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The Board convened in the Councilors' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Councilors Temple Lentz, Julie Olson, John Blom, Gary Medvigy, and Eileen Quiring, Chair, present.

PUBLIC HEARING: 2019 ANNUAL REVIEWS AND DOCKETS

To consider 2019 Annual Reviews and Dockets amending the 20-year Growth Management Comprehensive Plan Text and Map, Zone Map, and Clark County Code (Title 40).

QUIRING: Moving on to the public hearing for 2019, Reviews and Dockets, CPZ2019-00025, Complete Streets.

ALBRECHT: Good morning, Council. Good morning, Chair.

QUIRING: Good morning.

ALBRECHT: Gary Albrecht, Clark County. So I am here to discuss the Complete Streets update, CPZ2019-00025. Here's the agenda that we'll talk about, it's the road map for our discussion this morning.

The PC recommendation, so on October 3rd, 2019, the Clark County Planning Commission voted to approve forwarding a recommendation to adopt a complete streets program and related code changes. A quick background of the complete streets program.

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In 2011, the legislature established the complete streets grant program. In 2015, the legislature designated the Washington Transportation Improvement Board, TIB, as the complete streets granting agency giving them the ability to award grants in the range from \$100,000 to \$1,000,000 that could be used as flexible money for any complete streets project.

And what are complete streets? Complete streets are transportation plans and policies standards that enable safe, convenient and comfortable travel and access for users of all ages and abilities regardless of their choice of transportation. And here are some pictures of the past and present projects.

So the picture on the upper left is N.E. 10th Avenue, that's a complete street, we just received a Director's Award from the State on that bridge, that stretch of N.E. 10th Avenue, though the segment just on the other side of the hill in the background is, it's in design from 149th to 154th Street and that's scheduled for construction in 2020/2021 and there's a segment that was built in 2013 from 141st to 149th Street, that's a two-lane collector with center turn lane and bike lanes.

So I had one of my friends this summer park at the park and ride, got on their bikes and rode up to the fairgrounds for a concert.

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So the picture on the upper right is N.E. 15th Avenue, that's a two-lane minor arterial with a center turn lane and bike lanes, that was built in 2007, N.E. 137th Avenue was built in 2001.

Another document I'd like to discuss today is the complete streets guidelines, it's a summary document for TIB, it's a document that describes the steps Clark County has taken and continues to take and envisions for the multimodal transportation system and the public. So complete streets they're not new to Clark County, it doesn't mean a bike lane or sidewalk is on every road and having the complete streets program doesn't mean it's a mandate for immediate retrofit.

The complete streets guideline process, it's a three-step process that we've laid out. So Step 1 was the comprehensive plan text and policies that were approved earlier this year. Step 2 is amendments to the transportation and circulation standards in Chapter 40.350 to be consistent with the complete streets policies. And Step 3 is the adopting ordinance as required by the Transportation Improvement Board. And here's a quick review of the policies that were approved earlier this year. They talk about the complete streets program.

So the purpose of the program is to encourage street and road

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designs that incorporate safe access to all users with the goals of promoting health, improving safety, protect the environment and preserving community character. Provided a couple of definitions to the program that are specific to the program.

And when it's time to use the program, projects will be planned, scoped and designed consistent with the comprehensive plan policies, the current policies, the current Standard Design Manual and the current Title 40. So there are built-in exceptions to this program that are at the discretion of the County Engineer that relate to public safety, feasibility and no identified need for the improvement.

So the public process, we started out last year with a Council work session. We had three advisory bodies look at the complete streets program. The Commission on Aging made some recommendations for additional language that's in the supporting documents that you guys have had. The Bicycle and Pedestrian Advisory Committee and DEAB have made recommendations to approve these recommended changes.

The Planning Commission work session was in September and the hearing was October 3rd, with the Council work session earlier this month and the hearing, or last month, sorry, time's flying, and

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today's the Council hearing. And that's it for my presentation. I'm here to answer any questions.

QUIRING: Thank you. Are there questions of this Council?  
Councilor Blom.

BLOM: Yeah, I'm not sure if you can answer this or if it's perhaps better for Ahmad, but we -- I know (inaudible) has got some information from the development up at Three Creeks that was looking at ways of building complete streets that may not look exactly like those, different ways of separating pedestrians from vehicles and how the lanes are aligned, would anything in this prohibit alternative ways of building complete streets in terms of, I think we have, right now you have the road lane and then bike lane and then sidewalk, if someone wanted to change that order to do planning strips differently, do you know that information that I'm -- okay.

QAYOUMI: Yeah, we're going to be open to that. The main thing is to make sure that we're providing accessibility to other modes of transportation and pedestrian access and lots of schools and also for vehicles and so we will be open to those, I think there's some flexibility in the code, as Gary mentioned, that allows us to look at that a little differently.

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BLOM: So as long as they're meeting the intent of the complete streets, the exact form has some --

QAYOUMI: Flexibility.

BLOM: -- some flexibility. Okay. Thank you.

QUIRING: Councilor Olson.

OLSON: Yeah, I just want to, yeah, work dates are good if you don't mind, but this is really just codifying what we're already, what our current practices are --

ALBRECHT: Yes.

OLSON: -- and that by doing this grant opportunities are going to be available that they're not currently available.

QAYOUMI: That's a great point, that we are already practicing a lot of those like 10th Avenue and other areas, but this will give us additional resources that we can do more like a section of sidewalk that's missing and other ways that we can ensure the accessibility to all of them.

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QUIRING: And also I saw the phrase that where it's not feasible because of terrain and, you know, topography that there would be you could make exceptions to this and I think that that's, that's an important statement because sometimes it really isn't feasible and very extremely costly even though it opens us up to grants, it also codifying this, also makes it a little bit more compulsory, but the fact that there is that little bit of flexibility is important as far as I'm concerned at least. Councilor Lentz, did you have -- okay. Okay. If there are no further questions, thank you.

ALBRECHT: You're welcome.

QUIRING: I'd entertain a motion. Oh, no. I'm sorry. No motion. We do have to have public, this is a public testimony and we have people signed up to speak. Sharon Kenoski. I'm going to call --

KENOSKI: I'm reserving the option. I don't need to speak.

QUIRING: Oh, all right. Okay. Bill Baumann. Okay. Please spell your name when you, your last name when because the recorder is taking notes here.

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BAUMANN: I'm Bill Baumann, B-a-u-m-a-n-n. So good morning. I'm Bill Baumann, the mobility coordinator for Human Services Council, I work to increase transportation and access to services for seniors and people with disabilities.

HOLLEY: You've really got to slow down, please.

BAUMANN: Nervous. I'm here today to express my support on behalf of the Human Services Council for Clark County's Complete Streets Ordinance.

Complete streets are streets and roadways designed for everyone, all users no matter their age or ability. Complete streets have many positives associated with them, not only do they help reduce traffic and provide us with cleaner air, they make other modes of transportation and travel more appealing to the average user by ensuring necessary facilities are provided.

It doesn't matter which mode of transportation we, Clark residents of Clark County are using, whether it's walking, biking, riding, transit or driving, residents of all abilities need access to the appropriate built environment features including bike lanes, sidewalks and roadways to move about our community in a convenient



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yet safe manner.

Citizens of all abilities have the same need to travel to work, grocery stores, medical appointments, social events, et cetera, in the mode that works best for them. Driving a car to your destination is not always an option for all Clark County residents especially those who are aging and/or have disabilities. It is very important to provide those with the inability to drive or access transportation resources other options so they can pursue all opportunities to live a happy and healthy life. Thank you.

QUIRING: Thank you. Colleen Kuhn and Jan Verrinder.

KUHN: Good morning, Council. I am here also to support the County's proposed complete streets ordinance.

QUIRING: Your name and spell the last.

KUHN: My name is Colleen Kuhn, the last, spelling of my last name is K-u-h-n. I am the Executive Director of Human Services Council and Bill just shared our support on behalf of the Human Services Council. I'm also on the Board of the Washington State Transportation Improvement Board as the special needs representative.

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I'm really excited that Clark County is looking at adopting the Complete Streets Ordinance. Since the implementation of the complete streets awards, counties, jurisdictions across the state have really made a lot of progress in developing and approving their Complete Streets Ordinances and then being eligible for complete streets awards through the TIB.

In 2000- -- our last awards happened this spring of 2019, Battle Ground was awarded \$350,000 for their complete streets awards and the City of Vancouver was awarded \$700,000, so you can see that those awards are very helpful in completing whatever has made it through projects at each jurisdiction.

In 2019, TIB awarded approximately \$17 million across the State of Washington in complete streets awards and I can tell you that when we -- I am also on the Board of Community Transportation Association of the Northwest, it's a nonprofit that really focuses on special needs transportation, we're one of the nominating organizations, and the first year that we became a nominating organization we had about eight organizations approach us to be nominated for our complete streets award, this past cycle it was more like 40, so a significant increase in jurisdictions who are looking for complete streets awards.

