal does not include Visitor Parking; only Growth Parking is proposed. The Hearings Officer finds this criterion is not applicable.

I. If the site is in the Core Area:

1. If the proposal is for Growth, Visitor, or Residential/Hotel Parking: The parking management plan supports alternatives to the single-occupant commuting vehicle through accommodations for carpooling, short-term parking, and other demand management measures appropriate to the type, size, and location of the parking facility, and consistent with the Central City Transportation Management Plan. If the proposal is for Visitor Parking, the parking management plan ensures that the parking will be primarily used for short-term parking.
2. If the proposal is for Preservation Parking:
  - a. There are adequate spaces in the Replacement Reserve or Pool, which are administered by the Parking Manager; and
  - b. The Parking Management Plan includes measures to ensure that:
    - (1) The parking is used primarily for commitments of at least 10 years to buildings that have less than 0.7 parking spaces per 1,000 square feet of net building area, and
    - (2) Other uses of the parking will occur only when the spaces are not used by the contracted parkers.
3. If the proposal is for Growth or Visitor Parking on a surface parking lot:
  - a. It will be an interim use only, as documented by the phased development plan;
  - b. The phased development plan ensures that the later phases of development are realistically feasible, taking into account such factors as location of buildings on the site and zoning of the site; and
  - c. The first phase of development in the phased development plan includes creation of gross building area, and uses other than parking.
4. If the proposal is for Residential/Hotel Parking on a surface parking lot, and the parking will serve a residential use, either I.4.a or I.4.b, below, apply.
  - a. If the total surface parking area on the site is 40,000 square feet or less and the parking is an interim use, the criteria of Paragraph I.3, above, are met; or
  - b. If the total surface parking area on the site is more than 40,000 square feet or the parking is not an interim use, the Parking Management Plan includes measures to ensure that the surface parking is serving only the residential uses.

5. If the proposal is for new access for motor vehicles within 75 feet of a Light Rail Alignment, but not on the alignment itself, criteria I.5.a through I.5.c, below, apply. If the proposal is for new access for motor vehicles on a Light Rail Alignment, criteria I.5.a through I.5.e, below, apply.
  - a. There will not be a significant adverse impact on transit operations;
  - b. There will not be a significant adverse impact on operation and safety of vehicle and bicycle circulation;
  - c. There will not be a significant adverse impact on the overall pedestrian, bicycle, and transit environment and safety. A driveway is not automatically considered such an impact. On blocks where stations are located, the pedestrian environment on both sides of the streets will be considered and protected;
  - d. Motor vehicles can enter and exit the parking facility without being required to cross the tracks of a light rail alignment;
  - e. The development includes at least 0.8 FAR of retail, office, hotel or residential development in the same structure and on the same block as the parking. The retail, office, hotel or residential development must be on multiple levels. For purposes of this paragraph, net building area will be counted towards this requirement if any portion of the floor to be counted is at or above any adjacent grade.
  
6. If the proposal is for a parking structure - a building where parking occupies more than 50 percent of the gross building area - within 100 feet of Fifth and Sixth Avenues between NW Glisan and SW Mill Streets:
  - a. There will not be a significant adverse impact on the overall pedestrian environment and safety;
  - b. There will not be a significant adverse impact on vehicle operation and safety, and
  - c. The development includes at least 0.8 FAR of retail, office, hotel or residential development in the same structure and on the same block as the parking. The retail, office, hotel or residential development must be on multiple levels. For purposes of this paragraph, net building area will be counted towards this requirement if any portion of the floor to be counted is at or above any adjacent grade.

**Findings:** As the Site is not located in the Core Area (as identified on Map 510-8 of the Zoning Code), the Hearings Officer finds this criterion is not applicable.

**J.** If the site is outside the Core Area:

1. If the proposal is for Growth or Visitor Parking: The parking management plan supports alternatives to the single-occupant commuting vehicle through accommodations for carpooling, short-term parking, and other demand management measures appropriate to the type, size, and location of the parking facility, and consistent with the Central City Transportation Management Plan. If the proposal is for Visitor Parking, the parking management plan ensures that the parking will be primarily used for short-term parking.

**Findings:** The Site is located outside the Core Area, and is for Growth Parking. As identified above in response to 33.808.100.D, being located in the South Waterfront District, immediately south of the Core Area, there are a number of public transportation facilities that promote the use of modes of transit other than single-occupant vehicles, and thus reduce the demand for parking. These include two TriMet bus lines, the Portland Streetcar, and the Willamette Greenway Trail, which provides regional walking/bicycling access. There are also dedicated carpooling parking spaces along SW Bancroft Street and SW Bond Avenue.

In addition to these alternative transportation amenities, the Applicants' previously described TDM Plan includes a transit subsidy program for employees, bike parking, as well as changing rooms and showers for use by employees who walk or cycle to work. Implementation of the TDM Plan is a recommended condition of approval.

The Site's urban location, availability of alternative modes of transit, and implementation of the TDM Plan all reduce employee reliance on the use of cars and resulting demand for parking. As such, the Hearings Officer finds this criterion is met.

2. If the proposal is for new access for motor vehicles within 75 feet of a Light Rail Alignment, but not on the alignment itself, criteria J.2.a through J.2.c, below, apply. If the proposal is for new access for motor vehicles on a Light Rail Alignment, criteria J.2.a through J.2.d, below, apply.
  - a. There will not be a significant adverse impact on transit operations;
  - b. There will not be a significant adverse impact on operation and safety of vehicle and bicycle circulation;
  - c. There will not be a significant adverse impact on the overall pedestrian, bicycle, and transit environment and safety. A driveway is not automatically considered such an impact. On blocks where stations are located, the pedestrian environment on both sides of the streets will be considered and protected; and
  - d. Motor vehicles can enter and exit the parking facility without being required to cross the tracks of a light rail alignment.

**Findings:** The proposal is not within 75 feet of a Light Rail Alignment. The Hearings Officer finds that this criterion is not applicable.

- K. If the site is in the Lloyd District Subdistrict, Goose Hollow Subdistrict, Central Eastside Subdistrict, Lower Albina Subdistrict or River District Sectors 1 or 2:
1. If the proposal is for Growth or Visitor Parking: The parking management plan supports alternatives to the single-occupant commuting vehicle through accommodations for carpooling, short-term parking, and other demand management measures appropriate to the type, size, and location of the parking facility, and consistent with the Central City Transportation Management Plan. In addition:
    - a. If the proposal is for Visitor Parking, the parking management plan ensures that the parking will be primarily used for short-term parking; and
    - b. If the proposal is for Growth Parking to serve office uses, and there are more than 60 spaces included that will serve non-office uses: The parking management plan ensures that there is operational or physical separation of the office and non-office parking, so that the office users do not have access to the non-office parking.
  2. If the proposal is for Preservation Parking, the parking management plan includes measures to ensure that:
    - a. If the parking will serve office uses, the parking is used primarily for buildings that have less than the maximum ratio allowed for the parking sector, and
    - b. If the parking will serve both office and non-office uses, and there are more than 60 spaces included that will serve non-office uses: The parking management plan ensures that there is operational or physical separation of the office and non-office parking, so that the office users do not have access to the non-office parking; and
    - c. Other uses of the parking will occur only when the building contracting for the parking does not need the spaces.
  3. If the proposal is for Growth or Preservation Parking for non-office uses, and there will be more than 60 spaces on the site:
    - a. There will not be a significant adverse impact on transit operations;
    - b. There will not be a significant adverse impact on operation and safety of vehicle and bicycle circulation; and



- c. There will not be a significant adverse impact on the overall pedestrian, bicycle, and transit environment and safety. A driveway is not automatically considered such an impact.

4. If:

- a. The site is in a C, E, OS, or R zone;
- b. The proposal is for Growth, Preservation, Visitor, or Residential/Hotel Parking; and
- c. The site is in the Lloyd District Subdistrict, Goose Hollow Subdistrict, or Central Eastside Sectors 2 or 3, and the proposal is for a surface parking lot where the total surface parking area on the site is larger than 40,000 square feet in area; or
- d. The site is in the Lower Albina Subdistrict; Central Eastside Sectors 1, 4, 5, or 6; or River District Sectors 1 or 2; and the total surface parking area on the site is larger than 40,000 square feet in area, or the parking area covers more than 30 percent of the site, whichever is larger;

The following must be met:

- e. The amount of parking area larger than 40,000 square feet will be an interim use only, as documented by the phased development plan;
- f. The phased development plan ensures that the later phases of development are realistically feasible, taking into account such factors as location of buildings on the site and zoning of the site; and
- g. The first phase of development in the phased development plan includes creation of gross building area, and uses other than parking.

**Findings:** The Site is not within the Lloyd District Subdistrict, Goose Hollow Subdistrict, Central Eastside Subdistrict, Lower Albina Subdistrict or River District Sectors 1 or 2 (as identified on Map 510-8 of the Zoning Code). The Hearings Officer finds this criterion is not applicable.

- L. If the site is in the Lloyd District, and the proposal is for Preservation Parking: There are adequate spaces in the Replacement Reserve, which is administered by the Parking Manager.

**Findings:** The Site is not within the Lloyd District Subdistrict, as identified on Map 510-8 of the Zoning Code. The Hearings Officer finds this criterion is not applicable.

- M. If the site is in the Goose Hollow Subdistrict, and the proposal is for Undedicated General Parking:

1. The facility will provide parking primarily to those whose destination or residence is within the boundaries of the Goose Hollow Neighborhood, as shown on the most recent Neighborhood Boundaries Map published by the Office of Neighborhood Involvement. Long-term parking by others is prohibited. Short-term parking may be made available to others if it is coupled with a mechanism to ensure it is short-term parking. A parking management plan will be submitted to document how this criterion will be met;
2. The number of spaces provided is the same or less than the number of parking spaces being removed by the light rail construction;
3. The transportation system is capable of safely supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, access to arterials, access requirements, and neighborhood impacts;
4. The proposal will not by itself, or in combination with other parking facilities in the area, significantly affect the character of the area by discouraging housing and commercial uses which are compatible with a growing community;
5. If the proposal is for a surface parking lot, the proposed parking area will meet or exceed the landscaping and screening standards applicable to the site and for parking areas;
6. Design of the facility will provide for a safe and attractive pedestrian environment. Evaluation factors include the following: number and location of curb cuts; visibility at curb cuts; and adequate separation, landscaping, and screening between the sidewalk and surface parking areas to reduce the impact on adjacent public and private spaces; and
7. If the proposed access to the facility is within 75 of a light rail alignment, the access should be as far as possible from the light rail alignment. Access will be onto the right-of-way proposed for or containing the light rail alignment only if no other access is feasible.

**Findings:** As the Site is not within the Goose Hollow Subdistrict, as identified on Map 510-8 of the Zoning Code, the Hearings Officer finds this criterion is not applicable.

- N. If the site is in the South Waterfront subdistrict and the proposal is for surface parking:
1. If the proposal is for parking on a surface lot where the total surface parking area on the site exceeds the threshold of Paragraph N.3., below, criteria N.4.a. through N.4.c., below, apply. If the site is in an R, C, E, or OS zone; and is for Growth, Preservation, Visitor, or Residential/Hotel Parking; and is not created in conjunction with a regional attractor, criteria N.4.d. through N.4.f., below, also apply.

2. If the proposal is for Growth or Preservation parking on a surface lot, and if the proposal includes supplemental parking as specified in Subparagraph 33.510.267.A.3.b., criteria N.4.a. through N.4.f., below, apply.
3. Threshold: The amount of surface parking area on the site is larger than 40,000 square feet, or the parking area covers more than 30 percent of the site, whichever is larger.
4. Approval criteria.
  - a. There will not be a significant adverse impact on transit operations;
  - b. There will not be a significant adverse impact on operation and safety of vehicle and bicycle circulation;
  - c. There will not be a significant adverse impact on the overall pedestrian, bicycle, and transit environment and safety. A driveway is not automatically considered such an impact;
  - d. Interim use.
    - (1) If the amount of parking area exceeds the threshold in Paragraph N.3, above, the amount of parking area that exceeds the threshold will be an interim use only, as documented by the phased development plan;  
And
    - (2) If the proposal includes supplemental parking as specified in Subparagraph 33.510.267.A.3.b., the supplemental parking will be an interim use only, as documented by the phased development plan;
  - e. The first phase of development in the phased development plan includes creation of gross building area, and uses other than parking; and
  - f. The phased development plan ensures:
    - (1) That the later phases of development are realistically feasible, taking into account such factors as location of buildings on the site and zoning of the site; and
    - (2) After the final phase is built, the threshold in Paragraph N.3, above, will not be exceeded.

