



CITY OF
PORTLAND, OREGON

OFFICIAL
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **22ND DAY OF OCTOBER, 2014** AT 9:30 A.M.

THOSE PRESENT WERE: Commissioner Saltzman, Presiding; Commissioners Fish, Fritz and Novick, 4.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Ben Walters, Chief Deputy City Attorney; and Jim Rice, Sergeant at Arms.

On a Y-5 roll call, the Consent Agenda was adopted.

COMMUNICATIONS		Disposition:
1089	Request of Kathleen Bushman to address Council regarding Healing Man Sanctuary (Communication)	PLACED ON FILE
1090	Request of Scott Gibson to address Council regarding Park Rangers (Communication)	PLACED ON FILE
1091	Request of Bill Dolan to address Council regarding Park Rangers (Communication)	PLACED ON FILE
1092	Request of Lionel Eyres to address Council regarding Park Rangers (Communication)	PLACED ON FILE
1093	Request of Trena Sutton to address Council regarding Park Rangers contact with the homeless community (Communication)	PLACED ON FILE
TIMES CERTAIN		
1094	TIME CERTAIN: 9:30 AM – Accept Streamlining Agreement Ten Year Status Report: 2003-2013 (Report introduced by Commissioner Fish) 30 minutes requested Motion to accept the report: Moved by Fish and seconded by Fritz. (Y-4)	ACCEPTED
1095	TIME CERTAIN: 10:15 AM – Appeal of Central Eastside Industrial Council against the Design Commission’s decision to approve with conditions the LOCA/Goat Blocks mixed-use project at 1004-1036 SE Belmont St (Introduced by Commissioner Fritz; Previous Agenda 1060; Findings; LU 14-125908 DZM AD) 10 minutes requested Motion to adopt the findings: Moved by Fritz and seconded by Fish. (Y-4)	FINDINGS ADOPTED

CONSENT AGENDA – NO DISCUSSION		
1096	Appoint Charles Benson to the Adjustment Committee for a term to expire October 21, 2018 and reappoint Anyeley Hallova and Suzanne Zuniga to the Adjustment Committee for terms to expire June 30, 2018 (Report introduced by Mayor Hales and Commissioner Fritz) (Y-4)	CONFIRMED
Mayor Charlie Hales Office of Management and Finance		
*1097	Create a new entry level, represented classification of Water Meter Technician I and establish a compensation rate for the new classification (Ordinance) (Y-4)	186853
Commissioner Steve Novick Position No. 4 Bureau of Transportation		
*1098	Amend contract for Federal Highway Bridge Program grant of \$3.392 million for an additional \$161,784 to rehabilitate the historic NW Thurman Street Bridge 25B15 over Macleay Park (Ordinance; amend Contract 30003717) (Y-4)	186854
1099	Accept an Engineering Report on an existing encroachment into the public right-of-way for building projection on North Mississippi Ave (Ordinance)	PASSED TO SECOND READING OCTOBER 29, 2014 AT 9:30 AM
Commissioner Nick Fish Position No. 2 Bureau of Environmental Services		
1100	Authorize a grant agreement with Friends of Zenger Farm for their Nutrition Education and Food Access Project in the amount of \$50,000 (Second Reading Agenda 1075) (Y-4)	186855
Commissioner Dan Saltzman Position No. 3 Portland Housing Bureau		
*1101	Authorize application to Department of Housing and Urban Development for three Continuum of Care renewal grants in the total amount of \$698,524 and submission of the Consolidated Continuum of Care application on behalf of the Portland/Gresham/Multnomah County Continuum of Care (Ordinance) (Y-4)	186856
REGULAR AGENDA Mayor Charlie Hales		

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1102	Establish a tax on the sale, transfer, mixing, handling or serving of recreational marijuana and recreational marijuana-infused products in the City (Second Reading Agenda 1076; add Code Chapter 6.07) (Y-4)	186857
Bureau of Planning & Sustainability		
1103	Adopt the Willamette River Greenway Inventory as a supporting document for the update of the Willamette Greenway Plan (Second Reading Agenda 1088) (Y-3; Fritz absent)	186858 AS AMENDED
Bureau of Police		
1104	Amend an agreement with Volunteers of America to increase compensation not to exceed \$20,000 to assist victims and survivors of domestic violence (Second Reading Agenda 1079; amend Contract No. 32000612) (Y-4)	186859
1105	Amend an agreement with Catholic Charities/El Programa Hispano to increase compensation not to exceed \$10,000 to assist victims and survivors of domestic violence (Second Reading 1080; amend Contract No. 32000481) (Y-4)	186860
Office of Management and Finance		
1106	Accept bid of James W. Fowler Co. and authorize a three-year Price Agreement for Urgent Rehabilitation of Sanitary and Storm Sewers for a not to exceed amount of \$9,000,000 (Procurement Report - Bid No. 116506) Motion to accept the report: Moved by Fish and seconded by Novick. (Y-4)	ACCEPTED PREPARE CONTRACT
1107	Authorize a contract with e-Builder for hosted software in an amount not to exceed \$735,929 (Ordinance)	PASSED TO SECOND READING OCTOBER 29, 2014 AT 9:30 AM
Commissioner Nick Fish Position No. 2 Bureau of Environmental Services		
*1108	Authorize revenue-generating Revegetation Sponsorship Agreement in the amount of \$144,093 with Colwood Industrial Park, LLC for vegetation management services at Colwood Golf Course Mitigation site (Ordinance) (Y-4)	186861

At 11:001 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 22ND DAY OF OCTOBER, 2014 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Hales, Presiding; Commissioners Fish, Fritz, Novick and Saltzman, 5.

Commissioner Fish left at 4:00 p.m.

OFFICERS IN ATTENDANCE: Susan Parsons, Acting Clerk of the Council; Linly Rees, Deputy City Attorney; at 4:00 p.m. Lisa Gramp, Deputy City attorney; at 4:30 p.m. Ben Walters, Chief Deputy City Attorney; and Great Seamster, Sergeant at Arms.

The meeting recessed at 3:55 p.m. and reconvened at 4:03 p.m.

		Disposition
1109	TIME CERTAIN: 2:00 PM – Appeal of South Portland Neighborhood Association against the Design Commission’s decision to approve with conditions the 6-story, mixed-use building with 270 residential units, 8,359 square feet of retail area and 225 parking spaces at 3700 SW River Parkway (Hearing introduced by Commissioner Fritz; LU 14-117884 DZM) 1.5 hours requested Motion to deny the appeal: Moved by Fritz and seconded by Fish. (Y-5)	TENTATIVELY DENY THE APPEAL AND UPHOLD DESIGN COMMISSION’S DECISION; PREPARE FINDINGS FOR NOVEMBER 5, 2014 AT 10:30 AM TIME CERTAIN
1110	TIME CERTAIN: 3:30 PM – Authorize City Attorney to seek clarification regarding Order entered in United States of America v. City of Portland concerning the U.S. Department of Justice Settlement Agreement and the Portland Police Bureau (Resolution introduced by Mayor Hales and Commissioner Fritz) 15 minutes requested (Y-4; Fish absent)	37092

At 6:13 p.m., Council adjourned.

LAVONNE GRIFFIN-VALADE
Auditor of the City of Portland



By Karla Moore-Love
Clerk of the Council

And



By Susan Parsons
Acting Council Clerk

For a discussion of agenda items, please consult the following Closed Caption File.

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Closed Caption File of Portland City Council Meeting

This file was produced through the closed captioning process for the televised City Council broadcast and should not be considered a verbatim transcript.

Key: ***** means unidentified speaker.

OCTOBER 22, 2014 9:30 AM

Saltzman: Good morning, welcome to the October 22nd, 2014 meeting of the Portland City Council. Karla, please call the roll.

Novick: Here. **Fritz:** Here. **Fish:** Here. **Saltzman:** Here.

Saltzman: Let's start with communications.

Item 1089.

Moore-Love: We've been informed she may not be here this morning.

Saltzman: Kathleen? OK, she can reschedule, then. So let's go to item 1090.

Item 1090.

Saltzman: Mr. Gibson? Are you all the four speakers that are signed up? OK, do you want to read the other three names, as well?

Item 1091.

Item 1092.

Item 1093.

Saltzman: Welcome, and you each have three minutes. There is a timer in front of you that indicates the time. And I don't know which one of you wants to start. And just give us your name, also, and press the button at the base of the microphone there. There you go.

Scott Gibson: My name is Scott Gibson. Thank you for listening to me each day. I've been employed by the City of Portland as a park technician for almost 15 years now. I've maintained parks downtown that entire time. I mostly work in Waterfront Park. I've been taking care of that for a long time, and I've seen a lot of stuff in Waterfront Park over the years. I've seen a lot of different behaviors, I've seen a lot of bad behavior -- people acting out in a lot of ways, drunkenness, littering, public defecation, violence, nudity. Of course, there's people suffering from mental illness in the parks. When the situation like that makes me uncomfortable or makes other people around me uncomfortable, or scared, or frightened, it's really nice to call the park rangers to come and deal with it, to come and intervene with these people. And the rangers respond to events more quickly than the police non-emergency line. They seem make it more of a priority. And they're less intimidating, I think. They cause fewer hard feelings than calling the cops on people who are behaving badly. They rangers are familiar with the parks and the people in them, which is really helpful. They debrief me on what's been going on, and that's very nice. The rangers are a good program, and I'm asking you to treat these workers fairly, to hire permanent positions and to provide the training that they need to be safe and effective. It's important that all the rangers -- seasonal and full time -- receive the training they need to safely do their jobs before they're sent out into the public, because it's dangerous for them. They're being put at risk without thorough training before they go out. I'd also ask you to hire more permanent rangers and not rely upon seasonal workers -- who are often employed year-round, but it's just different people. The need is there for the ranger program, I think it's a really good program. And full-time work provides dignity to these people. It's very important. Thank you very much.

Saltzman: Thank you.

Fish: Scott, I just want to say that I remember when we proposed expanding the ranger program, and we were blasted I think in just about every editorial board, and there was a lot of pushback. The reason that we championed that program was precisely for what you said -- that it has

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fundamentally changed the interaction between folks in the parks and the people we serve. I just want to say that I could not be prouder of this program and of the work of the rangers. And there are issues you're here to talk about -- and we're going to have continuing dialogue and negotiations -- but I am a big believer in the ranger program, and I think the folks who serve the city as rangers are doing a terrific job.

Gibson: Thank you, Commissioner.

Fritz: And in response to your specific concerns -- of course, we have a wide range of training opportunities for both permanent and seasonal rangers, and we'll continue to do so. As you know, I asked for nine more permanent positions in last year's budget, and we weren't able to fund it. We're going to need to have some very significant discussions. There's talk of the \$15 per hour versus more permanent full-time positions. Each of those things would cost money. So I hope and expect that you will be participating in the budget process again, because I will be having another request to have more permanent full-time rangers.

Gibson: Thank you, Commissioner.

Saltzman: OK. Who wishes to speak next?

Trena Sutton: My name is Trena Sutton. I'm an advocate for the houseless and disenfranchised, mostly over in southeast Portland and northern Clackamas County. I have been in some pretty adversarial debates with the rangers at times. I've met good and I have met bad. The one thing that I discovered was the lack of knowledge with rangers, police, ODOT, TriMet -- that type of thing. I believe that people get rid of their prejudices if they are together and they learn from each other. I actually have taught police over in the southeast area. I work with a few ODOT people. I'm working on TriMet right now. If the rangers come in there without any training on how to deal with homeless, they are going to be just like I was five years ago. There was nobody that despised homeless more than I did, and I'm fully willing to admit that. I thought that they were all lazy, derelicts, drunks, drug addicts. And I'm going to tell you what -- we do have that predatory element that are there that victimize society as a whole, including other homeless people. But what we need is when there's a confrontation, when there are people -- the park rangers or anybody comes in there, there's a way to handle it, and there's a way not to handle it. And I've seen bad behavior on both, but I'm going to tell you, you keep pushing a segment of the population too far and the cost is going to be unbelievable, both monetarily speaking and in human dignity. I have really formed a group of people that are willing to work and train with the park rangers, ODOT -- anybody that's willing to have an open mind. And instead of going in there and having preconceived notions that they're all derelicts and worthless, give them some options other than handing them a Street Roots book. That seems to be the answer. That is not the answer. I hand out Street Roots books, but with this committee that I'm forming over in southeast, people, the rangers, anybody can call us and we can give them viable options for places to go. Because you just tell people to move -- it is not going to work. People need dignity and respect. And I'm asking for more full-time positions for park rangers that are trained. If they're not trained, it is pointless. Thank you.

Saltzman: Thank you.

Fritz: And Trena, thank you for participating in my regular meetings with Right 2 Dream Too and for all the work that you're doing, particularly partnering with Clackamas County. It's helpful that other jurisdictions are getting involved, because this is a regional challenge. Certainly will take you up on your offer of participating in trainings.

Sutton: Thank you, Amanda.

Saltzman: Who's next?

Lionel Eyres: Good morning. My name is Lionel Eyres. I'm a former Portland park ranger, and I'm here this morning to talk to you about the safety for all park rangers. I was a ranger of three years. I was part of the original push for the unionization of the rangers, and I believe that one of the strongest arguments for unionization is safety for the park rangers. And by safety, I mean, how do we achieve that? Through really good training and through experienced rangers. As a park ranger, I

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helped along those lines by being an instructor for first aid, and for tactical bicycle patrolling techniques. And I continue to train the park rangers in tactical bicycle patrolling. When I was a park ranger, during my first year, I was in the field with little training -- or not little training, I should say, but missing certain components that I believe would have been helpful to me, and I still believe that the park rangers are missing a lot of certain training components that they need. So, I was working without defensive tactics training. And one day, my partner and I were in Forest Park patrolling on the Wildwood Trail, and we came upon a person there who we knew to be excluded from the park. He was camping there, and we'd had reports that he had been exposing himself to park users and even deliberately defecating in front of people. So, we contacted the man and after a brief one-sided conversation, he produced a steak knife and violently attacked us. So, without all the [indistinguishable] -- that word -- I won't tell you too much about it, but it ended up with the two of us, the attacker and I tumbling down what was a 70-foot very steep incline. And at the bottom, I landed on my front, broke two ribs, my sternum, and received a punctured lung. I was in hospital for six days after that, and it was about three months total recovery period before I was able to return to the field and patrol normally. So, I believe that with better training and experience -- I had been in the field for six months at the time. We have all of our park rangers primarily seasonal at the moment, and they generally do one season. There's not enough time for them to gain the experiences that they need or all the training that they need. They're not given enough training. So, I would like to see and receive excellent training, and to be given the opportunity of permanent positions so that they can gain the experience that they need to be safe in the field. Thank you for your time.

Saltzman: Thank you very much.

Fish: Can I just say that I remember visiting Lionel in the hospital, and I'm glad to see that you're here and testifying. At the time of the assault, there was a cry in the community from some quarters that we should arm our rangers. I believe that you had a strong opinion to the contrary on that. Has your opinion changed?

Eyres: For firearms? I don't believe that park rangers should carry firearms, no. But they certainly need defensive -- perhaps weapons or some sort of defensive tool, yes -- some of which they've received.

Fish: Thank you.

Saltzman: Thank you. Sir?

Bill Dolan: My name is Bill Dolan, and I live in a central city Portland neighborhood, and we happen to have four nearby parks. I've lived there for seven years with my wife and two children, and I currently chair the livability and safety committee in my neighborhood. I've been a part of this committee for about five years. I've come to know the park rangers through Asa Arden, and the other folks that patrol our parks. I've gotten to know Mr. Arden on a more personal level, because he attends our meetings on a regular basis -- actually, every other month -- and he is willing to do more if need be. Our city has provided Mr. Arden the opportunity to be successful by granting him a year-round position. Since becoming a year-round employee, I've personally witnessed a number of significant improvements in his effectiveness. Mr. Arden's input has led to long-term solutions for ongoing issues that volunteers and my friends have been working and battling with for years. He did this by bringing to our attention a program that volunteers in another neighborhood had put together, and we would have never known about that. We also wouldn't have had the wherewithal to put this program together on our own. Without Mr. Arden's year-round experience and long-term perspective, this wouldn't have come together. And this program has been a success. The park rangers fill a major gap in our city's effort to maintain its livability and safety. They provide resources to the neighborhood associations, tourist and park patrons in general. I work with about five other city-run organizations through my volunteering, and the park rangers -- better than any of these other organizations -- provide us with solution-focused resources. More importantly than that, when they're in the parks, they bring integrity to what could be confrontational situations. They also

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bring integrity to people that society chooses to ignore. I've personally witnessed this on a number of occasions. One example happened last summer. I was in the park with my family, and we noticed a man acting inappropriately. Through my volunteering, I know this man to be someone who has committed violent crimes towards children. The park rangers came and very discretely and without confrontation and without embarrassing anybody, removed this person from the park. The park rangers keep our parks safe and enjoyable, and most importantly, they effectively build community. They allow our city to maintain its small and provincial feel. This can only be done through consistency, and how long can consistency be maintained by employees? As a citizen, I think it's inappropriate that our city's most important assets, our parks, be maintained by seasonal employees. I urge you to not focus on the short-term. We need to see the long-term benefits and cost savings that park rangers provide. Thank you for your consideration.

Saltzman: Thank you very much, all of you.

Fritz: Thank you for taking the time to come in, especially as a neighborhood advocate. The majority of our rangers are permanent, and I'm very happy that yesterday there was a tentative agreement with Laborers 483. It includes an 8% wage increase for their permanent rangers, and a 32% increase for the seasonals. And that was done based on a market study, and the city put our best offer on the table right away because we do agree that this is a wonderful program. We're very happy to have more union workers in our Parks Bureau, and very much appreciate all of your advocacy.

Saltzman: Thank you. OK, let's do the consent agenda. Is there any member of the council or the public that wishes to remove an item from the consent agenda? Seeing none. Karla, please call the roll on the consent agenda.

Roll on consent agenda.

Novick: Aye. **Fritz:** Aye. **Fish:** Aye. **Saltzman:** Aye.

Saltzman: OK, consent agenda is approved. We will move to time certain.

Item 1094.

Saltzman: Commissioner Fish.

Fish: Thank you, Mr. President. I'd like to invite Mike Reed, the chair of the streamlining committee to come forward. We have an all-star roster of presenters today to celebrate the tenth year anniversary of the streamlining process. In your packets, you have the Ten Year Status Report as well as some other summary documents and a copy of the PowerPoint. This Council item is to accept the report that marks 10 years of a unique agreement between the city and federal agencies to streamline the process for obtaining permits for stream restoration projects. It was the first agreement of its kind, and in the 10 years since its inception, it has helped to expedite dozens of projects. Many regulations and agencies come into play when stream work is involved, and this agreement has been invaluable to agencies that have to coordinate lots of regulatory programs to get their work done. With that brief introduction, I'm very pleased this morning to introduce Mike Reed. Mike?

Mike Reed, Bureau of Environmental Services: Thank you, Commissioner Fish. Before I start, I handed you the partnership award that the state land board awarded us last year. It was given by the governor, the secretary of state, and the state treasurer. It depicts a petroglyph in Washington state of she who watches. We were very proud of that report and in getting that award. As Commissioner Fish said, we're here to present the Ten Year Status Report and ask for City Council to commit the streamlining team and the city to another five years. We were here back in 2009 asking the city to commit us to a five-year commitment back then. After my presentation, the Hatfield School of Government and the Center for Public Service will present their independent assessment of our streamlining team. Rick Mogren and Phil Keisling are here in the audience and will follow my presentation. After that, we have opportunities to hear some testimony both from the members of the streamlining team as well as users. The streamlining agreement was put together with the purpose to build a collaborative process that encourages efficient, effective communications among

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the multiple agencies that permit city projects and the city project teams. The goal is to secure timely and non-conflicting decisions from these agencies. Just a quick history of the city streamlining agreement. In February of 2003, we signed a memorandum of agreement between the city and the federal agencies to streamline federal ESA Section 7 consultations. At that time, the federal agencies were the Army Corps of Engineers, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service. It was recognized that we had other regulations, other agencies that needed to be involved in order to accomplish our goal of streamlining. Those other agencies, by the way, began working with us immediately to accomplish those goals. But to formalize their role and partnership with us, in February 2006, former Mayor Tom Potter and former Governor Ted Kulongoski formally invited the state agencies and the Bureau of Development Services to participate in the city streamlining process. The state agencies were the Department of Environmental Quality, Department of State Lands, and the Oregon Department of Fish and Wildlife. I've already mentioned the presentation of the Five Year Status Report in 2009, and you have the state land board award that was presented last year. In June of this year, the Hatfield School of Government finished their assessment of the streamlining process, and are here to present that today. Just so that everyone can see who the formal partners are with our streamlining team, it's the Army Corps of Engineers, National Marine Fisheries Service, U.S. Fish and Wildlife Service that are with the federal agencies. State agencies -- DSL, DEQ, ODF&W. And as I mentioned, Bureau of Development Services.

Fish: By the way, that slide I think is very telling because it illustrates just how complicated it is to do stream restoration projects. There's an awful lot of federal, state, and local agencies that have to be coordinated and have different jurisdiction.

Reed: That leads perfectly to the next question: why the need for a streamlining agreement? So, just an example of three agencies on our team -- we could repeat this for other agencies -- these are the processes we have to go through just to get permits from these people, and this is what the process will look like just to get a final decision. And it does complicate the process when you have this many, and you can see why people are frustrated with a process like this. The purpose is not to explain this at all today, just to show you the complicated process. For streamlining, that means looking for a way to find common ground for collaboration. So again, just profiling these three agencies, we're able to go through these evaluation criteria, decision criteria to reach a final decision. I could also be showing the National Marine Fisheries Services or the Department of the Environmental Quality process as well, but we don't have time for that. Just some quick streamlining team facts. 187 city bureau presentations have occurred over 10 years. It's important to note that in the past, we used to have individual bureaus with their consultants trying to contact these agencies, and they would be trying to contact each agency separately. So, you could multiply by three, four times this number to get some idea of what it was like to work with these agencies and project teams. But the fact that we get all the agencies in one room and the project teams can hear one voice from all these agencies has really made an efficient process. The streamlining team agency members have issued 168 permits over these 10 years to 57 city projects. 42 agency representatives served on the streamlining team since 2003. Seven agency representatives served on the team at any one time. We have seven bureaus that have most actively used the streamlining team process. This just lists the four that are probably at the top, with BES leading at 109. Portland Parks, Water Bureau, and PBOT have less presentations and time in front of the streamlining team, but that doesn't lessen the reason that they are there. The bridge replacement. The Water Bureau has a habitat conservation plan in the Bull Run, and they need to be working with the streamlining team in order to facilitate these projects. Some quick examples of the streamlined permitted projects. Portland Fire and Rescue recently built the fire boat Station 21 new boathouse and dock next to the Hawthorne Bridge in order to help facilitate the response to emergencies to house their new response vessels. Parks recently restored shallow water habitat and built a boat ramp for the south waterfront residents. The Water Bureau tunneled water pipelines below the Sandy River to reduce

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the vulnerability. TriMet and the Federal Transit Administration asked us if they could use a streamlining team in order to facilitate the permits for the new Tilikum Bridge Crossing over the Willamette. If I was to ask how you can successfully acquire permits through the streamlining team, I would just sum it up with these three bullets. You coordinate early with the agencies. You get on the streamlining team agenda. You understand the agency's information requirements that will be reviewing the proposal. And the end result can be shorter approval time frames and projects that will more likely stay within project budgets. As I mentioned, the Hatfield School of Government Center for Public Service did an independent assessment, an audit of our streamlining team process, and we have here in the audience Rick Mogren and Phil Keisling -- the director of Center for Public Service -- that are ready to give their presentation.

Jane Bacchieri, Bureau of Environmental Services: I don't have anything to add to Mike. I was going to come introduce him, but I would like to thank our -- I'm sorry, my name is Jane Bacchieri, I'm watershed services' group manager for BES, and I would like to thank our partnering agencies in this process. As you can see, we have served the city well through a number of projects over the past 10 years, and we're hoping that we can have your support for another five years of our participation in the process.

Fish: We have guests we're going to invite up, but I want to ask you a question before we transition. Streamlining with this many different levels of government still presents the challenge of how you get to consensus when everybody has their own authority when they come to the table. I can tell you that in my experience, when we have a disaster in our community and we invoke the disaster policy council, the chair of that council is the ultimate decider. And so we have a system set up so that everybody gets their say, but a decision has to be made and the chair makes the decision. So, what's the key to getting to yes when you have so many people at the table that have independent authority?

Bacchieri: Well, Mike Reed is the chair for the streamlining team, so I'll defer to him to give you some insight.

Reed: It is true, each agency is representing their own set of laws that have their own strict legal requirements for how they will get to yes or no. Over the years, we have sat at the table and figured out what evaluation criteria, decision criteria we all share that we can focus on. We have also taught permits workshops every year that all the agencies get to hear each other and begin to learn what each agency needs. But that question that you ask has been addressed by the Hatfield School of Government. And I was very pleasantly surprised to hear some of the findings, so, if you are willing to --

Fish: Should we invite Professor Mogren and Director Keisling up to give a presentation? Thank you.

Phil Keisling: Good morning. My name is Phil Keisling, I'm the director for the Center for Public Service, which is part of the Mark O. Hatfield School of Government at Portland State University. The mission of the Center is to connect the resources of the university -- faculty, graduate students, and others -- with real world needs and challenges in the public sector. We do a lot of work for many local, state, federal agencies and tribal governments, as well, and nonprofits. Currently working on a project with the City of Portland, for example, around innovation and how to encourage that within the city. This was a project very much up our alley, and we were very glad to have a chance to look at it. It is an independent assessment. As we told Mike, we might look at this closely and find that it's terrible. We actually didn't, and Rick will tell you what he did find. But we were delighted to have the chance to do it. Dr. Mogren himself epitomizes what we often call the "pracademic" impulse on our center, the melding of practitioners and practice with academic knowledge. He's a colonel -- retired now -- from the Army Corps of Engineers, so he's been on the other side of the table around these permits and knows that. He went back and got his Ph.D. just a couple of years ago and now teaches courses. So, a great pleasure to turn it over to Rick Mogren to talk about the findings.