And on that note, I would encourage the County to really develop relationships with the nominating organizations, that's one of the nice things about these complete streets awards and the intended, part of the intended focus was to get jurisdictions to really partner with the nominating organizations. So thank you for hearing me today.

QUIRING: Thank you. Hi, Jan.

VERRINDER: Hi. I'm Jan Verrinder, and that's V-e-r-r-i-n-d as in dog e-r. I'm a bike rider so I just thought I'd tell you what that means to me when I'm on Clark County streets.

Highway 99 has recently been really improved. Protected bike lanes went in as well as signs at intersections that are pinch points because we've added a right-turn only lane and what that means for me as a rider is I get to merge into the car lane because the bike lane disappears, that's our worst sign, bike lane ends, but now Clark County is doing what Portland's doing and you are adding verbiage to those signs that say right turn only except bicycles so I get to stay to the right and that's a lot safer for me than merging with cars, so I really appreciate the protected bike lanes and I really appreciate that signage. And just all the

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projects that Gary showed us, I ride all those all the time.

Battle Ground's money and projects, I ride that all the time. Vancouver, I live right on McLoughlin so or right off it, so I ride it all the time, I feel safer. I appreciate what you're doing and I really hope you back this project. Thanks.

QUIRING: Thank you. Although, I don't know, you may have put a curse on it by saying doing what Portland does. Just kidding. Okay. That's the testimony on this particular hearing. So I would entertain a motion unless there's further discussion of the Council. I don't see any.

BLOM: Move to approve CPZ2019-00025.

LENTZ: Second.

QUIRING: It's been moved and seconded to approve Ordinance No. 2019-11-05, Complete Streets. Is there a discussion?

OLSON: I actually do have one.

QUIRING: Councilor Olson.

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QUIRING: So the relationships with granting organizations, I would think you guys were nodding your heads over there, Susan and Ahmad, but that's in the works I assume and already established? Yeah. Okay. Thank you.

QUIRING: Okay. Any further discussion? Would you call the roll, please.

LENTZ: AYE

OLSON: AYE

BLOM: AYE

MEDVIGY: AYE

QUIRING: AYE

QUIRING: Motion passes. Item Number 2, CPZ2019-00029, excuse me, 16, Arterial Atlas Appendix F.

HERMEN: Good morning, Councilors. My name is Matt Hermen for the record, H-e-r-m-e-n. I'm here to present CPZ2019-00016. This is an amendment to the Arterial Atlas which is the County's long-range circulation plan for transportation as well as subsequent amendments to Title 40, Appendix F. Title 40, Appendix F is specifically where the Highway 99 subarea plan resides.

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The proposal in front of you today is a removal of a future planned road on N.E. 16th Avenue; a small extension for N.E. 107th Street; and another small extension for N.E. 110th Street. These are planned streets, they do not exist, the right-of-way does not exist, currently they are lines on the map in the Arterial Atlas and in the Highway 99 subarea plan.

This map in front of you shows specifically where those planned streets are located. They occur west of Highway 99, east of I-5, north of 106th Street and south of 112th Street. The map here demonstrates why we're planning on, why we'd like to remove these roads.

Currently a large wetland exists immediately to the west of the planned road. In 2014, Clark County adopted a stormwater management plan which called for habitat buffers associated with those wetlands. Because of the ecological function in preserving the wetland, there's significant costly improvements associated with building a road adjacent to those wetlands. Currently this wetland here would require a buffer from up to 300 feet. So because of that, the improvement and the construction of this road is very costly.

Here is a map of a Highway 99 subarea plan. This map shows those

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exact same streets and the planned alignment in the Highway 99 subarea, specifically the Tenny Creek Commons, the activity center that it's associated with.

The Planning Commission reviewed this proposal, made the recommendation to approve the amendment in the Arterial Atlas and in Title 40, Appendix F with these applicable criteria. With that, I'd be happy to answer any questions that you may have.

QUIRING: Questions of Council? Okay. I think the clerk checked. Are there any -- nobody signed up to testify. So if there are no questions, I'd entertain a motion.

OLSON: Move to approve CPZ2019-00016.

BLOM: Second.

QUIRING: It's been moved and seconded to approve CPZ2019-00016. Is there discussion? Will you call the roll, please.

LENTZ: AYE

OLSON: AYE

BLOM: AYE

MEDVIGY: AYE

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QUIRING: AYE

QUIRING: Motion passes. Thank you. Development Agreement Procedures, CPZ2019-00029.

HERMEN: Again, my name is Matt Hermen for the record, presenting CPZ2019-00029. I'll wait for my presentation to load up, just a minute. So my presentation will include these following agenda items. I will entertain questions after my presentation concludes.

The purpose of development agreements are authorized by Washington State law. They are exceptions to the development code. They provide assurances that development projects can proceed as well as they encourage a public/private partnership. They are authorized by State code both in the Revised Code of Washington as well as in the Washington Administrative Code.

Recently the Clark County Council has seen several development agreements come forward shown here. Along with these there were development agreements that were authorized for approval on August 20th associated with the 179th urban holding project. These projects fall into multiple categories, some of those were comprehensive plan amendments as well as, for instance Cornerstone



Academy which is a private school was a development agreement associated with an actual development occurring, a Type III or a Type II process.

Currently, Clark County has no process when it comes to processing development agreements. This, as the folks behind me in the suits can attest, that this leads to inefficiency, policy negotiation that staff does which is not our purview, that's the purview of the County Council and there's no public process. With the uncertainty that the no public process has, it includes a high amount of risk for the developments.

We would like to propose amending Title 40 to include specific procedures for processing development agreements in order to identify those benefits early in the process, get your engagement early in the process, put it in writing in the County Code so that we can encourage creative developments, as well as focus our staff resources when it comes to the negotiation of those development agreements.

There are several best practices that we looked at when drafting the code in front of you today, included both application processes as well as specific criteria in the processing of those applications. The proposed procedures as presented to you before

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include this steps. I agree that this is probably a confusing process for the layman to know, but it specifically outlines the process and where Council engagement comes, negotiation occurs and then Council approval actually occurs.

We have received comments from two entities in regards to this. WSDOT requests to be included early in the development discussions when there are State facilities that are impacted. Friends of the Columbia Gorge wishes to not allow development agreements in the National Scenic Area.

Planning Commission on August 15th heard the proposed procedures and voted unanimously 4 to 0 to recommend the County Council to approve a new section Title 40, Section 40.550.030. On October 9th we had a work session with you where we presented this, there was significant discussion that occurred. I'd like to address some of those comments and how they are reflected in the proposed code moving forward.

So first off, Councilor Olson requested that development agreements be proposed by resolution not by ordinance. So on Page 6 of the draft code, specifically H.4.a, the code specifically cites that approval occurs through a resolution. The language for approval via ordinance has been removed from the proposed code.

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Councilor Lentz asked about the DEABs recommendation that included provisions for the Council initiated DAs. Along with that conversation, Councilor Quiring requested that staff return to DEAB to clarify the intention on adding the language related to DAs that are initiated by Clark County and not by a private party.

Unfortunately during that conversation we didn't check our calendar, the last DEAB meeting was held on October 1st before the Council work session. The next DEAB meeting is held on Thursday after this hearing, so unfortunately we weren't able to make it back to DEAB to ask for their intention. The language proposed by DEAB regarding DAs initiated by Clark County has been removed from the draft code language.

In consultation with our Prosecuting Attorney's Office, they have mentioned that a County initiated development agreement has not gone through our process and we don't intend for a County initiated DA to move forward.

Councilor Blom questioned that the development standards for non-project DAs - specifically the draft code that you saw at that time on October 9th - stated that non-project DAs may only allow permitted land use types associated with the zoning.

The draft code proposed today specifically on Page 3 has changed from what you saw on October 9th, it now reads: "Unless otherwise specified, a non-project development agreement may allow only one or more of the following: permitted land use types associated with the zoning, innovative land use types that advance comprehensive plan goals and policies, or existing legally established uses in effect at the time the agreement is approved." Staff believes that this draft code now allows for that innovation to occur.

We've also received comments from Washington State University Vancouver regarding the process to amend DAs that have vested trips. Washington State Vancouver signed a DA with the County in 2008 that reserved peak hour trips. The DAs are, that DA is set to expire the last day of 2025. If the draft code is approved between now and the expiration of the DA between WSU, extending the reserve trip period would follow the amendment process that's shown on Page 7 of the draft code.

This amendment process would include initial authorization by the County Council, negotiation recommendation and final consideration by the County Council. The preliminary review procedures would not apply to those DA amendments. With that, I'd be happy to answer any questions.

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QUIRING: Questions of Council? Councilor Olson.

OLSON: Yeah. So on the WSU comment piece, I have not had a chance to circle back around with them, this addresses their concerns about the --

HERMEN: Yeah. It specifically details the amendment process, the amendments. We don't want to make a specific criteria that applies solely to WSU Vancouver, but amendments to an existing DA would skip the preliminary review process which includes the 21-cursory day review and go straight to the County Council to entertain whether you want to proceed with amending the DA that's in existence and follow that process.