**Findings:** While the Site is within the South Waterfront subdistrict, the proposal does not include surface parking. The Hearings Officer finds this criterion is not applicable.

- O. If the site is in the South Waterfront subdistrict and the proposal is for residential parking that will be operated as commercial parking, the proposal must meet the approval criteria for Visitor Parking in the South Waterfront subdistrict.

**Findings:** While the Site is within the South Waterfront subdistrict, the proposal does not include residential parking, so this criterion is not applicable.

### **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

### **III. CONCLUSIONS**

The application, in this case, generated significant community interest and opposition. Two approvals were sought by Applicants; Conditional Use approval for a Detention Facility use and a Parking Review. The Conditional Use request for a Detention Facility is clearly the more controversial portion of the application.

Table 130-1 (PCC 33.130) provides that a Detention Facility, to be approved in a CX zone, must be processed through a Conditional Use review. The relevant approval criteria to review a Detention Facility in a CX zone are found in PCC 33.815.205.

The Hearings Officer reviewed each of the relevant approval criteria in PCC 33.815.205 in the context of the evidence submitted into the public record. The Hearings Officer determined that all of the relevant PCC 33.815.205 approval criteria were met excepting for PCC 33.815.205 B (Safety). Specifically, the Hearings Officer found the application met PCC 33.815.205 B for all activities proposed by Applicants except for the direct release of detainees from the Site. The Hearings Officer found, based upon the evidence in the record, that release of detainees directly from the Detention Facility into the immediate neighborhood could pose an unreasonable threat to the safety of nearby uses and residents.

In the event that the Hearings Officer's decision is appealed to City Council and Council determines that the Conditional Use application should be approved, the Hearings Officer recommends that Council require Applicants' Security Plan to include a condition to include "release factors" (Exhibit H.63 b, page 2 and 3) to be used by Applicants in assessing whether or not to directly release a detainee into the community. The Hearings Officer also would suggest that the Security Plan include assurance from the Applicants that transportation for each released detainee, from the Detention Facility, be assured. Finally, if Council approves the Conditional Use application, the Hearings Officer would suggest the Security Plan provide for a periodic review of the Security Plan be conducted by the Police Bureau.

The Hearings Officer found that Applicants did satisfy all of the relevant approval criteria related to its Parking Review request.

#### IV. DECISION

**Denial** of a Conditional Use to allow a 5,198 square foot Detention Facility on the Site; and

**Approval** of a Central City Parking Review to allow a 106-space accessory parking facility on the Site.

  
\_\_\_\_\_  
Gregory J. Frank, Hearings Officer

8/3/11  
\_\_\_\_\_  
Date

<b>Application Determined Complete:</b>	May 9, 2011
<b>Report to Hearings Officer:</b>	June 24, 2011
<b>Decision Mailed:</b>	August 3, 2011
<b>Last Date to Appeal:</b>	4:30 PM, August 17, 2011
<b>Effective Date (if no appeal):</b>	August 18, 2011 Decision may be recorded on this date.

**Conditions of Approval.** This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appeal of the decision.** ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4<sup>TH</sup> AVENUE, PORTLAND, OR 97201 (503-823-7526). Until 3:00 PM, Tuesday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 PM and 4:30 PM, and on Mondays, the appeal must be submitted at the Reception Desk on the 5th Floor. **An appeal fee of \$5,000 will be charged.** Information and

assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

**Who can appeal:** You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

**Appeal Fee Waivers:** Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

- A. Applicants' Statement
  - 1. Original Submittal, dated March 22, 2011
  - 2. Applicants' written statement addressing approval criteria, dated April 18, 2011
  - 3. Original Transportation Demand Management Strategies, dated May 3, 2011
  - 4. Original Transportation Impact Study, dated May 3, 2011
  - 5. Revised Transportation Demand Management Strategies, dated May 16, 2011
  - 6. Revised Transportation Demand Management Strategies, dated May 24, 2011
  - 7. Memo from Keith Skille, regarding follow-up questions, dated May 11, 2011
  - 8. Security Plan for 4310 SW Macadam Building
- B. Zoning Map (**attached**)
- C. Plans and Drawings
  - 1. Site Plan – Initial Development (**attached**)
  - 2. Site Plan – Future Development (**attached**)
  - 3. North and South Building Elevations (**attached**)
  - 4. West Building Elevation (**attached**)
  - 5. East Building Elevation – Initial Development (**attached**)
  - 6. East Building Elevation – Future Development (**attached**)
- D. Notification information
  - 1. Request for response
  - 2. Posting letter sent to Applicants
  - 3. Notice to be posted
  - 4. Applicants' statement certifying posting
  - 5. Mailing list
  - 6. Mailed notice
- E. Agency Responses
  - 1. Fire Bureau
  - 2. BDS/Site Development Section
  - 3. BDS/Life Safety Plans Examiner
  - 4. Police Bureau
  - 5. Water Bureau
  - 6. BES
  - 7. PBOT Engineering and Development Review
  - 8. Bureau of Parks/Urban Forestry Division
- F. Letters (none)
- G. Other
  - 1. Site History Research
  - 2. Findings and Conclusions of the City Council on LU 10-145100 DZM
  - 3. Letter of Incompleteness, dated April 13, 2011
- H. Received in the Hearings Office
  - 1. Notice of Public Hearing - Hardy, Douglas

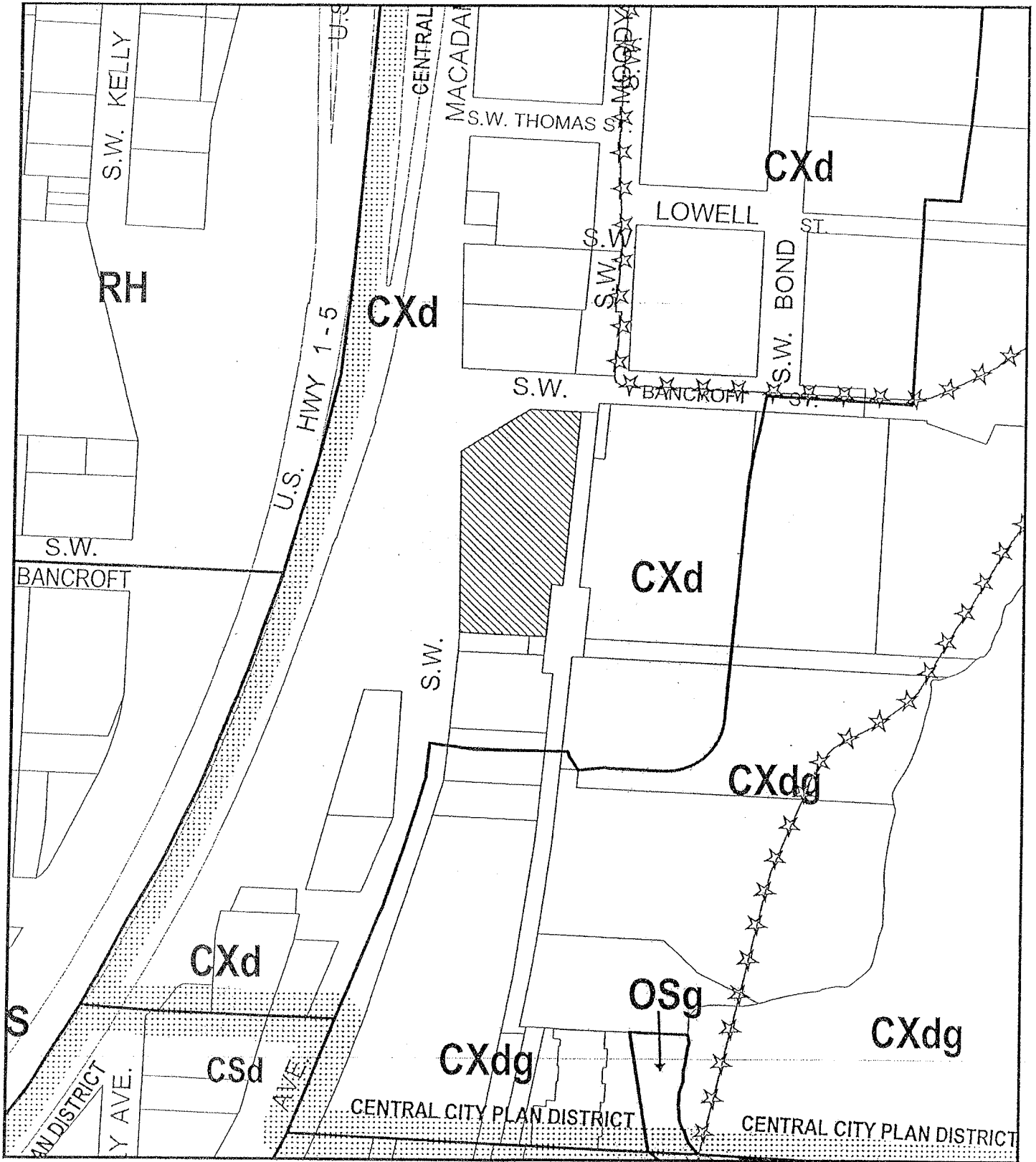


2. Staff Report and Recommendation to the Hearings Officer - Hardy, Douglas
3. 6/28/11 E-mail from C Kathrens & CJ Hanes - Hardy, Douglas
4. 7/4/11 Letter - Fenner, Peter
5. 7/5/11 Testimony requesting denial of conditional use application #LU 11-124052 CU PR - Fellman, Renee
  - a. South Waterfront Plan - Fellman, Renee
  - b. Map - Fellman, Renee
  - c. Copy of Chapter 33, Table 120-1 - Fellman, Renee
  - d. Copy of article from Oregonian - Fellman, Renee
  - e. Copy of article from Florida Independent - Fellman, Renee
  - f. Copy of article from USA Today - Fellman, Renee
  - g. Copy of article from CBS news - Fellman, Renee
  - h. Copy of article from Stormfront.org - Fellman, Renee
  - i. Copy of Article from Creative Loafing Atlanta - Fellman, Renee
  - j. Copy of Article from Fox News - Fellman, Renee
  - k. Mailing List - Fellman, Renee
6. 7/2/11 Email from Mary Gray to Douglas Hardy - Hardy, Douglas
7. Undated Testimony requesting denial of this application: GSA & ICE @ Macadam & Bancroft - Kenney, Sally T.
  - a. Map - Kenney, Sally T.
  - b. Photo page - Kenney, Sally T.
8. 7/5/11 Letter from Kittelson & Associates, Inc. to Bob Hailey - Hardy, Douglas
9. 4/28/11 Letter from Richard Palaniuk (SPBA) - Hardy, Douglas
10. 1/14/11 Letter from JD Watumull - Hardy, Douglas
11. 6/30/11 Letter from Dee Walsh to City of Portland Hearings Officer - Hardy, Douglas
12. 7/5/11 letter - Stein, Sabrina
13. 7/5/11 letter - Poole, Anna
14. 7/6/11 letter - Marmaduke, Mary Ellen
15. 7/5/11 E-mails - Hardy, Douglas
16. TRN-10.27 - Traffic Capacity Analysis for Land Use Review Cases - Haley, Bob
17. Testimony sheet with attachments - Michon, Gustave Leonard
  - a. Written testimony - Michon, Gustave Leonard
  - b. 7/4/11 Oregonian article - Feds tell Portland blogger Bojack he crossed line with immigration center floor plan - Michon, Gustave Leonard
  - c. 6/24/11 letter, Lindsey Snow to John Bogdanski - Michon, Gustave Leonard
  - d. General Services Administration PBS Order 3490.1 - Michon, Gustave Leonard
  - e. Document Security Notice to Prospective Bidders/Offerors - Michon, Gustave Leonard
  - f. GSA Order PBS 3490.1A - Michon, Gustave Leonard
18. Testimony sheet with attachment - Michon, Gustave Leonard
  - a. Written testimony - Michon, Gustave Leonard
19. Testimony sheet with attachments - Siegel, Mark
  - a. Written testimony - Siegel, Mark
  - b. BofA Merrill Lynch Official Statement - 9/15/10 - Siegel, Mark