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Rick Mogren: Thank you, Phil. And Commissioners, thank you very much for the opportunity to present the findings of our assessment. Before I get started, I want to acknowledge the contribution of Ben Fitch, the graduate student who assisted with this process. He could not be here today, unfortunately, but he played a major role in collecting the data, organizing the data, and helping pull the report together. So, I didn't want to go and take the time and not let him be recognized for his contribution. What I want to do is give you a quick overview of the project and methods, spend most of the time that we have allotted on our findings, conclusions, and recommendations. What I'm going to do is illustrate these with individual specifics without going into a lot of detail, and those of you that have questions and would like to get into more detail, we can do that after we're done with the formal presentation. In terms of what we were asked to do -- as Phil and Mike have said, it was a 360-degree third party assessment of the streamlining process. And then, if warranted, to provide endorsement. And I'm happy to say that the Center is pleased and proud to endorse this process and recommend it be continued for another five years. Getting to the bottom line on our conclusions, they're shown here. It's an excellent, excellent process for the city. It brings together these different regulatory folks who work together to come to the decisions. And Commissioner Fish, I will get to your question you asked as to how I see that playing out and why that works as well as it does in a couple of minutes. There were some limitations for our study mainly driven by the scope of what we were asked to do. I'm not going to dwell on this. Again, if there's questions, we can get into this later. I will say, though, that whereas we did not bore deeply into the material made available to us by Mike and by BES, and we found no contradictions in the findings or conclusions he's reached in his Ten Year Report with our interview results. Our primary source of information were the interviews that we conducted. In terms of our scope, as I mentioned, we conducted a number of interviews with a number of folks involved in this process, both within the team, with project managers, with consultants, and with the leadership from BES. We had a structured interview process with specific questions geared to get to the specific topics, and a couple of open-ended questions just to give individuals an opportunity to share what they felt was important for us to know. And frankly, a good half of our findings came from those open-ended questions, things that we had not anticipated going in but were very valuable, in making our final assessments. In terms of our findings, we organized them under these four categories. And again, this was kind of a bottom's up inductive kind of thing. We just looked at all the findings and categorized them the way they were. We did not form fit them to the topics. I'm going to go through each of these major categories, and as I mentioned before, I will illustrate them with an example or two from each without going into a lot of detail but give you a flavor of the types of things that we found. Under purpose, goals, and functions, I want to spend time on these particular two. In terms of project quality, a number of things that we found here. Number one, you're getting environmental compliance that the system is designed to bring up to the satisfaction of the regulatory agencies that are sitting around the table. There's a clear sense on the part of all the participants that this reduces the processing time. You avoid the wrong rock problem of talking to one agency who says do this, and then you go to another agency and they say, do that, and it's a different system. So there's time saved in the process itself. Qualities are improved by discussing project alternatives. So if the initial project request comes in at the meetings that Mike holds and it doesn't seem quite right, there's a discussion that takes place about what alternatives may be put in place to make it more compliant. The other piece on project quality is the fact that because you've got these representatives from these different regulatory agencies who are responsible for different laws and different authorities, they can have those conversations and integrate the needs to meet the needs of all the species that are affected by whatever project is being discussed. I want talk a bit about the relationships that go into this because this, Commissioner, gets to the heart of your question. The team that's formed here and the way that they see themselves is a very cooperative, collaborative team. And as they get involved in this process, they adopt appreciation for each other's responsibilities. And so they think in terms of not just with the authorities and requirements

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they're there to carry out, but also with the individual next to them needs. So they think in turn more holistically about they approach this regulatory process. An unexpected benefit is this carries to regulatory decisions outside of the city process. And so if the Corps of Engineers rep is listening to a permit request from somewhere, knows the Department of State Lands is going to ask this person this question on this topic, he will inform the applicant that you need to talk to so and so from State Lands and get their input. So there's a spillover effect of this that goes beyond the benefits to the city. In terms of the metrics, one of our structured questions was, how do you think that we ought to measure the results of this? One way to expect the usual quantitative type things, like time, money, and that sort of thing -- and we certainly heard that. What I hadn't expected was to get these ideas of qualitative ways of measuring success. I want to speak to one of those on the transparency and accountability. The fact that the folks are sitting around the table with the project manager discussing this, and the fact that everybody is hearing the same information and hearing the same requirements going to the project manager, it kind of opens up that process so everybody knows what the rules are and everybody knows what the expectations are. Additionally, there's an accountability aspect of this, because everybody is kind of -- again -- hearing what everybody is saying. The way the process works is after this meeting, the applicants go and speak to the individual agencies and go into more detail on their projects and develop the projects more. But generally speaking, the baseline is laid here so that there's a common starting point for the projects. One of the questions that's left is, how do you actually measure this stuff as a metric? We didn't get into that here. We just kind of put that on the parking lot as something else that you may want to look at further down the road. In terms of process strengths, there are five thematic conclusions that are listed here. In the interest of time, I'm only going to focus on one of these, and that is the finding regarding consistency and efficiencies. What we observed in this process and what we have learned from our interviews is that by getting this consistent, integrated regulatory advice, you tend to get more consistent compliance. And part of this is not only that the regulators are making clear what their expectations are, but as the project managers get used to this, they tend bring their projects and design to meet the questions that they know they're going to get. That in turn obviously makes it more acceptable environmentally and allows the permit process to move forward more quickly. In terms of weaknesses, we set out as part of this that every process has got to have weaknesses. And we wanted to find what those were and bring those out. The fact is we could not find any of our interview results with any major weaknesses whatsoever. In fact, one of the comments that stuck out was, I can't see the city operating without it. A number of process improvements. The one that I would -- I'm not go into the detail here on these process improvements other than this outreach idea, where the members of the team are concerned about educating their senior leadership about the benefits of this, and making sure they understand for their programs how important this is within the city itself. In terms of the themes and our general conclusions, this diagram is intended to illustrate this relationship piece. Inside the process, you've got the team members who developed this sense of teamwork and cooperation, this integrated approach to their regulatory requirements with relationships that go outside the box with the various participants. Everything we heard from all of our 360-degree review said this was a very constructive, positive type of relationship. I notice some of the managers are here in the room today. So we have that normative and instrumental. What I mean by that is these behavior changes I spoke to, and the instrumental objective benefits where this process meets the purposes for which it was designed to carry out. Mike mentioned briefly this training that takes place every year. Again, high marks from all our interview participants here in terms of how this not only teaches the project managers of the regulatory expectations, but gives the project managers an opportunity to share with regulators some of the practicalities of construction and some of the challenges that they face in meeting their obligations. And finally, information management. I mean that not in the sense of information technology, but just in the sharing of the information that's essential to making a successful project completed. In terms of the recommendations, the major one is to continue the

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process as currently designed. Again, we've got a number of procedural recommendations -- I'm not going to go into those here other than to acknowledge they exist. And Mike has these, the team has these, and they are taking them under consideration. And finally, to follow up on some of these parking lot type of issues, such as what's an appropriate measurement, methodology for qualitative metrics. There's a question if this should be mandatory for all the bureaus or not. Frankly, there was some pushback, some concerns that might not be the best idea. So, that merits a little further investigation. And probably most interesting to us was the idea of exporting this to other jurisdictions around the state. Commissioners, thank you very much. I will be happy to take your questions, and I just want to sum up by saying we are very pleased to endorse this project and process and recommend it be continued.

Fish: Dr. Mogren, I have two quick questions. The first is, for anyone who is thinking of contracting with PSU to do a similar 360 of other programs, about how long did it take you from the time that you were contracted to the time that you were able to conclude your assessment?

Mogren: That's probably the one question that I didn't come prepared to answer. I would have to think about that a bit. Mike, do you remember? Six months.

Fish: About six months to do something of this magnitude?

Mogren: Right.

Fish: And I guess the second question is -- you were given an assignment to look at this particular streamlining program which uniquely engages the governments outside of Portland -- so it's Portland and sister governments. But it struck me as you were giving us your excellent presentation that there were some lessons for us on how we might operate better within Portland government. Any thoughts?

Mogren: With regard to environmental compliance?

Fish: This program is designed to streamline relationships across government, but occasionally, we hear concerns from people about within city government, having bureaus work more effectively together and streamlining the process. Any thoughts about the lessons learned from this that could apply to other areas?

Mogren: Not just from this, but a bunch of other work that I'm doing. Mayor Hales is not here but is leading this Multnomah County drainage district issue with the levies in north Portland. And we're engaged with that particular process where you're doing the same type of thing. You're bringing in a number of different governments and bureaus from the city, county, state, federal type of agency folks to try to solve a very serious problem that's facing the city. So this motion of collaborative governments, of different levels of government -- either collaborations between bureaus within a government or agencies within a government, or between the different levels of government -- seems to be the wave of the future. So, how you go about doing that then is having somebody like Mike who can take the lead or serve as a convening lead to bring this about. And I have a number of thoughts about how to make that work, but frankly, we don't have time for it. There's quite a bit of thinking we've done on that about how you make the networks work given the different identities, the cultures, the interest, the objectives, the belief systems that different organizations will bring to this.

Fish: And I think that we would welcome that follow-up conversation because PSU is also in the lead around regional solutions, Oregon solutions, all these programs that are designed to facilitate the collaborative decision-making and government. Every time that I have the honor of participating in one, I learn some lessons that are transferable to my day job. So, I appreciate that.

Keisling: And I'll just add, one of the projects that Rick mentioned is actually an internal collaboration within the Hatfield School between the Center -- where Rick is from -- and the National Policy Consensus Center that Greg Wolf, and Steve Greenwood and others lead. So, very much a model that we continue to explore and find very fruitful with dealing with these complex and increasingly wicked problems.

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Mogren: I don't mean to put off your question, Commission, but it's just not a sound bite kind of answer.

Fish: I appreciate that.

Saltzman: Any questions?

Novick: I very much appreciate the presentation, very impressive. I do have a question, however, for Mr. Keisling. You presented with what is to me a new word, "pracademic," to refer to the marriage of academic theory and practice. It seems to me that concept has traditionally been reflected in the ancient word "praxis." I'm curious as to why you have come up with a new word, and why is the word used by philosophers from Karl Marx and Hannah Arendt not good enough for you? [laughter]

Keisling: I have a lecture prepared on that very thing right here.

Mogren: If he can't, I can. [laughter]

Keisling: Thank you, Commissioners.

Fish: Thank you both. We have one more invited panel, Dan, which we'll invite up. Thank you. If you could be available for further questions. It's now my honor to invite three guests from the Department of State Lands, Kirk Jarvie the director's office senior policy analyst; from the Water Bureau, Tim Collins, senior engineer and program manager; and from TriMet, Dave Unsworth, director of project development and permitting. Thank you all for joining us this morning. Who'd like to kick it off?

Kirk Jarvie: It looks like I've been voted in. Kirk Jarvie, Department of State Lands. Commissioner Fish, members of the city council, on behalf of Mary Abrams, the director of the Department of State Lands, it's my pleasure to be here this morning to, well, sing the praises of the regulatory streamlining program. I think through the testimony that you're going to hear from these gentlemen and in the report that's in front of you, there's a very compelling story that's being told about how this program has benefited city projects, and how projects have moved forward more quickly than what would otherwise have been possible without this program. I'm going to turn that conversation on its ear for just a moment -- if you don't mind -- and talk about it from the perspective of the regulatory agencies and ask the question, what's in it for us? Clearly, there's benefit for you. But for the regulatory agencies, why are we at the table for this? And I want to answer that with five brief statements, I guess. First, efficient use of regulatory agency's time. Much like city staff, state and federal agency staff are being pressed to cover more and more bases with less time and less resources. By convening this sort of forum, we're able to get our message out more efficiently and cover more bases, more projects within the city. Secondly, the agencies are able to instill their respective needs into projects early in the process when the projects are still malleable. I think as these gentlemen will attest, there's nothing worse than a regulatory agency coming in at the eleventh hour wanting all kinds of design changes on a project. Chaos ensues, I think is the answer to that. Thirdly, it creates the opportunity for agencies to coordinate our regulatory interests to avoid duplication and to avoid conflicting directives. I think that's what the gentleman from the Hatfield School was alluding to during his presentation -- making sure that as we're all talking about these projects around the table, we're aligning our permit conditions requirements in a way that we're not overlapping -- or even worse, sending city staff in different directions in terms of what they need to do to comply with the various laws. Fourth is to create an opportunity for regulatory agencies to understand and accommodate other constraints these gentlemen have with their projects. When we sit in our offices and process permit applications, we don't have the benefit of knowing and understanding what other obligations these gentlemen have to meet in order to deliver their projects. By being around the table with them, we can better understand all the side boards that they're dealing with and how we can adapt our side boards to meet the broader objective. And finally, the program creates a shared responsibility for project delivery. I think that's so important because it really breaks down that old paradigm of us the regulator versus them the project manager. It really moves us to a place that it really forces us to

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communicate about what each other's needs are and to get to a place where we can accommodate both our needs. So with that, on behalf of the Department of the State Lands, we look forward to another good five years -- if not 10 years or more -- in serving the regulatory streamlining program. Thank you.

Saltzman: Thank you. Dave?

Dave Unsworth: Dave Unsworth, TriMet. I'm the director of project development, and I had the responsibility of getting all the permits for the Portland-Milwaukie light rail project. It's 7.3 miles. We cross about eight streams or rivers, the largest being the Willamette River where the Tilikum Crossing goes. Hopefully, you saw the lights up there next week. So for that one point -- for the Tilikum Crossing alone, there were 34 local, state, federal, and property owner requirements. That's a lot of herding of cats, and I would tell you that early on, what we're trying to do is control the risk -- schedule risk, scope risk, and understand what these agencies want. This streamlining opportunity gave us a venue to come and have discussions over a two-year period, way in advance of when we get the permits when we're doing our national environmental policy act, protection act, policy act, our NEPA document and our biological assessment. We were able to understand the scope, talk to the city, talk to the different federal and state local agencies to make sure that we had a solid scope that we could move forward with that we would be assured that we would be able to get our permits. So, that certainty. What we found is when we talked to the individual agencies, that was fine. But what they really wanted to do was hear what the other agencies wanted to talk about, what was important to them. They all come with similar regulatory requirements. Each one has a different look, but in the end, what you want to do is be sure that you have the scope, the understanding, and in the end, the appropriate mitigation that addresses local, state, and federal projects. In part of this conversation, working with all your staff, we're able came up with great mitigation, So, shallow water habitat with the central greenway, 25,000 square feet. We're working with and teaming with the Willamette Riverkeepers, repairing riparian habitat on Ross Island. At Crystal Springs, we were actually able to leverage the Union Pacific and replace a culvert that blocked fish passage for a number of years. In addition, we teamed with the Corps of Engineers and Parks in redoing the Westmoreland Park pond that opens up this week. At Johnson Creek, we were able to look at doing and teaming with Friends of Johnson Creek, and actually breaking out that -- making and enhancing the floodplain in that area. So, the concentration and the looking at this allowed us to team with your bureaus to come up with what I think is a much better project that got through permitting very easily, but it was a better result in the end. I think that the one word that I would use is priceless. The communication that this process allowed us to have ended up with a faster, better project, and more certainty for the project. And without that tenth or eleventh hour, oh my gosh, there's a break or a bust, and we didn't think about that -- and that's going to hold you up. When we looked at our risk -- so, if we didn't hit our in-water work window -- which is defined by July 1st to October 31st for the Willamette River -- if we miss that, it was a \$60 million impact to a project. That is unsustainable, and that's why this coordination and the streamlining committee helps us to get through all of that. Thank you.

Saltzman: Thank you.

Tim Collins, Water Bureau: Good morning, I'm Tim Collins, I'm the senior engineer with the Water Bureau. My area of expertise or focus is projects that happen in the Bull Run with the watershed, the dams --

Fish: Could you bring the mic a little closer? You can slide the whole thing if you want.

Collins: I have been involved in quite a few projects dealing with how the Water Bureau does work around the protected watershed features -- the Bull Run, the Sandy River, some tributaries related to other streams coming in to the Sandy River. So, when Mike asked me if would I come and talk about my experience with this, I was like, awesome, great. Because I wrote an email that was like a page long in five minutes. I just -- lots and lots of things came out about how this process has really helped me. I've been involved in projects since 2007 with this, and so I've seen it kind of evolve. It

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was always useful, even from the beginning. It's become more so in the present day. As mentioned before, probably one of the most powerful elements of it is the early nature that you get to talk to the regulators. You get to come and bring your project -- as you mentioned -- the projects are still malleable. And this is huge, a major benefit to not have this after-the-fact input that is really difficult and expensive to input into these projects. The other thing that's particularly useful is you get to talk to all of the regulators at the same time. You can create a concise and consistent message that you give to all the regulators. That's powerful, because then you're not giving different stories to them as you move through time. Also, I've seen what I call a synergy of getting these people who -- you know, their passion is protecting the environment, protecting the species, and you get this synergy of ideas of ways to solve the problem, and you can just feel it as you're in the room. You're like, OK, we can do this, we can do that. There's lots of that collaboration that goes on that's very useful and effective that I find to be extremely valuable to projects like this. The other thing is you build a level of credibility with your regulator partners, because they see you, they know what your ideas are about over the time. I've been involved for five or six years now, they know me. I've been able to make projects move through the system, and they've been effective at protecting things. So they find that to be useful, and building that credibility is important. I've also -- people move through the process a bit -- you know, people move on. And what I've also found very powerful is that the new people are kind of brought up to speed. They're brought up to speed by their peers. There's already that base level of credibility that exists within the committee, so that's very useful to kind of bring people up. It's like, it's OK, we've talked about this already, it's OK. So, I guess that's what I would like to say. I hope that this continues, it sounds like it will. It's been a very valuable resource for me in getting my work done on time and effectively, and I would recommend it to continue.

Saltzman: Thank you.

Fish: Thank you

Saltzman: Questions for the panel? Good, thank you very much. Are there any other invited --

Fish: No. I think we have some guests in the audience, and we could ask them to stand just so that we can acknowledge them -- folks here that are part of the process. If you could just stand so we can thank you for your good work.

Saltzman: Thank you very much.

Fish: And that concludes the formal presentation, Mr. President.

Saltzman: OK. Is there anybody signed up to testify or anybody that wishes to testify on this report?

Moore-Love: No one signed up for this item.

Saltzman: OK. Make a motion to accept the report.

Fish: So moved.

Fritz: Second.

Saltzman: OK, moved and seconded. Karla, please call the roll.

Item 1094 Roll.

Novick: Very interesting and actually exciting report on what sounds like an excellent process. Aye.

Fritz: This is another one of the legacies of Mayor Tom Potter, and it's really good to see 10 years later how this is working so well. People think their agencies don't talk to each other, and in fact, we do, and we want to do that. So, this has set up a structure for that. Very happy that the Bureau of Development Services is one of the participants, and it's certainly easier for our regulators here in the city when everybody is talking to each other at the same time. Congratulations, Commissioner Fish. Thank you for bringing this report so the public understands that there's all these amazing people doing diligent work on issues that most people didn't even know needed to be regulated. Aye.

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Fish: Well, I want to thank everybody who joined us this morning. When Director Keisling was testifying, we had a little conversation about the values of collaborative decision-making. Some of the best experiences I've had on this council have been on either Oregon solutions or regional solutions teams -- which is representatives across the government coming together to look at a complex problem and to try to work towards solutions. The challenges we face as a community are getting only more complicated because of the myriad of regulations at every level of government. And so having that sort of permanent, ongoing process to facilitates good communication, transparency, problem solving I think is even more important today. So, it's my pleasure to present this report to my colleagues, but it's also my honor to thank Mike Reed for his leadership. As I was being prepared for this hearing, the constant refrain I got was that you are a terrific leader of this process, and I want to thank you publicly for your work. I want to thank all the bureaus that are engaged, including my team at BES -- people rolling up their sleeves and making this work. I want to thank all of our invited guests, particularly, our friends from PSU. We have relationships with PSU that go well beyond just doing 360s. We have Hatfield fellows that work in this building. We have regular exchanges with experts on criminal justice to public policy of one kind or another. So, we're very fortunate to have Portland State University in our city, and we're very fortunate to have this kind of ongoing relationship with the faculty and the graduate students. And finally, I want to thank our other invited guests, partners. When Dave said there were 38 different jurisdictions or bodies that he had to deal with in the permitting just for the Portland-Milwaukie light rail -- I mean, that's daunting. And we have to have a process to work through those issues in a thoughtful and rational, timely way. And I am proud of the work that you do on this, grateful for Mayor Potter's launching of this 10 years ago, all those who brought it to this point, and I enthusiastically endorse continuing on this road for the next five years. So, big thank you. Aye.

Saltzman: Thanks to the streamlining team for doing such a great job. It's truly a multi-jurisdictional effort that sounds like it's paying off, according to the Center for Public Service and Hatfield School of Government. We appreciate that external validation, as well. Thank you, Commissioner Fish. Pleased to vote aye. So, the report is accepted, and we will move on now to item 1095.

Item 1095.

Saltzman: Do we have somebody here from BDS? OK. You're going to walk us through this?

Mark Walhood, Bureau of Development Services: Good afternoon. You voted tentatively to deny the appeal at the hearing. We have findings for you, they've been reviewed by the applicant and their attorney. And it's just a final vote.

Saltzman: OK. Any questions of staff?

Fritz: Do we need to adopt the findings? I move to adopt the findings.

Fish: Second.

Saltzman: OK, moved and seconded. Please call the roll.

Item 1095 Roll.

Novick: I want to thank Kurt Krueger of PBOT for his work on this issue -- his continuing work that will go on for the next year talking to the landowners about parking issues. Aye.

Fritz: Well, thanks to the Commissioner of Transportation for committing to continue to look at that issue, and also staff in the Bureau of Transportation. I know some of the neighbors and business owners were concerned at the end of the hearing previously, because they are not sure of how things are going to go. I do believe that there is adequate right-of-way, that we can make things work. And I know that the staff and commissioner-in-charge committed to making sure that those businesses are supportive and viable. So therefore, I'm proud to support the motion. Aye.

Fish: I want to especially thank the team at the Bureau of Development Services. We have had a lot of complex matters come to us recently, and you do a great job in presenting the case and educating us about the important issues and helping us with our decision-making process. So I want to thank you publicly. Aye.

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Saltzman: Aye. Do we need to vote also to deny the appeal, or did we just do that? OK, great. The appeal was denied on 1095, and we'll move onto the regular agenda.

Item 1102.

Saltzman: This is a second reading, vote only. Please call the roll.

Item 1102 Roll.

Novick: Aye.

Fritz: Well I'm glad that if the measure passes, we will be able to have a local tax because the statewide tax pays only for law enforcement, not any of the management of the program. And certainly, it would not pay for the education or treatment, which is a problem that we've seen with the inadequate alcohol tax. So, I'm very pleased that we're not taxing medical marijuana. We shouldn't be taxing medications. Therefore, I'm very pleased to vote aye.

Fish: I want to echo what Commissioner Fritz said. I thought we had a very good discussion last time. Appreciate the work of the task force in bringing some recommendations forward. It's important to me that we not tax medical marijuana, and this proposal has my support today. Aye.

Saltzman: Aye. The ordinance is adopted.

Item 1103.

Saltzman: This is also a second reading, vote only. Please call the roll.

Item 1103 Roll.

Novick: Aye.

Fish: I want to just give a shout out to the Bureau of Planning and Sustainability. There was an issue that arose during this process. They worked with Schnitzer Steel to reach a conclusion. That's the best outcome possible when this thing is resolved before it comes to us for decision, so I want to thank them for their work and I'm pleased to vote aye.

Saltzman: Aye. The inventory is adopted.

Item 1104.

Saltzman: This is a second reading, vote only.

Item 1104 Roll.

Novick: Aye.

Fritz: Aye.

Fish: Aye.

Saltzman: I'll just say that on behalf of this and the next vote, I'm pleased to see the Police Bureau giving these extra resources for domestic violence services to Catholic Charities and Volunteers of America. Great work. Aye. The ordinance is adopted.

Item 1105.

Saltzman: Second reading, vote only. Please call the roll.

Item 1105 Roll.

Novick: Aye. **Fritz:** Aye. **Fish:** Aye. **Saltzman:** Aye.

Saltzman: OK, the ordinance is adopted.

Item 1106.

Scott Clement, Bureau of Environmental Services: Hi, my name is Scott Clement, I'm with the Bureau of Environmental Services. What we're putting in front of you today is a tool that we developed because there was a need. Right now, to get projects -- there's a few slides that come with this, I'll keep speaking while I'm getting some help here. Right now, we have two avenues available to get work done to take care of our infrastructure, to build new infrastructure, and that's the conventional path which takes design, bid build, or we have emergencies. And this tool allows us to be more responsive to those needs in our infrastructure that don't meet the definition of emergency, but need critical attention. So, this will allow us to shorten the time it takes to go from design to build by 17 weeks. This tool is going to shorten the time it takes us to move a project from the identification of the issuance to the notice to proceed by removing the 17 weeks that it normally takes us now. It's going to reduce the administration of both BES construction and design for

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getting the projects through this process. Through this tool, we're planning on completing up to \$3 million a year of system rehabilitation work. A few unique contract provisions. Undefined scopes of work at the time of contract award. With this tool, the project specificity will be identified when we issue the work order. Services were performed within fixed periods and at fixed unit prices are part of this contract. Something of note -- the workforce and training hiring program goals will be applied at the time that we issue work orders through this tool. On the minority, women, ESB program, the good faith efforts are going to be completed at the work order instead of at the time of the contract. Our goal of 35% for participation is in place. On that, the contractor that has been -- or, we're looking to award this contract -- Fowler -- has a great history of exceeding our city's goals. And it's not only the contractor, but the people that they've assigned to this contract we have personal experience with. And also, the people on the city side were a part of the past projects with Fowler where we exceeded this goal greatly.

Saltzman: Could you back up one slide? Was that your last slide?

Clement: Yes.

Saltzman: So, undefined scopes of work at the time of the contract award. Is that a good thing?

Clement: Correct. This contract had within it all-inclusive bid tab -- over 300 items on the tab. On this bid tab, we wrote in all the unit prices, sort of a fixed unit price that we would pay. The basis of the award was the contractor's multiplier. Now, with this -- since this is a tool to allow us to go in and rehabilitate our sanitary systems wherever there's urgent need -- we don't have project specificity at the time of contract award. That's identified during the preparation of a work order, and that manifests itself in a set of plans given to the contractor where we agree on the quantities that define the price in the work order.

Saltzman: So yeah, I guess I'm remembering this is for emergency service repairs.

Clement: Not quite emergency -- we have a tool for that -- but for those projection where if we weren't to take action, would turn into emergencies.

Saltzman: Great. Christine Moody, did you want to add something?

Christine Moody, Office of Management and Finance: Yes. Unless Commissioner Novick has a question?

Novick: Well, I just have a definitional question, which is, how do we define what's a situation in which our regular role of procurement process are just fine versus an emergency situation versus an urgent situation? Because if we're creating a new category, I would like to be able to articulate, what's the difference?

Clement: Emergency is imminent risk of failure and risk of safety to health and safety of the public. Our conventional process handles everything else currently. Now, the new one -- what we are calling the urgent rehab -- addresses systems that have failed, but it hasn't been a catastrophic failure. There's been no impact to health and safety, but the risk is high enough that we want to be able to move forward from the completion of design to get a contractor out there within a week or two instead of the 17 weeks to start to fix it.

Novick: So, our current emergencies roles don't allow for the idea that we really need something done within a week or two, just that there's been a catastrophic failure?

Clement: Well, from what I've seen, emergencies are dealing with catastrophic failures.

Moody: Christine Moody, procurement services. Emergencies have to meet an appropriate definition that's in the code, and so we do have emergency provisions that we do work on with BES. This is a bit different. This is a price agreement in which -- like Scott said -- we're going to be issuing work orders for those specific items rather than going out to bid. This is the first time that we are doing this, so this is a pilot. That is one reason that it is three years -- so that we can evaluate how well it's working as we go through time, and see if that is truly is meeting the need of BES before we embark on additional price agreements like this.

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Fish: Following up on Commissioner Novick's question -- Christine, do you feel that there's enough clarity about definitions here so that we're not creating a category which is going to swallow -- which is then going to be expanded to cover work that was technically not emergency?

Moody: Yes, and I believe that there is a cap on the work orders. Is that correct?

Saltzman: The work orders are capped at the low end so we don't impact the prime contractor development program. We're not putting our work orders less than \$350,000. We are limited to \$3 million a year. We've estimated the average cost of work orders to use this path at about half a million dollars.

Novick: So, do I understand that this is sort of a pilot for the concept of urgent but not emergency, and if the pilot is successful, that we might sort of expand that new category to other situations?

Moody: I'm not sure if we would expand it to different categories, but I think that we have looked at we may use this similar type of methodology with the smaller dollar values. There were six bids received on this project, and J.W. Fowler was the lowest responsive bidder. As Scott stated, as each work order is issued, we will be having J.W. Fowler perform good faith efforts. So, at that time, they will be going out and doing outreach for subcontractors for that work, and we will be approving that within our office before those work orders are actually executed.

Fritz: What's the hammer for that? Because often the fact that the contracts have to come to council and that we ask questions about minority and women tends to -- in the past, in between getting the agreement and coming to Council, you have been able to negotiate with an operator to get a better women and minority participation. How will you -- what stick will you have if it's not coming to Council?

Moody: I think part of it is just our past relationship with J.W. Fowler and the participation that they've had on both BES and Water Bureau and Parks and Transportation projects. So, they have been a very good partner over the past years. We also will not execute a work order -- and that's something that procurement and BES will need to discuss, if they're not obtaining those goals.

Clement: One more thing I could add to that is this contract has the ability to be renewed twice for a total of three years. Part of the decision to renew is going to be the contractor's performance. So, we are going to be looking at, did they meet our aspirational goals?

Fish: I have a question. We originally -- on May 7, 2014 -- authorized you to go out and contract for this purpose. In the memo that I have, it says it is an initial contract term of one year renewable up to an additional two years. So what will you learn in year one -- what do you need to know in year one in order to exercise the option for years two and three?

Moody: Well, I'll speak for the stuff that we'll be looking for is the workforce requirement and the subcontracting requirements. So, within that first year, if the work orders are being issued and we're having a hard time with J.W. Fowler completing any outreach or subcontracting and meeting any of the city's goals, then that would cause me to have a conversation about the additional renewals. And Scott, you can speak to that technical.

Fish: That sounds more like the hammer that Commissioner Fritz was referring to. It's not just a three-year contract, it's a one-year with an option. So you're going to have to be satisfied that certain objectives are met in year one before you exercise the option.

Moody: That's correct.

Clement: Correct. In addition to what Christine stated, we're going to be looking at, did they meet the other contractual requirements? Did they finish the work orders as stipulated within the scope, within budget, within schedule?

Saltzman: OK, any other questions? Thank you. Were you through, Christine?

Moody: Yes.

Saltzman: OK. Is there anybody that wishes to testify on this item?

Moore-Love: No one else signed up.

Saltzman: So, we need a motion to accept the procurement report.

Fish: So moved.

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Novick: Second.

Saltzman: OK, moved and seconded. Karla, please call the roll.

Item 1106 Roll.

Novick: Aye.