OLSON: Okay. Thank you.

MEDVIGY: Quick question.

QUIRING: Councilor Medvigy.

MEDVIGY: So the Friends of the Gorge recommendation not to have the DAs apply in the Gorge, was that accommodated in this amendment?

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HERMEN: We did not carry that forward. Any DA that's in the National Scenic Area will be reviewed by staff and will be made note of when it comes forward to the County Council for consideration of that DA.

QUIRING: Okay. Any questions? So what are the -- if we vote on this, what is this doing? We are actually amending this process?

HERMEN: This proposal will be wrapped into the 2019 dockets, so the official action when it's implemented will come with those in February.

QUIRING: All right. Okay. Thank you. We have one of the suits that wants to --

HORENSTEIN: Actually you have both.

QUIRING: Oh, we have two suits that want to comment. Jamie Howsley and --

HOWSLEY: And Mr. Horenstein.

OLSON: Mr. Horenstein.

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QUIRING: -- Mr. Horenstein. I drew a blank, I'm sorry. Steve Horenstein.

HOWSLEY: Do you want to go first?

QUIRING: Be sure to spell your last name.

HORENSTEIN: Oh, do you want me to go first?

HOWSLEY: Sure.

HORENSTEIN: I don't think the court reporter needs me to spell mine. Okay. For the record, Steve Horenstein. I apologize and confess to being asleep at the switch on this, I didn't know about this until today, I for some reason I didn't pick up on it.

I believe that the kind of pipeline projects we did at 179th won't happen again with this proposal as described and I think that for a couple of reasons. Number one, they're getting harder and harder to do because of the cost of doing those kinds of projects and I've said that before, but more importantly, if you recall, we were modifying development agreements up to the last minute including based on comments from certain of you. If that had to go back to the Planning Commission every time we do that, the process would

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just implode, it just wouldn't work.

So my suggestion is, and again, I apologize for not raising this earlier, but this isn't quite ready for prime time for those kind of projects. I suspect what you'll see, always see is development agreements for very large perhaps master plan projects that have a long life anyway in the permitting process so that you can afford to do the development agreement along with all the things that go along; you're requiring either site plans or conceptual site plans, you've got a number of development agreements in advance to make sure we could do a site plan because we had questions about what we could vest to and this and that.

The other thing I would say is I think this proposal comes very close to allowing zone changes which are specifically by case law not allowed and zone changes are not allowed to be accomplished through development agreements. They have to go through the normal Type IV legislative process to conduct a zone change and the kind of flexibility this provides is awfully close to that line, perhaps I'm talking against my client's own interest here, but I don't want to litigate that later either, so... That concludes my comments.

QUIRING: Thank you.



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HOWSLEY: For the record, Jamie Howsley with the law firm of Jordan Ramis. So I haven't seen the proposal before and I do echo some of my concerns raised by my colleague Mr. Horenstein, but on the other hand as a frequent flier here with development agreements at the County, I do agree that having some process rather than no process is in order, but it's probably correct in saying that this is not quite ready for prime time yet in that regard.

I think that there's still a few items that contemplate such as which happens with late amendments, does that need to go back to the Planning Commission and we don't want to be in a revolving door there with continuing to spin our wheels. But more importantly the reason for my testimony today is I really did want to direct it to the written comment provided by the Friends of the Gorge and depending on what Council decides to do here today, I would respectfully ask that you allow a 24-hour period for us to file a written response, but just saying that I do think that they misstate the law first of all in their letter.

Development agreements were not brought about as part of the Growth Management Act, they were brought forward in 1995 as part of regulatory reform in the State of Washington. There was a whole host of other items at that point including reforms to SEPA, reforms

to the shoreline management program, the creation of the Land Use Petition Act, development agreements were created at that time, they've been around since the inception out of a case in California called Avco v. Coast Commission in the 1970s. I happen to know a lot about this because I wrote my third year law school paper on them and I do present CLEs on development agreements often.

The other concern that I have is some of the statements in there regarding the Growth Management Act doesn't apply in the National Scenic Area and that's just, I can't understand that position from them. On another matter considering that that the county comprehensive plan explicitly recognizes the National Scenic Area within there. So, again, I would appreciate if the Council decides to take action today on this just the ability to have a 24-hour response period so I can get that into the record.

QUIRING: Thank you.

HOWSLEY: Thank you.

QUIRING: Are there questions actually of any of those that are here and then I'm going to allow Ms. Cook to answer any -- you came to the desk so maybe you have some comment and we certainly want to hear from you if you do. Okay.

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COOK: I do. Thank you.

QUIRING: Any questions?

MEDVIGY: So I guess my initial question is, did you not have enough time to give input in this process?

HORENSTEIN: As I said, Councilor, again I'll apologize again, I was asleep at the switch on this, I didn't notice it was being processed.

QUIRING: It is in draft form; correct?

HERMEN: Currently in draft form.

QUIRING: And what will be the process for these, any amendments that may take place before February? You don't want there to be. Councilor Olson.

OLSON: Can I just, can we get to some of the concerns, can we answer just some of the concerns about the flexibility of this process and to, you know, the idea that it might be pushing up on a zone, just can we just answer just some of the concerns because what the

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process, the idea here wasn't to make it more difficult --

QUIRING: No.

OLSON: -- it was to get some clear direction --

QUIRING: New process.

OLSON: -- on how we, so it's a little bit more predictable. So I want to make sure that if we can answer to some of those that we try to do that.

COOK: Chris Cook, Deputy Prosecuting Attorney. The first concern I wanted to answer, and if you don't mind I'll spit it out because it's in my mind now, is the issue of bringing an amendment to the DA or the proposed DA to Council and would it have to go back to Planning Commission, and there's nothing that I've seen in the ordinance in the process part that requires that.

So my opinion on that is that if there were a proposed amendment that so significantly changed the nature and scope of what the Council would consider, just like now, then it would have to go back to the Planning Commission and that would be the case now as well; however, with the 179th DAs for example, they were reviewed

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by the Planning Commission before they came to the Council because they involved an urban holding lift proposal, and when an amendment to a proposal before the Council changes the nature and scope of the proposal, then it needs to be renoticed, that's in our County code. So I would say there's no change, no change to that general rule from this proposed ordinance.

If the suggested amendment to the DA would not be that significant, then it could be considered and adopted by Council at the Council hearing without further noticing, without sending it back to anybody else, without any more SEPAs or anything like that, so that's my thought on that. So your question, Councilor Olson, was about?

OLSON: Mr. Horenstein had a concern about that this would allow a type of a zone change.

COOK: Well, again, we don't have, we don't have process now so I think that the same potential exists now and I would say it is up to staff reviewing a proposed DA too, that's part of what the cursory review is for, to see these giant issues, say, whoa, that looks like a zone change to us, we're not sure that you can do that.

So if we can prevent a DA from causing a zone change now, I think

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that the County can prevent a DA from causing a zone change under this ordinance as well.

Now, having said that, I want to go back to the language that says unless otherwise specified, where is that, Matt?

HERMEN: So it's page --

COOK: It's at the top of some page, I don't remember which.

OLSON: 7.

HERMEN: It's at the top of Page 3.

HOWSLEY: D.2.

COOK: D.2. Thank you. So unless otherwise specified there's a limitation, this exact language I have a question about because unless otherwise specified by what? Do you have a thought of what that refers to, Matt?

HERMEN: I don't.

COOK: Yeah. So I'm not sure precisely what that means and that

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does provide some flexibility that another name for that might just be vagueness.

BLOM: I'm going to step in really quick here --

COOK: Yeah.

BLOM: -- and make a motion that we table this until, and we can look at the calendar and set a time, but, one, so that DEAB can take a look at it, and two, since there's a legal concern instead of trying to fix it here. I appreciate the effort, I don't know if this is the right time to do it because we have a lot more things on the agenda, so...

COOK: DEAB has looked and commented on it.

BLOM: Well, we asked them to look at it again and they haven't met since we made that request. So I'll make a motion that we set this for the next time. I know we have more docket items coming before us, so...

QUIRING: I'm going to second it.

BLOM: Okay. So move to our meeting on November 12th.

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QUIRING: I'll second.

OLSON: I'm sorry, what was the date? February.

BLOM: November 12th.

OLSON: November 12th. Okay. And then is that, we're good with the calendar on all that?

COOK: That is a date and November 12th at 10:00 a.m. is that or is that a 6:00 p.m.? I believe it's 10:00 a.m. So that is continued to a date and time certain. It need not be re-noticed, it should simply be posted then to the November 12th meeting as well and that is just fine.

OLSON: And then can I ask one more question on the Gorge thing. That their recommendation was not included or was not affected?

HERMEN: No, it wasn't, Councilor.

QUIRING: Okay. Further discussion on this motion? Well, actually there shouldn't be discussion on a tabled motion, motioned table, so...



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MEDVIGY: It will give the lawyers plenty of time to weigh in and give us their thoughts.

BLOM: Stay awake this time.

QUIRING: All in favor say aye?