- c. North Macadam Urban Renewal Area Map - Siegel, Mark
- d. North Macadam Urban Renewal Area Tables - Siegel, Mark
- 20. Testimony sheet - Slaughter, Kelley
- 21. Written testimony - Walker, Perry
- 22. 7/6/11 letter from Anthony Sabatini - Walker, Perry
- 23. 7/5/11 letter from Yvonne Branchflower - Walker, Perry
- 24. 6/30/11 letter from Jeanette P. Oliver - Walker, Perry
- 25. 7/5/11 letter from Mary Zehring - Walker, Perry
- 26. Letter from Mary C. Gray - Walker, Perry
- 27. Testimony sheet with attachment - Luke, Jim
  - a. Written testimony - Luke, Jim
- 28. Testimony sheet - Walker, Perry
- 29. Testimony sheet - Ramsey, Craig C.
- 30. Testimony sheet - Tooke, Kathleen and James
- 31. Testimony sheet - Harris, Diana
- 32. Testimony sheet - Perlman, Lee
- 33. Testimony sheet with attachments - Fellman, Renee
  - a. Written testimony - Fellman, Renee
  - b. Title 33.920 - Descriptions of the Use Categories - Fellman, Renee
  - c. Title 33.110 - Single-Dwelling Zones - Fellman, Renee
  - d. Title 33 - St. Johns Plan District - Fellman, Renee
  - e. Title 33.555 - Marquam Hill Plan District - Fellman, Renee
  - f. Title 33.800 - General Information on Land Use Reviews - Fellman, Renee
  - g. Title 33.910 - Definitions - Fellman, Renee
  - h. Title 33.800 - General Information on Land Use Reviews - Fellman, Renee
  - i. Title 33.815 - Conditional Uses - Fellman, Renee
- 34. Testimony sheet - Dorfman, Marlene
- 35. Testimony sheet - Farzan, Jim
- 36. In Favor Of Testimony Sign Up Sheet - Hearings Office
- 37. In Opposition To Testimony Sign Up Sheet - Hearings Office
- 38. Letter - Harris, Diana
- 39. 7/8/11 letter - Michon, Carmen Q.
- 40. 7/10/11 Faxed letter - Gertenrich, Dr. Roger
- 41. 7/9/11 Letter from Suzanne and Leroy Barker - Poelwijk, Yvonne
- 42. 7/11/11 Letter - Dannen, Curt
- 43. 7/11/11 Letter - Dannen, Kay
- 44. Undated Memo to Hearings Office - Tinker, Irene
- 45. 7/12/11 Letter - McAtee, Terri
- 46. 7/12/11 Letter - Tooke, Kathleen and James
  - a. Map - Tooke, Kathleen and James
  - b. Fox News article - Tooke, Kathleen and James
  - c. Oregonian article - Tooke, Kathleen and James
  - d. The Washington Times article - Tooke, Kathleen and James
  - e. Los Angeles Times article - Tooke, Kathleen and James

- f. Ledger-Enquirer.com article - Tooke, Kathleen and James
  - g. Ledger-Enquirer.com article - Tooke, Kathleen and James
  - h. NPR article - Tooke, Kathleen and James
47. Undated letter - Merrill, Ralph G.
- a. UPI.com article - Merrill, Ralph G.
  - b. The Valdosta Daily Times article - Merrill, Ralph G.
  - c. The Washington Times article - Merrill, Ralph G.
  - d. Fox News article - Merrill, Ralph G.
  - e. Creative Loafing Atlanta article - Merrill, Ralph G.
  - f. Fox13 article - Merrill, Ralph G.
  - g. Alabama Public Radio article - Merrill, Ralph G.
  - h. USA Today article - Merrill, Ralph G.
  - i. NPR article - Merrill, Ralph G.
  - j. Oregonian article - Merrill, Ralph G.
48. 7/12/11 Letter from Lynne and Don Dagg - Merrill, Ralph G.
49. 7/10/11 Letter - Gertenrich, Dr. Roger
50. 7/12/11 Letter - Warren, Tamiko
51. 7/11/11 Letter - Smolen, Neil J. and Lee Daly
52. 7/12/11 Memo - Hardy, Douglas
53. Undated letter - Fenner, Nancy
54. 7/13/11 Letter - Fellman, Renee
- a. Analysis - Fellman, Renee
  - b. 6/27/11 Email string Renee Fellman - Yvonne Poelwijk - Fellman, Renee
55. 7/13/11 Testimony - Walker, Perry
56. 7/12/11 Additional Testimony - Davis, Jim
- a. Oregonian article: Posting of floor plan spurs inquiry - Davis, Jim
  - b. Oregonian article: U.S. plans to raise bar on who gets deported - Davis, Jim
  - c. Oregonian article: School feared fuss over ICE location - Davis, Jim
57. Undated Letter - Parks, Jessica
58. 7/13/11 Faxed letter - Walenza, Susan
59. Undated letter - Rodriguez, Krista
60. 7/11/11 letter with attachments - Farzan, Jim
- a. 4/28/11 letter from Richard Palaniuk, SPBA - Farzan, Jim
  - b. 6/30/11 letter from Dee Walsh, REACH Community Development - Farzan, Jim
61. 7/13/11 letter - Schlitt, Donna
62. Letter - Bracke, Laura
63. 7/13/11 letter with attachments - Junkin, John M.
- a. 7/13/11 letter from Hughart, Kittelson & Associates - Junkin, John M.
  - b. Letter from Elizabeth Godfrey, ICE - Junkin, John M.
  - c. Perspective at SW Moody and SW Bancroft Initial Development - Junkin, John M.
  - d. Aerial Perspective Initial Development - Junkin, John M.
  - e. View to the East - Junkin, John M.
  - f. Geo Transport, Inc. photos - Junkin, John M.
  - g. 7/13/11 Memo from Keith Skille, GBD Architects - Junkin, John M.

- h. Maximum Buildable Area - Junkin, John M.
  - i. Map 510-3 Maximum Heights, Map 2 of 3 - Junkin, John M.
  - j. Map 510-2 Floor Area Ratios, Map 2 of 2 - Junkin, John M.
  - k. 8/11/10 Memo to Kara Fioravanti - Junkin, John M.
  - l. 1/26/11 Memo, Michelle Seward to Susan McKinney - Junkin, John M.
  - m. 7/12/11 letter from Michael D. Schrunk, Multnomah County DA to Jim Davis -  
Junkin, John M.
64. 7/18/11 Letter - Junkin, John M.
65. 5/9/11 E-mail from Carrie Richter (printed 6/20/11, not labeled in staff file) - Hardy,  
Douglas
66. 6/15/11 E-mail string with attachment - Hardy, Douglas
- a. Carbon Monoxide Hot Spot Area - Hardy, Douglas



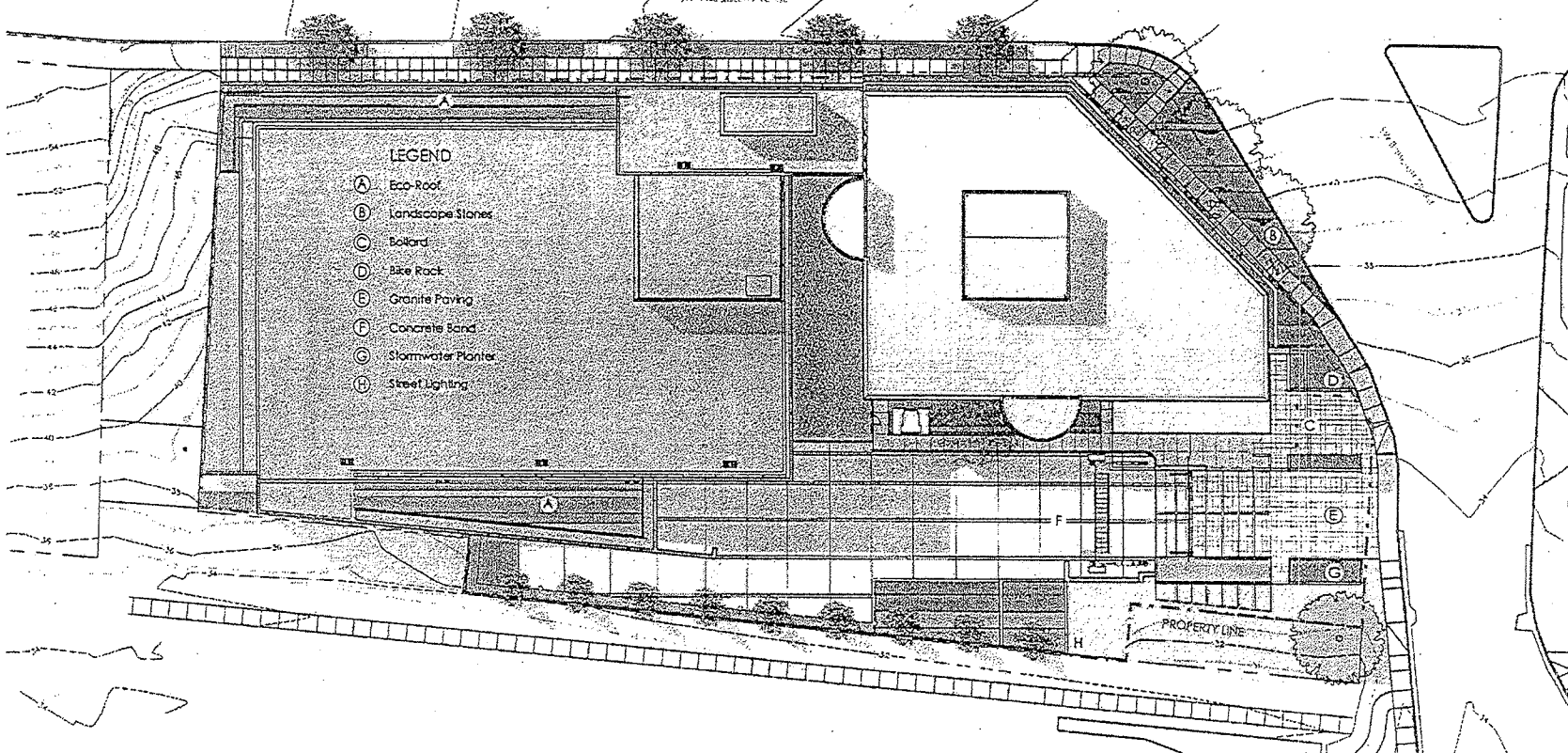
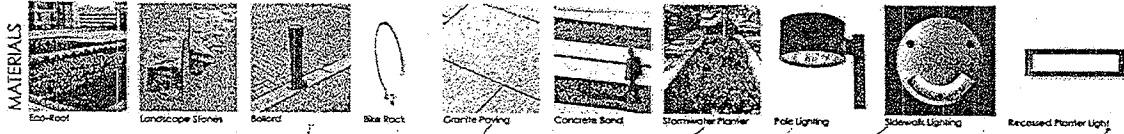
# ZONING

 Site



This site lies within the:  
CENTRAL CITY PLAN DISTRICT

File No. LU 11-124052 CU,PR  
 1/4 Section 3429  
 Scale 1 inch = 200 feet  
 State Id 1S1E10CD 500  
 Exhibit B (Apr 01,2011)