Fritz: Based on the presentation that we just had and the confidence I have in the procurement officer as well as BES, the commissioner in charge of BES, and your confidence in this company, I'm comfortable moving forward with this pilot. Aye.

Fish: Aye.

Saltzman: Aye. The report is adopted.

Item 1107.

Christine Moody, Office of Management and Finance: Christine Moody, procurement services. The Bureau of Environmental Services manages up to 100 construction projects every year, each of which requires project management, budget management, and resource management, with an additional 250 projects requiring overall program management. The engineering services group currently uses multiple pieces of software, along with manual calculations, in order to piece together business processes. Their current business model is paper-centric, involving duplicate data entry. Software that will consolidate these business processes into one hosted system is very much needed. Therefore, the city issued a request for proposals for a construction and program management software solution. In February 2014, 11 proposals were received. The proposals were reviewed, evaluated, and scored by a five-person evaluation committee that included representation from the minority evaluator program. The proposal from e-Builder was deemed responsive to the requirements of the solicitation and received the highest evaluation score. e-Builder is a web-based software service system that does not require the use of any subcontractors as part of the contract. The city issued a notice of intent to award on June 25th, 2014, and no protests were received. You have before you a procurement report recommending the authorization of a contract to e-Builder for \$735,928.80.

Saltzman: Do you want to add anything, Mark?

Mark Hutchinson, Bureau of Environmental Services: I'm Mark Hutchinson and I manage the construction division for the Bureau of Environmental Services. Thank you for giving me a chance to comment. We have been watching our processes, and they are processes we've used for quite a few years. Our current program is 20 years old that we use to track the costs, and to make projections in the future as far as projects that we're going to do. And so, we identified this period of time as a time to look at getting some new software. That being said, we have watched SAP and the state and others, and we're concerned about software overruns and that type of thing. For that reason, as we were looking at the procurement, we wanted to get an out-of-the-box type of software that had been used in other cities to do the type of thing that we're looking at. And we're looking at it as something that we can get implemented within a year. In fact, our hope is to have it in place for next year's budget season so that we can more accurately project our projected budgets and also keep real-time tracking on all of our costs and schedules for all the bureaus' CIP. We annually do about \$100 million's worth of work in our Capital Improvement Program. So, that's one of our big goals with this. To add to what Christine was saying, e-Builder is about 50% MWESB, as far as a company. They're a relatively a small company, but they've been working in our neighboring clean water services, the city of Bend, up in Spokane, and a lot of areas in the northwest. And so we think that we can be pretty successful with them in integrating this new software system in place. Along with the software system, what we've been doing is remapping all of our business processes. As said before, they were paper-centric, and what we're doing and what e-Builder will help us to do is look through those and see where we can cut the labor costs out of things. Just in the last year, as we've been mapping all of our business processes in anticipation of hiring someone for the software, we've cut 3% out of our construction administration costs for our contracts. When you figure that we do somewhere around 60 million in construction payments, 3% is a pretty good

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chunk of money. We're going to continue to relook at all our business processes so that we can kind of look like the most up to date utility in the northwest.

Saltzman: So, this is a software project, right?

Hutchinson: Yes, it is.

Saltzman: Was there any involvement by the Technology Oversight Committee in the formulation of the RFP or in reviewing the proposed solution?

Hutchinson: We worked with BTS and procurement, and procurement has a specialist for software type of processes. We had a city-wide process. We were spearheading it, but we were following their directions and their instructions as far as how we would go. Water Bureau and the department of transportation are also with us. They share some of the programs that we hope to sunset. And they're interested in what we're doing. But yes, we plan to follow all the BTS procedures in reporting. We've seen the dashboard they present to you every so often, and we hope to emulate that in our process.

Saltzman: So this project will be presented to the Technology Oversight Committee at some point?

Hutchinson: Yes, it will.

Saltzman: With its blessing or not?

Hutchinson: Very much so. We couldn't use it without their blessing.

Saltzman: Do you want to add something, Christine?

Moody: No.

Fish: Dan, it's my expectation that it would be a project that they track for us. And if there's any confusion about that, I will report back to you, but it is my expectation.

Saltzman: OK, great. Any other questions? Thank you. Does anybody wish to testify on item 1107? OK. This is a first reading, so it will move to a vote next week. Thank you.

Hutchinson: Thank you.

Saltzman: And our last item today is 1108.

Item 1108.

Saltzman: Commissioner Fish.

Fish: Thank you, Mr. President. I'm pleased to welcome Darian Santner and Nancy Hendrickson from the Bureau of Environmental Services to present this morning, and I have a brief opening statement. The rezoning and redevelopment of the Colwood Golf Course site has been a joint effort between private businesses, environmental organizations, the Bureau of Environmental Services, the Bureau of Development Services, and Portland Parks and Recreation. As a result of this process, a large portion of the Colwood property was rezoned for industrial uses in a city council vote in October of 2013. Colwood Industrial Park LLC is developing the industrial land, and will restore and enhance about 27 acres of wetland and upland natural area as mitigation for this development as required by city, state, and federal permits. Colwood Industrial Park LLC has in turn partnered with Verde Inc. to implement three acres of wetland mitigation associated with state and federal permits. The Environmental Services watershed re-vegetation program will implement the riparian and forest restoration associated with the Bureau of Development Services land use review. This council item authorizes a revenue-generating agreement between BES and the Colwood Industrial Park LLC, committing BES to the installation and five-year maintenance of 24 acres of upland and riparian mitigation. The five-year project cost estimate is about \$144,000. Colwood Industrial Park LLC will reimburse BES all staff time, contractor, and material costs. I will turn it over to Darian Santner.

Darian Santner, Bureau of Environmental Services: Thanks. Darian Santner, Bureau of Environmental Services. To add to what Commissioner Fish just said -- through this agreement, BES will restore and enhance about 24 acres of the Columbian Slough riparian area, and that will include the invasive species control and planting of approximately 30,000 native trees and shrubs. BES staff ecologists will manage the project and oversee all work items, but the actual implementation of the work and provision of all materials -- plant seedlings and other things

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associated with the project -- happens through on-call contracts with local businesses for re-vegetation work. Colwood Industrial Park recently received their final state and federal permitting for the project in late September, and so, because the 2014 growing season for vegetation management is actively dwindling, we are hoping to be out there on the ground as soon as this agreement process is complete to start invasive plant control.

Fish: And Darian, that's why this has an emergency cause on it?

Santner: That's correct, in order to try to get whatever we can of the last of October and November. The fall is the season in which we are the most successful at controlling invasive plant species, and so we're trying to do as much of that work this fall as we can in advance of doing a major tree and shrub native planting this coming winter.

Saltzman: Do you wish to add anything?

Nancy Hendrickson, Bureau of Environmental Services: Sure. I'm Nancy Hendrickson, Columbia Slough watershed manager for BES. I'm really pleased that the project has -- throughout all of the rezoning and the acquisition -- I do think that we got the best possible outcome, and I am really pleased that the re-veg group is doing the planting to protect the area in between the two sloughs -- the riparian area and the Columbia slough, itself.

Saltzman: Questions?

Novick: What are you planting again?

Santner: We're planting basically lower Columbia River floodplain native forest species. So, the canopy will be made up of a lot of things like Cottonwood and Oregon Ash and Red Alder and a variety of native shrubs that make up that same vegetation community -- a lot of what's there already, but we'll be expanding and taking over areas that were formerly fairways, turning those back into native habitat.

Saltzman: Any further questions? Thank you. Anybody wish to testify on this item? OK, come on up, Crystal.

Fish: Thank you both.

Saltzman: Greetings. You have three minutes, and give us your name for the record and push the button at the base of the mic there. Or you can move over, yeah.

Crystal Elinski: My name is Crystal Elinski, and I have questions. Since a year ago, I've been telling people in my neighborhood -- I live in this area and I understood that the city wanted to rezone the golf courses for industrial land. So, that was a question.

Fritz: Last year, the top part of it is rezoned for industrial land, the part above this restoration area. The part below is a Portland Parks and Recreation property now. It's going to remain in golf use for right now until we can do a master plan for it. But the larger portion of the golf course remains an open space in the Portland Parks property.

Elinski: And why was it rezoned to industrial?

Fritz: As a practical matter, the upper portion of the land is probably in better use industrially, because it's close to the airport. There's a need for industrial land and not as much need for additional park land above the slough. So, the park property on Columbia is the piece that the neighborhood really wanted, the environmentalists really wanted.

Elinski: Yeah, well, we wanted to keep it the way it was -- the golf courses -- and we need more green area in that area. Like I said, I live there, and I go around all the time, and I don't understand why the current industrial land isn't being used. I figured it was probably cheaper for the city to tear down trees and bird habitat than it is to clean up the brownfields in order to take over industrial land that's been sitting there for years. The entire peninsula is just covered with empty industrial land that nothing is being done with it. I doubt it's cleaned, either. So, I was sort of surprised that you were considering taking over the golf courses. Why not increase the land and have more of a biosphere as sort of a bridge between the green areas -- whether they are parks or private golf courses -- so that we have a cleaner -- like, I mean, I'm glad that they are putting this effort into it. I'm sure it

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will take money to rehabilitate, to put in natural habitat in these areas -- but why not increase it and then take over industrial land that's sitting idle? Question, anyone want to answer? Nick?

Fish: It's not before us. What's before us is an agreement to do the re-vegetation on a piece of land that is already subject to a council action. And thanks to the Trust for Public Land and prior actions of this council, the vast majority of this tract has been preserved for public ownership and use.

Elinski: Sure, but you're saying the city needs industrial land, so why not take the industrial land that's already sitting there?

Fish: But that's not the issue before us.

Saltzman: That's not the issue before us. Thank you very much.

Elinski: But is that why you're taking over the golf course, because you say you need more industrial land in north Portland?

Fritz: We did this last year, and the golf course is protected, it's in Portland Parks and Recreation. It's going to stay being a golf course for right now. But the upper portion --

Elinski: But as far as my other question of why not take over industrial land that's sitting idle and clean it at least, but definitely --

Fritz: Well, it takes money, and that's what this ordinance is doing.

Elinski: So this takes less money than cleaning up current industrial land that could be used for industrial purposes.

Saltzman: OK, you've asked your questions, you've received answers. Thank you. Karla, please call the roll?

Item 1108 Roll.

Novick: Aye.

Fritz: Crystal, you're welcome to talk with staff in my office. Either Tim or Patti can help you with knowing on what's going on here. It is actually a really good deal. And particularly, the industrial property to the north is now paying for the restoration, and that's what this ordinance says. I very much appreciate that and the involvement of Verde, which is a great community partner in Cully already. This is going to be a spectacular site in the Cully neighborhood with this natural area restoration. And thanks to BES staff for making this happen. Aye.

Fish: Today is a cause for celebration. I want to thank Darian and Nancy. I want to tip my hat to the watershed re-vegetation program. Through this emergency action, we'll be able to start planning now. This issue has been before us on and off over about six years. I think one of the earliest issues that Commissioner Fritz and I had a chance to act on when it came before us on an effort to rezone the property away from open land. Today, it's another down payment in protecting this area for future generations and public use. Pleased to vote aye.

Saltzman: Aye. The ordinance is adopted and we are adjourned until 2:00 p.m.

At 11:01 a.m., Council recessed.

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Closed Caption File of Portland City Council Meeting

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Key: ***** means unidentified speaker.

OCTOBER 22, 2014 2:00 PM

Hales: Good afternoon, everyone, and welcome to the afternoon session of the Portland City Council's meeting on October 22nd. Would you please call the roll? I think our other colleagues will be joining us.

Novick: Here. **Fritz:** Here. **Hales:** Here.

Hales: Let's take the first item, which is the land use appeal.

Item 1109.

Hales: Our city attorney will walk us through the procedural aspects of this and then we'll get started.

Linly Rees, Deputy City Attorney: I'm going to take a few minutes to describe the way the hearing will be conducted, including the kind of hearing, the order of testimony, and the scope of testimony. First, this is an evidentiary hearing. This means you may submit new evidence to the council in support of your arguments. As to the order of testimony, we'll begin with a staff report by Bureau of Development Services staff for approximately 10 minutes. Following the staff report, the council will hear from interested persons in the following order. The appellant will go first and will have 10 minutes to present its case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to Council. The principal opponent -- in this case, the applicant -- will then have 15 minutes to address City Council and rebut the appellant's presentation. If there is no principal opponent, Council will move directly to testimony from persons who oppose the appeal after supporters of the appeal conclude their testimony. After the principal opponent, the council will hear from persons who oppose the appeal -- that is, they support the application. Again, each person will have three minutes. Finally, the appellant will have five minutes to rebut the presentation of opponents of the appeal. Council may then close the hearing, deliberate, and take a vote on the appeal. If the vote is tentative, the council will set a future date for the adoption of findings and a final vote on the appeal. If Council takes a final vote today, that will conclude the matter before Council. I would like to announce guidelines for those who will be addressing City Council today. First, any letters or documents you wish to become part of the record should be given to the council clerk after you testify. Similarly, the original or a copy of any slides, photographs, drawings, maps, videos, or other items you show to Council during your testimony -- including PowerPoint presentations -- should be given to the council clerk to make sure they become part of the record. Second, the testimony must be directed to the approval criteria. Any testimony, arguments, and evidence you present must be directed toward the applicable approval criteria for this land use review, or other criteria in the city's comprehensive plan or zoning code you believe apply to the decision. BDS staff will identify the applicable approval criteria as part of their staff report. Third, issues must be raised with specificity. You have to raise an issue clearly enough to give the council and the other parties an opportunity to respond to the issue. If you don't, you will be precluded from appealing to the Land Use Board of Appeals based on that issue. Finally, the applicant must identify constitutional challenges to conditions of approval. If the applicant fails to raise constitutional or other issues relating to proposed conditions of approval with enough specificity to allow Council to respond, the applicant will be precluded for bringing an action for damages in circuit court.

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Hales: Thank you very much. Do any of the council members have potential conflicts of interest or ex parte comments to report? I don't either. OK, we'll verify that with our colleagues if they're available to arrive in time for the hearing. With that, let's have the staff report. Come on up, please.

Staci Monroe, Bureau of Development Services: Good afternoon, Council members. My name is Staci Monroe, and I'm with Bureau of Development Services, land use services section. I'm here today to present staff's presentation of the appeal for the block 37 South Waterfront --

Hales: Staci, your microphone doesn't seem to be on. Let's see if -- Sue is working on that. Hi, Dan, you don't have any conflicts of interest or ex parte contacts, right? OK.

Monroe: Is that better now?

Hales: Yes, better, thank you.

Monroe: So, the subject site of today's appeal is highlighted in red, known as Block 37, South Waterfront. The surrounding area is developed mostly with towers and six-story buildings, as you will see in this aerial photograph. The towers to the north and west of site are the Ardea and the Atwater, and further out the Meriwether and the John Ross. The parcels immediately south and southwest of the site are undeveloped. At the bottom of the screen, you'll notice the greenway trail that's currently under construction. It occurs along the eastern edge of Block 37 and it extends further north along the river. This is an image of the South Waterfront street plan. The property is highlighted in yellow for reference. Within the street plan, it includes a total of 14 planned east-west connections that connect the interior of the district to the greenway. The blue ones identified by these blue images are actual public dedicated streets, and examples includes Gaines -- which on north end of Block 37 -- and further north from Mead and Arthur. The green images here indicate the access ways. These are additional access ways that connect the inner parts of the district to the greenway, specifically for bikes and pedestrians. These are designated on private property and they occur mid-block on larger properties in intervals that mimic a more typical 200 by 200 block structure typically found in central city. This is an image of the street plan zoomed in in the immediate area, and the property highlighted there in red. The property is bounded by River Parkway to the west and Gaines to the north. Again, both of these are improved public streets. SW Lane borders the property on the south, and again, identified as a greenway access connection on private property. The greenway trail as I mentioned is east of the site. In the surrounding area is the streetcar line occurs on Moody and Bond. This image also shows the greenway access connections in the vicinity specifically to the north of the site, and they are Pennoyer and Curry. Both of these greenway access way connections have been improved with the abutting development, specifically the Meriwether. There was some precedent of projection into these access ways for the Meriwether Tower on the Pennoyer access way, which I believe the applicant will explain in a little more detail in their presentation. This is an image of a section of how the greenway access connections are intended to be improved. The typical width of these access ways ranges from 50 to 60 feet, with equal halves of the overall width occurring on the abutting properties. Within the 50 to 60 feet right-of-way, there is a 12 to 25-foot wide pedestrian and bike path, with the remainder of the right-of-way being for stormwater and landscaping. In addition to these development standards, the zoning code has very specific standards for the access ways that occur east of River Parkway, which is applicable to the Block 37 site. And the specific standards are that buildings must be set back 30 feet from the access way, and that there are specific landscape requirements to complement the greenway species. So, just a quick reference regarding zoning --

Hales: Before you leave the right-of-way question -- the typical approach in the South Waterfront is that those right-of-ways are dedicated even though they're not fully improved as a street, right?

Monroe: The streets are dedicated. The access ways -- public easements are required after they are improved. So they're dedicated for the purposes of maintaining public access, but they're not individual tracks or they do not become part of the public right-of-way.

Hales: Right. OK. There is an easement on which --

Monroe: Correct, that extends the entire width of that access way.

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Hales: And the maintenance responsibility for the improvements in that easement relies on the property owners?

Monroe: I believe so. Transportation is here, and they can probably answer that question.

Hales: OK, thank you.

Monroe: Would you like them to come up now or at the end?

Hales: We'll get it later.

Monroe: The property is zoned as central commercial with a design and greenway overlays. It's in the South Waterfront sub district of the central city plan district. There's an allowed FAR of five to one -- this is below that maximum of 3.78. And there's a 75-foot height limit within 125 feet of the top of the bank, and this building is well below that -- it's 72 for the overall building. This is image looking at the site. It is undeveloped. This is an image looking northwest with Atwater on the right and the Ardea to the left in the background. A brief project summary. This is a six-story building, 270 residential units, a little over 8000 square feet of retail. Parking is provided in the ground level, which is wrapped with retail and residential units. And then there is one below-grade level of parking. Two loading spaces are provided within the building, and there is bike parking also provided throughout. This is the site plan of the project. I've highlighted the building footprint with the red outline. As you can see, the red line indicates the building footprint and includes the projecting base on the north which project into Gaines Street. It also includes the upper floors that project on the south facade, which is the subject of the appeal today. The black line indicates the property boundaries. As you can see from that property boundary, the property includes half of SW Lane that extends 30 feet on to the property, and that's where the modification is requested. It also includes landscaping in the greenway between the property and edge of the future greenway trail that is indicated in the white. The image on the bottom indicates that it's an enlarged image of the site plan. The red line shows the 30-foot setback from the centerline. What is proposed is for the building to be within 26.5 feet from the centerline of Lane. The image on the upper portion, the red boxes indicate the masses of the south facade that project that three and a half feet. This is just a section that shows the building projection and the ground-level improvements on Lane. As you can see, the ground level is out of the setback, it's 32.5 feet with the upper floors being 26.5 feet. It should be noted -- and it's evident in this image -- that the pedestrian path which is 20 feet wide total but 10 feet on this property is outside of the projected facade. So, it runs down the center of the right-of-way, with the building facade -- the upper building facades are projecting over individual residential stoops and an outdoor seating area for some retail. The design review approval criteria that the project was subject to was the Central City Fundamental Design Guidelines, the South Waterfront District Design Guidelines, and the South Waterfront Greenway Design Guidelines. The modifications were subject to the approval criteria of section 33.825.040 of the zoning code. The land use review appeal findings must find a nexus to relevant design guidelines or modification criteria. The appellant states that the modification of approval criteria has not been met and has thus been approved in error. The specific approval criteria that is being contested is the modification approval criteria, which states, the resulting development will better meet the design guidelines, and on balance, the proposal will be consistent with the purpose of the standard which is being modified. I have highlighted on the screen the purpose of the access way setback standards, and the standard achieved to provide physical access in connection to the greenway. They are extensions of existing and planned east and west right-of ways that may or may not provide vehicle access, and they contribute to stormwater management and they provide a visual connection to the greenway area. The project has gone through the design review process over the past year. They [indistinguishable] request a year ago, and three formal design review hearings. During the process, the modification was specifically discussed, so much so that the Design Commission required revisions to approve the facade with the addition of recessed balconies. They added a condition of approval to approve the pedestrian realm within the access way by adding benches, bike stalls, and lights. And they stated additional reasons why they supported the projection at the final hearing

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when the project was approved. They specifically stated that the 60-foot width of the designated access ways was based on the potential for towers to be developed within the district. The width, 60 feet -- which is comparable to a typical central city block structure -- is sufficient for tall buildings in terms of the ratio of open space, natural light, and air to built space. Given the smaller scale of this building -- six stories -- the width of the access way was determined to be more than adequate. On September 2nd, the final findings went out and it included eight conditions of approval. They were to add some balconies on the west facade to match the lid cover for the underground vault to work on alternative design solutions, to use cedar for the balcony soffits, some material details regarding stucco, material details regarding an accent metal panel, and lastly, in SW Lane, to delineate a furnishing zone at the north end that included more benches, bike stalls, and lights. Then, the appeal was received from the public on September 15th. It should be noted that during a land use review process, the public and neighborhood specifically was very involved in the hearings, and they submitted written testimony. Participation has been very well organized and effective, and they contributed to some significant changes that are evident in the final design. Additional testimony has been received since yesterday, and staff has not yet had an opportunity to fully digest all of those. But we have noticed some familiar concerns that came up during the land use review process. However, they're not specifically relevant to the setback modification that's being appealed today. The options before Council today are to deny the appeal and uphold the Design Commission's decision to approve the project. Alternatively, they can uphold the appeal to deny the modification, which would overturn the Design Commission's approval. However, it should be noted that the second option would deny the project in its entirety, because the design is contingent upon the modification. Lastly, the option is to grant the appeal, deny the modification, but instruct the applicant to revise the design that doesn't necessitate the modification, and return to Council at a future date.

Hales: Could you describe the second option a little more? I don't understand the point there about how -- because the commission attached additional conditions, is that what it turns on?

Monroe: No. So, the land use review that carried the project through was a design review.

Hales: Right.

Monroe: The modification is an extra review kind of tacked on to that design review. So, the design review approval approved the entire building, and the modification approved a portion of the building to project, but you can't approve -- you can't deny the modification without denying the entire project, because the project is contingent upon that design.

Hales: I see.

Monroe: So they kind of go hand in hand.

Hales: OK, I understand now. Thank you.

Monroe: That's the end.

Hales: Other questions for the staff? Thank you very much.

Rees: Mayor, may I ask that in this little break that we talk about ex parte and conflicts on the record?

Hales: Right. Double check with two of our colleagues that arrived a little later whether you have any ex parte contacts to disclose or any potential conflicts of interest?

Fish: Neither.

Saltzman: No.

Hales: OK. We got that on the record. Thank you. Let's hear from the appellant, the South Portland Neighborhood Association. Good afternoon. Welcome.

Jim Gardner: I guess I'll start by saying what's probably on the lips of every Portlander today: is it wet enough for you?

Hales: [laughs] Yes.

Gardner: My name is Jim Gardner, 2930 SW 2nd Avenue, 97201. I'm the land use chairman for the South Portland Neighborhood Association, and I filed this appeal. If you've read the case file --

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and I assume you have -- you know that this appeal is about a single issue: whether the Block 37 project is allowed an exception to the setback required by the zoning code along Lane Street. This is a pretty straightforward, simple matter. So rather than bore you for 10 minutes citing chapter and verse from the zoning code, I thought I'd first fill in some of the back story, provide a little context for why this appeal is here. I'll get to the details of the code and why we feel an exception is not warranted here, but first, there are some things that you won't learn from the case file. For example, you wouldn't know that for the first couple of Design Commission hearings, this project asked to be allowed to intrude 20 feet into a designated view corridor along Gaines Street on the north side of the lot. In fact, the early staff memos actually said that this modification was, quote, supportable. But only because of clear and factual objections from the neighbors was the staff and the Design Commission convinced to reject that request. Another thing you don't know. If you look clearly at the renderings, you can see that the building now has bay windows and balconies on all of the sides, except the side facing the river. I call them bay windows, architects call them oriole windows for some reason. They were originally not in the original proposal at all. It had none of these elements. It proposed six stories of slab-sided, flat plain panels of metal, stucco, and glass. Again, in several steps, these elements were added at the insistence of the neighbors and the Design Commission. You also wouldn't learn from the case file that this building was initially even closer to the eastern edge of its lot, and even further crowded the Willamette greenway. Again, very grudgingly, the architects and the developer moved the building back a little from the greenway -- not nearly enough in view of the people who care about the greenway experience, but that's not the issue today, so, I won't even get into that. And finally, if you dig in and really read the Design Commission transcripts -- which I would assume you probably didn't have time to do -- you wouldn't know from the case file, though, that at the final hearing, the regular members of your Design Commission were evenly split on whether to grant this exception. There was a long discussion and debate among the members and at the end, the vote on the motion to approve it was a tie. 2-2 tie. Only when the chair voted -- in a fairly unusual situation -- the chair's vote had to happen to break that tie. My point being that this was not for your Design Commission a slam dunk, clear-cut decision. And one last thing before I get into the zoning code. This is not about NIMBY. At no time from beginning to end did the neighbors want to stop or block this project. In fact, this particular design is very favorable for most of the neighbors. They all live in high-rise towers. They've got great views to the east and to the south. There was always the potential that their views would be blocked by another tower on this site. So, for most of those neighbors, a six-story building is a godsend, because it gives them permanent protection for their views. But they also feel that this is their neighborhood, and they want it to be as good as possible. And they also want new buildings in the neighborhood to follow the rules. And the rules are the zoning code. Section 33.510.252 -- which I think you may have a copy of, because I passed out copies -- contains development standards. Not just subjective guidelines, but objective standards that sites in South Waterfront must meet. Subsection B deals with what are called access ways, and Lane Street is one of those. That says that buildings east of River Parkway must be set back at least 30 feet from the centerline of the public access way. In this project, floors two through six do not meet that requirement. They intrude into that 30-foot setback by three and a half feet. So, this building needs an exception or modification to that requirement. Now, there's a different section of the zoning code that spells out what are the criteria for granting modifications. That's on the back side of my sheet, and it's section 33.825.040. Those criteria are pretty clear. The exception can be granted if the resulting development better meets the applicable design guidelines and the proposal is consistent with the purpose of the standard. Now, you've all seen times when determining the exact purpose of a regulation can be basically a guessing game. But in this case, the code section about the access ways clearly states the purposes for requiring a 30-foot setback. It names four very specific purposes. To provide a safe and convenient bike and pedestrian access to the greenway. To contribute to stormwater management. To provide a visual connection to the greenway. And to provide a

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transition from the natural character of the greenway and the urban character of the district. I really found it interesting and a little bit disturbing that the written staff report that justified the Design Commission decision only mentioned the first two of those four criteria, the bike ped connection and stormwater management. This was disturbing in a way because it's the other two criteria that this project does not meet. And that in a nutshell explains this appeal. Remember, the code requires that a project has to better meet the purposes of the standard in order to be given modification. Not approximately meet, not equally meet, but better meet those purposes. So, if the purpose of a 30-foot setback is to provide a visual connection to the greenway, how is that purpose better met by providing a 26.5 foot setback? Clearly, it's not. If the purpose of a 30-foot setback is to provide a graceful transition between the greenway and urban character of the district, how is that purpose better met by providing 26.5 foot setback? Again, clearly, it's not. One could argue that a 26.5 foot setback is almost as good as 30 feet. It's only about 12% less, so maybe that's not very significant. But to assert that 26.5 feet does a better job of meeting those purposes than 30 feet seems implausible on its surface. The developer has said that they want those floors two through six to extend that three and half feet into the setback in order to shelter some of those entrances and in order to give some variety to that side of the building. But they could just as easily design small roofs or canopies over those entrances without needing an exception, without needing a modification to the zoning code. It provides just as much shelter and just as much variety. Finally, what will happen if you uphold this appeal and deny the exception? Frankly, not very much. The developer has said that they'll simply move floors two through six back three and a half feet. The project will not be delayed. They've assured me verbally and they've assured BDS staff in writing that regardless of how this appeal goes, that building footprint will not change. All the good design aspects of this building -- the balconies, stormwater swales, the street furniture -- they will all still be there. The development community often says that they can follow any code requirements as long as they are clear and objective and applied consistently. In other words, what's most important is certainty. South Portland Neighborhood Association and the neighbors of this project are just asking for the same thing -- certainty. Please just make this project follow the rules. Grant this appeal and deny that exception. Thank you very much for your attention and your consideration, and I would be happy to respond to any questions that you might have.

Hales: Jim, the staff described and you made reference to the rest of the design review process that took place for this proposed project.