EVERYBODY: AYE

QUIRING: Opposed? Motion passes to table. Thank you, Matt. CPZ2019-00028, Historic Preservation. Good morning, or, yeah, good morning.

KAMP: Good afternoon now.

QUIRING: Almost, two minutes after.

KAMP: Wait for the present team. Good morning or good afternoon, excuse me. My name is Jacqui Kamp for the record, K-a-m-p, with, planner with Community Planning. I'll be presenting the information for the docket item today, CPZ2019-00028, amendments to the Historic Preservation Code.

Clark County has interlocal agreements with the seven cities and the town of Yacolt regarding the historic preservation program. The agreements were last updated in 1997 in reference an older old ordinance.

In 2018, the County updated the Historic Preservation Code 40.250.030 to provide revisions and clarification for the programs existing processes which created a new ordinance for the code. Now the interlocal agreement between the County and cities will be updated to reflect the new adopting ordinance and changes that were made in the Title 40 update last year.

The County and the City of Vancouver are both certified local governments, so certified by the State and could each have their own historic preservation programs and historic preservation commissions while the other cities and town are not certified local governments, they're under the umbrella of the County's designation. The County and City have had a joint historic preservation commission since the creation of the program.

During the interlocal update discussion, the City of Vancouver requested consideration to revise the current commission appointment process to allow the city council to appoint members to the commission instead of recommending appointments. The

current process can be cumbersome and long for the applicants who apply for these volunteer positions.

To make a change to the appointment process requires an update to the Historic Preservation Code which will then be reflected in the interlocal agreement updates. In addition to the appointment revision, another code amendment that is part of this case is to add some additional language to the appeal section related to properties within City jurisdiction.

So to illustrate, the current historic preservation commission appointment process, this chart shows the steps that are currently in place and it includes review and potential interviews from three entities, the historic preservation commission, the City at the Vancouver Council and then of course the County Council, so it can be multiple interviews and reviews.

So a little bit about the, this part of the code. So currently the code states there are to be a minimum of five members, but for the last several years we've had seven which the commission feels is working really well. There are certain experience knowledge criteria that is to be considered for members, and we must always include at least two professionals that have specific experience in identifying, evaluation and protecting historical and cultural

resources which can come from a variety of professional and academic disciplines that are listed here.

For this docket, the proposed amendments are to increase the number of members from five to seven. Include language that states the City of Vancouver will appoint two members and the County will appoint five members. And then an update to the appeals language in the code for commission decisions to indicate that their respective city/town code will dictate that jurisdictions appeal process or an absence of code language default to the County process which is an appeal to Superior Court.

So with the amendments to the commission appointment process, the review of applicants by the decision-makers will be streamlined, instead of having three entities to go through for review of applicants, it will be down to two. If it is a city seat, the HPC will make a recommendation to city council; if it is a county seat, the HPC will make a recommendation to County Council. The public process thus far has been beginning with the Council work session on June 12th to initiate the idea for movement.

The Historic Preservation Commission held a work session and reviewed the proposal July 2nd. They held a hearing on August 7th and approved or made a recommendation to approve the amendments

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to the code. Planning Commission held a work session and reviewed the amendments on September 5th, they held a hearing on October 3rd and voted 5 to 0 to approve the amendments.

We had a Council work session with you on October 9th to review the proposal and the Planning Commission recommendation and we're here today, November 5th, for the hearing for these amendments. That is all I have for my presentation. I'm happy to answer any questions you have.

QUIRING: Are there questions of Council? I know we've gone over this and there's nobody signed up to testify. So with that, I will, I would entertain a motion.

LENTZ: Move to approve Ordinance No. 2019-11-06.

OLSON: Second.

QUIRING: It's been moved and seconded to approve Ordinance No. 2019-11-06. Would you call the roll, please.

LENTZ: AYE

OLSON: AYE

BLOM: AYE

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MEDVIGY: AYE

QUIRING: AYE

QUIRING: Motion passes. Thank you. CPZ2019-00033, Columbia River Gorge National Scenic Area Districts.

LUMBANTOBING: Good afternoon, Council.

QUIRING: Good afternoon.

LUMBANTOBING: My name is name is Sharon Lumbantobing with Community Planning for the record. So we're here to discuss CPZ2019-00033, this is a request to extend the interim Ordinance No. 2019-09-13 which was adopted by the County Council on September 25th.

The interim ordinance pertains to an error, scrivener's error in the Columbia River Gorge National Scenic Area District Title 40.240.440. State Law, RCW 35.63.200 requires the Council to hold a public hearing on the interim ordinance within 60 days which would have been November 24th, we're not able to meet that deadline for our hearings so we're requesting a six-month extension of the interim ordinance and allow time, sufficient time.

Title 40.240.440(H) currently states that the development and production of mineral and geothermal resources are required to follow a Type IV legislative process on agricultural lands and staff is requesting this be corrected to the Type III quasi-judicial process.

In reviewing the legislative history, evidence suggests that the initial change from a Type III to a Type IV process was in error and not the result of a conscious policy decision. In Title 18 this was always a Type III process.

In 2003, when the County repealed Title 17 and Title 18 and merged them into Title 40, that was a massive undertaking, that's where the change to the Type IV process occurred, there was no underline or strikethrough text in the adopting ordinances which is how changes are made. This can be seen in the table in Title 40.500.010-1, this is a summary of the approval types, approval processes in the Gorge and you can see that it's only listed as Type II and III, there are no Type IV review processes in the Gorge.

The definition in Title 40.510.040 of a Type IV legislative process does not include permits, these are all policy changes that go through the Planning Commission and then to the Council. There's a lack of consistency with other code sections.

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Title 40.250.520(H) which is the same language pertaining to geothermal mineral resources except that it applies to small woodland designations, that is a Type III process. That's all I have for you, and if you have questions, I'd be happy to answer them.

QUIRING: Are there questions of the Council? I know we've gone over this quite a bit. So for public testimony, Steve Horenstein and Jamie Howsley.

HORENSTEIN: Thank you, Madam Chair, members of the Council. For the record, Steve Horenstein, here representing Nutter Corporation who is the lessee and operator of the Washougal Pit. I want to emphasize the word pit. This is a rock pit, not a rock mine. No blasting occurs, we scrape and excavate material from that site, perhaps do some crushing but basically haul it out for road construction and other similar projects. I have tough comments for you today.

On June 6th, 2017, James and I met with the County to discuss the current status of our permits, excavation hauling and perhaps crushing activity at the Washougal Pit. Although the County official we met with seemed enthused and excited about



Mr. Howsley's approach to allow activity to continue and to perhaps amend the code to help others in similar situations with their pits and their mines, that official indicated he was going to talk to staff and get back to us. The next thing that we heard from the County came in the form of a notice and order to stop work at that facility.

We have continued to push for the kinds of changes to the County code that reflect current activity in mines and pits. Since that time, although I think we're finally through doing that now, because since that time the County has done nothing but throw up road blocks to our attempt to build roads, no pun intended, throughout Clark County and elsewhere, work that can't be done without material from such facilities as the Washougal Pit.

We are now engaged in two lawsuits and appeals, one pending, one filed, if not today, tomorrow, with two more on the horizon. One County official yesterday posited without prompting from either James or me that we were probably in for several years of litigation over this. Instead of working with us two years ago to update the process when we asked for it, the County has turned its attention to stopping the excavation activity and now finds itself with an interim ordinance before it to continue to make our lives difficult, our client's life difficult, and without any concern

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for public notice and opportunity to be heard.

We're only here today, and the only reason we have this opportunity today is because the Planning Commission heard what we had to say and decided it wasn't -- without making a decision on that ordinance wasn't ready for prime time and has continued it to later this month, which puts the Councilors in the position, if they choose to, to have a public hearing to continue your interim ordinance.

We are going to file a tort claim notice with the County for interference with our business and targeting and I'll talk a little bit about that a little bit later. We are going to shortly also, if we haven't done it already, send a letter to one of the opponents of this project who continues to fly a drone over this pit and take pictures.

Multi-aircraft for purposes of surveillance particularly taking pictures is actionable as trespass and this is the point we've reached in this case, we have no opportunity but just to fight where we need to fight. And it's not about, just about this mine, we're setting precedent for how this plays out, will set a lot of precedent for how permits are issued for surface mining and excavation of pits and such for all the others in Clark County here,

it's become that big of a deal.

Let me address the scrivener's error if I may. There's no proof to support that. It's legislative interpretation, lawyers can interpret legislation lots of different ways. We asked for, we filed a public records request and got three huge piles of information from the period of time when I think its 2003 code amendments occurred, and although we're not quite all the way through it yet, we find no proof to support the County's narrative that the narrative ordinance that is the subject of today's hearing is a scrivener's error.

It's a convenient thing to say, but there's no, the County has not presented any proof in your prior hearing before the Planning Commission or here today. This is all about the County's agenda by its actions can only be described as opposing excavation and probably related to that mining and true mining facilities and related activity in favor of a few complaining neighbors and using a straight interpretation of the code provision that was adopted 16 years ago, 16 years ago.