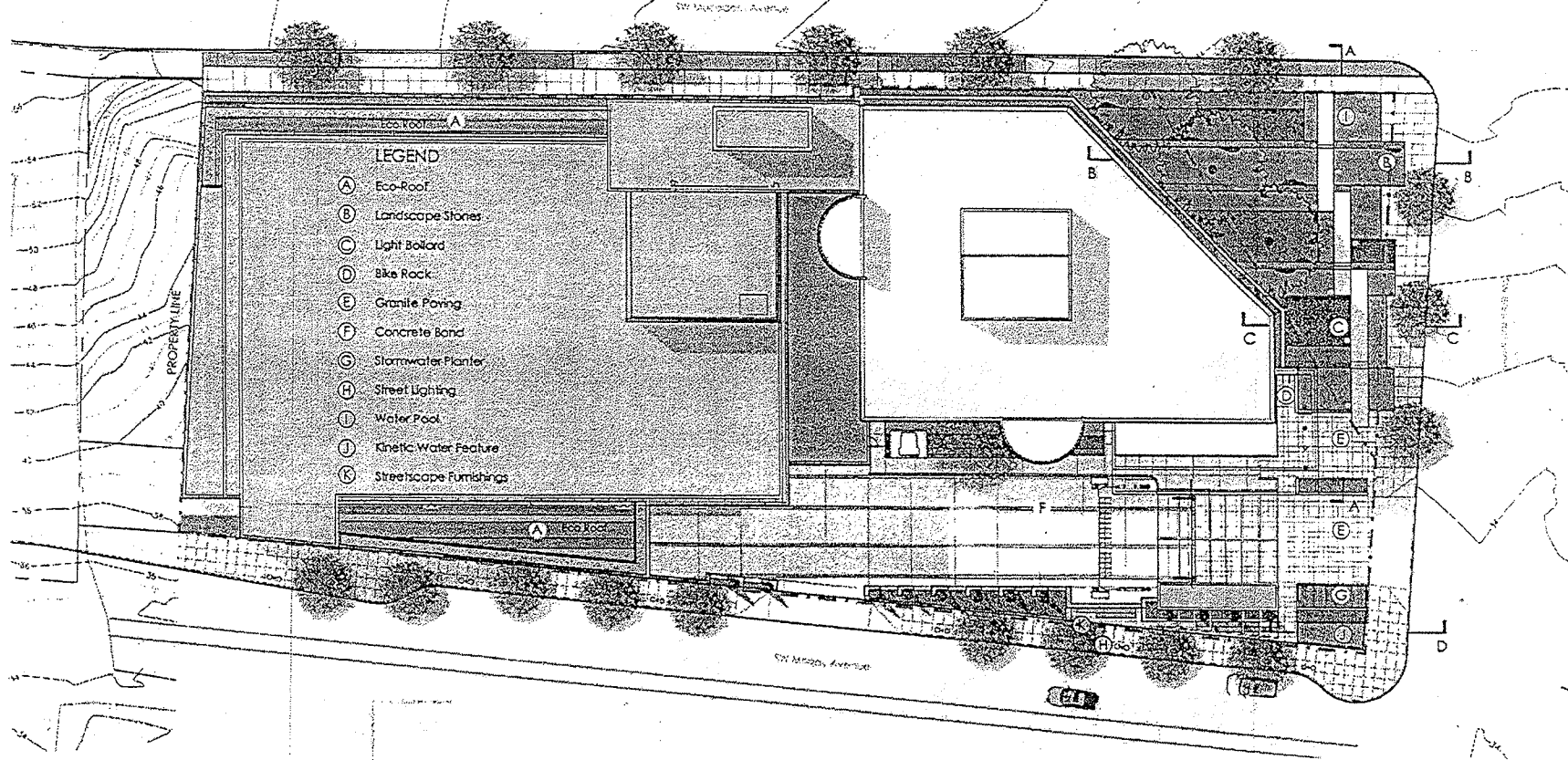
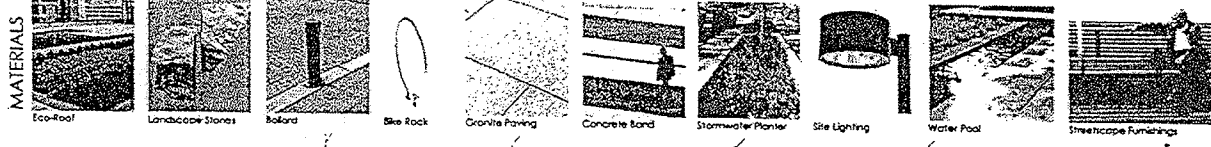
LANDSCAPE MATERIALS PLAN - INITIAL DEVELOPMENT

1/32" = 1'-0"



DESIGN REVIEW APPLICATION

CASE NO. 11-124052  
EXHIBIT C1



LANDSCAPE MATERIALS PLAN - FUTURE DEVELOPMENT

1/32" = 1'-0"



4310 SW MACADAM, PORTLAND, OREGON

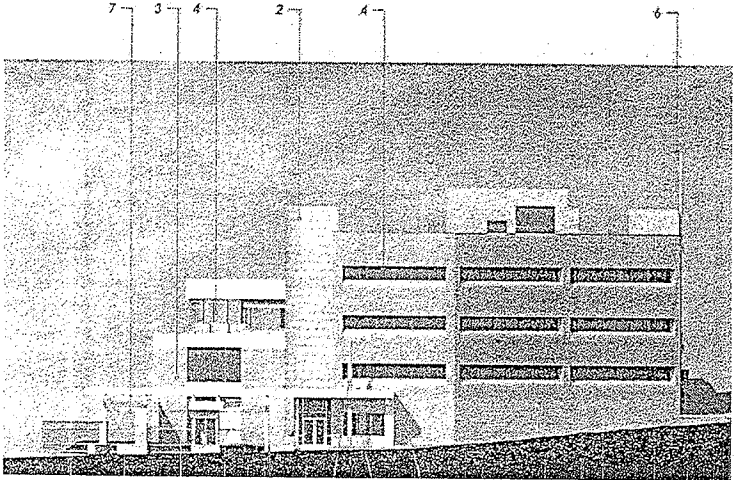
DESIGN REVIEW APPLICATION

CASE NO. 11-124002  
EXHIBIT C2

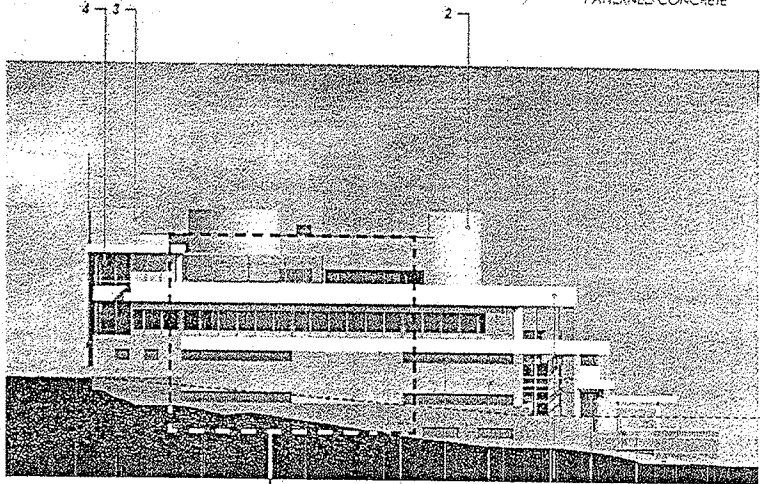


MATERIAL LEGEND

- 1 EXISTING SYNTH. PLASTER
- 2 EXISTING BRICK
- 3 BRICK
- 4 VISION GLAZING
- 5 METAL PANEL
- 6 ALUMINUM FLAGPOLE
- 7 METAL SECURITY GATE
- 8 WOVEN WIRE MESH
- 9 PATTERNED CONCRETE



KEYPLAN



KEYPLAN

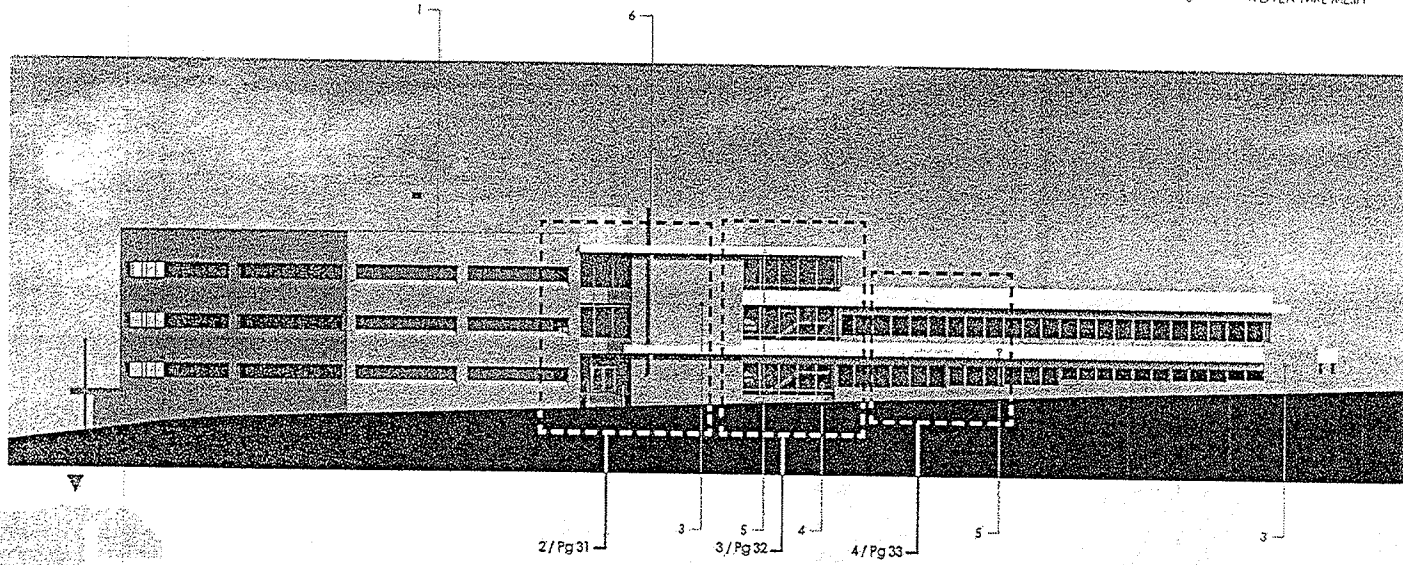
ELEVATIONS - NORTH + SOUTH

CASE NO. 11-124052  
 EXHIBIT 13



MATERIAL LEGEND

- 1 EXISTING SYNTH. PLASTER
- 2 EXISTING BRICK
- 3 BRICK
- 4 VISION GLAZING
- 5 METAL PANEL
- 6 ALUMINUM FLAGPOLE
- 7 METAL SECURITY GATE
- 8 WOVEN WIRE MESH



KEYPLAN

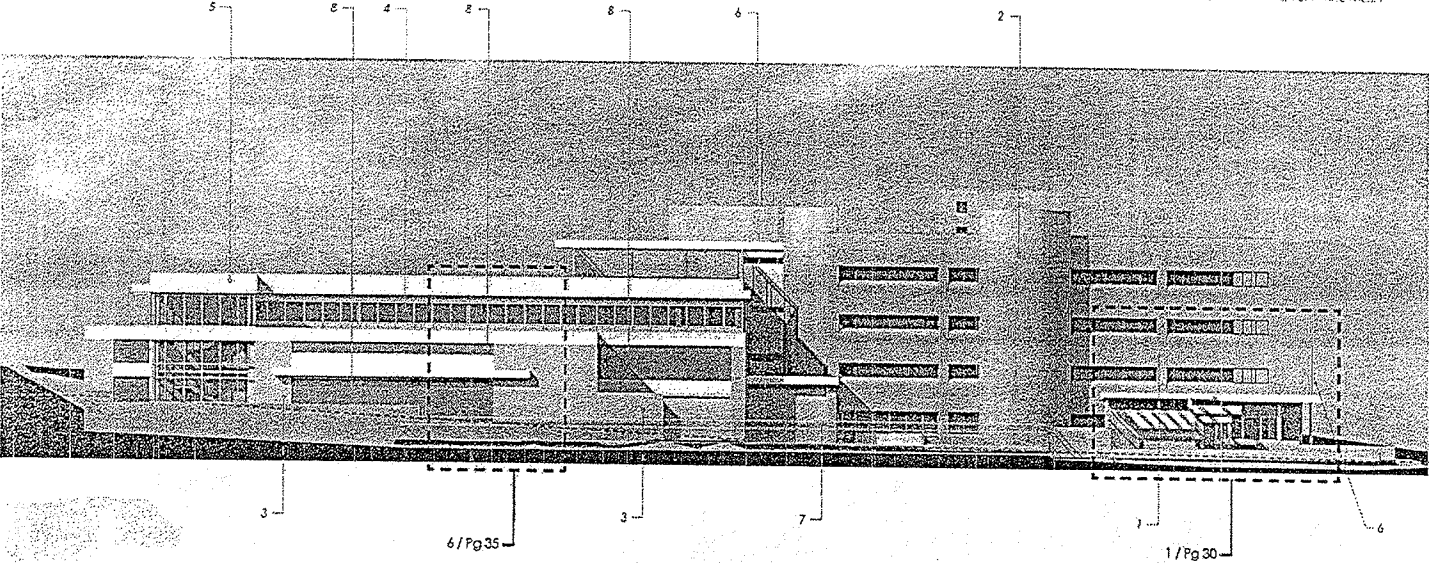
ELEVATION - WEST

CASE NO. 11724052  
 EXHIBIT C4




MATERIAL LEGEND

- 1 EXISTING SYNTH. PLASTER
- 2 EXISTING BRICK
- 3 BRICK
- 4 VISION GLAZING
- 5 METAL PANEL
- 6 ALUMINUM FLAGPOLE
- 7 METAL SECURITY GATE
- 8 WOVEN WIRE MESH