Gardner: Right.

Hales: And I just wanted to make sure that I understand you there on that point. Would you say with the exception of this issue -- with the exception of this question of the three and a half foot setback difference -- that the design review process -- the staff's interaction with the neighborhood, the staff's interaction with the commission, and the commission's deliberations -- was a success? That we got to a better designed project that responded to legitimate concerns and maybe does a better job of reaching some of the other goals than it did in the first iteration? In other words, would you rate the rest of the design review discussion that's taken place here in the evolution of this project as a success?

Gardner: I would say it's an unqualified success. The building is much better now than when the design was first submitted. And both the neighbors -- and they're very persuasive and rational arguments and also the Design Commission staff and their observations all led to changes. As Staci mentioned, there have been many changes. From the neighborhood's point of view, all of them were in the right direction.

Hales: Good. Thank you. Other questions?

Fritz: Thank you for your testimony. Very well laid out, as always. I'm having some difficulty with it having to be as good or better. Because the setback -- it says the buildings must be set back at least 30 feet. Under the logic that you just laid out, it should say adjustments are prohibited because you could never get less than 30 feet.

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Gardner: Well, again, there is another section of the code that says why and when you can grant exceptions. And that's where the language about the project better meets the guidelines with the exception than it would without it. And that's essentially what I'm saying. Equally meet doesn't cut it for me. The language of the code says better meet, do a better job of meeting. And it goes on, of course, to have a second criteria, and that is that it's consistent with the purpose of the requirement. And that's one of our major arguments with this is that purpose in the code is very clearly identified. Many times it's not, you have to kind of guess. But this lays out four reasons, and visual connection to the greenway is clearly one of those. And that transition between the greenway and urban district is another one. I guess the bottom line is if 30 feet is required to give you a good visual connection, then how can 26.5 feet do a better job of giving you a visual connection?

Fritz: But the 30 feet is adjustable. It can be modified, it doesn't say --

Gardner: It can be modified if it meets the criteria in that other code section.

Fritz: But under your logic, it never would meet that criteria.

Gardner: Often with something that's that specific, you're right. With guidelines -- and you and I and many people have struggled over the years -- they're always subjective, and reasonable people can disagree about guidelines. An objective standard that says that your building cannot be any taller than 45 feet -- you're right. A 50-foot building could never better meet that 45-foot height limit.

Fritz: So, you're saying that the projection doesn't provide the visual connection.

Gardner: It doesn't provide a better visual connection than a 30-foot setback would.

Hales: But -- yeah, I want to follow up on that if I can. The phrase that you're quoting here is that the resulting development will better meet the applicable design guidelines, not just that the modification itself will better meet the guidelines. I assume that what we as the council should do in evaluating these cases -- or the Design Commission should do -- is look at the development as a whole. Is the development as a whole better with the modification than without it? And I guess the question in this case is -- and your point about the project is likely to still happen without it -- raises the question of how severable is this modification from all of the other modifications that got made in order to approve the design of the building?

Gardner: Actually, there were no other code modifications.

Hales: No other code modifications.

Gardner: There were guidelines that were interpreted to conclude that the building met the guidelines. The Design Commission usually doesn't struggle with code standards, they're usually dealing with guidelines.

Fish: Can I piggyback of this? It's an excellent discussion. So, you're representing the neighborhood association. You're not here as the lawyer -- who's your lawyer in this case?

Gardner: We have no lawyer.

Hales: It's the neighborhood association.

Gardner: I'm just representing the neighborhood association. And I'm not a lawyer.

Fish: So, one of the questions -- another way of asking the excellent question that has been posed is, are there any examples that you're aware of where this language has been applied successfully to modify a code requirement? And you probably don't have them all at your fingertips, but can you think of an example where it's been interpreted in a way that you are asking us to apply it? Doesn't have to be with a greenway, but just conceptually where someone has said does it better meet, so we have a sense of how it has been applied.

Gardner: Well, I can hypothetically think of examples where a building -- if it were not granted an exception of this type -- had to be dramatically redesigned, had to be changed in significant ways because of not getting the exception. And that new design may in many ways not be as good as the original. That's where I think the idea of looking at the development as a whole certainly has to come into play. And there would be lots of situations where a building relied on getting an exception to the code for some very significant design reason. And in this case, that's not true. All

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of the design of this building will look virtually exactly the same if those two facades just moved back three and a half feet.

Hales: Other questions?

Fish: There's an issue here we're going to have to talk to staff about later. But I want to join Commissioner Fritz in just saying that was exceptionally clear testimony on complicated issues, so, thank you.

Gardner: Thank you. Actually, when I started, as I said, I don't think it is a complicated issue. It's a fairly straightforward one compared to what the Design Commission usually has to struggle with on guidelines.

Fish: Let me say this -- sometimes in these hearings, by the time the opening statements are made we're all hopelessly confused about the issue. The fact that you have framed your issue clearly is a service to our deliberation.

Gardner: Well, thank you.

Fritz: I just have a follow-up question. Isn't there another development that has already been done that has a similar projection?

Gardner: Excuse me?

Fritz: My understanding is there's a building that's already been built in South Waterfront that has a projection into the right-of-way.

Gardner: Late in the process, the Design Commission staff and I think the applicant's pointed out that I believe the Meriwether has some elements -- it's also on access way and has some elements projected in there. I don't know for sure what those elements are, but I guess bottom line -- if that was not caught and overlooked the first time around, there certainly shouldn't be a precedent for doing it again.

Fritz: Well, I was hoping to be able to go down and look at that building. Unfortunately, I have not been able to do that. So that's something that I would be interested in hearing testimony on from folks. Do you think that -- you know, we have a project that's been built. Does it significantly impact the visual connection?

Gardner: And while I don't believe that that should be considered a precedent to allow this intrusion into the setback, I want to maybe let you know that on the other side of Lane Street, a vacant lot -- as you saw -- which will certainly have a new development built on it. I guess what we're also concerned about is granting this intrusion into that setback will then be decided as a precedent. Maybe that one wants to go in three and a half feet as well, or maybe more.

Fritz: Thank you.

Novick: I have one more question. Whose visual field is being obstructed? Who will not have as good of a view?

Gardner: The general public. Anybody on the street, anybody further west looking toward the greenway. Because again, the code says that you should have a 60-foot wide all together access way on both sides of the centerline. And -- by 12% -- most of this building mass will stick into that. So, everybody's visual field. Not residents in the condos nearby so much, because they're not looking down the street. But it's essentially down that Lane Street is where the view would be. Admittedly not blocked, not greatly diminished, but some.

Fritz: But at street level, it's 60 feet.

Hales: Or more.

Gardner: As you go further west, you're rising, you're not looking right at street level anymore. Particularly on Macadam Avenue, as you're looking toward the river as you're driving by, you look down that street and this building will stick in.

Fritz: And what's the view -- is it just the view of the river?

Gardner: It's meant to be in terms of what the code lays out as the purpose, a visual connection to the greenway. And I guess by implication the river just beyond it, yeah.

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Novick: If you're walking down the pedestrian walkway, which is in the middle of the 60 feet -- I mean, you'll still be able to see the greenway looking straight ahead of you, obviously.

Gardner: Oh, yeah, if you are in that block. If you're two, three blocks further west, you will see something sticking in to that 30-foot setback to some extent. 12%. It's not a great amount.

Hales: That was helpful. Thank you. Other questions for Jim? Thank you very much.

Gardner: Thank you.

Hales: Now we want to call for anyone who signed up as an individual supporter of the neighborhood association appeal.

Parsons: We have 11 people signed up.

Hales: Come on up. Good afternoon. Welcome. You can be first.

Melanie Diamond: Oh boy, OK. Well, thank you for your time. This is a first for me. I'm going to skip all of the --

Hales: Just give us your name for the record.

Diamond: Sorry. Melanie Diamond, and I live in the South Waterfront area. I'm not going to go into the details and the definition of the code. I think that was articulately explained by James. The Block 37 building is set back currently in the design that is proposed 26 feet and six inches. It's not the required 30 feet from the centerline of the access way. Block 37 projects three feet six inches into the required SW Lane access way on floors two through six. Here are the reasons for the violation. The encroachment is used for additional rental space on five floors. The developer is able to build approximately 2800 square feet of additional space. More rentable space translates into an additional gross annual income of about \$70,000 to \$85,000 a year. More space translates into an increase projected value of approximately \$500,000 to \$700,000. The developer did not propose tangible benefits to offset the code violation. The Design Commission suggested four benches and four stalls. So, here are the consequences of the violation -- and there are three. Number one, special access ways are compromised. Access ways east of River Parkway were singled out in the building code with specific setback requirements. These blocks are special because, A, the city wanted to provide a transition between the urban character to the west of River Parkway and the Willamette greenway and the river. Blocks east of River Parkway are one and a half to two times the length of standard city blocks -- 320 feet versus 200 feet -- and a constricted width would degrade the visual and physical connection to the river. The SW Lane access way width may be reduced further -- that's the second violation. The Design Commission commented that the development on the south side of Lane Street would be looking for approval of a similar encroachment setback. If that happens, the Lane Street access way will be reduced from 60 feet to 53 feet. That's more than a 10% reduction of a space already overcrowded with bioswales, private patios, street furniture, zone bollards, and other walkway amenities. So, the biggest issue is a dangerous Portland precedent will be established -- trading already limited open space that is meant to be an amenity for the general public for the benefit of a private developer establishes a precedent that is not consistent with Portland's values. Thank you.

Hales: Thank you. Thanks very much. Yes, welcome. Do you want to go next?

Robert Nunn: Councilors, my name is Robert Nunn. I live across the street of the Atwater place condominiums. And Commissioner Fish, I am not here as a lawyer, I'm here as a neighbor as a citizen. I intended to lecture you on what Mr. Gardner referred to as the tedious details of the code. Instead, I'm giving you a tedious letter and will talk about some other things instead. I wanted to emphasize this is a 3-2 vote that comes out of your commission. This is not an easy decision for them and was not an uncontroversial decision for them. I would ask you to consider again the purposes stated for this access way. But more than anything, I would like to talk to you about the investment that this council has made in South Waterfront area. The City of Portland has put millions into this neighborhood, and we appreciate it. We love that neighborhood. But those investments were made based on a code which was intended to create a unique neighborhood in the city of Portland, a neighborhood that had an extraordinary sense of quality. And to nibble away at

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that vision and to jeopardize the investments you have already made is not something that this council should do. Commissioner Fritz asked a very good question about, well, can you ever have a modification that would work for a visual corridor? And I think maybe the answer is, no. But those modification requirements apply not merely to visual corridors, but to many other aspects of the code as well. For example, in this land use matter, there's a modification dealing with the tandem parking. We have not appealed that. We have not argued about it. We haven't talked to the developer about it. But that's one of the areas where those modification guidelines work perfectly fine. But when it comes to something like a visual corridor, there probably really can't be an improvement to a 60-foot setback, to 60 foot view corridor. I can't imagine how it would work, but those modification principles work quite well elsewhere. My request for you today is to consider the vision for this neighborhood. And don't allow it to be eroded by small decisions with a little exception here and a little exception there -- and soon this neighborhood will not be as exceptional as we all hope it will be. Thank you.

Hales: Welcome, good afternoon.

Phil Juckeland: Good afternoon. My name is Phil Juckeland, I'm a resident of the South Waterfront neighborhood, having moved there in 2008. My wife and I decided to move there largely because of the vision of the neighborhood, which included high-rise residential buildings with restaurants and local businesses on the first floor, with lots of green space and easy access to the Willamette River, as well as being close to medical care. We were told this vision would continue into the future because of the city building codes and guidelines established by various neighborhood and city organizations. The developers at the time had models of the neighborhood demonstrating how the neighborhood would look as it grows. The models had about 12 high-rise buildings on it with at least a dozen low-rise or medium-rise buildings. One of the high-rise buildings was supposed to be on this Block 37. This is a showcase neighborhood for Portland. People come from around the world to look at it. Now, we have before us this project which wants to violate the codes and guidelines, as well as the original vision for this neighborhood. Basically, this project wants to cram more units on to a parcel than can be supported. Those before me have identified the specifics of the violations. The code violations do not benefit the neighborhood, but detract. Most of the buildings built down there add to the neighborhood. So now, we're looking at one that wants to detract from the neighborhood. There are many aspects of this project not part of this hearing that will significantly impair the livability in the neighborhood. It will impinge on the greenway -- as people have noted -- which is for all Portlanders and which you have spent millions of dollars developing. It will increase the stress on the local parking, which is so desperately needed by local businesses. Businesses are not able to operate down there or go out of business because people can't get down there. There's no place for them to park, and this project makes it worse. My request is to ask you to uphold the original vision for South Waterfront. You are making a decision that will impact the neighborhood for 40 years or more. You are setting a precedent that will govern future development. It is clear that this is a bad project for the neighborhood and for the city. We can and should do much better. We only get one chance. Remember, you represent the citizens of Portland, not out-of-state developers. Thank you for listening to my testimony, and thank you for your service to the city.

Fish: Can I ask you one question? You said at the end that this project is a bad project for the city. Is that because of the three foot six encroachment or other concerns about the project?

Juckeland: Others -- many others.

Fish: You have others. OK, thank you.

Hales: Thank you all. Thank you very much. Let's take the next three. Good afternoon, welcome.

Jim Luke: Good afternoon, my name is Jim Luke. I live at 0841 SW Gaines Street, number 431. That's in Portland, 97239. Appreciate you having us here today. When people talk to me about South Waterfront, they are excited at what a great place it has turned out to be. I have always been proud of the city of Portland for the planning and the investment that was necessary for it to become

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this great place to live and to visit. Over the years that we have lived in South Waterfront, I have met many people from all around the world who enjoy the environment that it has created here on the west bank of the Willamette. So, thank you for that. Here we are as the construction is being completed for the central portion of the greenway, and again, we are excited that another part of the great planning and investment is becoming a reality. But now, I realize that the planning and the design guidelines that have been enacted to protect that planning are being side-stepped to allow the developer of Block 37 to have a larger building, which translates into more profit for him. Now, I don't know where you come from, but where I come from in South Waterfront -- to me, that stinks. The idea that this developer was able to get approval for encroaching three and a half feet into Lane Street on five floors of his building is way beyond anything I could envision here in South Waterfront. So, how did this happen? Well, of course we had to appeal this. I know that you have the power to overturn this approval, and I actually feel that you would overturn this approval. Thank you for that. Some of the guidelines which were side-stepped in the project with the stepping back or the erosion of the building at the greenway and lack of a river walk where the public can leisurely enjoy the greenway. The greenway is going around the bioswale at Block 37, which makes these guidelines more important, because the building crowds the greenway so much. Try as we might, we were not able to get the design review commission to understand the importance of the greenway, and the greenway to the public. They were only focused on the building and what it could be to the residents of the building. It seemed to us that the greenway and the river walk were not items that needed attention from them. All this planning and all this investment -- [beeping] -- and it could have been so much better at Block 37 and the greenway -- sorry.

Hales: Thank you.

Fish: You have more time if you want.

Hales: Yeah, you're OK. That was the 30 second warning. You're fine. Thank you. Welcome.

Neale Creamer: Hi, I'm Neale Creamer, I live in the Atwater place. Rather than repeat what others have said, there are two things that have come up just now that concern me. One is that it seems that if one entity has violated this access way by encroaching, that it justifies another one to do the same thing, which, of course, then would justify the next one and the next one and the next one. It sounds to me like the 60-foot right-of-way that's built in to the access way being amended -- the code itself being amended by what's going on here today. And that's a troublesome concept to me, because it doesn't fit what I think the appeal is about. The other part that's come up is that potentially, the concept that a modification needs to better satisfy the goal has to be looked at as a whole. That says, well, maybe we have to look at how it fronts on the greenway and the modifications and the impact of the guidelines there. You're bringing in all of these other issues that -- as Commissioner Fish asked -- you know, there are other problems that we have that aren't really part of directly this appeal. But maybe if you're looking at the impact of this three and a half feet as part of the whole impact of the building, we have to get into these other issues. I don't think that's your intent. And that's -- I think you just have to focus on the access way being amended in the code by this process. Thank you.

Hales: Thank you. Good afternoon.

Leland Stapleton: My name is Leland Stapleton, 3550 SW Bond Avenue. I'm not going to repeat some of my comments because they are repetitious of prior comments. So, I'm just going to say this building with no view of the water or greenway to many of the prospective residents is bursting at the edges leads one to conclude that if it doesn't fit, don't permit.

Hales: Thank you. Thanks very much. You don't often get poetry in land use cases. [laughter]

Fish: Mayor, just by way of clarification, people who testify before us in their proceedings do not have to give us their address, correct?

Hales: That's right.

Fish: They can come from any part of the city and live anywhere you want. They're not required to give us their address.

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Hales: You're free to do that but you're not required.

Parsons: The next three, please come on up.

Michelle Mundt: Hello, Mayor and Commissioners. My name is Michelle Mundt. I want you to follow your own code, and I agree with people who say if you break it for somebody, it will break it for the next developer will get a little bit more feet. In my way of saying it, you're making a mockery of your own code, I'm sorry to say. And what they mean by visual to the greenway -- it would actually help your shops, which may be floundering because they are not based on a business license -- not based on a business plan of making profit -- you guys don't base on doing business anyway, I don't really see you making business in Portland. But what I was going to say about that is living downtown every day, what it means is -- the visual, if you can see that it's a river and it is kind of cool, you would go down there and buy something and go to the restaurants. If you do cut it off a million times -- it's a personal experience -- I'm looking down the river and I see, oh, there's the fountain. Oh, I could go down there. That is why you need every last inch, because sometimes you can only see a little triangle of green as the waterfront as from up on 4th or 5th or 6th. You need every inch to protect your businesses if you really want your businesses to make money down there. I do not respect the way you are handling things because you don't follow your own code.

Hales: Thank you.

Mary Eng: Hi, Council, it's great to see all of you. How are you today?

Hales: Hi. Just put your name on the record, Mary.

Eng: My name is Mary Eng. I just wanted to say thank you to the South Portland --

Mundt: Rude -- that's rude --

Eng: Association for their vibrant participation and I wanted to laud them --

*****: [inaudible] You guys are not letting the truth get out, it's a sham operation, I'm glad you're having a nice discussion -- [inaudible]

Eng: I don't have much to say, I just wanted to thank the South Portland Neighborhood Association for their participation and their lively debate and their passion and their neighborhood involvement. I think they serve as a model for citizen participation in the local sphere. I wanted to bring something anecdotally about an artist called Hunter Vasser, like a hundred waters -- and he took that name because he was a pioneer of green design in Germany. He did a lot about beauty and architecture and beauty and landscaping. And one of his standby maxims was that oppressive architecture will oppress the human spirit for lifetimes and generations. And so, maybe we should really listen to these engaged citizens and value their testimony, because this has such a lasting impact for the future of Portland and a very beautiful neighborhood. Thank you.

Hales: Thank you. Thanks very much. Come on up.

Lloyd Kendrick: My testimony is just repeating --

Hales: Just give us your name, sir, for the record.

Kendrick: My testimony is repeating all of the factors that have gone into this.

Hales: OK.

Kendrick: Portland had a vision in 2003, and that vision is for the future of Portland. The building is asking for changes. I don't think that we need changes at that part of Oregon. Thank you.

Hales: Thank you. Lloyd Kendrick, did I get that right? [speaking simultaneously] Thank you very much, appreciate it. Thank you for your testimony. So, is that all that are signed up in support of the appeal? Anyone else? OK, so let's hear the applicant's presentation now, please. Are you using PowerPoint?

Christy White: And you should have handouts. Good afternoon, I'm Christy White, a land use attorney -- Radler White Parks & Alexander 111 SW Columbia, Suite 1100 -- representing the applicant. With me is --

Katherine Schultz: Katherine Schultz with GBD Architects. Project architect on the project.

White: And we're just going to go back and forth through a PowerPoint presentation and explain the modification to you. But before we do that, I wanted to start with just a couple of thoughts

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before we jump into that presentation. First -- and I think some people mentioned it here -- there was a significant public vetting process for this application. And it started with a design advice request, which is the early design advice request of the Design Commission to understand whether or not they would be disposed to entertaining this modification. In fact, we asked specifically during that early request about this Lane modification, got their feedback that it was approvable with certain elements that we incorporated, and we incorporated those early on and moved that design through all of the Design Commission hearings that you're hearing about. We had five official neighborhood meetings. We had additional meetings with stakeholders and property owners. We had that DAR and then three Design Commission hearings. Yes, the debate was very full, yes, and Lane was a matter of specific interest during those proceedings, and the Design Commission ended up approving this Lane projection. That's the public process. Also the larger context. So, you've heard this, but I want to emphasize it. This project is on a block that would permit a 250-foot-tall tower, relative to a 60-foot wide access way. But of course, we're not asking for a 250-foot tower, and I know that's unusual in the South Waterfront, because, of course, there's a lot of towers. But in fact, the highest point of this building is 72 feet. Why that's important is because the difference between 72 feet and 250 feet is now light, air, space, and visual open space for people to see over this building which is, of course, an important asset to neighboring property owners. With that context, I would add one more point. Modifications are not violations of the code. Modifications are permitted under the code, and they're permitted for a really good reason, which is we can't anticipate and dictate every good design, and so there's a modification process to allow you to put forward a creative response to a particular block based on its context. And when you put forward that modification, it's judged during the Design Commission proceeding and it's judged based on two criteria, and those have been transposed here. What I would like to say also as a beginning is the actual standard is not equally or better meet -- that's why we're having a problem trying to figure out how to equally or better meet a numerical standard. How do you equally or better meet 30 feet or 60 feet? It's not that. It's that we have to be -- on balance -- consistent with the purpose of the standard. So, that's the standard that was applied at the Design Commission, and under that standard, the Design Commission approved this project. With that introduction, I would like to get straight in --

Fish: Christy, just so we can follow what you are saying. And I'm referring to Mr. Nunn's letter in the record. He cites to 33.825.040 --

White: That's right.

Fish: And then he has the text and then he puts, A, better meets design guideline; and, B, purpose of the standard.

White: That's it.

Fish: Because there is an "and" between A and B, don't we have to read them together?

White: You do. What's interesting, though -- you better meet the design guideline. The design guideline is a highly discretionary design guideline that has really a vision for development behind it. The second one, B, is actually what's been referred to in the testimony, and that's the actual purpose of the access way standard. And you heard Mr. Gardner articulate it very well, the various purpose statements of the access way. When you refer to those purpose statements of the code standard, it is not equally or better meet. And the purpose for the 30 feet instead is, on balance, the proposal will be consistent with those various purposes in that purpose statement.

Fish: So, when you're finished with your testimony and questions, I'm going to ask you to come back and walk us through that again.

White: Sure.

Fish: Because we have to be clear as a body what the standard we apply is and apply the evidence. We have a chance to ask staff.

White: That's right.

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Fish: You get your fair shot like the applicant to give us your best reading of the statute, because that ultimately is what guides what we have to do here.

White: Sure.

Fritz: And Commissioner Fish, I -- like you -- are looking at Mr. Nunn's statement on page two. And as the mayor pointed out earlier, it's that the resulting development will better meet the applicable design guidelines. That's the part that has to be better and that's what the applicant is saying and that's what the Design Commission is saying.

White: That's exactly right.

Hales: While pausing here, it says the applicable guidelines. So, I think that means -- and I want to get staff to confirm this, but you can tell us your opinion and Mr. Gardner can tell us his. I think that means the design standards for the district -- because we have got some -- and the design standard for buildings, which the Design Commission applies to cases.

White: That's right.

Hales: So it's both, right?

White: Right.

Hales: It's what the district is supposed to be, and how we're supposed to design buildings anywhere, but also in the context of that district. So, there's a lot of subjectivity here.

Schultz: And can I add one more point? There's not a design guideline that specifically relates back to the setback of the access way.

Hales: Right, that's code.

White: That's exactly right, too. It is conjunctive. There is an "and" there. And there are different standards under A, the resulting development better meets the guideline. So when you're contesting a guideline, the standard is better meet. If you're contesting the standard -- the code standard -- it's B, on balance, will be consistent with that standard. And what's being contested here is the code standard.

Fish: By the way, just for the record, I earlier asked Mr. Gardner the question if he had a lawyer here. Because I look out into the audience and I see half a dozen distinguished lawyers here. So to the extent I was asking how this be applied, I want to make sure he didn't view it as a trick question that a lawyer that might actually recall the myriad ways it's been applied. Since I see so many distinguished members of the Bar sprinkled throughout this gathering, I didn't want to assume that he didn't have counsel. I hope he did not take offense at my question.

Hales: OK, let's proceed.

White: Let us start going through the slides. What you're going to see in the first slide is the overall proposal. We share this slide with you because it offers two perspectives. It shows you the Lane improvements that you can see and the pavers in the street. But it also shows you the area of the building where we are projecting 26.5. The area of the building where we are projecting is the red and white panels. You can see how they're juxtaposed against the portion of the building that actually does meet the 30-foot setback, which you see in the charcoal or darker color. That's the extent of the intrusion into Lane. You'll see it only occurs on the upper floors, not actually in the pedestrian realm along Lane.

Fish: But Christy, can I just push you on that point for a second?

White: Yeah, please.

Fish: And you'll recover your time. The map that we have been given from Bureau of Development Services shows a bit of a dog leg at River on Lane, so that technically, as I look at this map, if I'm standing on Bond looking down Lane, it is unlikely that I can see to the river, because according to this map, there's a little bit of a dog leg at River Parkway, and then there is the intrusion. So, is that true and is that relevant?

White: So, we're about to show you slides of that visual from streets that are further west. One thing that's important also to realize here is this access way standard that we are asking for a modification from applies only east of River Parkway. So it only applies to this block.

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Fish: And why is that?

White: And why is that? Because you go back to the purpose statement. The purpose of the access ways was to extend the green finger of the greenway up into the district and create a greenway urban transition into the district. It was not to create a view corridor. There are special regulations for view corridors rather than just a visual connection. It's different. Those view corridors, for example, on Gaines -- you read that purpose statement, and it talks all about views from the west, from the hills all of the way through the district to the greenway and the river. It does not state that in this purpose statement. Instead, it is littered with comments like pedestrian connections, stormwater facility, access to the greenway, visual access to the greenway. These are all at the pedestrian level, and that is further proven by the fact that it's just one block. It is not a corridor that extends through the district and intends to preserve views from the hills east or west through the district. And you will see visuals responding to your question about how you can see it. So we can go to the next slide. And the next slide, Kat will explain.

Schultz: I will talk to this quickly. The areas that we've highlighted in yellow are areas that are solid. So, we're talking about those two big planes that Christy described that have some projections, and it's the areas in yellow that are solid projections. This is a point at Design Commission, so we went and added balconies to help create transparency, depth, and variety within those planes.

White: And what you'll see here is those yellow solid areas are all restricted to the second through the sixth floor. So at the ground floor, we respect the 30 foot setback -- and even actually a greater setback -- and all of the improvements that are required we either meet or exceed along that ground plane.

Schultz: This shows a number of the provisions that we did to meet the purpose statement. And the Design Commission -- as commented, part of that is the pedestrian access to enhance the pedestrian furnishings. Again, part of that is the pedestrian access way. We want to encourage people to walk down here, pause, and enjoy Lane. We enhanced the stormwater treatment facility. So we haven't just treated it, we've created a landscape feature to help bring and transition the greenway into Lane Street. We've created bridges, we're expressing the water, we've got a waterfall that comes out of the building, and we've quite lushly landscaped it. We have fully improved the access way. So it's not just going to the centerline of Lane, which is where our property ends. We've completed the pavers all of the way to the other side, which would be the face of curb of the property next door, to fully have the entire pedestrian access way completed at the time this project is completed. We've actually connected the access way to the greenway, which is on Parks property. We're paying for that, we're improving that again to provide access, greater access and better meet that purpose statement. As Christy stated, the ground level of the building sets back an additional 2.6 from that centerline. So, at the ground level, up to the second story -- that continues all the way up. We have an even greater setback than the 30 feet. And then, we also did an enhancement of additional pavers. This is a ground-level view zooming in of the building, and we purposely took it where part of the building overhangs. This is really the reason we're here today. We feel that by providing a little bit of a projection, we actually create an environment that encourages residents to come out and live on their stoops. So, when you have shelter, people want to hang out in shelter. They don't want to hang out against the wall of the building. They want to be able to feel enclosed, feel safe, and enjoy, and kind of take over space and feel like it's inhabitable and a place they want to be. This encourages people to hang out there. It encourages them to enjoy and see their neighbors walk by, versus just feeling like a sidewalk in a public realm. So that's the whole purpose of why we're doing this.

Hales: So that white pavement you're showing there in the rendering -- is that patio space for those units?