Why is it coming up now? Why hasn't it been included in so many omnibus code amendments to fix things that the staff felt needed fixing and many times the Council agreed with, why is it being fixed

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on an emergency basis? Let me give you some, some history that I have discovered about this.

I mentioned to the Planning Commission I've been doing permitting of mines and pits for a long, long time now, probably 25, 30 years, I've been involved in not all of them but many of them, and I had a vague recollection when I was talking to the Planning Commission this issue of the Type IV came up at the time that that code was adopted.

So I had the opportunity to speak to former County Commissioner Betty Sue Morris who I remember as being quite involved in the discussions around mining. She said to me that it was a Type IV because the Board felt that the opportunity for enhanced public participation was so important at the time that the Board felt it ought to be involved in the inevitable appeals that come with these projects, they're always appealed. She didn't hesitate at all to explain that to me when I talked to her. I would encourage you all to give her a call, she'll tell you this.

I realize that Type IV then and type now are two different things and it's a little awkward the way, it would be a little awkward to keep this as a Type IV under the code, but that's not the point, the point is why aren't we looking for a solution for this rather

than just getting the way of this material being excavated.

Another County official asked me, well, what would you do to fix it? Well, there are a lot of things we could do to fix it. We could make, just a couple of them would be allowing you to hear permits for these types of projects. Another way that does make sense to, I think Mr. Howsley and I know it does to me, is to require that terms and conditions for surface mining be included in development agreements that come to the Board for final approval, if you really care what the public thinks about this, that's a good way to do that.

So just getting rid of the, getting rid of the code as it's currently written and making this Board a bystander in all of these processes puts us in a position where you don't get to balance the need for rock against the public need about the impacts it has on the public and just gives staff the authority with our regulatory mind state, the County authority with it's regulatory mindset to just regulate it and there's two years almost of history here telling you how difficult that can be for somebody in this business.

Let me talk about the opposition briefly, and I have a handout for you. Sorry, not protocol. Let's take a hard look, let's take a hard look at the opposition. There are 52 properties encircling

this pit. There are 12 properties opposing this activity, is part of what I call generically the friends and neighbors that are involved in this litigation.

This chart tells you who moved in while the pit was operating. All of them moved in while the pit was permitted by the Department of Natural Resources and by the County and then various points by the Gorge Commission, there's a whole history of that as you're probably aware of. Of the six that moved in when, during a period of lack of activity on the site while it was still permitted, three are listed, you see this towards the top of the second page as Friends of the Gorge, no site address, just a tax parcel number, I have a hunch those are just properties that the opponents included in this thing, so we're really talking about three people that moved in when there was no activity.

This is -- environmental orders are very good at getting their opponents to call you on a regular basis and send you letters on a regular basis and make this just seem like there's a lot more opposition to this pit than there is. It's not that big, and although there is an opponent on all sides of this project, 40 of the 52 properties are not complaining about this pit. Even if you moved in during a period of inactivity, and these pits do have active periods and inactive periods while their permits remain,

I mean I wouldn't move into a house in that area without checking out what was behind me, it's pretty obvious what it is.

So we're overstating or overprotecting perhaps the opposition here and I get it, you know, I wouldn't want to live by a rock pit, I know what they're like but people choose to do that. Keep in mind that trucks coming out of this pit come out on a private road owned by the owner of the mine, of the pit. The folks that live along that road, I don't know five or six of them perhaps, is that right, use that road by permission from the landowner himself, the owner of the road. So I get the opposition, it happens every time, to some extent it's fair, but let's not overstate what it is.

Let me talk legally about what's before you for a minute here. We don't believe -- we believe that the ordinance before you was before you before and is before you again is flawed, it's legally flawed. Section 1 of the interim ordinance refers you to RCW 35.63.200 and RCW 36.70A.390 as authorities for adopting interim zoning measures, interim zoning measures with certain limitations.

Interim ordinance does not identify what those certain limitations, code word, statutory words are, nor does it explain how the proposed procedural change qualifies as an interim zoning ordinance. RCW 35.63.200 authorizes interim zoning control,

zoning control. Although it isn't defined in the statute, 36.70A.390 authorizes a county or city governing body, that would be you, adopt an interim zoning ordinance. These are the two statutes, State statutes that are being relied on here. Again, this chapter doesn't define zoning ordinance.

But think about it, what we're here doing here is typing an application. The County's attempting to convert it from a Type IV application to a Type III application procedural, they aren't complaining about the zoning on this site, they're not having proposed to change the zoning on this site, this is about simply the way the County processes applications among the four various types they have, it has absolutely nothing to do with zoning.

You know, we consolidated all of our land use regulations into one chapter Title 40 some years ago now. I can remember before that, if you follow the logic with staff here you could change anything in that code on an interim ordinance without notice and opportunity to be heard. Does that make sense? Absolutely not. What if it was authorized this way just for a minute, let's consider that.

The burden of establishing that the Council had the authority it was purported exercises rested with the County Council and we don't see anything in the record that carries that burden, and believe



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me, we've listened to every word of the transcript. And, again, it's not clear that the Council can enact interim zoning controls or ordinances.

The code section in Title 40.560.020 outlines the procedures that must be followed to make changes to zoning districts or to amend zoning codes. Those procedures do not include the ability for the Council to make interim zoning controls or interim zoning changes, it just doesn't work like that.

While the County Code does not supersede the RCW, the fact that the code expressly outline zoning code amendment procedures and did not include these interim authorities is pretty telling. Code Section 40.560.020.A.3 -- I'm doing that slowly, how's it going?

HOLLEY: Good. Thank you.

HORENSTEIN: -- explicitly says that "A code amendment must occur through a Type IV process that includes Planning Commission review." Is that what we're doing now? Why are we going through this procedure if in the County's opinion the interim ordinance is valid? I anticipate staff will say because the interim ordinance is only good for six months, but if it's only good for six months, why was it even passed at all? Why are we doing this?

Why did the scrivener's error need to be changed right now when it's been on the code for six years? I'll tell you why.

As part of this overall process, the owner of the pit and the operator of the pit continue to move things along under protest filed an application for a land use permit, and when staff saw that coming, they rushed to you and said, well, we, staff, better get control of this so we want to make this a Type III not a Type IV, but for our desire to find a way to continue to work in that pit therefore filing an application under protest to do so, they came to you to change the code.

I've taken a look at the maps and as best I can tell there is no other property with a surface mining overlay in the Columbia River Gorge, and of course you regulate surface mining and in the Gorge in particular in a special section of Title 40, sections that have been approved by the Gorge Commission a long time ago for you to manage, you to permit, you to enforce, et cetera, et cetera.

When you put together everything we've experienced in the last almost two years now, we can only conclude that the County is targeting this site. Targeting is actionable under the law, it's a due process violation among other things. I don't, I don't want to sound overly critical of you all, you're just responding to

something that was brought to you by staff.

Commissioner Medvigy, I noticed toward the end of the last hearing you made it clear that there's no subterfuge here and no attempt to gain advantage and you want to do, you wanted to put all that on the record which made some sense to me because the only information you had is that this was a scrivener's error, I don't doubt for one minute you're sincere in making those remarks, but I hope by now you can see this is a way bigger deal than that and there are two sides to this story that the County attempted to keep from you by doing the interim ordinance without notice and opportunity to be heard or the courtesy of a phone call to those of us that have been involved in this for almost two years now, saying, hey, we're going to do this, this is why, just want to let you know if you want to be there, here's when we're doing it.

The response one of us got when, well, Jamie got, if I can speak for you, when he called to say what's this, how did you find out about that, that's what we got from the County. I don't know how you could expect our clients to see this anything other than apportions of the County trying to target this with subterfuge and not thinking, really thinking through the legal exposure they're creating for the County in doing this by targeting this one particular pit.

And in conclusion, I would say you have a choice here as the policy maker, you can either be bystanders in this process by stepping out of it and you'll continue to hear from a few of those neighbors on a regular basis but you won't have any role in the process other than that or you can tell the other parts of the County here to get this right, use the development agreement, put yourselves in a position of making the final decision, a number of things we could think of here, but absent that.

You know, I learned from a much older public affairs professional one time, I learned a lot about government relations and public affairs when he said to me, I've never said this openly before, but he said to me, you know, Steve, we work really hard to make things happen and use all the tools we have but sometimes you just have to realize you have an enemy and deal with it accordingly and that's where we are and this will engender all kinds of litigation and we need to do it now, not only for these clients, but to make sure mining activity can continue in Clark County so that we can still build roads and the other things we use rock for. Thank you.

QUIRING: Thank you. Mr. Howsley.

HOWSLEY: So for the record, Jamie Howsley. I'm going to be a lot

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more brief than my colleague, but...

HORENSTEIN: Thank you.

HOWSLEY: So I want to talk about how the genesis of this happened. I got a notice of a Planning Commission hearing where this item would have been taken place and I immediately contacted some folks at the County questioning where this was coming from. They said, well, how did you find out about this? I think Steve's summation of my statement was correct.