GRADE OF FUTURE DEVELOPMENT AT SW MOODY AVENUE

KEY PLAN 

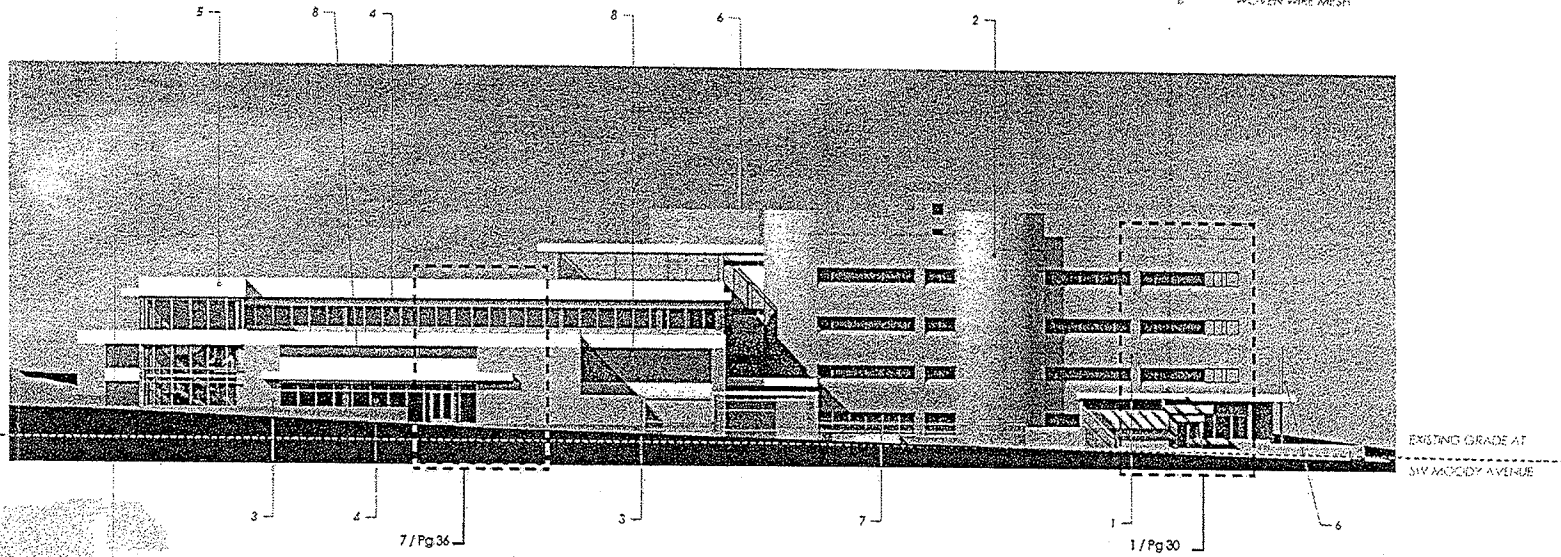
ELEVATION - EAST  
INITIAL DEVELOPMENT

CASE NO. 17-24052  
EXHIBIT 45

63D

MATERIAL LEGEND

- 1 EXISTING SYNTH. PLASTER
- 2 EXISTING BRICK
- 3 BRICK
- 4 VISION GLAZING
- 5 METAL PANEL
- 6 ALUMINUM FLAGPOLE
- 7 METAL SECURITY GATE
- 8 WOVEN WIRE MESH



KEYPLAN ▲

ELEVATION - EAST  
FUTURE DEVELOPMENT

CASE NO. 11-124092  
EXHIBIT *cl*



**RESPONSE TO THE BUREAU OF DEVELOPMENT SERVICES  
LAND USE REVIEW REQUEST**

**Portland Transportation  
Development Review  
Bureau of Transportation Engineering & Development**

LU: 11-124052-000-00-LU

Date: June 10, 2011

To: Douglas Hardy, Bureau of Development Services, B299/R5000

From: Robert Haley, B106/800, 503-823-5171

Applicant: Gbd Architects \*Keith Skille\*  
GBD ARCHITECTS  
1120 NW COUCH ST STE 300  
PORTLAND OR 97209

Location: 4310 SW MACADAM AVE

TYPE OF REQUEST: Type 3 procedure CU - Conditional Use

**DESCRIPTION OF PROJECT**

Type III Conditional Use Review and Central City Parking Review for proposed Department of Homeland Security Immigrations & Customs Enforcement Detainee Processing Center, classified as a Detention Center by City Council.

**RESPONSE**

Portland Transportation/Development Review has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services.

**Introduction**

4310 Building LLC has already received City Council approval to construct a new 64,948 square foot three-story building that will be connected to an existing 49,331 square foot four-story office building located on the southeast corner of SW Macadam Avenue and SW Bancroft Street. Combined, the building will consist of approximately 114,279 square feet and will house two Immigrations and Customs Enforcement (ICE) agencies – Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO). Within the combined 114,279 square foot facility, approximately 5,198 square feet will be dedicated for detainee processing subject to a Conditional Use Review.

**Transportation Impact Study**

As requested, a limited transportation impact study (TIS) has been developed to address the transportation impacts of the proposed detention facility component of the larger ICE facility. This analysis includes the following:

- A detailed narrative that outlines how the ICE facility (and detention/processing center) operates from a transportation perspective.
- A trip generation comparison of potential trips generated by a reasonable worst-case full build out allowed under current zoning to that of the proposed conditional use combined with the other previously approved development.
- A review of the site access operations including an access gate queuing analysis.
- A review of the impacts that the Conditional Use element will have on the surrounding on-street parking supply in the South Waterfront neighborhood.

CASE NO. 11-124052  
EXHIBIT E7

### **ICE Transportation operations summary**

The following bullets describe the proposed detention facility (the subject of the conditional use) and its relationship to the larger ICE facility (which has already been approved by the City Council).

- The ICE facility will accommodate 5,198 square feet of space dedicated for a detention facility (approximately 3,860 square foot) and accessory uses/service area (approximately 1,338 square feet).
- Detainees will be brought to the ICE facility throughout a typical weekday from a variety of locations. Based on experience at the current facility in downtown Portland, approximately 10-15 individuals will be processed per day at this facility.
- Detainees will arrive to the ICE facility via a transport van or fleet vehicle. A gated entrance and manned gatehouse will dictate access to the site. Once inside the facility, the transport vehicle will drive into a sallyport where detainees will be unloaded and taken into the processing center.
- Upon being processed, all detainees will be loaded onto a single bus and transported to the NW Detention Facility in Tacoma, WA. This transport typically leaves around 2:00 p.m. daily. No detainees will be kept overnight at the processing center. Any detainees required to stay overnight prior to transfer to Tacoma will be housed in other off-site detention facilities in the metropolitan area.

The following bullets describe the transportation operations of the larger ICE facility.

- The ICE building has been designed to accommodate upwards of 50 HSI, 80 ERO, and 4 computer support employees.
- A 106-stall internal parking garage will support the daily operations of HSI and ERO. The parking garage will provide permanent overnight parking spaces for transport vans and official government vehicles. In addition, the parking garage will provide daily on-site parking spaces for HSI and ERO officials who are assigned take-home government vehicles.
- All vehicles accessing the site (including the parking garage and sallyport) must stop at the gated entrance/guardhouse where they will be required to present credentials. During off hours, a card reader will provide access to the facility for authorized vehicles.

### **Approval Criteria**

33.815.205 Conditional Use Review for Detention Facilities

#### **C. Public services.**

1. The proposed use is in conformance with the street designations shown in the Transportation Element of the Comprehensive Plan;
3. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, or other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; and safety for all modes

#### **Trip Generation Comparison**

Given that the proposed detention facility/processing center requires a conditional use approval, a trip generation comparison was completed to better understand the anticipated impacts of the conditional use compared to a reasonable worst case build out allowed under current zoning. For the purposes of this analysis, the reasonable worst case full buildout allowed under current CX zoning was assumed to be a

241,475 square-foot mixed-use building (40,000 square feet of ground floor retail and 201,475 square feet of general office uses). This mix of uses is permitted outright within the current zoning code and is consistent with surrounding South Waterfront development patterns.

As the conditional use is only a small component of the overall ICE facility, the trip generation calculation included the trips anticipated to be generated by the detention facility/processing center and the trips anticipated to be generated by the previously approved HSI and ERO uses. The trip generation profile for these uses was developed based on the anticipated number of employees and the percentage of those employees that will have the ability to drive and park a vehicle within the proposed parking garage. Although the typical arrival/departure patterns of the employees are random (primarily due to the large amount of official business that is completed off-site), it has been conservatively assumed that all employees will arrive and depart the site within the same weekday a.m. and p.m. peak hours. The resulting trip generation profile and comparison is outlined in Table 1 below.

**Table 1** Trip Generation Comparison

Land Use	ITE Code	Size (sq. ft.)	Daily Trips	Weekday AM Peak Hour			Weekday PM Peak Hour		
				Total	In	Out	Total	In	Out
Reasonable Worst Case Buildout Under Existing CXd Zoning									
General Office Building <i>(30% Mode Split Reduction)</i>	710	201,475	2,220 <i>(670)</i>	310 <i>(90)</i>	270 <i>(80)</i>	40 <i>(10)</i>	300 <i>(90)</i>	50 <i>(15)</i>	250 <i>(75)</i>
Specialty Retail <i>(10% Internalization Reduction)</i>	814	40,000	1,770 <i>(180)</i>	110 <i>(10)</i>	50 <i>(5)</i>	60 <i>(5)</i>	110 <i>(10)</i>	60 <i>(5)</i>	50 <i>(5)</i>
<b>Total Net New Trips</b>			<b>3,140</b>	<b>320</b>	<b>235</b>	<b>85</b>	<b>310</b>	<b>90</b>	<b>220</b>
Buildout for Proposed Conditional Use and Associated HSI and ERO Offices									
Conditional Use (Detention/Processing Center)			30 <sup>1</sup>	<5	<5	<5	<5	<5	<5
HSI			180	45 <sup>2</sup>	40	5	45 <sup>2</sup>	5	40
ERO			80	20 <sup>3</sup>	15	5	20 <sup>3</sup>	5	15
<b>Total Trips</b>			<b>290</b>	<b>65</b>	<b>55</b>	<b>10</b>	<b>65</b>	<b>10</b>	<b>55</b>

<sup>1</sup>The ICE detention/processing center is anticipated to process 10-15 detainees per day. For the purposes of the trip generation analysis, it has been conservatively assumed that all detainees will arrive separately via individual transport vehicles. Once processed, all detainees are relocated via a single transport van to the NW Detention Facility in Tacoma, WA around 2:00 p.m. each day. As such, the weekday a.m. and p.m. peak period trip generation potential is anticipated to be minimal.

<sup>2</sup>Based on conversations with HSI officials, approximately 40 employees are issued take home government vehicles and will be expected to park these vehicles within the on-site parking garage. All other employees are anticipated to commute via public transportation.

<sup>3</sup>Based on conversations with ERO officials, approximately 15 employees are issued take home government vehicles and are expected to park these vehicles within the on-site parking garage. All other employees are anticipated to commute via public transportation.

As shown in Table 1, the combination of trips associated with the proposed conditional use and approved development is significantly less than the trips associated with a reasonable worst case full build scenario of the site under existing CXd zoning. As a result, the potential traffic impacts to the surrounding roadways and intersections within the South Waterfront District are substantially minimized with the proposed conditional use and approved development. Based on this finding, a detailed street capacity and intersection level of service analysis is not required.

**Site access operations**

Although a formal street capacity and intersection level of service analysis is not required, a site access operations analysis was performed at the proposed gated entrance to ensure that vehicles can access and maneuver the site in a safe and efficient manner.

Vehicle delays associated with gated entries can cause vehicle queues when there is a high vehicular demand and an inefficient entry mechanism. To ensure that the proposed gated entrance operates as efficiently as possible, specific design elements and operational controls are being implemented into the building design. As previously mentioned, access to the site and the parking structure will be dictated by a manned gatehouse and a retractable security gate. It is anticipated that all vehicles accessing the site during normal business hours will pull up at the gatehouse to present their credentials. The security gate will then be opened for access:

With respect to the entry procedure, service times were estimated based on observations at other guarded entry facilities and from the manufacture specifications on the security gate. As a result, it is estimated that the entry procedure can take upwards of 20-30 seconds for a vehicle to pull up to the gatehouse, present credentials, wait for the security gate to open, and then clear the threshold.