Schultz: Correct. Those are stoops for the residents.

Fritz: But those are not in the right-of-way.

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Schultz: Well, none of it is right-of-way. Part of them are within the setback, correct. It is that 30-foot setback.

Hales: The building at the ground floor of the building is outside of the 60-foot easement.

Schultz: Right. So there's that two foot six that is pushed back from the face of the building. Part of the stoops are within that setback, and part of the building above is within that setback.

Hales: But you're allowed under the code to do that. You're allowed to do stoops and patios and that kind of thing.

Schultz: It is not specifically defined, but we'll speak to that.

Fritz: But there is a public easement over the entire 60 foot right-of-way, correct?

Schultz: I'm not sure technically whether the easement is over the entire right-of-way, or the pedestrian access way. And I believe it's just the pedestrian access way, which is at the center. I believe 12 feet on either part of that.

Fritz: That's a question I want to know from staff.

Schultz: That would be great. So, where we've kind of taken this cue from of how to resolve and create a much more pedestrian-friendly environment is the Ardea. The Ardea is one block west. This is exactly kind of a very similar condition that we're talking about for our project. Their building -- and again, this is not within that access way, it's required to have that 30 feet -- but you can see it also projects what would be four feet into, if they had had a setback requirement. And they're doing a very similar thing where they're kind of creating shelter with their stoops and it feels very activated.

Fish: I have a question for Christy, though. A concern was raised by the applicant about creating precedent. So just because we've done it somewhere else and now we're doing it again, are we now normalizing something that otherwise you have to show -- meet some standard? What's your response to that?

White: Two responses. One, I think the assumption was that people did this without approval, and so we shouldn't be using those prior precedents to then justify something we're doing under the code standards. And the reference was to the Meriwether. The Meriwether, in fact -- based on review of that file -- sought and obtained the same modification we're requesting within their access way, although their modification was greater. And we're going to show you a slide of that. It was greater than the intrusion we're asking for, and it was a 250-foot tower whose building wall came down entirely within that setback. So, it's not dangerous from a precedential view, because in fact, everybody is using the process that's allowed under the code, which is a modification. And I presume that when the Meriwether went through on a design application, it proved its point and the Design Commission approved it. I didn't -- I wasn't involved in that case, but I'm assuming that since it's built, it's not built in violation but built consistent with its approval. That's the same process that's occurring here. We're using the modification to prove that this design response meets the approval standards.

Schultz: And I guess I would argue that any project to the south would have to go through the same process to prove that it better meets -- or it meets the purpose of the code. So, they will have to go, bring it in front of the Design Commission and seek a modification. They're not just going to be allowed by right to do it. So the next slide is a slide of Riva, which is now two blocks to the west of our project. I just point this out -- those wood portions are projecting, by the way, into that 30-foot area. But this is what we're kind of trying to avoid. It feels very much like a street wall. It's very sterile. And you can see, it doesn't feel very activated at all. It's not a great pedestrian environment. This is an example of the Meriwether. All the line work at the top, that image is the Meriwether. Our project is down below. On the west end of the Meriwether, actual building tower comes down and projects portions of that five feet into the required setback. It kind of does a little jog, and that's the orange-colored area. All of the yellow colored area are stoops that are also within that setback, and they are projecting five feet into it. They have access to their stoops in kind of a similar manner that we're providing and they also have a very green swale that we took precedent on and followed.

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This is the street. It's a wonderful street. It feels very comfortable. It creates transition. There's still view to the greenway -- you can see. I've pointed out where the Meriwether building is coming all of the way to the ground within that setback. Here's a straight-on view of what that looks like with that building coming in. You can still see the greenway that's still maintained. And this is an image -- this is a standing a little past River Parkway, which is where the Ardea is -- looking east, which is across our property and which would be the access way. And actually, you can see the trees kind of block the view more than anything.

Hales: The property is on the right in this slide?

Schultz: In this slide, the property would be on the left.

Hales: Oh, sorry. OK.

Schultz: That really concludes all that I have to say.

White: I'd just like to wrap it up by acknowledging exactly what Mr. Gardner said, which is this building is not the same building we started with. We went through a very rigorous design review process. Many changes were made to this building because of the input. It is a better building because of that input, and the Design Commission reviewed this particular projection over a series of hearings, applied the correct approval criteria, and determined -- based on the context of this building within the environment of the South Waterfront and its reduced height of 72 feet, relative to 250 feet -- that reduced height of 72 feet was a good proportional relationship to a 60-foot right-of-way with this minimal intrusion that was done for the right design reasons and the right design reasons only. And so, we're asking that you reject this appeal and endorse the Design Commission's decision to approve the project.

Fish: It would be helpful for me if you took the two portions of the code -- A and B -- and very succinctly said to us why it better meets the design guidelines and on balance, why it's consistent with the standards. Your summation.

White: Sure, I'll do that. Here's the summation. Under A, the resulting development better meets the applicable design guidelines. Why? Because there is no applicable specific design guideline relative to the access way. Instead, there's design guidelines relative to the pedestrian realm, the facades of the building -- all of the other elements of the building. On review, the Design Commission found that because there is no specific guideline, because the elements of the building meet all of the other design guidelines.

Fish: OK.

White: The purpose of the standard -- this is the real issue, and it's been well articulated, as you said, by the neighborhood through all of these hearings. The review there is that on balance, the proposal will be consistent with the purpose of the standard. So, what is the purpose of the standard? You have it in front of you in the testimony, and Mr. Gardner articulated it. What is an access way? What is the purpose? It provides physical access and connections to the greenway for neighbors, visitors, and residents. Have we done that? Yes. We're preserving physical access of course at the ground floor with the full 60-foot right-of-way, and even greater, because we have further building setbacks at the ground floor. And we're improving the entire access way, past the centerline to the other side of the street which would normally be the other project's obligation, but we're doing it early with this project. What's the next one? The next one is a general extension of existing and planned east-west public rights-of-way and may or may not provide vehicle access. We are of course are an extension of an east-west connection. Vehicle access can be provided here. It's mostly dedicated to the pedestrian realm. Do we provide safe and convenient bike and ped connection to and from the greenway trail? It's safe, it's lit, there's bicycle facilities, it's very well designed with high-quality materials. Do we contribute to stormwater management in the sub-district? As you heard Kat explain, we don't just contribute, we exceed those standards for stormwater management. Do we provide a transition from the natural emphasis of the greenway to the urban emphasis to the rest of the district? We certainly provide that transition. We do exactly what has been asked of us -- to pull that green finger from the greenway up into the neighborhood

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for that one block. And do we provide a visual connection to the South Waterfront greenway area? Yes, we do. The visual connection here is multifold, but again, it's only one block long. And of course, there's a very generous visual connection that's not impeded by a second story height for any pedestrian -- and I would argue, not impeded even for someone if this access way extended to the west. It wouldn't be impeded, because what you're seeing there is equivalent to what you would see from mature tree growth along that access way.

Fish: That's helpful, thank you. Just one other question. We have different standards baked into the code. This one says -- key language to me is on balance, the proposal be consistent. In plain English, what does on balance mean?

White: What it's meant before in the city of Portland is that if you have a myriad of objectives you're trying to meet, and you meet most of them or everyone but one, then you've met it. So, I would draw an analogy between comprehensive plan and zoning map amendments where the standard is on balance, you equally or better meet the comprehensive plan policies. You've used it before. What that means is you look at all of your comprehensive plan policies, and if you meet a large portion of them and you've balanced them against each other, you're good to go. If you use that same interpretation here -- and when I've used it for modifications in the past -- you put your thumb up in the air, and you say are you almost there? Are you more than 50% there? In this case, we've hit all of the purpose statements and even exceeded some of the standards in the purpose statements. So, I would submit that we're past on balance.

Fish: Thank you.

Hales: Other questions? Did you get to cover everything? We interrupted you a couple of times.

White: I think so. The only other thing I would say is greenway wasn't appealed. But just as a point of reference, there is a 100-foot building setback from top of bank, and we exceed it on every location on the property. So we're really not pinching the greenway.

Hales: OK, thank you. We may have more questions later. Let's take any individuals that have signed up in support of the applicant.

Parsons: We did not have anyone sign up.

Hales: Anyone here to speak on that? And then, do we do rebuttal? Yes, we do. Mr. Gardner, you have the chance to come back and respond to anything you've heard for five minutes.

Gardner: Here we go. Was waiting for the clock to get to five. Need an official timeout. [laughs]

Hales: Right.

Gardner: Well, the issues of what the code requires for a modification have certainly gotten a little cloudier. I think the on balance is the key part of the whole issue, really. Katherine Schultz in one of the responses said, well, the part of the code that says that a modification must better meet design guidelines in many ways doesn't fit here because there are no design guidelines relative to access ways, which is exactly right. The only thing the code says about access ways are standards, not guidelines. Specific objective development standards. Those standards only apply east of River Parkway. So, in the Riva building -- which is west of River Parkway -- is shown as an example of an intrusion into that Lane Street access way. It really is irrelevant, because the 60-foot wide public access way was not required on that block. Now, it's been often mentioned that we're only talking about one block it does apply to, and that's the block of Lane Street east of River Parkway. It's a bit misleading to talk about it as a block. You know, when you talk about a block in Portland, you think 200 feet. This is a block of 320 feet. So, in essence, it's over a block and a half really -- it's not just one block. So, this intrusion is not a block long, it's over a block and a half. And from further west -- along Lane, past the Riva -- you can, indeed, look down Lane Street and see the river and see the greenway. And if this building is allowed to stick in three and a half feet, you will see that. Now, again, it's not a dramatic change to the 30 feet or 60-foot total that is required, but it is some. The building design, if you take the approach that -- you look at the building as a whole on balance, then really the way the code would want you to consider it is does the building design -- as a whole, with this modification -- do a better job of meeting all of the applicable design guidelines than it would

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without this modification? And I guess what I would assert -- and what seems pretty clear to everyone who has seen all of the drawings as they've changed over the past several months -- is that the building would essentially look exactly the same. You've got this three and a half foot projection of floors two through six that either will be there or won't be there. If they're not there, then the shelter that Katherine Schultz felt was a real purpose for this can be provided in other ways. For one thing, three and a half feet is not a heck of a lot of shelter in this climate. But roofs that are projecting canopies -- anything that can be built even further than three and a half feet to provide that shelter for those apartment entrances and for those patios. Really, if you want to give those patios a sense of enclosure -- it's sort of the difference of being on a porch where there's a roof protecting you or being under the overhang of a big building. It's a much more inviting place to be if it's simply a light porch roof giving you the shelter rather than cowering under a three foot overhang of a six story building. So I think all those guidelines that apply to the building as a whole can still be realized -- and this entire design can be realized -- without allowing this projection. That was essentially the debate that went on at the Design Commission that led to two of the four regular members agreeing that this overhang should not be allowed and then the two that did and then the chair that broke the tie. Again, what started out simple has gotten a little clouded by picture of all of the good things about this building, and these are not things that we're disputing. In fact, they're things that we're welcoming. We think the design as it evolved is significantly better than it started. We also still feel, though, that the public's right to this full access way should be protected. Thank you.

Hales: So, Jim, I'm trying to unbundle my own mind a little bit -- and I want to talk with staff about this a bit more -- the concern about this perceived defect of the design and the question of precedent. In other words -- I'm not asking you to reveal this, but how much are people worried about this remaining point of disagreement of this building versus how much are they worried about the erosion of the vision, which some people here testified to? You and I both have a little history on the subject of this vision. Somewhere, there's probably a piece of scrap paper from what now is Commissioner Novick's office where Vic Rhodes and I sketched out this street grid and where we started the discussion about connection to the river and how we wanted this neighborhood to evolve over time. You've been a big part of that process as well. That's why -- to some extent -- I'm a little surprised that we're here. This is a relatively small disagreement over what appears to be a project that is largely consistent with that vision. And in fact, it could have been a lot bigger. So, help me out on that higher altitude view of that situation here. I understand you believe the building has been much improved by the design review process, and I'm relieved to hear that it's working to that extent. But how much are you worried about precedent here versus this building? If you knew this was not likely to get repeated 10 times -- I realize that's predicting a future we can't see -- but you see where I'm headed. Some thoughts about that? How much should we be weighing this issue of precedent versus the technical compliance with the code in this case?

Gardner: Well, at the beginning, I wouldn't have been as concerned about precedent until the applicants in this case started citing other precedents, particularly the Meriwether where it had been allowed to intrude into the access way. That's sort of what brought the issue of precedence to have a little more significance. Primarily, the objection of myself and most of the neighbors isn't that. It's primarily the fact that this building essentially in many ways started out trying to cram too much building on to too small of a lot. It had to back off on Gaines Street on the fifth and sixth floors, because the Design Commission wouldn't go on with it. There are a number of guidelines on how it should relate to the greenway that most of the neighbors still strongly feel are not met. Compared to all of the other buildings in South Waterfront to the north right now, this building is much closer to that 100-foot setback. This greenway along there has a 100-foot width. Nothing can be built within 100 feet of top of bank. All the other buildings to the north are 20, 30, 40 feet further away from that 100-foot line. This one, at some of its corners, are five or six feet to that line. And it's especially egregious because of the nature of the greenway here -- there's a big bioswale on the

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riverside, and all the bike and river trails have swung all the way to the west, almost to the edge of that greenway setback. And then you have this building looming right there next to it. That guideline in particular, but also the guidelines about where to have the parking garage entrance -- several things still concern me and the neighbors, but we're not here appealing those things. I understand that design guidelines -- reasonable people can disagree about whether they are met. Frankly, would not take up your time on something that's a matter of interpreting a guideline.

Fish: Can I follow up on that for a sec in advance of asking staff some questions? What exactly are you asking us to do? Are you asking us to uphold the appeal, deny the modification, and have the developer fix this one discrete issue? Or do you want us to -- are you asking us to uphold the appeal, deny modification, and effectively overturn the design review approval denying the project?

Gardner: The former, simply to deny this modification. I've been led to believe from talking to the architects and developers that they very quickly could make that change and proceed with the building. They are already digging the hole. They have assured us the building footprint is not going to change. Nothing about the building is really going to change, except moving back those projecting parts of the building three and a half feet. We're not trying to stop the project or even delay it. It's going to go forward. We're not asking that it be stopped or delayed and that the Design Commission have to start all over. We're accepting the Design Commission's decision about every aspect of this building, except the modification.

Hales: If we were to grant that request, you're going to end up with a building much more monolithic along Lane Street. You're not going to have that articulation that the facade now will have. And you're more willing to lose that than you are to lose three and a half feet of air space?

Gardner: Unlike the other sides of the building -- particularly the north side and west side -- this building won't be monolithic, anyway, because it's designed as an open 8-shape or U-shape building, with portions of the center setback and with a waterfall coming out, and stairs going up, and a courtyard. Even if these two projecting elements move back, that south side of that building will still have a lot of variety. It won't be the kind of slap sided monolith that the north side started out proposed as, or the west side.

Hales: OK, good answer. Thank you. Other questions, Commissioner Fish?

Fish: I appreciated your answer earlier. I was just reflecting on who's best suited to do what role here, because we're sometimes admonished to stay in our lane. And the Design Commission process is a more robust participatory process than this. You're coming here on appeal and we're often cautioned not to get into the weeds. So at some point, we're talking about differing visions of an articulated side of a building that's been designed after a full hearing. Some would caution us as a council not to substitute our aesthetic judgment on those points unless there was compelling reason.

Hales: Sorry, Commissioner Fish, this is a de novo appeal and there are design standards. So even though we're not architects -- and some of us aren't lawyers, either -- we do have to not just have interpret the code but also interpret the guidelines.

Fish: I understand, but we almost may be told that the code has been followed. So we're being asked to look at code issues and aesthetics issues. I'm fully aware that it's de novo and that we have a code.

Gardner: I appreciate your point. Because frankly at our board meeting, the applicant's attorney told my board when the board was trying to decide whether to appeal or not -- they said, you're not going to win. City Council rarely overturns the Design Commission decisions. City Council views the Design Commission as their experts in terms of design and you don't substitute your subjective judgment for theirs on issues that involve design and aesthetics. And she was right. The thing that led to us deciding to appeal though is we're not trying to dispute the Design Commission's judgment on matters that involve guidelines and interpretation. That's why our appeal is simply focused on the modification to a very objective standard rather than a guideline.

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Fish: And I have to say, I appreciate this is a very thoughtful discussion we've had, and we appreciate the chance to talk to you about this.

Hales: Other questions? Jim, I think we may be done cross-examining you. Thank you.

Gardner: Thank you very much.

Hales: I think we do need staff back up for some questions.

Fritz: I just have one question, and then I have a suggested way forward. My question is about the pedestrian easement -- or the public easement. Is that along the entire 60 feet, or is it just along the pedestrian pathway?

Monroe: I believe it's along the entire width. However, we have a member of transportation -- Kurt Krueger -- that could clarify that.

Tim Heron, Bureau of Development Services: Excuse me -- Tim Heron. Kurt and I spoke and we believe it would be across the entire 60 feet.

Fritz: Did the Design Commission discuss these proposed stoops and other projections into that 60 feet which then kind of privatizes that public right-of-way -- public easement?

Monroe: Well, the standard applies to buildings, it does not apply to at grade elements. So, the specifics of those projecting in was not specifically discussed regarding privatizing it. They were discussed in terms of better meeting the design guidelines, which is one of the two approval criteria. Specifically, one of the approval criteria that staff and the Design Commission felt the design better met B12, which is to enhance access way transitions. That guideline is pretty specific and speaks to those stoops and those other pedestrian elements. It states that programs along access ways and intersections of access way in public streets link the greenway with the interior of the district that activate and expand the public realm. They incorporate private building elements such as entries, patios, balconies, and stoops along access ways to expand the public ground from the building face to building face, integrate landscape elements with an access way set back areas with access way transportation components to enhance transitions from the waterfront to the greenway. They are specifically stated in design guidelines that staff and commission felt that the design better met. So, those elements pertinent to that discussion.

Fritz: OK. So if there was a day like today and someone happened to get caught in a major storm, a pedestrian on the access way could go and shelter under the three and a half feet.

Monroe: So a portion -- the residential stoops occur at the eastern half of the access way. The building three and a half foot projection expands over a more public area on the western half. They are not private residential stoops below it, it's actually an expansion of the access way pavers that could accommodate seating for the adjacent retail space. So somebody walking down Lane could gain some shelter under the more western half. Under the eastern half, although it's not gated, it's intended to be more private but there is no physical barrier between the two.

Fritz: Thank you that answers it.

Hales: Other questions?

Fish: You said you read language about expanding the public realm, but you then defined it in terms of private space expanding the public realm. How does a private space expand the public realm if it's otherwise inaccessible to the public?

Monroe: Well, the stoops are rather narrow. I'm not sure how narrow, exactly, but their depth is not very substantial. But in between the stoops and the pedestrian pass there is a very generous landscape planter that carries the water from the building to the greenway into planters. And then there are boardwalks that transition over it. So that area is not privatized -- if you will -- it's just the residential stoop that basically resides underneath the projection. The majority of the Lane access way is for the public, both visually and physically.

Hales: I think there are examples not just in this district but in the Pearl District of projections over the sidewalk. It may or may not be a fully improved street. In some cases, it's a pedestrian way where we allowed creation of walkways on the 200 foot grid rather than a fully improved street. In some of the cases, those walkways are very narrow and the balconies actually get further and further

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into the encroachment as you go up the building. So there are a number of ways this has been done before. And to my eye not as an architect but someone trying to figure these guidelines out and what they mean, I think the question gets back to on balance, overall, does this create a pedestrian environment and a corridor that meets the purpose and the language of what's in front of us? I think that's where we have to ultimately try to come down, even though there is a relatively hard and fast standard here with the 60 feet.

Fish: By the way, Mayor, it just wouldn't feel like a land use hearing without Kurt here. I just want to acknowledge that you have a standing reservation regardless of the issue. At the staff level, do you have any further comments you want to share with us about interpreting the applicable language? Is there anything -- we have asked both sides to tell us how to interpret A and B. Is there further guidance you want to offer us?

Heron: Thank you for the opportunity, Commissioner. Couple of things. One, I want to reemphasize the amount of public participation on this process, both from the applicant's part in reaching out to the neighborhood but also the organized testimony of the neighbors. It's been -- we've talked a lot about this modification. One thing I want to be clear on -- if the modification weren't allowable, we'd have language in our code that says prohibited. It is permissive and understood that in this area along these access ways, you can ask to extend into them. And that review process has added approval criteria vis-a-vis modification. And so that was thoroughly discussed. What I would also like to highlight is we review cases on a case-by-case basis. The fact that the vote was close relative to still a vote of approval is noted by staff and reminded of any commission in the future when and if the next modification to request this were to come up that this was a very challenging discussion. It will be scrutinized at this level, and we will acknowledge the fact that this was appealed to City Council regardless of the outcome today. So, we do have institutional memory on the design and historic review staff, and we make sure the design review commission -- even though they evolve every four --years remind them of what happened even if they weren't there before. For what that is worth for the neighborhood and their efforts and their organization, we don't forget. We'll carry that concern and certainly the conversation today forward.

Hales: Thank you. Other questions? Thank you very much. Commissioner Fritz, are you ready to give some guidance here?

Fritz: I certainly appreciate all of the testimony. Obviously, many modifications have already been made in this application as a result of the great input from the community. I appreciate Mayor Hales noting that it is a de novo hearing and that the council has the option of denying the application and also to be considering new things. Actually, the fact that it was the chair of the commission who cast the vote in favor is very persuasive to me. Guenevere Millius is an amazing citizen who has been on this commission which dedicates literally hundreds of hours a year to design review. And we certainly appreciate all of our neighborhood volunteers both who are here yesterday and the folks on the commission. I believe that we should defer to the commission -- that I agree with the commission on this particular case, that the resulting development will better meet the applicable design guidelines and the proposal is still consistent with the purpose of the standard. Because as Tim Heron just pointed out, if we were never allowed to make the access way less wide, it would be prohibited. Furthermore, we're not making the access ways less wide, because -- as Commissioner Novick pointed out -- at the pedestrian level, you still have the entire 60 feet. And I think the projection is going to provide a little bit of shelter for walkers at times. That would be my recommendation.

Fish: Commissioner Fritz, the notion that closer vote requires a closer scrutiny may apply in practice. But I'm also reminded that the vote for Pioneer Courthouse Square to convert a garage into a park was a 3-2 vote with Mike Lindberg as the third vote. It doesn't -- it means that democracy is working and people are -- we are sometimes accused of having too many 5-0 votes. And sometimes

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a divided vote means people have strong views. But in this case, it's just one of many factors and I would concur with your analysis.

Hales: I'll take that as a motion, Commissioner Fritz.

Fritz: Yes, I move to deny the appeal and uphold the Design Commission's decision to approve with conditions.

Fish: Second.

Hales: OK, any further discussion? Let's take a roll call on that as a tentative decision, and then if we make one, we'll figure out a date to set findings.

Roll on motion to tentatively deny the appeal and uphold the Design Commission's decision; prepare findings for November 5, 2013 at 10:30 a.m. Time Certain.

Novick: I really appreciate the discussion, the high level of clarity which was carried on. And I am relieved to have the opportunity to defer to Guenevere Millius, as I think Commissioner Fritz has suggested, because I share her opinion of Guenevere's astuteness on issues like this. I appreciate my colleagues' spirit of discussion. Aye.

Fritz: I know from having been in the neighborhood position that it's difficult to get a denial -- I mean, to be in the position of hearing us say no. Please don't lose sight of the fact that you made multiple modifications in this development, which made it hugely better. I'm also very, very interested in the fact that it's not anything like 250 feet which it could be and which I think would be much more detrimental than the current proposal. In fact, I think the current proposal does meet the guidelines. My Parks staff are satisfied with the treatment adjacent to the greenway, which is persuasive to me. So although, as I said -- and Commissioner Fish meant to be complimentary when he asked if you had a lawyer, Mr. Gardner, because I think your presentation was such that it could well have been one of the eminent lawyers in this room and I appreciate your diligence over the years. Aye.

Fish: I want to first thank BDS staff and presentation staff for way they guide us through these things. We take for granted every week that we get high level staff support for our work, but it should always be acknowledged -- the quality of the work that we get. I want to thank the appellant for doing an excellent job of presenting the neighborhood case, and both sides for walking the council through their particular views. Ultimately, this body gets some right and gets some wrong, but the most important thing is we build a record that anyone who reads it can say it was a fair fight. Mr. Gardner, you said something earlier that I want to gently push back. You said that someone told you below that somehow this was a hopeless task and that Council is not going to overturn the decision below. If you had joined us at a number of hearings we've had in the last month, I think you'd be pleasantly surprised with the unpredictable nature of these proceedings. And I think there are some people probably here over the last month that came with the same fatalistic view about this body and were surprised -- maybe pleasantly surprised -- that we overturned decisions and did it on the basis of the record that was made at this hearing. So, my colleagues in my view and my experience really work hard to get it right. And at a de novo hearing, they listen to all the evidence. Very rarely do we come in with a fixed mind, and I want to assure you of that. So, these proceedings do matter. But as I listen to the evidence and as I read the code and as I listen to my colleges, I am compelled to join this motion and to vote aye.

Saltzman: I think there's a big difference between the fact that Lane is considered an access way versus Gaines, for instance, which I believe is a greenway protection. I think the threshold to protect the views was much more intentional around a street like Gaines than it was around Lane, and I think Lane was meant to be more pedestrian-friendly and I think that the design does not intrude into that pedestrian environment with the three and a half feet starting at floor two and above. And I think it probably doesn't detract from -- probably adds to the environment of this particular area east of River Parkway. So, I also join my colleagues in denying the appeal. Aye.

Hales: I want to support the comments of my colleagues and just add that I appreciate the quality of reasoning that came to this hearing by both the formal parties and the citizens that testified. These

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land use hearings keep reminding us about how many people we have in Portland who really understand the depth and detail of what we're trying to accomplish, and I appreciate that. To me, on this case, the key words really are on balance. What are we trying to accomplish? We're trying to accomplish generous pedestrian realm and a green connection to the river. Does this proposal do that better than it might have, or better than it would have otherwise? It's not but for could have been 250 feet tall -- I understand we're talking about this modification. To me, what matters is how generous we are at that pedestrian level. We expect basic compliance with design standards. Got to get to at least that. If you want a modification, you've got to do better. As I look at this proposal, the fact that it's actually not just at 60 feet at ground level but I believe it's at 65 feet at ground level, and it's generously planted and generously green in terms of the bioswales and the rest. The green connection to the river is well done here. And that's what we wanted. Now, I pressed Jim closely about the question of precedent, because I think one of the things that's happening here is this is a neighborhood that now has more people in it -- that's good -- and they're being more vigilant about making sure that we carry out both the big picture plan and that each building respect it. I think that's still true here, even though I'm going to support the applicant and deny the appeal. I appreciate your vigilance and I expect as this neighborhood continues to get built out that we'll hear from you again. And we will appreciate it, because you're keeping a very watchful eye on both the big picture and the details, and that's excellent. So, thank you for a very well-made argument. It's a close call, but I do think in this case they have met the big picture requirement that on balance it better meets all of the guidelines. Aye. So, we need to set a date for findings.

Rees: Yes. And both staff and the applicant's attorney have suggested two weeks -- if we have Council present -- for adoption of findings.

Hales: Sue, do you have a date there that works?

Parsons: We do. That would be November 5th. Could come back in the morning at 10:30 time certain.

Hales: 10:30 a.m. time certain on the 5th? Does that work? OK, then we'll set it for that date. Thank you all very much. Take a five-minute break and then take up the next item.

At 3:55 p.m. Council recessed.

At 4:03 p.m. Council reconvened.

Hales: Commissioner Fish has an excused absence this afternoon, so the other four of us will continue this afternoon's meeting. So, with that, let's take up the next item.

Item 1110.

Hales: To set the context for this one, I want to ask Ellen Osoinach, our deputy city attorney, to come up and present this item. And then, I think Commissioner Fritz and I both have some opening comments and then we'll get started. We'll figure out how long we can stay today, because I think we have a large number of people signed up to speak.