A day later I get a phone call letting me know that this emergency interim ordinance was passed and I immediately became concerned with how the County was proceeding as a matter of process. I think Councilor Lentz you said we don't do budgeting on the fly, you don't draft ordinances on the fly.

LENTZ: I said we shouldn't.

HORENSTEIN: What did you say?

LENTZ: I said we shouldn't, I didn't say we don't.

HOWSLEY: That we shouldn't be doing that. So I think to the point

is that the County started making allegations that this was some sort of scrivener's error, and with all due respect to the many of great staff that you have here at the County, the last fears, there's not a lot of institutional memory in the positions that would have remembered a lot of these ordinances.

Unfortunately, Steve and I are kind of old guys and have been around here for a couple of decades and do have different memories of things, and in particular do remember the Title 40 update and do remember the Commissioners at the time having different conversations around mining and in particular I can recall specific issues related to Section 40 and the series of development agreements that were entered into out there with those parties in a Type IV legislative process ahead of them being annexed to the City of Vancouver.

So just from my own memory, and I believe my colleague's, we just question whether or not that was a potentially, a conscious policy choice by the Commissioners at the time to do that. To that end, we have filed several public records request that we are still waiting responses from. And, again, we pointed all of this out to the Planning Commission and they agreed that we need to get that information to see, you know, what's what and we would like to find that out.

The other issue I have concern with is this does feel a lot like targeting to me and I'm involved in a case in the city of Tacoma right now, it's a very contentious one where the city did target a specific land use operator and that specific land use operator has sued the city of Tacoma in Federal Court for similar kinds of due process violations.

As Steve alluded, this is the only property in Clark County that is in the Gorge area subject to a surface mining overlay where this ordinance impacts. And, again, I find it very curious that the timing of all this when the County as an entity knew full well that I was going to be walking in any day with an application in hand under protest while the rest of our litigation was pending.

I think where I'm headed with this is I'm just mostly concerned that the County is being a bit self-serving in this ordinance and in this process. I've pointed out other inconsistencies with both the scenic area ordinance and the surface mining ordinance that are there that I would have liked staff and the Council to address because quite frankly it will clean up the process as we proceed with the various avenues that we're going down and yet I feel like Steve and my client are getting stiff-armed on those opportunities and yet when it serves the County's interest, you know, low and

behold just trample all over our due process rights.

I was a little bit impassioned or a lot impassioned at the Planning Commission on this point and, you know, I love this county. My family came here in the late '70s where my father was the planning director, our family has invested a lot of our heart in trying to build, you know, a very good community and have worked with this organization for a very long time.

In all of my memory and in all of my professional working with this as an entity I've never seen such a trampling of a client's due process rights as I have in this case, and I really don't say that lightly, and we can all respectfully agree to disagree about the law, but this one is just very cut and dried to me and again I just felt like this is one of our very few opportunities to get this information in front of Council and maybe hear a different perspective than you're getting from the forest below. Thank you.

QUIRING: Thank you. Are there questions of the Council at this point?

OLSON: I'd like to get some clarification on the reference to the RCW or to the code and the RCW that we're using for this ordinance, if you could clarify that, please.



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COOK: I can certainly refer to the RCW which would supersede, it would allow something that the code might not. And Steve, if Steve could tell me what code section he was citing that would be helpful or if Sharon could. But as far as the RCWs go, there are two RCWs that permit a County to do this, one is RCW 36.70A.390 and that is part of GMA, and the other is RCW 35.63.200 which is the Planning Act.

HORENSTEIN: Those are the two that I --

COOK: Yeah. But what about the code section?

HORENSTEIN: Oh, I'll have to find that for you. But I would say both of those statutes refer to zoning, not --

COOK: Well, this is a zoning control, this is part of the Unified Development Code Title 40, that is in the case law that I have read a classic example of a zoning control. So respectfully I would have to disagree with Mr. Horenstein's assertion that this has nothing to do with a zoning ordinance, Title 40 is Clark County zoning ordinance, so that is my response.

HORENSTEIN: 40.560.020.

COOK: Thank you.

HORENSTEIN: Title 40 is everything land use which is my point, it's not just zoning and this will become a major issue I think going forward.

COOK: Yeah. So this is our zoning code, this is our amendment to our zoning code, it is a zoning control as set forth in the statute and the statutes permit interim amendments to those zoning ordinances.

OLSON: And the action we're being asked to take today to continue an interim ordinance, not adopt a final ordinance, but for six months?

COOK: That is correct.

QUIRING: And that allows for what? That six months is going to allow what?

COOK: That preserves the status quo.

OLSON: So if I'm not mistaken, the Planning Commission wanted to

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hear additional information or see additional information and that hearing is not until the 25th?

COOK: The 21st. The issue with the Planning Commission was as I saw it two things. One was that there were exhibits that were intended to be attached to the staff report that were inadvertently left out so that they, the Planning Commissioners did not feel like they had the adequate background, those exhibits have been posted.

The other was that Council complained that they had sought public records and they wanted to see what's in the public records. So this was rescheduled, was continued to a date and time certain which is the Council meeting on November 21st.

ORJIAKO: No, Planning Commission.

COOK: Planning Commission, yes, I'm sorry, meeting on November 21st.

QUIRING: Councilor Blom.

BLOM: If this is continued and in Council's work they find firm evidence, which I think in about 25 minutes in testimony we've been here, but find firm evidence that this was not a scrivener's error

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and that it was intended, could we pass another emergency ordinance reverting back to Type IV if indeed that there is something in the documents, in the record that shows that it was intended to be?

COOK: Absolutely. Absolutely. If I could I would like to comment on the discussion that Mr. Horenstein said that he had with former Commissioner Morris and he said, well, yes, we had those as Type IV because we wanted the public involved in the appeals, type appeals at that point went to the Board --

HORENSTEIN: That's true.

COOK: -- that changed in 2009. So that was part of a Board legislative process then, that doesn't happen now and hasn't happened since 2009, but the provision at issue here does not relate to appeals, it relates to who decides initially on a permit, who gets the application, who reviews the whole application, who says, well, this is complete, this is not complete, you need A, B and C. Yes, A, B and C comply with these criteria or, no, they don't and it's curious to me to think of Council engaging in those activities. I don't know when Council has previously sent out a completeness letter for example on a permit application, in general that is not something that Council does.

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QUIRING: When you say permit application, are you talking general permit application or a conditional use permit?

COOK: Any. Any.

QUIRING: We don't have any say in that.

COOK: You don't do conditional uses, no, ma'am.

QUIRING: We don't review it?

COOK: No.

QUIRING: I guess we hear about it after the fact.

COOK: That could be. That could be. Sometimes during the fact.

QUIRING: Yes. Yeah. Well, I just would, I have a couple of comments because I think that often when you hear one side of the story, you've heard one side of the story and you don't hear the other side until the other side presents it and this is the first time I've heard this side, the other side of the story. And, frankly, I can understand completely why Commissioner Morris would have and that commission would have taken action that would make

this a policy issue partly because of sensitivity of the Columbia Gorge Commission.

I was in the State legislature in Oregon when this was formed and it was not noncontroversial and I can see why various counties would want to have a little bit more control over what was happening in the Gorge and a say there. Passing this, making this interim resolution go for another six months it remains the status quo which is the status quo right now is it's a Type III?

COOK: That's correct.

QUIRING: And not a Type IV?

COOK: That is correct.

QUIRING: If it's a Type IV what happens? We don't pass it.

COOK: Well, that was what I was, that was what I was trying to visualize which of you will be reviewing the application materials for completeness and determining whether it's complete or will that be done in a public process, well, we've got this, we've got -- I don't see that the Council is the body in this county that does permit decisions which is what other council, these counsels

clients would like, they would like a permit.

QUIRING: I actually would like to hear from --

HORENSTEIN: And that proves, I'm sorry, Jamie, that proves our point 100 percent. We agree that you shouldn't be doing the technical land use permitting here, but you should have some control over the decision that is made.

That requires a fix to the code whether it puts you in as the body that hears appeals, whether it puts, requires a development agreement to continue the standards that are recommended as part of the enhanced site plan approval that happens with a surface mining permit which is, it's basically an enhanced site plan approval.

It gives you the ability to balance the need for the material because you have the responsibility to build the roads, the Prosecutor's Office doesn't, the Planning Department doesn't, you have the responsibility to get the roads built and you're being hamstrung here.

It's a red herring to raise these issues about being engaged in the day-to-day permitting process itself, it's the final decision.

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It's going to take some work. It's going to take some amendments to the code and we're asking you not to just defer this to the regulators without any policy input whatsoever.

HOWSLEY: All I was going to say is somebody that practices and both stays very actively and probably have been in 50 different jurisdictions, you know, one of the ways that Oregon does it still currently, they don't in a lot of their jurisdictions they don't have a hearings examiner model anymore and a Type IV process would involve going to their planning commission and then ultimately whoever sits as their legislative body as their final decision-maker and various other jurisdictions.