Using a maximum service rate of 30 seconds and the estimated peak entering volume of 55 vehicles<sup>1</sup> during the weekday a.m. peak hour, the expected vehicle queues during the peak entry period were calculated as summarized in Table 2.

**Table 2** 95<sup>th</sup> Percentile Vehicle Queue Estimates

Direction	Time Period	Maximum Vehicle Queue <sup>1</sup>		
		Vehicles	Feet	Available Storage (feet) <sup>2</sup>
Entering	AM Peak Hour	2	50	55

<sup>1</sup>95th percentile queue

<sup>2</sup> Measured from the face of the security gate to the back of sidewalk area along SW Bancroft Street

As Table 2 shows, the queuing analysis determined that during the weekday a.m. peak hour, the 95th percentile queue is estimated to be two vehicles. Given that there is room to store approximately two vehicles on-site, the gated entry is not anticipated to have an operations impact to traffic or pedestrian movements along SW Bancroft Street. The queuing analysis calculations are provided in *Appendix A*.

### Accommodation of Large Vehicles

The only regularly anticipated large vehicle that will access the site is a 55-foot long passenger bus that will be used to transport detainees once a day to other off-site detention facilities. As documented in the previous section, there is sufficient on-site stacking distance for this bus type such that it will not impact vehicle or pedestrian movements along SW Bancroft Street while it is awaiting access at the entry gate. Once on site, the driveway layout adequately accommodates maneuvering room for this bus type to enter and exit the sallyport. The attached figures illustrate the turning/sweep paths for Phase 1 (prior to the Moody Avenue extension) and Phase 2 (with the Moody Avenue extension).

### Impacts to on-street parking

Approximately 55 staff working in the ICE facility will be issued take-home government vehicles that will be used for daily commuting purposes. There will be no other on-site parking available for ICE employee use on a consistent basis. Given the lack of long-term public parking opportunities in the South Waterfront District, it is anticipated that the majority of all remaining employees will commute to/from work via public transportation, bicycling, or walking. The subsidization of employee transit costs, the inclusion of secured/covered bicycle parking and shower/changing facilities within the building, and the site's proximity to transit opportunities (Streetcar, Tri-Met bus routes #35 & #36) and popular walking/bicycling trails all help support this requirement.

Under the existing CX zoning, there are no minimum on-site parking spaces required. Central City policies discourage the provision of on-site parking and encourage the use of alternative modes of transportation. Potential on-street parking impacts can be looked at using the analysis comparing trip rates of a reasonable worst case full buildout allowed under current CX zoning was assumed to be a 241,475 square-foot mixed-

those of Chapter 33.266 minimum on-site parking requirements would they have been required for 201,475 sq ft of general office and 40,000 sq ft of retail as they are in other areas of the City. Had the minimum parking requirements apply, the site would have to provide 483 spaces for the general office and 80 spaces for the retail, for a total of 563 on-site spaces. The argument could then be made that a project allowed outright could be constructed that created a demand for 563 parking spaces without providing any spaces on-site. If parking were required for the entire 114,279 sq ft ICE building, 228 spaces would be required using the same 1 per 500 sq ft standard for general office. Since the ICE building is providing 106 on-site parking spaces, the potential on-street demand is only 122 spaces compared to 563 spaces under the reasonable worst case scenario.

Conversations with ICE officials indicate that they anticipate very few visitors to the facility, given the nature of the uses on-site. Patterns at the existing HSI and ERO centers indicate upwards of 3 visitors per week on an average basis. Given that these visits consist primarily of attorneys and are typically short in duration, it is expected that they will utilize available on-street parking within the site vicinity. With on-street parking available along the Moody, Bond, and Bancroft corridors, it is reasonable to assume that the on-street parking supply in the vicinity of the building is adequate to accommodate these infrequent visitors.

The applicant was required to provide a detailed on-street parking survey to determine the availability of on-street parking supply. They state that field visits indicated that there is a large amount of residential construction occurring within the immediate site vicinity<sup>2</sup> that has temporarily reduced the supply of on-street parking spaces. As such, an on-street parking survey at this time would not yield an accurate measurement of supply and demand.

### **Central City Parking Review**

#### **APPROVAL CRITERIA FOR CCPR**

#### **Section 33.808.100B**

*Evaluation is based on the transportation impact analysis and includes factors such as street capacity and level of service, on street parking impacts, access requirements, impacts on transit operations and movement, impacts on the immediate and adjacent neighborhoods, and pedestrian and bicycle safety.*

In accordance with Section B., Kittelson & Associates, Inc. has completed a review of the trip generation and transportation related impacts of the proposed access driveway off of SW Bancroft Street. As previously noted in the TIS section of this letter, the combination of trips associated with the proposed conditional use and approved development is significantly less than the trips associated with a reasonable worst case full build scenario of the site under the existing CXd zoning. As a result, the potential traffic impacts to the surrounding roadways and intersections are substantially minimized with the proposed conditional use and approved development. This will help to preserve capacity in the South Waterfront District and minimize peak hour traffic congestion in the Portland region. The proposed driveway and access gate are adequately designed to support the estimated vehicle queues during the peak ingress period. Finally, the number of parking garage spaces are adequate to support the estimated number of government take-home vehicles and transport vehicles that are anticipated to park at the site on a daily basis.

From a pedestrian perspective, the SW Bancroft Street frontage will be improved in the interim with a 6-foot pedestrian sidewalk behind the existing curb (no sidewalk currently exists today) until the South Portal Project is complete. At that time, the full 11-foot pedestrian corridor will be established. Along the east side of the building, the South Waterfront Circulation Plan calls for the southerly extension of SW Moody Avenue south of SW Bancroft Street. The project will not be required to construct frontage improvements at the outset of the building construction, but will be required to sign street and storm sewer waivers of remonstrance for participation in future improvements. The south side of the development area is an existing ODOT storm sewer line that extends from Interstate 5 east toward an outfall in the Willamette River. During the Design Review phase, a conflict between existing Planning and Street Design Standard

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maps was discovered. Map 510-7, updated March 2010 indicated the presence of a Pedestrian Access way in approximately the same location as the ODOT easement. The South Waterfront Street Plan and Standard update dated May 2009 does not show that link. During the Design Review, PBOT and BPS determined that the Street Plan over-rode the Zoning Map and no pedestrian link/ access way is required. In summary, all of the noted improvements or agreements to make future improvements demonstrate that the project will improve pedestrian circulation and safety and that the parking structure will have no impact. Lastly, the proposed building/parking structure is not located adjacent to an existing light-rail or streetcar line. As such, it is not anticipated to have any impacts on transit operations.

**Section 33.808.100C**

*The parking facility is in conformance with the street classifications of the Central City Plan District and the Central City Transportation Management Plan.*

The Section C. approval criterion aims to ensure that the parking facility is in conformance with the adopted street classifications and Central City Transportation Management Plan. Table 3 summarizes the street classifications as identified in the City of Portland Transportation System Plan (TSP).

**Table 3** City of Portland Street Classifications for Area Roadways

	Street Classifications		
	Macadam Avenue	SW Bancroft Street	SW Moody Avenue
Traffic	Major City Traffic Street	Traffic Access Street	Traffic Access Street
Transit	Major Transit Priority Street	Transit Access Street	Major Transit Priority Street
Bicycle	Local Service Bikeway	Local Service Bikeway	City Bikeway
Pedestrian	Central Walkway	City Walkway	Central City Transit/Pedestrian Street
Freight	Major Truck Street	Truck Access Street	Truck Access Street
Emergency	Major Emergency Response	Major Emergency Response	Major Emergency Response

**Phase I:**

- Macadam Avenue (west frontage): The existing sidewalk that extends to the face of curb will be removed. The entire frontage will be redeveloped according to current PBOT standards, complete with a 4 foot wide planting area between with new concrete sidewalk and curb. The existing street trees will be retained. A 3-1/2 foot wide, 688 square foot ROW property dedication immediately adjacent to the building addition will occur.
- Bancroft Street (north frontage): A temporary easement to allow development of a 1,197 square foot, 6 foot wide sidewalk will be placed to provide pedestrian access where there is none currently present. The existing frontage will be redeveloped with new landscaping that will include raised planters, and stepping stones. The existing street trees will be retained. A new driveway and entry plaza will be developed using stone pavers and raised planting areas.

**Phase II:**

- Moody Avenue (east frontage) Phase II is necessary to accommodate the planned extension of SW Moody Avenue south of SW Bancroft Street as part of the proposed South Portal entrance into the South Waterfront Subdistrict. As part of the project, Portland Streetcar is planned to utilize the existing railroad right of way. When that project occurs, the east site frontage will be transferred from private ownership to a public right of way. A 4,923 square foot ROW property dedication will be made and the frontage redeveloped to implement the South Waterfront Subdistrict Street Standards. A kinetic water feature will be placed at the corner of SW Moody and Bancroft Street. The Moody street frontage will be reconstructed into a layered landscaped area that includes district standard street lighting, planting and furnishing zone at the curb, and a series of raised planting bed, trees, shrubs and seating areas interspersed between L-shaped brick piers and infill fencing.

a portion of the street at the intersection of Bancroft and Macadam, the west portion of the frontage will be redeveloped into a landscaped pocket park, complete with district standard lighting, sidewalks and furnishing/planting areas. A water feature and planting areas will be developed over the current street.

These improvements will be completed when the City has substantially completed half-street public right-of-way improvements along SW Moody and realigns the SW Bancroft Street frontage. As such, the project and associated parking structure are in conformance with the adopted street classifications.

### **Transportation Demand Management Strategies**

Recognizing this and the lack of public parking facilities within the South Waterfront District, the following programs and features identified in the May, 3<sup>rd</sup>, 2011 Kittleson & Associates letter are being incorporated into the design and operations of the ICE facility in order to minimize single occupant vehicle trips and encourage the use of active forms of transportation. The requirement to implement these three TDM strategies is recommended as a condition of approval.

1. As part of the Department of Homeland Securities' Commuter Transit Subsidy Benefits Program, all HSI and ERO employees that do not have on-site parking privileges can participate in the transit subsidy program. This program provides transit subsidies to employees of up to \$230 per month. This amount is sufficient to cover Tri-Met and C-Tran monthly transit passes.
2. The facility will include a minimum of 22 bicycle parking spaces. These spaces will be located within the parking garage, providing covered and secure parking. In addition, four bicycle parking spaces will be located near the building's front entrance on SW Bancroft Street for general public use. With the facilities location adjacent to the popular Willamette Greenway Trail and other developing infrastructure in the South Waterfront District, it is anticipated that a large number of employees will take advantage of this infrastructure.
3. The building will include changing rooms and showers that can be used by employees who walk or bicycle to work.

In addition to the specific programs and design features, it should be noted that the site can take advantage of its proximity to a number of urban amenities that will naturally provide alternative commuting options. These include:

- The Portland Streetcar provides stops along SW Moody and SW Bond Avenues every 13-20 minutes depending upon the time of day and day of week.
- Tri-Met operates bus lines #35 (Macadam/Greeley) and #36 (Southshore). Line #35 provides daily service between Oregon City and north Portland with area stops along Macadam Avenue and Moody Avenue. Line #36 provides weekday rush hour service between Tualatin and Portland City Center with area stops along Macadam Avenue and Moody Avenue.
- The site is located immediately adjacent to a future Streetcar line extension to the south.
- The City of Portland offers dedicated carpooling parking spaces along SW Bancroft Street and SW Bond Avenue.
- The site is located immediately adjacent to the popular Willamette Greenway trail that provides regional walking/bicycling access.

These programs and design features, coupled with the site's proximity to transit (next to Portland's Streetcar) and urban location will help reduce the prevalence of single occupant vehicle commuting.

Based on the TIS submitted by the applicant, PBOT staff finds that the transportation system is capable of

safely supporting the proposed facility in addition to the existing uses in the area.

**Transportation System Development Charges (Chapter 17.15)**

System Development Charges (SDCs) may be assessed for this development. The applicant can receive an estimate of the SDC amount prior to submission of building permits by contacting Rich Eisenhauer at 503-823-7080.

**Driveways and Curb Cuts (Section 17.28)**

Curb cuts and driveway construction must meet the requirements in Title 17. The Title 17 driveway requirements will be enforced during the review of building permits.