Ellen Osoinach, Deputy City Attorney: Mayor Hales, members of the council, given the fact that there are so many members, I'll keep my comments brief and hopefully informative. Ellen Osoinach, I'm a deputy city attorney in your City Attorney's Office. The resolution before you today would authorize a narrow appeal to clarify a legal and practical issue arising from the court's order approving the DOJ settlement agreement. In this case, the United States and the City entered into a settlement agreement almost two years ago and filed it with the court. The Albina Ministerial Alliance Coalition for Justice and Police Accountability, AMAC; and the PPA, the Portland Police Alliance, joined in the court proceedings. The AMAC and PPA initially sought amendments to the settlement agreement, but after extensive mediation, both supported it. After receiving public testimony at a fairness hearing, the district court concluded this settlement agreement was fair, adequate, and reasonable. We have fought hard for that result and are quite pleased and have no intent of using an appeal or any other mechanism to challenge or otherwise undermine the

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settlement agreement. The court indicated that it wanted ongoing reports from the city about the agreement's implementation, and we agreed to do just that. The court and the four parties, however, could not agree on the proper way for the court to receive the information. The court had legal concerns about its jurisdiction, and the United States, the City, and the PPA agreed on the scope, frequency, and procedures to be used of these update hearings. The AMAC, however, objected to the procedures that we proposed -- we being the United States, the City, and the PPA. Ultimately, the court issued an order that did not clarify those issues. The court required the parties to appear -- something everyone had agreed to do -- but used open-ended language to describe the roles and responsibilities of each of the parties. I'd like to just describe from the legal perspective why that sort of open-ended language is problematic, and that is because a settlement agreement is a contract. Legally speaking, a contract is valid only if terms and obligations are certain. Practically speaking, the parties to a contract perform best when they understand the scope of the obligations they are required to undertake. So this appeal is narrow, because all we're seeking is clarification about what procedures should be used at the hearing, what the scope of the hearing should be, and asking that the procedures that the parties agreed to be the ones that are ultimately adopted. I'll be here to answer any questions that you all have, or any other issues you would like me to address. Thank you.

Hales: Thank you, Ellen. Let me make a few opening comments and then ask my colleague who co-sponsored this resolution to do the same. First of all, I think everyone needs to understand that this whole council is fully supportive of the Department of Justice settlement. That's not just words, I'll talk more about actions in a minute. We believe that these changes are good and necessary. So this is a mandate that we welcome and that we as public servants are upholding, heart and soul. I want you to know that. I believe that these things are the right thing to do, whether we were ordered to do them or not. But we have been ordered, and we take that seriously. Secondly, I want to say that as police commissioner, this appeal has nothing to do with the pace or commitment to reform in the Police Bureau. In fact, that reform is well under way. We've changed how we hire our officers. We've changed how we train them. We have changed how we discipline them. We've changed our rules for the use of force, for the use of Tasers, and we're in the process -- again, under this agreement -- of adding additional oversight. We throw these acronyms around, COCL and COAB. Let's remember what they stand for. Compliance Officer and Community Liaison. We're about to appoint a Compliance Officer under this settlement to make sure that there are independent eyes on the city's progress of compliance. And we're about to appoint a COAB, a Compliance Officer Advisory Board of citizens, independent citizens who will again watch over this work. We're about to appoint the Police Bureau's first-ever equity director in the next few weeks. We added one position to the Police Bureau budget this year -- that one position -- and we're about to fill it. As Ellen described, this appeal has nothing to do with reforming the Police Bureau. It has nothing to do with regular reporting, because there are requirements under the DOJ settlement to do that reporting, and we're committed to that. This is about clarity. Again, I want to emphasize we haven't waited to start complying with this settlement agreement. We didn't wait for the judge's order to start complying. Chief Reese is here, and I appreciate the progress that he and the bureau has already. This is a little work sheet -- and Deanna Wesson-Mitchell on my staff has additional copies if anyone would like to see them -- of all 88 provisions under the Department of Justice settlement and how we're doing in getting them accomplished. It's coded green, yellow, or red depending on whether it's underway, getting started, or being stopped somehow. And you'll notice when you go through this worksheet that every single one of those 88 items are either colored green or yellow. Now, I'd love to hear if you have any disagreements as to whether that's an accurate statement of our commitment to the 88 provisions of the settlement agreement, but I'm proud of the fact that we're this far along already. So, there's work to do in this community, in the relationship of the Police Bureau and the city. I'm committed to that work, and I'll make sure that the bureau continues to be committed to that work. And as a member of this council, I'll also make sure -- as I know my

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colleagues will -- that this city council stands fully behind accomplishing each and everyone one of these provisions. But we'd like clarity about who's accountable, and the five of us are accountable to the citizens of Portland, and that's why we think it's important to clarify this question of who's responsible for making sure that every cell on this chart turns green and that citizens in Portland know that spirit and the letter of this agreement have been inculcated into how the Police Bureau serves our citizens. Commissioner Fritz?

Fritz: Thank you, Mayor. Yes, just emphasize that again -- this is about the scope of the judge's hearings and who is responsible. The Department of Justice settlement says the entire council is responsible for oversight, and I take that very seriously. We are going to do every single thing in that's the settlement agreement and more. And it's not whether the judge says it's done, it's whether the community says it's done. We are responsible, we are accountable to our community. Until we earn the trust of everyone in our community, we're not done -- whether the judge says we're done or not. That's what we're aiming to do in this process is for the first time, the entire council is responsible for police accountability. Previously, it was the mayor or whoever was the police commissioner. And somebody like me could say, oh, I'm in charge of Parks, that's not my problem. Well now, it is my problem, it is also my responsibility, and frankly, it's my honor to participate in this process where people that I have worked with -- people experiencing mental illnesses, which is I what I did for 27 years before I was on the council. I want to make sure this settlement agreement is implemented so that everybody in our community -- whether it's people experiencing mental illness or people of color, every single person needs to be safe and needs to have confidence in our police. That's what we're doing. The settlement is the step-by-step of some of the things that we're going to do. As the mayor said, when the community says that everything is green, that's when it's done. It's not whether we do. We're currently in the process of hiring the Compliance Officer Community Liaison. The videos from their presentation are posted on the mayor's website, and we're encouraging you -- everyone -- to comment on which of the three candidates you think should be chosen by the council. All five of us will be participating in making that selection. As soon as that's done, we have then 60 days to appoint the oversight and advisory board. We're going to meet very shortly with stakeholders to figure out the process for doing that. This has been a journey for all of us from waking up to knowing that we have issues to take care of to figuring out how we do that together. How do we do that with the Albina Ministerial Alliance Coalition for Justice in Police Reform? How do we do that with community advocates for people experiencing mental illnesses and people with lived experience in mental illness? We need to do this together, and that's our responsibility. I know from sitting in hearings here that you get a smattering of information -- those of you who arrived at 3:00 would have seen that we just had a very long design review hearing. It was very long, but it wasn't very long because the Design Commission had worked on that project for a year and had three hearings with multiple different iterations of back and forth. There's no way that I as the person in this seat in a hearing can hear all of the issues that are related to a particular challenge. So, this is not a one hearing a year. Although let's be clear, we are going to comply with everything in the judge's order, including the annual hearings. So moving forward, that's not at issue either. We're just seeking clarity on what then does the judge has the authority to do and not do. But for right now and probably for the first hearing, he will do whatever he wants because it's not going to get to the court agreement by that point. So, we are going to be implementing the settlement as approved by the judge. I want everybody to understand that -- that we're not saying, let's go back to the drawing board. We're saying, we're going to do it and it's my responsibility to do it.

Novick: Would it be OK to as Ms. Osoinach back up to clarify some additional points? One thing I just want to discuss was this case is technically the United States of America against the City of Portland. It's the Justice Department against us, and we have that agreement with the Justice Department. And they will be monitoring our compliance of the agreement, will they not?

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Osoinach: Yes, that's right. We entered into what the United States and City both considered a novel -- and we hope to be a new -- model for the national litigation, where the DOJ is the monitor and the community is sort of co-monitoring with the DOJ. So yes, we have an agreement with the Department of Justice that is unique in that they are the monitor along with the community.

Novick: And if they think that we are not complying with the agreement, then they can go to the judge and tell him to kick us and get us into compliance?

Osoinach: That is the model. Maybe not kicking, but yes, that is the model of court oversight and enforcement.

Novick: So normally, judges or judges and juries hear evidence to resolve disputes between the parties. One thing I don't understand about Judge Simon's order is he seems to be contemplating a proceeding where evidence would be presented, even if the Justice Department hasn't come forward to say they don't think we're complying. I'm trying to figure out, what would that evidence be about?

Osoinach: That's one of the questions that we have is that Judge Simon was not clear about that, the court was not clear about the purpose of the proceedings. Because -- as you point out -- typically, court proceedings are adversarial in nature and evidentiary. And he indicated that that was not his intent, but in the order, he included language that would have required adversarial evidentiary type proceedings. So, that's an issue that we're seeking clarity on because that is not a normal or typical judicial proceeding. It is also what also prompted the court's initial concerns about its jurisdiction to even have a proceeding like that.

Novick: Thank you.

Hales: Other questions or comments? Obviously, we will have more questions as we proceed. Now, we have a large number of people signed up. I think we're going to start out with three minutes and ask people to be succinct. And if someone has already covered your points, please don't feel you have to completely reiterate them. But we're going to try to give everyone a chance to have their say. Let's take the first people signed up.

Parsons: OK, we have 21 people signed up.

Hales: OK, that's manageable.

Parsons: Would the first three please come up?

Hales: Good afternoon. Welcome.

LeRoy Haynes: Good afternoon to the honorable Mayor Charlie Hales, distinguished members of the Portland City Council. The last 10 years, the Albina Ministerial Alliance Coalition for Justice and Police Reform has led a major effort for police reform and police accountability in the city of Portland. We held marches, pickets, rallies, forums; participated in a variety of city boards, commissions, and task groups through several mayors of the city. History has placed us now at a pivotal moment in the settlement agreement forged by the Justice Department, the City, the police union, and the AMA coalition. Federal Judge Michael Simon ruled in favor of the U.S.

Department's settlement agreement that included a change, and that mainly a limited annual review wherein the progress or the non-progress of the issues and points of the agreement would be reviewed. Both the City Attorney's Office and the police union filed motions to eliminate the federal judge limited annual review. Judge Simon rejected the City and the union motions. Now, we stand at a crossroads in our city with a resolution to appeal the mandate of the judge ruling to have only an annual limited review of the settlement agreement. This appeal, according to our own lawyer and civil rights litigant, has the potential of stalling or delaying the whole agreement. Furthermore, it does not represent the direction where the majority of the stakeholders and citizens of Portland want to go. Our citizens want comprehensive police reform and accountability now, not later. We do not want an appeal of the 9th Circuit to negate the limited annual review by Judge Simon. There's a need here for transparency, wise judgment, doing what's right -- not politics as usual. In light of the Ferguson, Missouri and the Michael Brown case, police accountability has become a national, urgent issue in every city in America. We have an opportunity to become a

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model for America. Don't pass this historical moment by politics as usual. If we want clarity, ask the judge and deliver. Thank you very much.

Hales: Thank you. Dr. Bethel, welcome.

T. Allen Bethel: Good afternoon. Dr. T. Allen Bethel, President of the Albina Ministerial Alliance. Mayor Charles Hales and to our fellow commissioners who sit this evening, I have come to really say I agree with everything Dr. Haynes has said. A couple of things that trouble me with this appeal. Number one, is the timing -- or you might say, the lateness. That we had an agreement agreed upon, we signed it, we celebrated it, and now later, we come back and appeal and say we don't understand it. I do not understand what the judge is requiring or asking to be done to bring in a report -- which is a part of reporting that's a part of the agreement anyway -- that it is adversarial in its nature. I believe that the judge made it clear he wanted this brought before him and he would be asking questions, particularly of the DOJ, saying, well, if the city is not in compliance, what do you plan to do in order to have the city work towards being in compliance? I still don't understand how we got an interpretation -- I'm not the legal mind, I just happen to have a community mind, you might say -- but I still don't get adversarial. I don't believe that we have been adversarial in most of these proceedings as we have gone forth. I want to encourage the council today to not approve moving forward with this limited appeal, and let's seek some way in which we can present the evidence -- and I don't want to use the word evidence -- let's present the achievements of obtaining the objectives or the goals of settlement agreement and the 88 things you have listed that are in green or in yellow that you would give the community -- as you said, the community must say they are in the green. Give us an opportunity to say they are in the green. To my knowledge, we've not had that opportunity yet to say they are in the green. In fact, some of the directives that were to be given to us prior to being posted have been posted, and we've had to ask for the directors to come. So I want to encourage you: do not approve this limited appeal today. Let's go with the spirit of that agreement. And in the annual meeting, let's present the reports of the progress made or the non-progress made and see if we are fully in compliance, working towards compliance, or out of compliance, and then, we take the necessary steps from there to continue to move forth with accountability, working together as a city as a community to achieve a better Portland for all of us to be safe, to go home at night, to live responsibly and to celebrate the great city in which we live in. Thank you very much.

Hales: Thank you.

Kate Lore: Mayor Hales, members of the city council, my name is Kate Lore, I'm the social justice minister at First Unitarian Church. I have other leadership roles of which you are well aware. Today, however, I'm speaking as a clergy person who cares deeply about the people in our community. Let me first acknowledge the significance of this moment in history that the city council, the Police Bureau, and the residents of our beloved city are wrestling with very difficult issues concerning how to be in community with one another. It took a long time and a lot of work to get to our settlement with the Justice Department. And although many of us see it as less than ideal, it's a great step forward towards the healing of our city. I'm testifying today because I believe your proposed appeal represents a giant step backwards in the healing process of our community, because it's not happening in a vacuum. We all know that police issues and trust issues with the police are happening in many segments of our community, not just the mental health community. We have communities of color, persons who are economically disadvantaged, homeless people, non-English speakers, sexual minorities -- the list goes on. It's not just here in Portland where those places exist, it's all across the country. Just think about Ferguson's Mike Brown, New York City's Eric Gardner, Florida's Trayvon Martin, and here at home, Portland's Aaron Campbell. The ties and similarities are very real and raw for us. We see similarities with groups that regularly incur excessive use of force regardless of where they live. It's called institutionalized bigotry. It's hard to see, but it's always there. I would like to respectfully suggest that an all-white City Council may not be able to see it as well as others. You say that appeal is necessary to gain clarity on the settlement

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and that there may have been a violation of the separation of powers. I respectfully remind you the judiciary serves the crucial role in checks and balances in this country. In this case, Judge Simon and the Albina Ministerial Alliance Coalition will get to ask you questions -- just questions. No one gets to introduce evidence. No one gets to cross-examine you. Given your repeated claims that the city of Portland is in compliance with the settlement and that you're repeatedly promising us transparency, I must ask, what then are you afraid of and is that fear really worth damaging the healing that's taking place in our city? I respectfully ask that you take this resolution off the table. If that is not possible, I would ask three things. That you adopt a position and make it clearly public that protects Judge Simon's ability to serve as a third party overseer. Two, protects the authority of Judge Simon to call the parties to the lawsuit into his courtroom. And three, protects the AMA coalition's ability to exercise their privilege as part of their enhanced amicus status. Thank you.

Hales: Thank you.

Fritz: Dr. Lore, just as a point of clarification, my understanding is that Judge Simon wrote that the parties were to present evidence.

Haynes: That's incorrect.

Novick: Actually, the order says -- I'm sorry, the order says -- actually, this part of it is very short. Orders the parties and the COCL to appear before the court at periodic hearings to be held approximately annually unless otherwise ordered by the court to describe to the court the progress being made toward achieving substantial agreement with all provisions of the settlement agreement and any obstacles and impediments to that end, to respond to the court's questions on these issues, and to present evidence on these issues as so directed by the court.

Lore: But that's the COCL, not the city council.

Novick: But Judge Simon is saying that he can call on us through the COCL to present evidence. That is actually the crux of our --

Lore: I think this is a great time to bring up our lawyer who can address that much better than we can.

Haynes: Because that can be interpreted a lot of ways --

Fritz: We're seeking clarification -- [speaking simultaneously]

Haynes: -- interpretation is a report.

Lore: One of my concerns has been interpretation thus far. The fact that we never talk about race, you know, there are many things that are of concern to me. That's why we actually need Judge Simon's involvement in this way. And I think that's why the trust issue is so pressing right now.

Haynes: Thank you.

Hales: Thank you. Next three? Dan, I think you're first.

Dan Handelman: Good afternoon, Mayor Hales and members of Council. I'm Dan Handelman with Portland Copwatch. I'm also a member of the steering committee, the AMA Coalition for Justice and Police Reform. Speaking on behalf of Portland Copwatch today. Portland Copwatch urges a no vote on the resolution that would authorize the city attorney to partially appeal the judge's order on the U.S. Department of Justice settlement agreement. We're appalled at the city's efforts to back track on the judge's order. When the judge's ruling came down on August 29, the city's response was they were excited to move forward. It is clear that members of the community -- particularly, the African American community and people with mental health issues -- do not trust the city to take care of itself. Were that possible, we would not be engaged in this ongoing struggle for police accountability, and the DOJ would never have come to town and investigated the bureau. By filing an appeal about the judge's authority to merely ask questions about the implementation of the settlement agreement, the city is showing it's not truly committed to making the reforms. Judge Simon pointed out during the court process that City Council members may come and go, but as a lifetime appointee, he can keep tabs on the process whether it takes two years, five years, 10 years. It's not clear why the city has to file an appeal to get the answer to the question they're allegedly asking, which is, what does the judge mean when the parties to the lawsuit will present evidence

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that the judge requests? They could safely ask the judge that question without creating more legal proceedings to tie up city funds. Also, the resolution allows broad discretion for the city attorney to follow up, meaning that the narrow issue could be turned into something that calls the entire settlement into question. Community members were not at the table when the city and the DOJ hammered out the agreement. Despite one and a half days of testimony urging him to strengthen the terms of the agreement, the judge did not order the city to make any changes to the substance. The one piece of the overall picture that was created because of community demand was a requirement for these annual hearings. Please don't take that away from us. In addition, the discussions leading to this resolution, the cost to file appeal, and the legal and political work following up in court are all taxpayer time and money better spent on actually making changes to the bureau. The tensions among people and the community members we've talked to is that the city seems to be circling the wagons in trying to avoid even the limited outside oversight the judge can provide. The community members who have suffered long at the hands of the PPB deserve better. And on a note on the table of the 88 items, the Police Bureau has made that checklist themselves. There's been no outside review of that. So, we looking forward to the COAB, the COCL, the DOJ looking at that and making sure that those things are actually being implemented the way they are intended in the agreement. Finally, I just want to remind Mayor Hales and Commissioner Fritz that we've passed the 30-day timeline on the JTTF that we were going to do.

Hales: Thank you. You'll be hearing from us on that.

Fritz: Thank you. Just to clarify, the Compliance Officer Community Liaison will be doing quarterly reports which we haven't yet discussed but we could easily have those be quarterly reports to Council. We have those for the Technology Oversight Committee, so I don't see why we wouldn't want to for this very important issue. We are also intending to have annual hearings before Council, because the council are the members who can apportion the budget, make the changes, do the accountability, the oversight. And we are your elected representatives, so yes, you can -- I think the point about Judge Simon being appointed is an important one. We are accountable directly to our electorate. Absolutely, we are planning to have not only the hearing before Judge Simon while this is worked out, but also -- and probably more importantly -- annual hearings here at Council.

Novick: Mr. Handelman, a question. If you think that the city is not abiding by the agreement, can't you contact the Justice Department and tell them that we're in violation, and if they agree, can't they go to the judge and try to bring us into compliance?

Handelman: I don't know if I can do it as a member of Portland Copwatch. Maybe the AMA as an amicus curiae may be able to do that. Members of the community maybe have the ability to contact them, but they don't necessarily have to respond to us. The question here isn't really whether you're complying with it and we want to complain about it, because the agreement allows for the DOJ itself to call you into court. The question is whether the city is going to let the judge ask questions on a yearly basis. That's all he wanted to do, and we want to have his ability to ask questions that may not be raised or answered at a City Council hearing. Because we ask you questions all the time, and a lot of times, we don't get answers when we ask them. When he asks the question, you're going to have to answer them.

Novick: But wouldn't his questions be about whether we're abiding by the agreement? And if we weren't abiding by the agreement, since it's with the Department of Justice, don't you think they would be coming to him and saying they don't think that we're abiding?

Handelman: Well, this is where I hope we can hold Council members who've talked to this issue to their word, and that community will be judging whether or not their compliance has happened. Hopefully, the community's voice will be heard through the AMA coalition, because they are the only community members with a seat at the table at this point in the courtroom.

Hales: But there will be more members seated at the table once we have a COAB.

Handelman: But they don't have access to the judge.

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Fritz: They have access to the council, not the DOJ. That's kind of the point we're at here. We've got an agreement. I'm not clear why the judge needs to be involved, because the DOJ can take us back into court if we don't comply.

Handelman: They could if it was in their interest to do it.

Fritz: Essentially, we're on probation. We're parolees. We've got this agreement. The DOJ is talking with us about compliance. When are you going to get the COCL hired? What's the process for the COAB? That's a conversation I had just this past week with Department of Justice staff. So, that's the process we're in right now. We are accountable to the Department of Justice as well as to our community. It's not clear to me what the extent of the judge's involvement is, and that's why I'm interested in finding out and having it written down.

Ashlee Albies: Mayor Hales, Commissioner Fritz, Commissioner Novick, my name is Ashley Albies, I represent the AMA coalition. I'm the lawyer they wanted to call up here to respond. Initially, I do want to respond to your comments, Commissioner Fritz. From my perspective, I think that court Judge Simon found that the agreement is procedurally fair, adequate, and reasonable. But he sat through a day and a half of the fairness hearing, hearing from community members about their concerns about this agreement. And some of those concerns included concerns about access to the Department of Justice and the Department of Justice's response to the community. So I presume, or I have the sense that one of the concerns that Judge Simon is trying to address with the order that he issued is these community concerns, and having this agreement be fair, adequate, and reasonable both substantively and procedurally. And giving the community that came out in full force to testify about their concerns about this agreement -- to give that community the sense that he's also monitoring this. He's going to make sure that it's implemented. And yes, the Department of Justice is the ultimate arbitrator under the agreement to determine whether or not the city is in compliance and they can bring the city into court, but the court clearly thought that that was not enough and that there needed to be an annual hearing instead of these quarterly reports, or he may not hear -- as he stated in court to the parties -- he may not hear anything for years and wanted to make sure that this was proceeding adequately. And I think his response to the community concerns that were addressed in that fairness hearing was to adopt the order that we see. I would like to raise the point that it was briefed in our briefing in the Department of Justice briefing that we don't think that this is ripe for appeal. If it's not going to be appealed, if it's not ripe for appeal, then what happens is a writ of mandamus or prohibition, according to the resolution that you're looking here today. And the U.S. Supreme Court has described a writ of mandamus as a drastic and extraordinary remedy for really extraordinary cases. I would posit that going to these annual hearings are not something that calls for this drastic and extraordinary remedy. If the city would like clarification on the language of the order, I would suggest that the proper way is to ask the court for clarification. That can be done in a letter, in a motion, in a hearing with the court. And I'm sure Judge Simon would be happy to answer those questions and provide additional clarification. I'm going to defer to Mr. Kramer. Thank you.

Hales: Thank you.

Mark Kramer: Mayor Hales and members of the council, the Portland chapter of National Lawyers Guild has been working on these issues of oversight for more than 25 years. In 2000, we were part of Mayor Katz's work group. More recently, we were part of Mayor Adams' stakeholder group. Our colleagues were representing the AMA alliance, Ms. Albies has just testified. I testified at the fairness hearing before Judge Simon at length, and we urged Judge Simon to reject the proposed settlement because it failed to address larger issues of race and oversight in the city. After the fairness hearing, Judge Simon asked for further input, and we specifically proposed an amendment that the COCL be empowered to report not only to the parties and to the council, but to the court without having to vet his or her perspectives with the parties. While the court's implementation order didn't include that recommendation, as you know, it did require this other obligation of the city to appear at periodic hearings. Now that the agreement has been ordered, the

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Guild supports the agreement but only if it's fully and fairly implemented in a transparent manner with appropriate public and judicial input. And that would be a very positive step for Portland. We think that this resolution is reckless and not supported and not with merit. We're dumbfounded as to why this challenge is being considered. The agreement already provides for public input and public participation. And Mr. Mayor, you said you're committed to transparency. Why would the city challenge a public session before Judge Simon to assess implementation issues? The judge could have appointed a special master. The judge could have ordered the parties back to the table. Instead, after a day and a half of hearings, and hearing me and other members of the community, I think the court felt compelled to stay involved in a neutral and professional and a judicial manner. And that's all that order requires. He's already acknowledged his function is to listen and to solicit information. He's already acknowledged he lacks the power to order the city to do anything. I want to give you some specific suggestions before you take this reckless step. Number one, write the judge a letter. Number two -- we do this all the time -- we ask for a conference among the parties and stakeholders, at least among the parties and the AMA. Number three, wait until an issue arises. There'll be an agenda, perhaps, for the hearing. If there are any issues of friction that come up at the hearing, the judge says I want X, Y, Z. The issues can be raised then -- your honor, we don't think we can apply. Maybe the judge, maybe PPB is going to report, maybe the COCL is going to report. We had 10 incidents in the last year in which excessive force was used with the mentally ill. Maybe the judge says, we would like to see the reports. Maybe the judge says, we'd like to see the use of force reports. Why are we bringing this issue up now? I want to close. Commissioner Fritz, you said it was important to you that we earn the trust of the community. I can tell you at this point, you, the council, does not have the trust of the community. This is a step backwards in transparency. The community sees this as putting a public process behind the cloak of secrecy. So, I urge you to explore other alternatives before you take this step.

Hales: Thank you. Questions? Thanks very much. Next, please.

Becky Straus: Good afternoon, Mayor and Commissioners. Becky Straus on behalf of the ACLU of Oregon. Thank you for the opportunity to chime in. Want to echo many of the comments before me and just note that we also urge you to vote no. Through cycles of revisions to the settlement agreement and public testimony as to how it should be crafted, we advocated repeatedly for court oversight of its implementation. The COCL rule is a very important one, but it's not enough to achieve true oversight because that position carries no authority to bring the parties back to court. We support the middle ground that's been discussed that Judge Simon's order. It's not all that we asked for by any means, but it's something for the community to point to believe that police reform will happen. So much of the people's relationship with law enforcement relies on these intangibles like perceptions of safety and trust in our officers. Our concern is that right out of the gate now, we have a perception -- whether it's real or abstract, legal or not -- that the city and the bureau will not be held accountable for implementing the settlement. We see this as action as a concerning step, and we urge you to vote no. Thank you.

Hales: Thank you. Welcome.

Charles Flewelling: Mayor Hales, City Council, thank you for the opportunity to speak on this important topic of whether or not it is in the best interests of the citizens of Portland for the City of Portland to deviate from the terms of the currently settlement agreement. My name is Charlie Flewelling, I'm a law clerk with Disabilities Right Oregon. Disability Rights Oregon is the nonprofit protection and advocacy agency for people with disabilities in the state. DRO appreciates that the City of Portland and the Portland Police Bureau entered into this settlement agreement with the U.S. Department of Justice and the Albina Ministerial Alliance Coalition for Justice and Police Reform. This averted a lawsuit against the city of Portland, the heart of which would have been that the Portland Police Bureau used unconstitutionally excessive force on citizens of Portland with or perceived with mental illness. Judge Simon has ordered the City of Portland to appear it looks like once a year to discuss the status and progress of the settlement agreement with a neutral party.

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Having a neutral party observe the standpoint of the agreement allows for genuine police quality assurance. The City has contested this provision. In order for there to be some measure of transparency for the citizens of Portland, it is imperative that this provision remain. One of the concerns that the U.S. Department of Justice has -- as well as our clients, who are people with disabilities -- is the lack of trust among the citizens of Portland and the Portland Police Bureau. Let's not hide behind clarification of a narrow legal issue to escape this previously agreed-upon transparency mechanism. Let's instead work towards breaking down the us versus them mentality that exists between the citizens and the police by supporting transparent oversight of the settlement agreement. Appreciate your time and your attention to this matter.

Hales: Thank you. Debbie?

Debbie Aiona: I'm Debbie Aiona, representing the League of Women Voters of Portland. Good afternoon, Mayor and Commissioners. The League has been closely involved in issues related to Portland's police oversight system since the 1980s. We provided detailed comments on the Department of Justice settlement agreement and testified at the fairness hearing. As an organization that places high value on government transparency and accountability, we applauded Judge Simon's insistence that the parties to the agreement appear before the court on a regular basis to report on implementation and respond to questions. These periodic reviews will provide useful occasions for the City and Department of Justice to share progress reports not only with the court, but also with the community. We encourage the City to take advantage of this process with Judge Simon and view it as an opportunity to inform the public and demonstrate that it is holding itself accountable to the terms of the agreement. Regular reporting and responses to the court's inquiries should build trust in the City's effort to remedy the Police Bureau's previously documented deficiencies in its interactions with individuals with mental illness. We question the need for the appeal and urge the City to continue to move forward on implementing the agreement including participating in the court's annual reviews. Thank you.

Hales: Thank you.