In Clark County until very recently I can think of doing a number of subdivisions in the City of Camas for instance just one instance where that was all done through approval at the PC level with the ultimate authority to make a decision at council, so it's not unheard of, it's not -- the norm is becoming more and more to use a hearings examiner as a professional, you know, land use attorney who can understand the code.

But again that really isn't the point here, the point is, is, you know, what did the County Commission decide as a process back in 2003, '4 when this was going forward, and again I still have a lot



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of questions as to whether they did this consciously or whether it is as staff alleges as a scrivener's error.

OLSON: And so if I could --

QUIRING: Councilor Olson.

OLSON: So I don't disagree with you except that I don't see us going back to this Type IV as it existed prior to this code and be able to answer those questions. I actually think that passing this interim ordinance again gives everyone a chance to take a deep breath without because it's inconsistent in the codes, I mean it's inconsistent with everything else that's in our current code if we left this Type IV.

So I'm with both of you in terms of trying to find solutions and I understand your frustrations with this particular, with this pit and with this process, I understand that. I think in this case it's, for me it is just what does the record support, and if you haven't had time to review it totally and the Planning Commission needs time, then we need to do that, but to go back to the Type IV process to me would be a bigger problem until we understand what the record shows and that it's consistent with our existing code and our prior practices, so that's kind of where I'm at right now

with this.

This is an interim ordinance still, it's not a permanent ordinance, it will give us time to review the record and thoroughly before we make a decision on what we do finally.

HORENSTEIN: Might I respond to you, Councilor Olson, and I apologize to you, I have not made myself clear. We are having to do what we have to do for the Washougal Pit now, and putting us in this position while you take whatever time it takes to come up with a different process will not have any impact on this targeted pit. And not only will you be doing that, but you will be doing quite a bit of other, be involved in quite a bit of other appeals of litigation while this goes forward.

So it isn't just as simple as saying, well, we're going to leave that in place like it normally is, I would agree with you it normally is, it isn't, because we're going to have to do what we have to do here.

OLSON: I understand.

BLOM: I think there's a need to bifurcate the larger issue of pits and gravel mining and surface mining in Clark County from this

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decision and this decision is, was the change from Type IV to Type or Type III to Type IV a scrivener's error or not, that's what we're deciding today.

And I agree with Councilor Olson that we need to take a broader look at all of this, but the decision that we're voting on today is was this a scrivener's error or not. And if there is evidence that can be very clear, a memo saying, hey, we want this to be, and I apologize to Susan, (inaudible), do we want this to be a Type IV instead of a Type III and there's that in writing from 2003 or in an e-mail, then I would want to schedule an emergency ordinance the next day and make that change, that's the case today is whether or not this was a scrivener's error or not and so far I haven't heard anything that says that, yes, this truly was not a scrivener's error, so that's I would support moving the ordinance forward outside of proof otherwise.

QUIRING: Further comments?

HOWSLEY: Thank you.

QUIRING: Thank you. Did anybody want to make a motion?

LENTZ: Move to approve Ordinance 2019-11-07.

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BLOM: Second.

QUIRING: It's been moved and seconded to approve Ordinance No. 2019-11-07. Will you call the roll.

LENTZ: AYE

OLSON: AYE

BLOM: AYE

MEDVIGY: AYE

QUIRING: NO

QUIRING: Motion passes. Moving on to public hearing on to Transportation Improvement Plan and 2020 Annual Construction Program. Good afternoon.

QAYOUMI: Good afternoon, Council. Again, for the record, Ahmad Qayoumi with Public Works.

Today I would like to present to you our transportation improvement plan, and we have our team, they will go over the details, we had a couple of workshop with you and also with the Planning Commission.

So this is a very important document that helps us to outline all

the projects we have for transportation, it helps us to get grants and the discussion we have with other granting agency and also for the public to see what kind of projects we're going to be doing in the next six years.

So with that, I'll turn it over to Susan Wilson and also Rob Klug our Transportation Manager to go over the details of the presentation and be free to, if you have any questions, we will respond to them.

WILSON: A lot of this material is probably familiar to you, but we'd like to discuss guiding principles and the legal compliance of the six-year transportation improvement program.

We talk about some of the financing that goes behind the program and the heart of the program which is the construction program and then also we'll touch base on the I-5/179th urban holding projects and the road balance and leveraging that we have done in the current program and in the past programs, and then we'll talk about the annual construction program and the related funding and then we'll talk about the request for the adoption of the program.

Just a reminder for the guiding principles that the Council has set is that we will pay the debt service for the County road fund

and for our six-year transportation program. Also we'll look at the safety and preservation of existing assets and then we'll look at the capital projects based upon the evaluation of safety, economic development and mobility. The capital projects consist of larger projects such as 179th, 99, Highway 99 improvements.

And then legal compliance, all the projects that we work on for the capital, for capital transportation must be in the six-year program and the 2020 annual construction program. The annual construction program it, the first year of the six-year program, it just has a little more detail about the funding attached to those projects.

We must have priority programming. We must evaluate the projects like I talked about, safety, economic development and mobility. Also the Council must adopt the program before the budget's adopted. And then the transportation improvement program is an implementation of the 20-year capital facilities plan. So that's our box that we build based upon the 20-year capital facilities plan.

Similar accomplishments. As you know, N.E. 10th Avenue we just received an award of excellence. There are three phases to that project, two phases have been completed. The next phase is the

gap segment between 154th, or excuse me, 149th and 154th, we plan to start construction on that hopefully the summer of 2020.

As you can see it was about a \$43 million project for the entire corridor, we have about \$11.3 million in State and Federal grants, 3 million of that is projected for TIB which, Transportation Improvement Board, which they will do their announcements in the next couple of weeks so we'll know if we received a little more money there. We also have proposed REET on this project, partnerships with utilities and traffic impact fees.

119th Street, this was an old country road that we brought up to urban standard from N.E. 50th Avenue to SR-503, we completed the project in four phases. As you can see the project is about \$59 million and we had a lot of funding partners support this project.

We completed some work out at N.W. Pacific Highway, we replaced the culvert out there, it was failing. On February 12th, County crews did spot some undermining of the culvert, we immediately shut down the road and then we started design in February 19th and then we completed the project on March 29th. The County Road Administration Board supplied about half a million dollars in State funds to support this project. The TIP money is spent throughout

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the county in multiple areas.

As you can see this year we had a \$200 million secure transportation improvement program. About 55 percent is spent in the urban areas and about 20 percent is spent in the rural road areas. You'll see that we had the rural road projects, that is \$8 million, that consist of all the culverts; however, all the other ongoing programs are in rural areas.

So the road preservation we spent about 16 to \$18 million which is reflected in this pie and the bridge reconstruction is about \$8 million and the transportation safety is about \$6 million for the rural road segment of that. And so we spend about \$20 million on sidewalk and ADA and then about \$17 million in transportation safety and about \$8 million in our bridges and then of course a big pie, a big portion of that money is spent on road preservation. So this pie chart shows a breakdown of the revenue sources.

The bulk of our money does come from county road fund which is about \$67 million, 34 percent, and then also we have some secured grants and projected grants is about \$67 million followed by the urban holding development agreements and the surcharge that's anticipated in this \$200 million program and then REET is about 27 million, about 13 percent, and then we have the County arterial



preservation program about 2 percent and traffic impact fees about \$23 million.

This is a proposed construction schedule in the six-year transportation improvement program. Just note that this does not include all the design, permitting, land acquisition that we're doing, it's just the construction starts of the program.

The projects listed in the gray shade is projects that are under construction or complete. The bulk of these projects right now are complete. We just have just a little bit of mitigation and planting on 119th Street, N.E. Blair Road and then Highway 99 Preservation, that's a safety project. We have completed the ADA ramps and will do the preservation work next year. And the Highway 99, Kline sidewalk has also been completed.

The yellow shaded projects are the fully funded projects, so the grant committed projects. So we have 99th Street from 94th to 503, Highway 99, we're doing some improvements at that intersection. N.E. Manley Road, that's out to ad right now. Mason Creek Culvert, we just received some grant funds to complete some design work, we'll go after more money for construction. Some signal optimization projects and then also some bridge projects that are mostly grant funded. N.E. 68th Street, this is a partnership with

the City of Vancouver to complete sidewalk on Highway 99 to St. Johns. Munch Road, that's mostly funded by the County Road Administration program to complete some pavement improvements and some guardrail.

And then also the pink projects are the highest priority projects that we're seeking funding on, I'll talk about the blue projects in just a few minutes. So N.E. Hazel Dell Avenue sidewalk, we did receive about \$100,000 to complete some design work on the sidewalk project there. N.E. 119th Street at N.E. 152nd, this is a safety project, we've had a lot of accidents there, it's rising in our safety evaluation list and we did receive some information that we'll be getting an award letter for about \$3 million to support that project, so that's really, really good. Davis Bridge, I think we can probably get some County Road Administration money, we're still trying to seek funds for that.

And then the white projects are all the next tier projects or the ongoing program. The ongoing programs again are the preserving what we have, safety, mobility, excuse me, safety, bridges and some right-of-way acquisition. Those have their own evaluation systems, they really can't compete against the larger capital projects and the ongoing programs is about \$89 million of the 200 million. And then the blue projects are the urban holding

projects.