**RECOMMENDATION**

No objection to approval subject to the applicant implementing the Transportation Demand Management Strategies identified in the Kittleson & Associates, Inc. May 3, 2011 TDM letter.

16



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

## MEMO

**Date:** July 12, 2011  
**To:** Greg Frank, Hearings Officer  
**From:** Douglas Hardy, Senior Planner  
Land Use Services  
503-823-7816  
[Douglas.Hardy@portlandoregon.gov](mailto:Douglas.Hardy@portlandoregon.gov)  
**Re:** LU 11-124052 CU PR (4310 SW Macadam Avenue)

Please consider the following Bureau of Development Services (BDS) response to several of the issues that were raised in the public testimony provided at the July 6<sup>th</sup> hearing for the proposed Detention Facility at 4310 SW Macadam Avenue. Also included in this memo are corrections to the previously submitted BDS Staff Report and Recommendation.

### **Response to Issues Raised in Public Testimony**

- **Detention Facility Floor Plan**

Several comments were made at the hearing that questioned the ability to determine whether the land use review approval are met given the record does not contain a floor plan of the proposed detention facility. As demonstrated in the BDS Staff Report, it is not necessary to have a floor plan in order to determine whether the applicable Conditional Use approval criteria (in Zoning Code Section 33.815.205) are met. The Conditional Use approval criteria are generally limited to the appearance of the facility, the safety of facility, and the availability of public services to accommodate the facility. The applicant included information in the record regarding how the detention facility will be secured, including details about the facility design that would promote safety. These details are included in the Security Plan, identified as Exhibit A8 in the BDS Staff Report.

Additionally, the applicant has identified the size of the facility (5,198 square feet), which is a factor BDS and Portland Bureau of Transportation (PBOT) used in determining the impact the facility may have on parking and traffic. BDS' recommendation to the Hearings Officer included approval of a detention limited to 5,198 square feet.

Given the information in the record on the limited size of the detention facility, and how the facility will be secured, BDS staff does not find that a floor plan is necessary to determine whether the applicable approval are met.

- **Release of Detainees from the Facility**

At the hearing, the applicant indicated some detainees would be released on bond at the subject site in accordance with federal guidelines. There was no information or discussion included in the applicant's written narrative submitted as part of the land use review regarding this practice. Absent any information regarding what specific criteria are used in making a determination to release detainees on bond, BDS staff cannot comment on whether this practice will pose any unreasonable safety risk to nearby uses and residents.

- **Maximum Allowed Building Height and Floor Area Ratio**

In addressing the transportation impacts of the proposed detention facility, the BDS Staff Report included figures on the amount of floor area that could be built on the site under a reasonable worst case scenario (pages 10 and 11). This scenario was based on a maximum floor area ratio (FAR) of 5:1 allowed on the site by the Central City plan district regulations. Information on the maximum allowed height of development at this site (125 feet) was also included in PowerPoint presentation BDS staff presented at the hearing.

Testimony provided at the hearing contested the allowed building height and FAR figures that BDS staff included in the Staff Report and PowerPoint. The testimony indicated plans for South Waterfront advocate a "stepped down" approach to development within the district, with the height and density of buildings tapering at the edges. BDS staff notes that the testifier is correct that the plans for South Waterfront do advocate for a stepped down density and height of development in this district, and this policy is reflected in Maps 510-2 and 510-3 of the Central City plan district (Zoning Code Chapter 33.510). These maps indicate that the largest FAR and height allowances are limited to the core of the South Waterfront district, with these allowances tapering down along the river frontage, and the area south of SW Bancroft Street. Also evident on these maps is that the subject site does have an allowed FAR of 5:1 (even without any bonuses permitted by the plan district), with an allowed height of 125 feet. This compares to a maximum allowed FAR of 6:1 and maximum allowed building height of 250 feet at the core of the district. Therefore, statements made in the BDS Staff Report and in the PowerPoint presentation related to maximum allowed height and FAR are accurate.

- **Zoning Code Prohibition on Detention Facilities**

Testimony was received at the hearing and subsequent to the hearing that provided Zoning Code citations identifying where detention facilities are prohibited, such as in Single-Dwelling and Multi-Dwelling zones, as well as in some plan districts. The testifiers conclude that this demonstrates such facilities are undesirable in residential areas.

BDS staff notes that detention facilities are prohibited in the Open Space zone, the Single and Multi-Dwelling zones, five of the eight Commercial zones, and in the St Johns and Marquam Hill plan districts. In these zones and plan districts, it is not even possible to request Conditional Use approval of a detention facility. However, the subject site is located in a CX commercial zone, and in the Central City plan district. There are no prohibitions against detention facilities in either the CX zone or Central City plan district; instead, detention facilities are allowed if approved as a Conditional Use.

- **Location of South Waterfront South Portal**

Several testifiers noted that SW Bancroft Street (at SW Macadam Avenue) is the identified South Portal to the South Waterfront district. As indicated on page 18 of the BDS Staff Report, while SW Bancroft Street historically was the identified South Portal to the district, the 2006 *South Portal Study* relocated the South Portal to SW Hamilton Street (at SW Macadam Avenue).

- **Impact of Proposed Use on the Desired Character of South Waterfront**

The issue of the proposed detention facility not being consistent with the desired character of South Waterfront, and with the intended residential character of the district was raised several times at last week's hearing. Specific references were made to the character and vision statements included in the 2003 *South Waterfront Plan*. The *South Waterfront Plan* does place an emphasis on encouraging a rich mix of uses in the district, including office, institutional, residential, and neighborhood scale retail uses. The Plan includes a desire to encourage the development of up to 3,000 residential units in the district. The Plan identifies the core of the residential area to be south of SW

Gibbs Street and east of SW Bond Avenue, with mixed uses expected in the area south of SW Bancroft Street.

While Conditional Use reviews for some uses include criteria that require demonstrating the proposal is consistent with the character of the area, or with adopted area plans, the Conditional Use approval criteria for detention facilities does not contain such a criterion (see Zoning Code Section 33.815.205). For detention facilities, the Conditional Use approval criteria are limited to appearance, safety, and adequacy of public services. Beyond addressing findings related to appearance, safety and public services, the approval criteria do not allow consideration of the impact of the proposed detention facility on the desired character of area, or the facility's consistency with adopted area plans. Nor do the approval criteria allow an evaluation of the impact such a facility has on property values, which is an additional issue raised in some of the testimony.

- **Transportation Impact Analysis Addendum**

PBOT staff has reviewed the July 5, 2011, addendum to the Transportation Impact Study (TIS) prepared by Kittelson and Associates. As the Kittelson representative indicated at the hearing, this addendum updates the employee count and parking information in the previous TIS dated May 24, 2011. The addendum indicates that the Immigration and Customs Enforcement (ICE) agency operation (both the office and the detention facility) anticipates 100 employees on site when the facility first opens, with a potential for the previously stated 134 employees over time, if needed. The addendum also states that 75 staff members will be issued Government Home to Work vehicles. This is up from the original allotment of 55 vehicles. With 20 more employees issued take home vehicles, there should be a corresponding decrease in the potential demand for on-street parking spaces in the district. Based on an updated queuing study included in the addendum, the driveway entrance should still be able to accommodate the increased employee vehicles without creating queuing across the sidewalk at the entrance on SW Bancroft Street. In addition, the addendum clarifies that the ICE facility will attract up to three visitors per day instead of three visitors per week. This modest increase should not have any significant impacts on on-street parking impacts or intersection operations.

Based on the information and analyses in the updated TIS addendum, PBOT continues to find that the transportation system can safely support the proposed facility in addition to the existing uses in the area.

- **Recommended Condition Regarding Connection to ODOT Storm Facility**

Condition E of the BDS Staff Report and Recommendation required the applicant to either receive Oregon Department of Transportation (ODOT) approval for connection to the ODOT storm-only sewer, or extend a public storm sewer to the site prior to building permit issuance. Subsequent to the publication of the Staff Report and Recommendation, the applicant submitted an e-mail, dated July 5, 2011, indicating that the proposed site drainage facility appears to be adequate, and appears to be an improvement of the existing stormwater system with respect to water quality. The Bureau of Environmental Services has reviewed the e-mail and determined that this provides sufficient confirmation that the ODOT storm-only facility can be used to address stormwater management needs of the site. As such, BES has commented that Condition E is no longer required.

**Corrections to Staff Report and Recommendation (revisions are underlined)**

- Findings for 33.808.100.K (bottom of page 25). The BDS staff finding for this criterion should read, "As the subject site is not within the Lloyd District Subdistrict, Goose Hollow Subdistrict, Central Eastside Subdistrict, Lower Albina Subdistrict or River District Sectors 1 or 2 (as identified on Map 510-8 of the Zoning Code), this criterion is not applicable."
- Findings for 33.808.100.L (top of page 26). The BDS staff finding for this criterion should read, "As the subject site is not within the Lloyd District, as identified on Map 510-8 of the Zoning Code, this criterion is not applicable."

- Findings for 33.808.100.M (bottom of page 26). The BDS staff finding for this criterion should read, "As the subject site is not within the Goose Hollow Subdistrict, as identified on Map 510-8 of the Zoning Code, this criterion is not applicable."



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GARVEY SCHUBERT BARER

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Please reply to JOHN M. JUNKIN  
jjunkin@gsblaw.com  
DIRECT DIAL 503 553 3131

August 17, 2011

**VIA EMAIL AND HAND DELIVERY**

Douglas Hardy  
Senior Planner  
City of Portland Bureau of Development Services  
1900 SW 4th Avenue  
Suite 5000  
Portland, OR 97201

Re: Appeal of Hearings Officer Decision HO4110014 (LU-11-124052)

Dear Mr. Hardy:

We represent the applicant, Lindquist Development Company, in the above-referenced matter. On August 12 we filed an appeal of the Hearings Officer's decision denying our client's requested conditional use application (LU-11-124052). We also have informed you that our client is extending the 120-day deadline on this matter to October 14, 2011 in order to accommodate the appeal.

In the appeal we filed last week we reserved the right to further supplement the appeal. Please consider this letter as a supplement to the appeal. In doing so we do not expand on the limited scope of the appeal, i.e., as to whether the Hearings Officer correctly applied PCC 33.915.205B. in concluding the facility's tenant, Immigrations and Customs Enforcement and Enforcement and Removal Operations' (ICE/ERO), direct release of detainees poses an unreasonable safety threat to nearby uses and residents.

In analyzing the unreasonable safety threat criteria, the Hearings Officer identified certain "safety issues" presented by the opponents (H.O. Decision, p.12). He specifically found that the majority of those issues did not rise to a level of posing an unreasonable safety threat to nearby uses and residents – and only found that any of the issues had merit in regard to the direct release of detainees. Specifically, as to the "safety issues" the Hearings Officer concluded as follows:

**Lack of Architectural Detail** That portion of the building that is to be used as a "detention facility" is internal and no floor plan was provided, although there was extensive text and testimony explaining how that portion of the building would function and the safety precautions that are taken to maintain detainees while in custody. The Hearings Officer correctly concluded that a detailed floor plan was not necessary to, as a matter of law, determine if the facility posed an unreasonable safety threat to the nearby uses and residents.

CASE NO. LU11-124052  
EXHIBIT F.6





**Presence of Guns** Concerns were expressed that officers and security personnel would be armed at the security gate and for the transport of detainees. The Hearings Officer concluded however that the presence of guns on security personnel working at or in conjunction with the detention facility did not pose an unreasonable safety threat to nearby uses and residents.

**Demonstrations** Opponents had raised concerns regarding the potential of demonstrations at the building. The Hearings Officer noted that such demonstrations at the building could occur if there was no detention facility located at the building. The Hearings Officer concluded that the *possibility* of demonstrations does not pose an unreasonable safety threat.

**School Proximity** The Hearings Officer noted the concerns over the proximity of the detention facility to a school. The Hearings Officer noted several factors important to maintaining the facility's security, e.g., the relatively small number of holding areas and the few number of detainees processed on a daily basis, the short holding period and the security gate and sally port, etc., to conclude the detention facility would not pose an unreasonable safety threat to the school. However, the Hearings Officer did qualify this conclusion so long as detainees are not directly released from the facility.

**Security Plan** The opponents raised concerns that the Security Plan proposed by the applicant as a condition of the approval would be unenforceable as a practical matter. The Hearings Officer disagreed, however, that such condition would not be enforceable as a matter of law. The Hearings Officer did find that, by not addressing the direct release of detainees, the Security Plan posed an unreasonable safety threat to nearby uses and residents.