Chris Lowe: Good afternoon, thanks for taking our testimonies. My name is Chris Lowe, I'm here representing Portland Jobs with Justice. Jobs with justice is a community labor coalition of over 90 organizations and several hundred activist advocates for improving working conditions and living conditions for working people and for social justice. Jobs with Justice has a long history of standing in solidarity with the AMA Coalition for Justice and Police Reform. In that long history, our observation is that the City of Portland is not trustworthy, that the City of Portland has repeatedly sought to accountability to the community about policing. It has had rhetoric about community policing that has not been really seriously attempted at any kind of implementation since the mid-1990s. So, in that kind of context, the reason there's a settlement agreement is because the City was forced to make an agreement by a lawsuit, so we don't trust the city council. I'm glad you all have that responsibility now, and it's not just the mayor who has an institutional relationship with the Police Bureau. That's good. But I don't trust you, and I don't think the community trusts you. And I think if you're going to frame it as an issue of community trust, you have to understand that Judge Simon is part of the structure that enables us to trust this settlement a little bit more. If you take Judge Simon out of the picture or reduce his role, you are reducing our trust in you and you are demonstrating again a repetition of this culture of seeking a lack of community accountability and upholding a culture of impunity within the Portland Police. So, when I listen to you talk today, I hear two things. On one hand, I hear an argument, we're seeking to be bigger than the settlement, we really want the community to trust us. On the other hand, I'm hearing these legalistic arguments and a really bizarre thing saying we want clarification but we want it by a legal appeal to a higher authority rather than asking the party that's not clear -- in your view -- to actually clarify. So, an appeal is the wrong route to get a clarification, as the legal people have said. It's also that way in the eyes of the community. I really urge you not to make this appeal, to seek your clarity through a proper channel of going back to the judge and be open in the process and let us have this neutral

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party to help us have confidence in you. If you want to build trust, it's a process. And you're taking the very wrong first step.

Fritz: Chris, let me just ask you for clarification -- you said that we shouldn't take Judge Simon's role out of this. What do you see as Judge Simon's role? We have this annual hearing, the community says this has been done, this hasn't been done. What then does -- in your mind -- does the judge do?

Lowe: Judge Simon has a role of asking you questions as a person to whom you feel more compelled to respond than you do to the community. Because the City has failed to respond to the community for decades.

Fritz: So then we respond to the judge, and then what?

Lowe: Then there will be at least more information on the table with which to pursue the struggle for wider police accountability and better reform. I actually think, though, you should see it as an opportunity. As has been said, this is a public setting in which you have a chance to engage with the leading organization for police accountability and reform, engage with the Department of Justice, with the Police Bureau before a neutral body. You should take advantage of that to build confidence in the city beyond the Police Bureau as committed to this kind of accountability.

Fritz: Yes, but then what does the judge do? Does the judge say, yes, you're good, or no, you're not good?

Lowe: You should ask the judge that before making an appeal to a higher court that could constrain the entire process and just bring the whole thing down that you're trying to accomplish.

Fritz: Just to be clear, we are going to do those annual hearings. We are not going to stop doing those.

Lowe: If you're restraining the judge's role to ask you questions, then --

Fritz: It doesn't -- until it gets heard by the court, we're going to do exactly what the judge said.

Lowe: I don't understand what you object to. I don't understand why you don't want to be able to present information to the judge in this public setting, and even evidence in this public setting. I don't understand why it needs to go to an appeal, why you can't just ask the judge. And the point I'm really making here is you have to choose between this legalism and public trust. You can pursue the legalism and that's fine, but then you're abandoning your seeking for public trust.

Fritz: The purpose of the settlement was to reach an agreement between the Department of Justice, the City, the AMA Coalition, and the police association on what it would take to fix the problems that the DOJ found. So those are the parties to the settlement. Having this additional oversight by the judge means that we really don't have a settlement.

Lowe: You agreed to that in August. You agreed to what's there, and now, you're appealing it before anything has happened.

Novick: Actually, no, Mr. Lowe. We agreed that we would have an annual meeting. But we did not agree that there would be a procedure where the judge could decide to ask the parties to produce evidence. A question I have for you, though, is I understand you don't trust the police, you don't trust us. Do you distrust the federal Justice Department?

Lowe: Yes -- or, let me put it this way. I want as many institutional means by which the community can have a voice to exist as possible. If you're cutting out one of those means, or you're reducing its scope, the Justice Department will be responsive to some kinds of things, they won't be responsive to others. This fits to me the pattern of the Portland City toward these whole sets of issues for several decades, which is to limit the structures and processes by which the community can hold the police accountable. And you're doing that again.

Novick: Do you think the judge's role should be in part that of a prosecutor?

Lowe: No, I don't see that in what you're contesting. Or, I guess you're contesting.

Novick: So, are you afraid that the Justice Department won't enforce the agreement against us and we'll be in violation but they won't see that and it will be up to the judge to decide on his own whether we're in violation and go after us?

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Low: I am afraid the Justice Department will not recognize the Albina Ministerial Alliance Coalition for Justice and Police Reform as having the legitimate voice it should have that the Judge Simon has recognized and has built into the setting.

Hales: Thank you.

Jason Kafoury: Jason Kafoury of the law firm of Kafoury and McDougal and also representing the Oregon Progressive Party. I think you need to reverse the questions that you're asking to us and ask yourselves the question of what's the harm in having this hearing with the judge every year where he has the power to ask questions? An appeal -- I mean, everyone has already said this -- an appeal can take years and years, and I don't understand why the first step wouldn't be seeking clarification from the judge of how these hearings are going to go and what role he would have. It just doesn't make sense to go and take all the resources of the City Attorney's Office and file an appeal and go that route without first trying to resolve it at a lower level. That's point number one. Number two is, what is the basic problem with this appeal? And I think in most of the citizens' eyes, it looks like the police and police union are driving the ship in terms of policy, and not the city council. And we've seen this over and over again. Even when juries come together like they did a few weeks ago and rendered the largest verdict for excessive force in the history of this city in the Cox case -- even you, Mayor Hales, said you disagreed with the jury. And there was video showing six punches and four Tasers in a matter of six seconds on that, and that caused a great amount of public outrage. I think that this is not the right time for the city council to be taking a step back at all in this agreement. I think it's time for us to say, let's get the judge, and I think the key will be that we'll have a better chance for the DOJ to step in as a party if things aren't being implemented if there's a public hearing with Judge Simon where he's getting to ask questions. I think that's the reality of how it will work out.

Novick: But Mr. Kafoury, doesn't the DOJ automatically have that ability? I mean, they are part of the agreement.

Kafoury: They do. But I think if there's a public hearing where the judge is asking questions, I think the DOJ is going to feel a lot more public pressure to step in if they don't think things are being done than if those are not happening. And again, back to the council, I don't see what the rationale is for appealing is. Is it a waste of resources to have the hearing?

Novick: Mr. Kafoury, it sounds like you're saying the purpose of having a hearing is to put pressure on the DOJ to say that we're not complying with the agreement --

Kafoury: If you're really not --

Novick: -- even if that's not what they really believe.

Kafoury: Well, that's the benefit of a public hearing, to allow everyone an opportunity to be there and watch what's happening. As is, I don't see -- again -- any rationale why we should not have such a hearing. And I think it would put pressure. The DOJ has got their agreement here. Let's look at this in hindsight. They're going to be looking at other cities, they're going to be looking to enforce this in other cities. They're not going to have this at the forefront of their radar. And having a public hearing with a judge asking the tough questions about things I think would be very helpful for them having to refocus on the Portland case over and over again.

Novick: But don't you think the DOJ will actually be more involved on a week-to-week, month-to-month basis in overseeing this agreement than the judge? Don't you think the judge -- if he's coming in every six months or one year -- will be kind of parachuting in and perhaps tempted to say things or do things based on minimal information?

Kafoury: I think that the DOJ -- the final agreement was pretty weak in terms of police reform. And I think a lots of citizens feel that way, too. I think that's where the lack of community support for the DOJ is coming from, and that's why I think having a neutral -- someone who is not involved in any of this and has no public pressure and doesn't have to take campaign contributions -- having that person who has become intimately knowledgeable in all of this stuff over the last few years,

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having Judge Simon play a key role in this is essential. And again, I don't see a reason why we shouldn't have.

Novick: If the agreement wasn't good enough, don't you think Judge Simon should have thrown it out?

Kafoury: Yes, I advocated for that, but he went ahead and implemented it. And he had a very minor requirement, an annual hearing so we can discuss and see how it's going that the public could be at. And I don't see any reason why we shouldn't have that. Going through years and years of appeals and having city attorneys fight this out is crazy.

Hales: Mr. Kafoury, can you think of a situation in the relationship between the federal government and a local government where a lawsuit is filed, a settlement reached, and the parties stay in court for an indefinite period after that?

Kafoury: I can't think of something off the top of my head. I think they've done this in four other cities where they've had implementation agreements and the judge has been the ultimate --

Hales: That's because there was a special master appointed. I'm saying, can you think of any instance -- outside a matter even like this -- and the relationship between the federal government and its judiciary and a local government where you go to court and then you stay in court? It seems bizarre to me. So, I just --

Kafoury: Mayor, I think we have not gotten police reform done right in decades. And the fact the DOJ came in as a statement to that. And the fact they want to stay involved is helpful. And I think having this case remain as case -- and as I understand it, it's basically an abatement -- but if things are not being implemented it could be reactivated at any point. I think that's a beautiful thing. I think that's how it should be. I can't think of another example.

Hales: I can't either.

Lowe: I can. School desegregation. There are many cases were like what you're describing. I grew up in Boston in the late '60s and early '70s and that is exactly how it went.

Hales: OK, thank you. Ms. Eng, welcome.

Mary Eng: Hi, City Council, great to see you Saltzman, Hales, Fritz, and Novick. My name is Mary Eng. I want to go really fast. I've made you a really wonderful packet, so I'll be leaving that with your clerk so you can have that. I want to point out that you are not the dictator, just so we have that clear. And the police of Portland are not a secret police, they are a public service. Just so we have that clear. I'm very concerned about the Rachel Andrew lawsuit regarding the male masturbation gesture that Chief Reese reaffirmed the harassing incident in a hearing with her and with the city attorneys. I'm concerned about Landrum's courtroom demeanor. He's very, very rude, he's very aggressive. I think he kind of dropped the ball on the Cox case, I think he's getting tired of the Kafourys, honestly, because he can only be so nasty and so unprepared. And I wanted to let you know that Yamashita came and gave me a handshake, and I kind of took it as a symbol of good faith that maybe we do want to work across the aisles, that it's not an us and them situation. I've never heard him speak, he's the quiet type, but I have a feeling he might be a better representation of the city. Because when you throw somebody up there who's going to victim-blame and get very nasty with someone like Elizabeth Nichols in the pepper spray case, you misrepresent the city and you misrepresent our intent to be in compliance with the constitution and with our civil liberties. I definitely want to hit the point of Mary Claire Buckley. Her conduct was very, very bizarre and disturbing. And thanks to Max Bernstein for reporting on that. I found it strange that the police hired her for implementation. I wanted to bring up the Kruger thing, it's got us like a neo-Nazi website tour guide for great cities to be a neo-Nazi. We're making it into the neo-Nazi blogosphere with our irresponsible attitude towards Kruger. That to me is very concerning, because that's the kind of press -- I don't want more hate crimes here. I don't want swastikas on temples and things like that. So, I think we've been sloppy in a lot of regards. Bu Michael Simon is a really nice guy, and I think that you should get to know him and overcome your trepidation. Like they say, write an email, write him a letter or give him a phone call. He's so nice, he's very funny, he talked about

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Foucault, he lived in Los Angeles and New York, he's a very well-traveled conversational guy. He's actually related to Neil Simon, the great comic writer, and his dad wrote for Different Strokes - - which I found very touching -- and the Carol Burnett Show, and you might find you like him, and that we could build community here without any kind of adversarial overwhelming appeal. I'm sure that you have more Kafoury lawsuits to be fighting with your city attorneys, so why drain your resources when you probably have some very serious instances of brutality to address. And that fiscal drain and the PR drain are not being assessed. We have Chasse killers in the mental health organization, and your mental health unit, and we have Kyle Nice still being dispatched, and there is a lot of strange behavior that does not show a level of compliance I would suggest. This picture is a picture that Judge Simon has. This is a picture of Ben Pickering's care dog, and without his dog, he was brutalized. And then there's a --

Hales: Mary, you need to wrap up.

Eng: Oh, thank you. And there's a whole big article for you to read about his original brain injury and why people like him shouldn't be assaulted by the police. They did a great job, by the way.

Hales: Thanks very much. OK, Mr. Pickering, go ahead.

Benjamin H. Pickering: Benjamin H. Pickering. Resonate the mind. A lot of exciting stuff here today. I mean, some people new like this don't know what's really going on in the city. Anyway. [inaudible] I am a police brutality victim, I've had some things happen to me, but I want to talk more about the city. I mean, they always say -- I watched this video that used to be on TV all the time, bad boys, what are you going to do when they come for you. And you got the cops, and you got the citizens, and you got people that live and do their normal day jobs, and they put their suit on and they live for that, the moment. The moment of truth, which is trusting somebody and giving them something to trust in. On the point of view of who brings up a ballot or something toward what is wrong, like if you were -- yeah, you always hear the cases like Kafoury, they were fighting his case for the 575,000 settlement for that guy had been beat up, socked in the face and what happened to him. I was sitting there experiencing it, I had to walk out and excuse myself because I broke down in tears because I had been brutalized myself by four officers, and not only did they put me on trial and accuse me, but I had to relive my accident all over until the day that I had come to trial of not guilty on all the charges and one mistrial. But if you read all their statements the cops put in from 10 years back, you can see every cop started on the force, and from way back from -- I mean, you know, since Portland started, the bureau -- but concurrently, how they write their statements and put them in. If you are looking at a forensic file, and you look at them, their statements concurrently of everything they bring people in -- and yeah, like for example, for just a short example, here's the guy that had 570,000 settlement. Here's his statement. But concurrently, where's all the other people that that were blamed or just took the plea bargain or went through the courts? But concurrently, I give everybody the honest, the gratitude for being honest and being part of the police bureau and protecting and keeping people safe. So, I mean, concurrently, who does the investigation against them? There is a lot more criminal acts out there, and there's a lot more, more things going on, and you say bad boys, bad boys, what are you going to do? I don't care if you're a cop or a criminal, you do the crime, you do the time. They've been doing some crime, people's loved ones been hurt, people going through anguish and people -- you can't begin to sit down on the side of the road and be one of those people and watch the traffic go by or even feels what it feels like to be loved. Yeah, the money is the root of all evil to the bottom of the food chain, and you've got these people that lived their every day job, and you guys are the ones -- everybody that's in our city, and our county, and we're the ones believing what? Everything that people bring to the attention of you guys' sense of humor and sensitivity. I want to say actions of what it feels. I can't go one or two or count to a million before I count how many things are wrong. Thank you.

Hales: Thank you. Welcome, Lightning.

Lightning: My name is Lightning, I represent Lightning Rethink Lab. This appeal to me is very questionable on the timing. It's very questionable on why you have not written a letter to the judge,

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at least possibly not even getting a response and go from there. Another issue that I have on this is that -- I'm going to say Commissioner Novick, I think you are very adversarial against Judge Simon. And I find this very interesting. You made quotes to the Mercury, Judge Simon is doing something very wrong and legally odd, and I find that an interesting statement to make to a judge on this settlement, because -- correct me if I am wrong -- if we go through this appeal process, could this really unravel this settlement? And in my opinion, and I'm not an attorney, but I think that it could lead in that direction, and that's my opinion. And another issue like I've stated is that the city attorney I'm sure is very happy to get moving forward on this because it's the public's money that we're spending here. I would like to have a cap set on this appeal before this is approved. I want to know the amount of money you plan on spending on this, I want a cap to be set on that, and I do not want this approved without that being put into place. Now, correct me if I am wrong on this. We have a settlement already that has been agreed upon by the judge. The settlement will continue to move forward, you want some more clarification on this. I don't think an appeal is necessary at this time to do that, in my opinion. I think there's other directions that you could go. I don't think that you have to spend the public's money to find this out. And everything that I have seen on this is, we want more oversight. By leaving this settlement in place as it's currently agreed upon, I believe that we have that additional oversight. Again, some people brought up, what is the big concern? What is making you so nervous to have maybe some additional oversight? And it's my understanding that Judge Simon will not be looking and reviewing this for possibly six months to a year. So, what is the big concern right now on that issue?

Novick: Lightning, can I respond to a couple of those things?

Lightning: Absolutely.

Novick: One thing I want to say is that Judge Simon is actually a personal friend of mine, and I have great respect for him, but I think he's making a mistake here. In terms of what the concerns is, one of my concerns -- and I don't know if I speak for anybody else -- is that I think that Judge Simon is setting himself and the rest of us up for disappointment in that I think that if he has this annual hearing where -- or more than annual hearing where he's hearing evidence, some people will think that that's an opportunity to go before the judge and say all the bad things that the police are doing and ask him to fix it. And either he's going to say, no, actually, that's not my role, my only role was to oversee the settlement between DOJ and the city, and if DOJ isn't saying they're out of compliance, I can't do much. Or, he's going to feel tempted to go beyond the scope of the settlement and sort of act himself as an additional prosecutor, which would be inappropriate. So, I think that one problem is that he's putting himself in -- frankly -- in what I think might be an untenable situation.

Lightning: And if I could just respond to that --

Novick: Actually, sorry, just one more thing.

Lightning: OK.

Novick: Which is that there actually has been -- people keep on saying, why don't we just ask the judge what he meant? There actually was significant back and forth between our lawyers and the judge on the question of what his final order would look like. And our lawyers proposed a version of an order which said the COCL will appear before the judge once a year, and the judge will have the opportunity to ask the COCL questions, but in the proposal that we submitted, we said, for example, absent a motion to enforce the settlement agreement by the United States or the City of Portland, the court will not use the annual court appearance to sua sponte -- which means sort of on its own -- order the parties to administer, enforce, or construct the settlement agreement in any particular way. So, the fact that the judge did not accept that suggestion as to what the limitations of the hearing would be, and the fact that the judge said that the parties might have to present evidence as directed by the court leaves us really confused as to what's going on, and that confusion remains after there had been extensive back and forth between our lawyers and the judge.

Lightning: If I may respond to that --

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Hales: Briefly.

Lightning: OK, just a few more seconds. If you are in fact a friend of Judge Simon, and you believe that he is a good judge and he's made his final opinion on this agreement -- as a friend, don't you think that it would be more advantageous to maybe get together and have a discussion before you try appeal and take him in and make him look like an incompetent judge?

Novick: Actually, it would be thoroughly inappropriate for me as a city official to meet directly with the judge. And, I mean, he's my friend --

Lightning: By letter, written form is what I meant.

Novick: He's a friend, and I think he's a very smart guy. But all of us have friends that occasionally make mistakes. And I think that's the case here.

Lightning: OK, and I disagree with you on that. And I think that your appeal won't go anywhere, thank you.

Hales: Who else do we have signed up?

Parsons: We have about seven left.

Hales: OK, welcome.

David Elton: My name is David Elton. I live in the vicinity of 102nd and Burnside. You might call it the heart of darkness where a lot of crime happens. Tonight, you've had 15 people kind of throwing arrows at you. I would take a bit of a more ambassadorial tone, because I don't distrust you or the Department of Justice. I actually think Mike Reese is a decent guy that's doing a very difficult job. I come from a background where I was abused by police in 1986 in Palo Alto, California while a student at Stanford Law School. A few years ago, I was mistreated by a police officer in Lake Oswego. The City of Lake Oswego had to pay me for that. I had a situation where a police officer ran over my Blackberry and my glasses, and made me watch it. They went backwards and forwards. So, I've had some negative interactions with police. But for the most part, most police officers -- in my opinion, and I'm a researcher by trade -- 90 to 95 and maybe 98% of all police officers are very good and noble, and they have very few complaints against them. It's the few that we have problems with, where you really have to hone in and have oversight on them. Now, very few people will step up to a public microphone and say I am mentally ill. I don't like to say that out loud, but I was diagnosed at Stanford with -- back then we called it manic depression, now it's called bipolar. Now it's trendy. But it's a frightening thing to know that there may not be efficient oversight in your city. I raised five kids in Spokane, Washington, I have not been here that long. I grew up in Lake Oswego, but most of my life is in Spokane. There are four cities in America with problems right now. And you know about Albuquerque, New Mexico. We all know about Ferguson. The other two cities are Portland and Spokane. Spokane just went through a system where they actually did finally get oversight. Not with subpoena power, but they got some oversight. The people that spoke here tonight, the Albina ministry, the president of that group, Kate Lore, Dan Handelman, who I met a couple of years ago because I started a Copwatch version in Spokane. The fifth person spoke about the writ of mandamus -- over and over, people talked about the lack of trust. I would say that most people watching at home are kind of in the middle. Not everybody distrusts you and the police, but we wonder what is happening right now. The people, the voters, the citizens out there -- this is a unique period of time where you can choose to go one way and kind of have this adversarial and get lost in court with the appeal process, or you can actually take a leadership role and do something bold. And I trust you. I trust the police. Not all the time. Oversight is necessary, whether you take the ombudsman approach like the city of Boise and the city of Spokane, or if you start your own system, I would suggest you listen to the people speaking tonight, and do not go through this appeal. It could create more problems than it's worth, trust me. Thanks.

Hales: Welcome.

Crystal Elinski: Hello, Mayor and Commissioners. My name is Crystal Elinski, I represent 10,000. Not trendy, but yes, bipolar -- I would say delusional is sometimes an issue we all have. It's kind of

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hard to follow that last one up. Wow. But yeah, there are cities with problems everywhere across this country, and the funny thing is you start to see the patterns very clearly, just like with the Mohammed case. Once you see this and you hear about it in other cities, it clicks, and we're thinking, this is a problem with the culture. It's not going to take yet another IPR or CRC. I mean, in Ferguson, they don't even get that. But they're looking at us saying well, Portland had that. And in my case, the IPR deleted my file immediately. And when I went to their boss, the auditor, she wouldn't do anything about it. So there's no oversight. When I look at issues like this, I can't really answer and I'm not really sure why we're discussing an appeal right now. I just know from my experience -- since I've been paying attention here in Portland -- Kendra James -- it's just gotten worse. And of course, we have more homeless, we have more with homeless and the economy, domestic violence, we have child trafficking, we have drug abuse. But I am more and more losing trust in our city services. And that's especially the police, especially in my neighborhood, where every day there's constant barrage of different vehicles that the police own, whether they be undercover or big SUVs, helicopters, it's just -- it's grating. And all the time I've been there, there was one shooting that was never explained, and whenever there is something in my neighborhood, they won't tell me. And I call the police station. And to say at City Hall, well, we want our citizens to trust the police -- that's the aim, that's the goal -- well, citizens don't really trust City Hall. So, there is a bubble being burst here, but when Judge Simon actually listened, I felt like he was listening to us. And the agreement was that we, as citizens -- I feel the Albina Ministerial Alliance has been working on this so long that we had ideas that looked like they would work. So, if I look at the waste of resources and the hypocrisy, why is it that just recently when Chief Reese was being interviewed, he was saying, everything's fine, we've been implementing this sort of thing all along? A lot of what's in the DOJ settlement has never been discussed. So, to say that we're already on it, we're doing it, and we're not going to waste time and resources is ridiculous. It's a complete lie. And we keep torturing people right out here outside of City Hall, and I think it's horrible. We haven't improved, and I thought -- if we can appeal this, why can't we appeal, like, ask for an exception or an extension on the reservoirs? Covering up the reservoirs for the EPA? So, that's a hypocritical to me. Thank you.

Hales: Thank you. Welcome.

Ross Bennett: Hi, my name is Ross Bennett. I'm a former secretary of Dignity Village, so I'm kind of like vetted in the streets. I'm also -- though I'm going not speak as a villager, I'm going to as a parent because I have kids, and I'm sure you all do, too. And I have a question for you four. What if Kendra James was your daughter? Would you be hiding behind this legal wrangling? Would you?

Hales: Of course not. that's not what we're doing here.

Bennett: But I feel you are. Like many of the people said, it's a trust issue, and why are you spending the taxpayer's dollar when you can simply write a letter and say, what is it? Clarify it for me, Judge. Why does it have to go to an appeal, which obviously buys you time to actually deal with the problem? Right is right and wrong is wrong. That's what my dad always taught me. I shouldn't have to have a teacher tell me that I have to do something in class. If I know that I'm supposed to do it, I should do it. I'm going to leave it at that.

Hales: OK, thank you.

Fritz: Just so you know, we are implementing a settlement. We are doing everything, including the judge's order for the annual hearings.

Bennett: But you are appealing it to --

Fritz: We're seeking clarification --

Hales: Not the whole settlement.

Fritz: No, we're not appealing the whole settlement.

Bennett: Why can't you just take it as a whole?

Fritz: Because we don't know what it means, so we need to find out.

Bennett: But can't you just write a letter and find out?

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Fritz: We're going to have the city attorney come back.

Hales: We're going to ask our city attorney. Thank you, thanks for raising it.

Trudy Cooper: Mayor Hales and City Council, I'm Trudy Cooper, and I'm citizen of northeast Portland. I would like to -- I've listened to all of this and revised my comments several times. But I think what it comes down to is that I would really like to urge you to vote no on your resolution because I think that it really sends the wrong message, a message that in the long run, you won't want to send, and that's that you want to back off from public involvement. Commissioner Novick, I think that I was hearing you say, something like that about, does this open this up to more parties challenging, and so on. And I think that, during the process, you opposed Judge Simon's involvement. It looks like now, you want to limit it. What that looks like to members of the community, especially the ones who have experienced great loss -- and not just loss, but not just the past, and not just the years it took, but all the fear for the future. I went to the hearings, and I was very impressed with what I thought that I was observing in Judge Simon. People with their very personal stories made real to him their pain, their loss that the excessive force had resulted in real deaths, that it had taken years to get to this point. And we have years ahead of us. This is a multi-year process. The process of oversight has to be a model for the country. This is where we are now, this is where we are in this country -- these issues. I am all for clarity. But if the goal is to reduce his role, I think that the message that you're sending is that you want to reduce the role of the community. My impression of Judge Simon and the way that he spoke to the group that was there was that he understood what he thought his role was to facilitate a rebuilding of that trust. So, I'm hoping that as you go forward, that it's your interest, interest in rebuilding trust, and rebuilding and those burned bridges that drives you, whether than some form of hurt feelings that I think Commissioner Fritz, I was hearing when you said it's like we're on probation, if this is some form of feeling a loss of status, it seems like a kind of an indulgence compared to what the community has been through for decades. It seems like this could be worked out directly -- not through a legal appeals process. It seems like -- what I would love to see you do is bring all of your creativity to this, embrace this process rather than just tolerate it. Bring all your creativity to make this a process that works for everybody. I think that we can do that. Thank you.

Hales: Thank you. Mr. Walsh.

Joe Walsh: My name is Joe Walsh, I represent individuals for justice. The ACLU, the Lawyers Guild, the League of Women Voters, individuals for justice, Copwatch -- all of it -- the committees and all of the people that have worked on this for years and years are telling you not to do this. And think about what's going to happen here. You're going to lose. You're going to appeal to the 9th Circuit court of appeals, which -- if you know anything about this court, they defend their judges. They don't like it when someone criticizes their judges. And that's what you have to do. You have to go, and you have to say, this judge is wrong. Just like Commissioner Novick said, this judge is wrong. And you have to say that to judges that like this judge. He's very popular. So, you're going to lose. And you're going to waste the money. And in the paperwork that you submitted on this, you said there's no cost involved in this. Now, I want you to bag this because I have never, never heard of going to an appellate federal court with no cost. It's free, it's not going to cost you, it's not going to cost your city attorney, it's not going to cost fees or two years of messing around with this. For what? Because a judge wants to look over your shoulder? And let's be clear -- that's what he wants. Because he doesn't trust you, like we don't. We don't trust this body. We don't trust the police department. We don't trust the Department of Justice, either. We trust this judge. 60 of us -- organizations testified for two days with this judge, and he was stunned by our testimony. He was concerned enough to say, I can only do one of two things, either accept or reject this settlement. That's his options, that's it. However, he can hold it over your head and say, you know what, I just have this small thing, I want you to come once a year and tell me what you are doing, and if you do that, I'll let this go. And I'm telling you right now, if you are going into the 9th Circuit court of appeals and tick this judge off, you know what? He still has the ability to ask your city attorney this

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question, he has the ability to say, that's it, go to court, you're on trial just like the other cities. We have got a bargain here, folks, and you're screwing it up, and if you're going to the 9th Circuit and you waste the money and you lose, you all should resign. You should resign -- every one of you that signed onto this -- because you're embarrassing us. This will be a national embarrassment when you finish with it. And for what? For what? You're wasting money, you're wasting time, you're embarrassing us, and you get nothing at the end because the judge holds the keys. Do not mess with the federal judge. I'm telling you. I worked in federal employment for a long time, and dealt with federal judge says because I was a chief steward for the IBEW under the federal sector, and we had to deal with federal judges. Do not mess with them. If you embarrass this judge, I'm telling you, you're going to lose, and you're going to lose big. And we are going to be very, very angry.