QUIRING: The one pink one that you left out was 182nd and --

WILSON: Oh, excuse me.

QUIRING: -- State Road 500, can you comment on that.

WILSON: I will comment on that. So this we have, I know the Council has provided \$200,000 for, to look at the project and complete some design work on that. We do plan to take it up a 30 percent design with the money you provided; however, we only own 30 percent of that road, so we are we've been working with WSDOT to get this project funded together. Legally we cannot pay for more than 30 percent of the road, so that's where we're at right now, we've been in communication with them and hoping to form a partnership.

QAYOUMI: And that 30 percent is going to really help us to get a better construction estimate and what the impacts would be in order to get the project be more in line what we need to do and also help us to talk to WSDOT and other granting agency that this is a needed project and to have priority for Council that we will at least help us to move forward instead of just talking about it.

WILSON: We'll have a better chance just to get grants once we know what we're doing, so... And then the blue projects are the urban holding projects that's contingent on the funding package that was approved by Council on August 20th, so I'll talk about that right now.

So just like I stated that the urban holding projects are reasonably funded in this six-year transportation improvement program contingent on the funding plan as adopted via resolution on August 20th. Looks like we have a lot of County road fund, we have real estate excise tax, we have some more County road fund, we also have real estate excise tax and then we have a really large contribution from the developers to support these, these projects. And I'll turn this over to Ahmad.

QAYOUMI: One of the thing that I mentioned before to Council about road fund and the status of road funds we rely heavily on funding a lot of project or leveraging the dollars for road funds. So just a little history on how the funds are doing in the last, since 2014, in the last five years and some of the projects that has funded to road funds and has continued to decline.

So we are, several factors, one, the construction cost has gone

up for projects and also our, because of some other issues that we have with the Growth Management Act, some of the -- our ability is to get more grants has gone down. So I just want Council to be aware of where -- how the status of the road funds are and how we're trying to manage those, but it is something that's going to continue to do in terms of the road funds and where we're at and in terms to get more project funded.

MEDVIGY: May I ask a quick question, Madam Chair?

QUIRING: Councilor Medvigy.

MEDVIGY: So one thing I've been thinking about and never brought up regarding this particular chart which we've seen many many times, what does it look like going back ten years?

QAYOUMI: Ten years actually we had a little bit more healthier balance for the road because of the construction costs were lower. One of thing that happened after the recession in 2008 there was a lot of projects were able to do with a lot less dollars.

There was a lot of contractors were trying to survive and we received, I mean amazing bid prices on a lot of projects and we were able to do a lot more with a lot less dollars, but what had

happened in recent years as the economy has gotten better, the cost of construction has gone up, the cost of the right-of-way acquisition has gone up and some of the complications with the environmental permitting has gotten more complex and longer duration.

A lot of times if we anticipate the project to start at a certain time, but because of delays either right-of-way negotiation or environmental permitting process, add an additional cost of inflation for construction. So what we were able to do ten years ago or five years ago we're not able to do that right now because of the cost of construction has gotten really high and I've seen some years that average a six percent or more a year in terms of cost of construction going up.

MEDVIGY: Let me just ask in a different way. In 2009, where would that bar graph be as far as millions? If you don't know, that's fine.

QAYOUMI: I don't have the -- but we can provide you that information.

MEDVIGY: Thank you.

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QUIRING: Just going along with that or commenting on that particular question and what the construction that has been accomplished for one thing the 2014 because I was going to ask, when did 119th Street start, that was a huge project and I would imagine that some of these projects have actually brought the balance down because we're actually using that money to do a lot of construction and we've done a good job of it.

I mean some very nice projects have been completed and I do understand the other difficulties with the cost of construction with the fact that there's other construction going on therefore contractors don't bid or the bid that they give isn't just to put their guys to work, it's, you know, it's also to make a profit, so I understand the two sides of the coin.

WILSON: Another thing I wanted to say is that the funding packages aren't as large anymore from like the Feds or the or, you know, the State TIB, I mean for Salmon Creek interchange we received \$28 million of appropriations from the Federal government, 119th we didn't receive that.

In addition, TIB supported, you know, \$8 million. Now, their awards are maximized at probably 3 to \$4 million, so that's another big change that I've seen with this program since I've been managing

it.

QAYOUMI: And I think the next slide has a history of how we've been able to leverage the road dollar funds and other local shares. If you look at the last ten years been over \$220 million of other money that we've been able to leverage with our road fund.

So the last ten years we had about \$85 million of road funds would have been able to bring in with projects, as you can see about \$86 million in Federal grants, \$48 million in State grants. So if you look at the calculation, almost \$2.60 we've been able to get for every dollars that we've been using to leverage for those projects.

And as Susan mentioned, they're becoming more and more competitive, and that was one reason when we did the estimation for 179th, we took a very conservative approach on estimating this and what we could get in terms of grant, we're estimating, we're counting a lot more local share to be able to get more grants and they're becoming a lot more competitive and a lot of local granting agencies are asking for more, not only delivery, but also more local shares in order to get those grants approved or awarded.

WILSON: I'm going to move on to the first year of the



transportation improvement program which is the 2020 annual construction program.

So there's about \$25 million that we plan to work, we plan to complete in the annual construction program. We have about 55 projects included in the program, and of all those projects, about 23 projects are starting construction or completing construction or under construction, so quite a few, quite a few projects we're working on.

About \$15 million is we plan to anticipate to spend on construction and then 6 million or 24 percent in permitting and design work and then about \$4 million in land acquisition. This is the proposed revenue for the \$25 million for the annual construction program. About \$10 million in County road fund, \$8 million in secured and projected grants and then \$4 million in real estate excise tax too and then a small amount in county arterial preservation and partnership funds and then \$2 million in the traffic impact fees.

So the public process that we went through for the 2020-2025 transportation improvement program and annual construction program was we met with the Council twice on April 17th and October 9th. We also went to the county fair, we went to neighborhood associations and then every time we had a capital open

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house like for 179th Street, 68th Street we had a table presenting our program.

And then we went, and then we talked to the Planning Commission through a work session and then through a hearing. Met with Development Engineering Advisory Board and we did public notices, SEPAs and now we are here today to adopt our transportation improvement program and our annual construction program. We're asking the Council for three actions today.

The first action is to adopt the 2020-2025 transportation improvement program. The second action is to adopt the 2020 annual construction program. And the third action is to approve the 2019 Annual Review and Dockets for the Planning Commission recommendation of the 2020-2025 transportation improvement program. And so the third action is per County Code Title 40, the first two actions is State mandated.

QUIRING: Okay. Are there questions of Council or clarification? I guess I'd entertain -- now you're asking for three actions and they will be taken separately; is that correct? Okay.

BLOM: I do have one question.

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QUIRING: Councilor Blom.

BLOM: And I will still want to ask the question. But the six-year TIP is partially funded by developer agreements to my understanding, is it not, all those developer agreements have been signed and returned? If one of them is not, what happens, do we have to just make amendments to the TIP or what happens in that scenario?

QAYOUMI: Yeah. We can do an amendment next year, yes.

BLOM: Thank you. Then I'd move to approve Resolution 2019-11-01.

OLSON: Second. No public comment?

LENTZ: Do we have no comment?

BLOM: Oh, I'm sorry.

QUIRING: And actually the people that signed up for public comment have exited, they are no longer present, so we don't have any public comment unless anybody out there would like to make public comment. Hearing and seeing none, we can have a second to that motion. Did we?

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OLSON: Second.

QUIRING: It's been moved and seconded to adopt Resolution was it 2019-11-01?

BLOM: Yes, it's right there I think.

QUIRING: Oh, yes. Okay. Further discussion? Call the roll. No? No roll. All in favor say aye?

EVERYBODY: AYE

QUIRING: Opposed? Hearing and seeing none, the motion passes. Next resolution is.

LENTZ: Move to approve ACP Resolution 2019-11-02.

BLOM: Second.

QUIRING: It's been moved and seconded to approve ACP Resolution 2019-11-02. Is there discussion? All in favor say aye?

EVERYBODY: AYE

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QUIRING: Opposed? Hearing and seeing none, the motion passes.  
Approve the 2019 Annual Review and Dockets.

OLSON: So moved.

BLOM: Second.

QUIRING: Been moved and seconded to approve the 2019 Annual Review  
and Dockets. Any further discussion? No? Any further  
discussion? All in favor say aye?

EVERYBODY: AYE

QUIRING: Opposed? Hearing and seeing none, the motion passes.  
Thank you very much.

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CLARK COUNTY COUNCIL

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Eileen Quiring, Chair

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Temple Lentz, Councilor

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Julie Olson, Councilor

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John Blom, Councilor

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Gary Medvigy, Councilor

ATTEST:

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Rebecca Messinger, Clerk to the Council

Minutes Transcribed by:  
Cindy Holley, Court Reporter/Rider & Associates, Inc.