The Hearings Officer's reasoning in concluding the detention facility fails to meet PCC 33.915.205B by posing an unreasonable safety threat to nearby uses and residents revolves solely on the direct release of detainees. In regard to this issue, the applicant provided the testimony of Elizabeth Godfrey, the Assistant Field Office Director for the Portland ICE/ERO office. Ms. Godfrey's written submittal in regard to the direct release of detainees is set forth on pages 15 and 16 of the Hearings Officer's Decision. The Hearings Officer acknowledged the testimony of Ms Godfrey as credible (H.O. Decision, p. 16).

The Hearings Officer identified that the opponents addressed the public safety concerns in regard to the direct release of detainees in the oral testimony of Harris and Siegel and the written testimony of Poole (Ex. H. 13) and Siegel (Ex. H. 19). However, these submittals essentially only identified concerns that the direct release of detainees could result in the area "harboring more and more transient folks with no place to go upon release and the impact on property values and concern about increased crime (Poole Ex. H. 13). The Siegel submittal raised a concern that the direct release of detainees was not addressed in the Security Plan.

Notwithstanding the only credible evidence in the record would support a finding that the direct release of detainees *did not* pose an unreasonable safety threat to nearby uses and residents, the Hearings



Officer concluded that, as a result of the direct release of detainees, the public safety criteria was not met. The Hearings Officer's decision in this regard arose from his previous experience with the conditional use permit granted Multnomah County for the Wapato Jail Facility (LU 00-00554 CU) and what he believed was a lack of a supportive recommendation from the Portland Police Bureau (Hearings Officer's Decision, p. 17) in regard to the proposed facility. However, the Police Bureau did submit an opinion that found the proposed detention facility did not pose an unreasonable public safety threat to nearby uses and residents (Ex. E.4),<sup>1</sup> albeit, the Police Bureau's position did not specifically identify the issue of direct release of detainees.

The Hearings Officer erred in concluding that, as a result of the direct release of detainees, the application failed to meet PCC 33.915.205B. by posing an unreasonable public safety threat to nearby uses and residents. There was no evidence presented to support this conclusion – all credible evidence supported the contrary position that the direct release of detainees does not pose an unreasonable public safety threat. Further, the Hearings Officer erred by supporting his Decision on what he perceived as a lack of support by the Portland Police Bureau, rather than the position.

Notwithstanding the Hearings Officer's conclusion, his Decision then provides a road map to addressing the concerns with the direct release of detainees. Specifically the Hearings Officer recommends, if the application is to be approved, that the Security Plan (Ex. A.8) address the issue of the direct release of detainees. In furtherance of this recommendation, ICE Field Office Director Nathalie R. Asher has issued the ICE CUSTODY RELEASE PLAN for the Macadam Site – Portland, Oregon (enclosed herewith, the "Plan"). The Plan, consistent with the oral and written testimony of Ms. Godfrey, includes the ICE Mission; Nature of Custody at Macadam Site; ICE Detainee Arrival at the Macadam Site; ICE Secured Vehicles; Release of eligible persons from ICE Custody; Release Gratuity for Transportation; and Decisions to release persons from ICE Custody. The Plan, among other things, provides for specific procedures to assist detainees to leave the area upon their release. The Plan provides further assurances that directly released detainees do not constitute a public safety threat to nearby uses and residents.

As ICE's Field Office Director, Ms. Asher has the authority to direct and enforce operations of the Portland Field Office. Upon executing the Plan by Ms. Asher, the Portland office is mandated to follow it. Further, the applicant is agreeable to incorporating the Plan into the Security Plan, as a condition of the approval of the conditional use permit.

The Hearings Officer erred in concluding that the application did not satisfy PCC 33.915.205B, by posing an unreasonable public safety threat to nearby uses and residents. The only credible evidence presented on this issue concludes the contrary – that the direct release of detainees does not pose an unreasonable public safety threat. The Hearings Officer further erred in reaching his conclusion by relying on evidence he did not believe was in the record, i.e., a recommendation by the Portland Police Bureau regarding the direct release of detainees. A perceived *lack of a position* by the Portland Police

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<sup>1</sup> The Portland Police Bureau's position is set forth in a June 20, 2011 memo from Capt. Chris Uehara.



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Douglas Hardy  
August 17, 2011  
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Bureau is not sufficient to rebut the evidence in the record that the direct release of detainees does not pose an unreasonable public safety threat to nearby uses and residents.

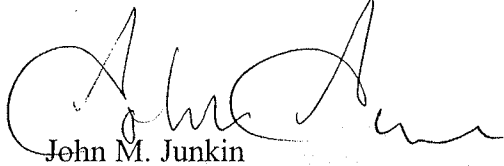
Notwithstanding, and consistent with the testimony of Ms. Godfrey, the ICE Field Office Director has executed the Plan attached hereto and the applicant is agreeable to incorporating the Plan into the Security Plan as a condition of approval.

Please include this letter in the submittal for the September 21, 2011 City Council hearing. Thank you for your attention to this matter.

Very truly yours,

GARVEY SCHUBERT BARER

By



John M. Junkin

JMJ:tk

Enclosure

cc: Client

ICE CUSTODY RELEASE PLAN  
SEATTLE FIELD OFFICE  
MACADAM SITE - PORTLAND, OREGON

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1.0 Mission

- 1.1 ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration.
- 1.2 ICE enforces the nation's immigration laws in a fair and effective manner. It identifies and apprehends removable aliens, detains these individuals when necessary, and removes aliens so ordered from the U.S.

2.0 Nature of Custody at Macadam Site

- 2.1 Custody at the Macadam site will be for the purpose of investigating people's status with respect to their legal right to be in or remain in the United States, and to process persons for removal as required.
- 2.2 ICE custody is administrative (civil), as opposed to punitive, conditioned to assure the removal (deportation) of those so ordered through due process. ICE will not detain persons at the Macadam site for criminal charges.
- 2.3 ICE will not detain persons at the Macadam site for periods exceeding 12 hours, though in the majority of cases periods of detention at the site will not exceed 6 hours.

3.0 ICE Detainee Arrival at Macadam Site

- 3.1 Detainees arriving at the ICE Macadam site will be transferred to and from the secure transport vehicles into the facility via the secure Sally Port adjacent to the Processing Area.
- 3.2 Transfer into the building will occur only after the Sally Port vehicle door is closed. Detainees will be escorted into the processing area by ICE staff, will be escorted at all times while moving within site, and will not be visible from the street or nearby buildings.

4.0 ICE Secured Vehicles

- 4.1 ICE vehicles used for detainee transportation are caged on the interior, in a manner similar to that in common police cars. Some transport vehicles are branded as ICE or contractor vehicles, while others are unmarked.

5.0 Release of eligible persons from ICE custody

- 5.1 From time to time, ICE releases certain eligible persons from custody pending decisions on their removal (deportation) cases.

ICE CUSTODY RELEASE PLAN  
SEATTLE FIELD OFFICE  
MACADAM SITE - PORTLAND, OREGON

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- 5.2 Telephone calls are permitted for detainees to arrange transportation away from the Macadam site upon release.
- 5.3 Release from ICE custody may be limited to designated release times and will be affected under the following conditions.
  - 5.3.1 Subject released and transported from site by family, friend, attorney, or non-governmental organization.
  - 5.3.2 Subject transported by ICE and released from custody at mass transit location with funds sufficient for transportation fare.
  - 5.3.3 Subject transported by ICE and released from custody at other mutually agreeable location within the City of Portland.
- 5.4 ICE will prominently post notices in the processing area advising detainee of these site specific release procedures.
- 6.0 Release Gratuity for Transportation
  - 6.1 As circumstances indicate, ICE may provide detainees subject to release a gratuity to assist them with transportation when required.
- 7.0 Decisions to release persons from ICE Custody
  - 7.1 Release eligibility is based on a combination of a number of factors, including the following.
    - 7.1.1 Danger to the public safety or national security
    - 7.1.2 Flight risk (likelihood will appear at future proceedings, failure to appear history, etc.)
    - 7.1.3 Length of time in the United States (ties to the community)
    - 7.1.4 Immigration status of immediate relatives (parent, spouse and/or minor children)
    - 7.1.5 Eligibility for relief from removal (deportation)
    - 7.1.6 Health and other humanitarian considerations.

APPROVED:



Nathalie R. Asher  
Field Office Director  
Seattle Field Office  
US Department of Homeland Security  
Immigration & Customs Enforcement



## CITY OF PORTLAND, OREGON



### Bureau of Police

Sam Adams, Mayor

Michael Reese, Chief of Police

1111 S.W. 2nd Avenue • Portland, OR 97204 • Phone: 503-823-0000 • Fax: 503-823-0342

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### MEMORANDUM

**DATE:** August 31, 2011

**TO:** Douglas Hardy  
Bureau of Development Service

**FROM:** Commander Vincent L. Jarmer  
Bldg119/Central Precinct/Police

**RE:** Statement of Support,  
LAND USE

**FILE NO:** LU 11-124052 CU PR  
**ADDRESS:** 4310 SW Macadam Avenue  
**PRECINCT:** Central  
**DISTRICT:** 872

### SUMMARY

The applicant requests approval to site a Detention Facility at the above address, operated by two agencies of Immigrations and Customs Enforcement (ICE); Homeland Security Investigations and Enforcement and Removal Operations (ERO).

A Conditional Use Hearing took place on July 6, 2011 at 0901 hrs. Additional communications have occurred between the applicant and police representatives, and I intend this memorandum to follow-up and clarify the Police Bureau's position on the question of community safety posed by PCC 33.815.205(B).

The procedures for the Direct Release of Detainees by ICE at the proposed facility are consistent with the ICE/Detention and Removal Operations (DRO) Detention Standards for releasing a detainee from a facility. The Police Bureau concludes that application of the Detention Standards will protect nearby uses and residents from unreasonable safety threats. As a supplement to the Detention Standards, ICE has agreed to make an additional, more rigorous safety and security review of releases that would be approved under the Detention Standards and transport some detainees to other sites for release on a case-by-case basis. This supplement to the Detention Standards provides additional

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I.7

assurances of safety. The Police Bureau has also determined the people released from the facility will be the subjects only of immigration status enforcement in most cases.

In response to the Hearings Officer's comments regarding the potential for an appeal by the applicant, I must observe there is no authority or precedent for Police Bureau certification or annual inspection of a federal facility or auditing of its adherence to a security plan. The Police Bureau does not perform that service for any facility of this kind.

Based on its experience with similar local release facilities and its study of this proposed facility, the Portland Police Bureau concludes, on the question presented by City Code 33.815.205(B), that the facility and operations will not pose an unreasonable safety threat to nearby uses and residents.

C: Captain Chris Uehara

Note: Original memorandum on file in the Police Bureau's Strategic Services Division

**GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR ON-THE-RECORD APPEALS**

**1. SUBMISSION OF LEGAL ARGUMENT**

- a. On-the record appeals are limited to legal argument only. The only evidence that will be considered by the City Council is the evidence that was submitted to the HEARINGS OFFICER prior to the date the HEARINGS OFFICER closed the evidentiary record. Parties may refer to and criticize or make arguments in support of the validity of evidence received by the HEARINGS OFFICER. However, parties may not submit new evidence to supplement or rebut the evidence received by the HEARINGS OFFICER.
- b. Legal argument may be mailed to the Council Clerk, 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. Written legal argument must be received by the time of the hearing and should include the case file number.
- c. Legal argument may be submitted orally (see below).

**2. COUNCIL REVIEW**

- a. The order of appearance and time allotments are generally as follows:

Staff Report	10 minutes
Appellant	10 minutes
Supporters of Appellant	3 minutes each
Principal Opponent	15 minutes
Other Opponents	3 minutes each
Appellant Rebuttal	5 minutes
Council	

- b. The applicant has the burden of proof to show that the evidentiary record compiled by the HEARINGS OFFICER demonstrates that each and every element of the approval criteria is satisfied. If the applicant is the appellant, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the applicant must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidentiary record compiled by the HEARINGS OFFICER demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong approval criteria are being applied or additional approval criteria should be applied.

**3. OTHER INFORMATION**

- a. Prior to the hearing, the case file and the HEARINGS OFFICER'S decision are available for review, by appointment, at the Bureau of Development Services, 1900 SW 4<sup>th</sup> Avenue, #5000, Portland, OR 97201. Call 503-823-7617 to make an appointment to review the file.

**If you have a disability and need accommodations, please call 823-4085 (TDD: 823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.**