Hales: Thank you. Welcome.

Nancy Newell: I'm losing time. Can it be reset? [laughter]

Hales: Yes.

Newell: I'm Nancy Newell, I've been a long-time activist here and I want to put on the record -- because I was part of a wonderful experience -- we wouldn't even be in this council because if Trojans were not stopped by the Kafoury family and the wonderful work that they did, we wouldn't even be here, it would be vacated. So I just want to make sure that the people are well aware of the wonderful work that they do for this communities, and I joined in that. I would like to bring to your attention why there is not trust. This is what is happening, and the president of the United States has just recently because of Ferguson brought it to the attention of the entire nation when we're experiencing it. Police officers come to our neighborhood association fully vested, with things that we don't even know what the use is. And when I asked the question, it was joked about. I went to the training building, the new opening, I went to several people touring, I went to a room where there are mats. I know that a student -- a very good student at Roosevelt High School -- was assaulted by a police officer in his neighborhood -- and his brother -- and these training dummies, about this high, are all black. And it was a Black officer that I spoke to. And I said, don't you think that helps police officers that have not been a good example in this community about racism to once again profile? And he said, no, it's just because white gets dirty and in the company -- that's all that they are provided. Well, these companies are providing tons of equipment to local police stations and offices and the JTTF, etc. What's in our community is not to be trusted. And we don't know what it is -- some of it. But some of that technology can look into our houses. We have no clue that it's happening. There's drones at Manzanita Beach. So if you say that you want to set -- and I fully support Kate Lore, I fully support every objection to this method, I don't trust the city law's office because I've been up against them I've won every single time. So, I would trust your own feeling about the community. If this is a request by very distinguished members of your community, please honor it. I think that's a key thing to pay attention to today. I think this has to be addressed immediately to find out what our police department is doing, and what they're doing with the equipment. The SWAT team that was on display at this training building didn't even acknowledge that four years ago in Dawson Park, they had a SWAT team op for two African Americans were having a fist fight. The following week, there were white people having a fist fight, nothing was done, and it was disruptive for the people in the community that wanted to continue with their enjoyable day. So, we've got some real problems here, and I don't envy your position. I mean, it's a tough position in a very complex society and all of these kinds of things happening, but I think you can play a better role in this kind of action you are saying today.

Hales: Thank you.

Steven Entwistle: Good evening, Mayor and Council members. I'm Steven Entwistle, I live in downtown Portland, I am a founder of the Healing Man Sanctuary which is a futuristic concept on the problems that we're dealing with houselessness and other issues. A little bit further in depth than, say, an R2DToo, which is just a rest area. That being said, we spent a lot of time on this, and I've got some other folks that are with me on this. Anyway, the issue about trust. Amanda says that

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she wants everybody to trust -- you guys and the police. When? Is my question. Because right now, we're being harassed by, quote, police informants that are posing as tramps and houseless folks living out in front of City Hall. And they are there to harass us. We know what's going on. There's nobody doing anything that's wrong. But then, this person -- if I can give you a name, do you want to know the name?

Hales: Probably better not.

Entwisle: OK. Or the name of the person that this person, the city official that this person is dealing with on a regular basis. Can I say his name?

Hales: Probably better -- do that in a letter or something rather than make accusations in a public way.

Entwisle: OK, I respect that. But there's a trust issue here that apparently you're not following what you're saying as far as the trust. It's not trust to send someone out to harass people, to data mine information on their police record, and then bringing their police record to them in public and yelling at them about what they'd done in the past and embarrassing them and making them angry and upset to the point of suicide. To the point of violence. Just so they can go to jail. You're doing this every night, every night. You did a good job clearing the park, Chapman Park. You did a good job of that with that person and the other person dealing with this. I know who it is. And I know that they're doing it illegally, because that's harassment. And one person had a violent action from that person -- fortunately, that person wasn't hurt. But he could have very well have been hurt. That is a potential lawsuit right there. You want to talk about trust -- these are houseless folks. Just like you, just like you, just like you, just like you. Without the money or the resources. Thank you.

Hales: Thank you. Ellen, I know that I've got some questions, and I suspect that other council members do as well. So, one subject that came up a number of times at the testimony here that would help for you to explain more is, what informal communication has occurred other than the appeal with the judge? Can we by a letter or get an opinion about this ambiguity, conference among the parties? What about those options, what are those still open to us? What are those doors and could we go through them?

Osoinach: Mayor Hales and City Commissioners -- so, the communications that have occurred between the parties and the judge have been all on the record. So, we've had three oral communications with the judge and three briefings. I would characterize that as fairly extensive dialogue and communication with the court in which we were quite clear about the procedures that we wanted to be employed, the manner in which the proceedings would better serve the purposes of the community engagement, community oversight, and the mechanisms that we had in the agreement. So, we definitely had an extensive dialogue with the court. And ultimately, the court -- although it had previously indicated it would issue an opinion -- only issued an order. So we didn't get guidance from the court in the form of an opinion, but we did get a pretty certain result from the court that the court was not going to adopt the procedures that the parties had agreed on. That issue is what we need to seek clarification on. And essentially, the judge decided via his order that he is not going to provide clarification in terms of his order. So, the appropriate legal venue to seek that clarification at this point is with the 9th Circuit because we need to know whether or not we are entitled as a matter of law to have the judge clarify that. As to your second question --

Hales: So, we requested that order?

Osoinach: Yes.

Fritz: What's the difference between a letter seeking clarification and a writ of mandamus? I don't understand what that is.

Osoinach: I understand the point that a lot of people make, you know, why can't you just send a letter to the judge or talk to the judge? But these are judicial proceedings, so we're not in a position where we are authorized legally to write a letter to the judge. We are attorneys, these are legal proceedings, so we need to file motions and appeals. I mean, that's the way that you are authorized to communicate with the judge. Certainly, a letter would not be appropriate. In terms of what the

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difference is between seeking clarification via an appeal and a writ of mandamus or a writ of prohibition, they are two different legal mechanisms, and they're different procedure that a supervisory court employs for the parties to seek that kind of clarification about what the lower court's orders are. In this case, we've asked to keep all of those options open, but what we intend to do is to seek an appeal. It could be that the 9th Circuit says, that's not the correct vehicle, you must actually file a writ. So, those are the two different procedural vehicles, but in terms of seeking clarification directly from the court, we have done that on at least six different occasions.

Hales: And you did that in writing as a motion -- how does that happen?

Osoinach: We did it both in a motion -- two different motions -- a memorandum. And the court initially had questions it asked to respond to immediately after the fairness hearing, and so we communicated in writing with the judge about this issue. And then at the hearing right after the fairness hearing and in two status conferences with the judge, we also brought up these issues and indicated what it was that the parties agreed to in terms of the procedures that we wanted to see happen at the hearing.

Hales: So there's not an informal track like that now that the order has come down?

Osoinach: That's correct, there's not an informal track.

Saltzman: So, is this seeking an appeal to a higher court of a judge's order -- this is a judge's order, correct?

Osoinach: Yes.

Saltzman: Is this akin to seeking judicial review of a judge's decision, or is this a highly unusual thing where -- you know, I have to say that I sort of agree with Joe Walsh that, you know, judges are going to watch each other's back. Just like we're accused of watching each other's back, or I could say the Albina Ministerial Alliance watches each other's back. We all operate in these cliques, and I'm just wondering, are we paddling so upstream to be beyond any hope of a reasonable thing but we're going to feel good that we did this? But beyond any help of really getting a ruling?

Osoinach: I think that's a fair question. The reason I think the issue will be of great interest to the 9th Circuit is because there is a larger legal issue here that is apart from the practical considerations of this specific case, and that is that parties all the time file settlement agreements in court.

Saltzman: Did you say write or file?

Osoinach: File. File them with the court and ask the court to retain jurisdiction in order to resolve deputies that might arise between the parties under the contract. It's a very common thing that parties do. What is uncommon in this case is that the court imposed conditions in addition to those that had been agreed to by the parties. And in fact, imposed conditions that had not been requested by the parties. So, it's an important issue that I do think the 9th Circuit will want to clarify -- whether a district judge has that kind of authority to impose conditions that have not been requested or agreed to by the parties, as opposed to conditions that the parties did agree to. So, I think that it's not so much a question of trying to limit the judge's authority or that the 9th Circuit will perceive that what we're doing is questioning the judge's authority. What we're really trying to do is clarify an ambiguity in the rules of civil procedure that apply to all parties that appear before district courts in attempt to file the settlement agreements.

Saltzman: And are there precedents for this within the 9th Circuit or within any judicial circuit of this country?

Osoinach: I think that is another reason why the 9th Circuit will be interested, and why certainly members of the Oregon Bar have expressed interest in this issue, because there is no precedent. I mean, to be perfectly technical, the rules of civil procedure allow a plaintiff to dismiss a case and it allows the courts impose conditions on that dismissal, and those conditions are supposed to be for the protection of a defendant. So, for instance, if a plaintiff files a lawsuit and puts the defendant through the trouble of discovery and all of the expense of discovery and then at the last minute elects to dismiss the case, the rule allows the court to protect the defendant by conditioning the

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plaintiff's dismissal on things like paying court costs. And so, what is very unusual is that the court here has imposed a condition on the defendant, and there is no procedural mechanism for the defendant to protect themselves in the case where a court imposes additional conditions on them. And so, this is a case of first impression, both because courts do not -- at least in our research, we could find no court that had employed the rule in the fashion that Judge Simon has in this case. But it is a case of first impression as to whether or not the rule can or should function in that way, which I know is legalistic and doesn't get to some of the concerns that you heard here today, but I hope answers your questions about why the 9th Circuit would be interested in the larger legal issues that are presented by this case.

Saltzman: They could outright reject our appeal, right? They can just dismiss it?

Osoinach: Yes, the 9th Circuit could choose to not take the appeal.

Hales: Yeah, so walk us through that, if you could. What are the possible outcomes here and what are some of the issues that you want to see clarified that are in the judge's order?

Osoinach: The specific issue that we would like to see clarified is whether or not the procedures that we proposed that were attempting to be responsive to the judge's desire to have information. What the city proposed was that the oversight mechanisms that we have in place produce an enormous amount of information, and that the parties contemplated that that information would be highly public in the form of public reports, town hall meetings, that there would be a Community Oversight Advisory Board who is charged with interacting with the public, disseminating information about the agreement. What we proposed is that the court -- understandably and beneficially for us -- should have access to that information. So we proposed having our Compliance Officer go to the court and share all of the information that had been generated. The Department of Justice is required to comment on our compliance in writing, as is the Community Oversight Advisory Board. We proposed that the Compliance Officer would produce all of that information for the court, and the court would interact with our Compliance Officer and ask questions, our Compliance Officer would need to respond to those questions, and that was our proposal. Instead, what the judge did was to say the court is going to inquire and call hearings of unlimited scope and frequency with a requirement that any party produce evidence. And that was very different than what we had proposed. The very limited issue we want to understand on appeal is whether or not we can give the judge the information in the way that we proposed. The 9th Circuit may say, we don't think that the greater legal issues I just described are important enough to take. They may decide that they are important and that on appeal, they are going to reinstate the agreement and the request of the parties as to the nature and scope of the hearings, and that's going to be our request -- that they do just that.

Hales: Frequency, you mentioned. Isn't it once a year, or could it be more often?

Osoinach: It can be more often than once a year. Again, Judge Simon had indicated -- the court had indicated that he would convene these hearings approximately annually, and we had agreed to that. But in the final, order he included language that said that he would be calling the hearings approximately annually or at such other time as the court decided.

Hales: Oh, I see.

Osoinach: So, he's left open the possibility that he can call hearings at whatever time and frequency that he desires.

Hales: Yeah, OK, I see that. Other questions?

Fritz: You're on staff of the City Attorney's Office, so that's why there's no cost for your time because you can spend it doing this or spend it doing something else.

Osoinach: That's right.

Fritz: Are there any fees for appealing?

Osoinach: There are filing fees. And if those didn't appear in the fiscal impact statement, that's our error. I believe the filing fees are \$400 or less. But I can certainly get a more precise figure for you.

Fritz: Thank you. And is there a deadline for the appeal to be filed?

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Osoinach: Yes. That's another consideration. There are different deadlines. There's a different deadline for filing a writ, there's a different deadline for filing an appeal. So the deadline for a filing an appeal is 60 days after the entry of the order. And that 60 days will run October 28th. So, we need to file a notice of appeal or we would waive our right to appeal at a later date.

Fritz: And how about the deadline for the writ?

Osoinach: The writ is more flexible and it depends on a number of factors. But we will probably -- because we want to give the 9th Circuit the option to pick whatever legal vehicle they want, we will probably file an appeal and a writ at the same time. So, in the alternative.

Fritz: And what we got was that the writ is the more -- should be used more rarely. So we would actually rather appeal.

Osoinach: Yes.

Fritz: I see. So, we have to act today, we can't put it off.

Osoinach: Yes, you have to act today.

Fritz: Presumably, if we vote to appeal, we can withdraw the appeal at any time?

Osoinach: Yes, absolutely, we would still have that option.

Fritz: Can we stay the appeal?

Osoinach: I don't know. I mean, probably you could stay the appeal. But it's likely that if we ask for a stay that the 9th Circuit would be less inclined -- they would be more inclined to dismiss the appeal if we asked for a stay.

Fritz: But at some point we could decide to withdraw the appeal.

Osoinach: Yes.

Saltzman: Conceivably, if we go ahead today -- there's been a lot of talk about this will take years. But it could take days, right? Court of appeals could hand us our head on a platter if they want.

Fritz: Yeah, could you tell us about the timeline? What's expected?

Osoinach: We will file a notice of appeal and then -- at least in Oregon -- if they decide that the appeal is the correct route, one of the first things that will happen is it will probably be sent to mediation. And that will likely be an opportunity once again for the parties to get together to figure out whether or not some of the solutions, some of the initiatives you heard here today -- that will be another opportunity for us to talk about those. The other thing that we'll need to do is some legal proceedings where we designate the record and essentially gather information for the 9th Circuit. The 9th Circuit will review our petition and there are a number of things that they might decide. One of which might be they might ask for further briefing on the issue of what is the appropriate vehicle, and specifically on the issue of is this a final order, is it a collateral order? So, procedural questions that they might ask for additional briefing. They might, however, simply accept the appeal. Or, they may dismiss the appeal.

Fritz: What would be the timeline for the mediation and then for accepting or rejection of appeal?

Osoinach: It's hard to say. The order for mediation would come likely within 30 days of the appeal being filed.

Fritz: Who would be the parties to the mediation?

Osoinach: At this point, I'm not sure. Clearly, the United States and the City -- because we're parties to the settlement agreement -- we would be ordered into mediation. It's unclear whether or not the PPA or the AMAC would also similarly be ordered by the 9th Circuit to join us.

Fritz: What would be the purpose of the mediation though? Because it's the judge's orders, not -- I don't understand what would be on the table to mediate.

Hales: It's not mediating between us and the Justice Department because we've agreed on the settlement.

Osoinach: Right. So this is also sort of a technical legal issue, but in a writ, where you are appealing to a court to give a writ of mandamus or prohibition, there is no mediation. But in an appeal, the presumption is that there are two adversarial parties. You know, there's a plaintiff or a defendant. And so, in this case, that's why just automatically we'd be sent to mediation. If I

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understand your question, it's really, what purpose could be served by the mediation since what we're talking about is the judge's order? But again, I think that's a real opportunity that we should take to talk again to the United States and other parties if that's available to us to figure out whether or not we can continue the conversation about what these hearings should look like.

Fritz: Right. And so, certainly the AMA Coalition would be part of that mediation. Would there be an opportunity for other groups who are not currently part of the full party agreement -- for instance, Disability Rights Oregon participated today. Would they be able to participate in that mediation?

Osoinach: I think that's certainly something we could explore. I mean, the court defines the terms of the mediation, but the parties are subject to it. So I think we have a good deal of discretion in fashioning what parties we would like to bring to the mediation.

Fritz: And then, as far as the court actually acting after that piece, what would be the expected timeline? Is it months, years?

Osoinach: It's difficult to say. I mean, in a typical appeal that doesn't present any special issues, it can take years for the 9th Circuit. If the 9th Circuit is particularly interested in resolving this question, they could put it on an expedited track -- which would be, at the earliest, nine months. But I think that would be -- I would not put money on the fact that the court would decide something that quick. So, I think the range that I could give you all is nine months to maybe 18 months for resolutions.

Fritz: We would certainly be doing the first annual hearing before Judge Simon under his terms, regardless.

Osoinach: I think that's entirely likely. Glad you brought up the point. Typically, when you're appealing an order, you also seek a stay in court. And we are not doing that. We are not seeking a stay of Judge Simon's order.

Hales: So -- go ahead, Dan.

Saltzman: I think this is my last question. The U.S. Department of Justice was initially with us on seeking clarification of the judge's order, and now they are not. Is that correct?

Osoinach: The Department of Justice took the position in the lower court that they agreed with us that the procedures that we had proposed they would support. In addition, the Portland Police Association also supported the procedures that we proposed. But they also argued that the judge did not have to accept our procedures and could impose procedures that nobody had requested or agreed to. So, they supported our request and joined in it, but they also argued that the judge didn't have to follow the input of the parties.

Saltzman: And that was their position from the get-go or was that recent?

Osoinach: That was their final position.

Saltzman: That was their position at the time of the judge's order.

Osoinach: Yes.

Saltzman: OK. Thanks.

Hales: Another concern raised in the hearing was that although we're appealing on this narrow question, that it could somehow unravel the whole agreement. Could you comment on the likelihood of that?

Osoinach: That likelihood is extremely unlikely. The judge in assessing the settlement agreement was required to make a finding as to whether or not the agreement on its face was fair, adequate, and reasonable. The agreement did not include the language that the judge proposed, it did not include a requirement for periodic or annual hearings. So, the settlement agreement didn't include any of those terms and the judge approved that on its face as being fair, adequate, and reasonable. We're not asking -- no party will be asking for the 9th Circuit to undo that decision. So, it is highly unlikely that the 9th Circuit would somehow undo that.

Hales: So those 88 items in the agreement that we're marking our progress against -- none of them is under appeal.

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Osoinach: None of them is under appeal. I don't see any way that anyone could challenge Judge Simon's entry of the settlement agreement.

Hales: Alright. Other questions for Ellen before we take action? So, I think we're ready to take roll call on the resolution, then, unless there are other questions or concerns that Council wants to raise before we take a vote today. OK. Please.

Item 1110 Roll.

Novick: I would not want to be a judge of any kind, because a judge is supposed to be a neutral overseer and adjudicator of disputes between parties and I know that I would have a very hard time being neutral. I'd always want to jump in and mix it up. So, I would be a terrible judge. What Judge Simon has done here -- this is going to sound terribly legalistic -- but normally in the way things work, as Ellen Osoinach has said, is if parties come to an agreement, they present it to a judge, and the judge does have the authority to say, no, I don't like this agreement, and throw it out. But a judge can also say, no, I adopt the agreement, and make it an order of the court. I have never heard a judge saying I adopt the agreement, but I want other stuff done, too. It's just not something judges do. One could say, well, why does that matter? So the judge added something on to the agreement, why do we care? I think one reason to care is that I really think that this order could lead to really problematic situations. Because I think we've heard actually in the testimony today that a lot of people now see the judge as their advocate. We want the judge to be an advocate to ensure that the police behave well. And actually, the judge's overseeing a lawsuit between the Justice Department and us. And when the judge's order says that even if the Justice Department isn't saying that we are in violation of the agreement, he might hold evidentiary hearings. I think people in the community will think that means we have an opportunity to tell the judge what we think the police are doing wrong and the judge will fix it. And if that happens, then the judge will be either in a position of saying, I'm sorry, that's not really my role, or be tempted to overstep what his role in and order us -- declare that either go beyond the bounds of the consent decree or declare on his own -- even without the Justice Department saying it -- that the city is in violation. So, with all respect to everyone who has testified today and to Judge Simon, who's a very good man, I think that this order creates a very problematic situation. One thing that I think it does is creates the impression that people who think that we're not abiding by the agreement should be going to the judge, when really, the appropriate people to go to if they think we're not abiding by the agreement is the Justice Department. They're the ones that sued us. They will be monitoring compliance. So, if people think that we are not in compliance with the agreement, they're the ones that people should go to. I am not saying that everybody should trust the police or the council or even the COCL or the COAB. I'm just saying that the way things work legally is that the Justice Department is in charge of monitoring our compliance, and if you have problems, you can go to them and then they can go to the court and say we're not in compliance, do something about it. Again, I'm sure that sounds hopelessly legalistic, and I'm not expecting any sympathy. But it's because I think that the judge is sort of departing from the normal role of being a judge in ways that could cause all of us problems that I support the appeal. Aye.

Fritz: It troubles me greatly to disagree with so many great leaders in our community, people who - before I was on this council, I was in your seats and advocating from the community with the community. I went from being a registered nurse, which is the most trusted profession in the country, to being a politician, which is the most despised. And I chose to run for a second term because I wanted to be part of this implementation, because the people of Portland need to be able to trust their police. I'm almost given up on ever getting trust back in politicians, but it used to be that politicians were good people who tried to get the best things to happen. And I know many good politicians. I don't expect everybody to agree with that. The reason I can't do what you ask me to do and not appeal is because that would be saying that I don't trust myself, and that I need oversight of a judge to do the right thing. And I don't agree with that. I need the participation of our community in figuring out how to get from where we are now to where we need to be. And we have the

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settlement agreement. It is a settlement agreement, it's not a court-required monitoring. That was what we worked so hard to avoid in my first four years -- was to get something that was more collaborative, which was more of a partnership, which allows our community to be the oversight. The Community Oversight Advisory Board is going to be hugely important. I encourage everybody -- as I said earlier -- comment on who we should have as our Compliance Officer, how this is going to work. I disagree a little with my good colleague Commissioner Novick. The people to come to is us. And I recognize there have been many times where you have come to me and other members of the council and we haven't been able to do exactly what you wanted to us do. And particularly, we haven't been able to do it exactly when you wanted us to be able to do it. Some things take time, and it takes us all working together. And to hold out hope that once a year going to a judge who's going to somehow wave a magic wand and make it all better -- that's not how it works. That's now how it's supposed to work. Your Council is accountable to you, is accountable to our community, and is directly an oversight to our police force. We are the ones who can provide the budget and the oversight to make sure that everybody in our community can begin to trust us. I understand that trust is not something that is given once, it is earned on a daily basis and you can lose it in a heartbeat. And once you lose it, it takes a long time to earn it back. And that's what we're seeing here. It's that we know we have lost -- and not just this Council, but past Councils -- have lost the trust of our community because of so many bad things that have happened. We are the only ones who can earn that back. And so I cannot do what you ask me to do and not appeal because I want clarity that I am responsible, that the mayor is responsible, that each of my commissioner colleagues are responsible, and that you are responsible. Because the judge is not going to ride in on a white horse and save the day for us. We are going to need to do it ourselves and we are going to need to do it despite not trusting each other. We're going to need to suspend disbelief and just hold on to that hope that if we work together we actually could get to a place where everybody in this community can trust our police. And every single one of our police.

*****: [inaudible]

Hales: Let her speak.

Fritz: Thank you for participating here today. I vote aye.

Saltzman: Well, I am very torn about this. I went into this meeting thinking I was support the appeal, and I guess I do. I have tremendous doubts about our ability to succeed on this appeal. I think we're going to take a public relations hit, maybe we've already taken it around this appeal. But I do tend to -- I'm listening to my colleagues, and I think they both have good points. Commissioner Novick, I think that you're right, that ultimately we are accountable to the U.S. Department of Justice, and that is the entity that should be looked to to hold our feet to the fire. Commissioner Fritz, you're also right, we need to regain and earn the trust of our citizens that we can -- in essence, in their eyes and many eyes of the people here today -- that we can stand up to the police. That we don't close ranks, as they're often accused of doing, as we're often accused of doing, and as I can say, the Albina Ministerial Alliance can be accused of closing ranks too, just never having something positive to say about police. I think I'm going to support this appeal, but I do so with extreme reluctance. I just think this is not going down a productive path. Part of me wants to say, let's just take our lumps, move on, take our chances with the type of evidentiary hearings Judge Simon may have. I don't know Judge Simon, but from everything I hear about him, he seems to be a very fair-minded person. After all, he's a federal judge and I would expect a very high degree of professional responsibility and impartiality from him, even though he may not like the fact that we're seeking a higher review of his authority. I think that's a very human instinct that we all share. I mean, I can bring something before the council and I can lose, and I can be very professional about it but it doesn't mean I like losing. I think we run a real risk going into the first hearing knowing full well that this appeal will be hanging over that first hearing, maybe even the second hearing. And you know, people are people and we all have emotions. I'm not going to belabor it, I'm going to support the appeal, but I am doing so reluctantly. Aye.

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Hales: Well, there's been a lot of good discussion today and some passion from people who I respect. That will continue, and so will our conversations. One thing that we'll probably also continue -- and you, Commissioner Fritz, alluded to it -- is that people won't trust politicians and those of us in elected office. Well, let me tell you, I ran for this office and I've been in it now almost two years not expecting that people who start trusting politicians or that they would even trust me personally, but that I could run for office and make a difference. I think all four of us -- and our colleague, as well -- believe that, that you can run for office in Portland and you can make a difference. One of the reasons I ran for office is that I wanted to change the relationship between the Portland Police Bureau and the citizens it served. I wanted to never see another day like the day after the death of James Chasse or Aaron Campbell. I never want to be the police commissioner on that morning, and neither does our chief or his successor want to be the police chief on that morning. And what I want to see is real change in that relationship, and that's where the trust will come from. What words we say here and what this judicial proceeding results in probably won't materially change that trust between our citizens -- the 610,000 of them -- and the Police Bureau. But if these 88 items are real things, and we make real changes in those real things, like who we hire and how well they understand that there's institutional racism in this city and that they need to understand that, and how well they understand that mental illness has facets and nuances that they must understand in order to deescalate situations on the street, and a whole bunch of other things that they need to know, that we get those training in place and they are real and sustained and monitored and that they work. And that we have different rules for when they get to use their weapons. In fact, we already do. And that those rules are consistently followed, and they will be. All those 88 things and 88 more that aren't on this list that this council believes are good public policy and that we put in place for our Police Bureau will change the relationship. In fact, we already have -- to an extent. We're not done. No one should hear my words of hope and optimism about what I see in the Police Bureau as feeling like we can check the box. But I get the reports every morning, and I see thoughtful, nuanced de-escalation of situations involving mental illness day after day. I see people talked off of bridges who are about to commit suicide. I see people with weapons or what appear to be weapons in their hands -- like a young man coming out of his garage with what looked like a pellet gun -- being disarmed. Not every time. Tragically, not every time. But I see real improvement in that understanding and in that relationship. So, if I didn't think change was possible, I never would have run for office. And I don't think that's unusual to me. But I do think it's possible, and that this settlement, whether it's written on a judge's order or a letter between the Department of Justice and the City of Portland, or a piece of paper in this room -- if we mean that we are going to do all these things and the Department of Justice holds us to it, that's some opportunity for trust that there will be real change. Then, we have independent police review. We're going to have a COAB, a Compliance Officer -- Compliance Officer -- Community Liaison, and we're going to have a board of independent citizens who are looking over all those shoulders. I think those institutions will help make sure that these things become real. But that's what matters -- do they become real? Is there real change? Do we treat people with mental illness differently? Do we police all of our citizens the same way with real justice -- procedural and real justice on the streets of the city? I think those things are possible. I think that progress can be achieved. It will require vigilance. And frankly, it doesn't necessarily require trust. It just requires results. And I'm committed to those results. So, I think it's reasonable that we go ahead with this appeal. It may or may not clarify the roles of the court and the City and the Department of Justice further than the clarity that we already have. It's a reasonable proposition that our city attorney has recommended and I'm going to support. But I'm at least as focused -- frankly, as a member of this council and the commissioner charge of the Portland Police Bureau -- that we get real change day by day, sustained over time, in real ways that change that understanding of what people are going to get from their police officers when they encounter them on the streets. That's I think what matters most and that's where my heart is. Thank you all. Aye. We're adjourned.

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At 6:13 p.m., Council adjourned.