

YVONNE POELWIJK
1900 SW 4TH AVE, STE 5000
PORTLAND, OR 97204

PLANNING AND SUSTAINABILITY
299/ 7100

TONI ANDERSON
AUDITOR'S OFFICE
131/140

BES / DEV. SERVICES
106/1100

KURT KRUEGER
PBOT
106/800

DAWN KRANTZ
PORTLAND FIRE BUREAU
472/100

WATER BUREAU PERMITS
106/601

OREGONIAN
PORTLAND TEAM
1320 SW BROADWAY
PORTLAND, OR 97201

STACEY CASTLEBERRY
DEVELOPMENT SERVICES
299/5000

SYLVIA CATE
DEVELOPMENT SERVICES
299/5000

TERESA ELLIOT
PORTLAND WATER BUREAU
1120 SW 5TH AVE, ROOM 600
PORTLAND, OR 97204

TIM BROOKS
WINTERBROOK PLANNING
310 SW 4TH AVE, #1100
PORTLAND, OR 97204

LINDA BAUER
PLEASANT VALLEY NA
E PTLD LAND USE & TRANSP COMM
6232 SE 158TH AVE
PORTLAND, OR 97236

BILL DAYTON
MIDWAY BUSINESS ASSN.
2604 SE 122ND AVE
PORTLAND, OR 97236

RICHARD BIXBY
E PORTLAND NEIGHBORHOOD OFFICE
1017 NE 117TH AVE
PORTLAND, OR 97220

ARIANA LONGANECKER
2535 SE SALMON
PORTLAND, OR 97214

CAROL PERMAR
2105 SE 142ND
PORTLAND, OR 97233

ROBERT HALEY
B106/800

H. DAVID SPECHT
4320 SE 45TH AVE
PORTLAND, OR 97206

JOCELYN TUNNARD
BES
106/1100

DOUG MORGAN
DEVELOPMENT SERVICES
299/5000

AMY RUIZ
MAYOR'S OFFICE
131/340

LU 10-169463 CU MS EN AD
TO BE MAILED 1/10/11
22 LABELS

LU 10-169463 CU MS EN AD
MAILED 1/10/11 ✓
22 LABELS

EM



City of Portland, Oregon - Bureau of Development Services

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



Type III Decision Appeal Form

LU Number: 10-169463 CUMSENAD

FOR INTAKE, STAFF USE ONLY

Date/Time Received 1/3/11 7:55 AM

☒ Action Attached

Received By CS

Fee Amount \$15,028.50

Appeal Deadline Date 1/3/11

☒ [Y] [N] Fee Waived

☒ Entered in Appeal Log 1/3/11

Bill # 3189599

☒ Notice to Auditor 1/4/11

☒ [Y] [N] Unincorporated MC

☒ Notice to Dev. Review 1/3/11

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

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

Development Site

Address or Location 15800 SE Powell

Date Jan. 3, 2011

Land Use Number LU-10-169463

Appellant's Name East Portland Land Use & Transportation Co.

Street Address 6232 SE 158

City Portland

State Oregon

Zip Code 97236

Day Phone 503-761-2941 FAX Sam

email LBauerPVNT@aol.com

Appellant's Interest in the case (applicant, neighbor, etc.) Land Use Committee

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

attached

RECEIVED

JAN 03 2011

Appellant's Signature

Julie Bauer

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

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

CASE NO. 10-169463

EXHIBIT I.1

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

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

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

Type III Appeal Hearing Procedure

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

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

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

Appeal Fees

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

Fee Waivers (33.750.050)

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

A. ONI Recognized Organizations Fee Waiver

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

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

B. Low Income Fee Waiver

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

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

Information is subject to change

JAN 03 2011 1

Approval Criteria 33.815.100 C. Livability page 31 of the Decision of the Hearings Officer states, "A 1,000 year storm event, in staff's opinion, is such potential magnitude that the event could potentially overwhelm *any* carefully engineered system that meets all regulator requirements. Therefore, staff disagrees with the argument that the proposed stormwater system is not safe." If the committee was asking for, say, the Water Bureau to flood-proof all of the houses down stream of the Water-Bureau-made flood event, then we would agree with staff and the Hearings Officer. But the request is for "as much early notification of a 1,000-year flood as is possible for residents downstream of the flood so that families can get out of harm way in time". Staff notes that the specified approval criteria is discretionary and requires, "The proposal will not have significant adverse impacts on the livability of nearby residential -zoned lands due to safety issues." A 1,000-year event may overwhelm any engineering system, but with advanced notice from the Water Bureau, loss of life can be kept to a minimum .

On Page 46 of the Decision of the Hearing Officer , "7. All Zoning Code requirements are met unless superseded by the Master Plan." The Hearings Officer finds in error that all zoning code requirements that are not superseded by the Master Plan

CASE NO. 00-169463
EXHIBIT I.12

have been met. "88.430.070 (E.) Changing topography, grading, excavating, and filling : " was not superseded by the Master Plan and requires that an environmental review be done when grading, excavating, or filling is proposed to occur in an environmental zone, such as Powell Butte Park . The applicant did not address any grading, excavating , or filling impacts as part of the environmental review that was done even though the requirement for environmental review is clearly stated. In fact, the words excavating or filling do not appear anywhere in the environmental review section of the application.

Page 64 of the Decision of the Hearings Officer says, that the standard for erosion control "will be met." The same requirements was supposed to be met in the last land use approval, but the Water Bureau has 35 out-standing Title # 10 violations which mean that the erosion control standards were not met and may not be met in this land use process either. Attached is Mr. Shaff's letter that states, " We agreed in good faith to construct the rock entrance,". Development Services requested the Water Bureau to install the construction entrance on March 11,2010, but as you can see from Mr. Shaff's letter, the entrance was not installed until the week of May 13, 2010.

"Title # 10 Violations of Title" (Attached) (A.) explains what a violation is and (B.) explains that "Each specific incident and each day of non-compliance shall be considered a separate violation of this Title." The Water Bureau did not comply with BDS's repeated requests for installation of the rock entrance which resulted in 35 out-standing violations to Title # 10.

On page 62 of the Hearings Officer Decision states, "Further analysis has concluded that changes to the reservoir associated with this project will not alter the probability or severity of an emergency overflow event discharging to Johnson Creek." How can the release of an additional 50-million gallons of water not affect the severity of an emergency overflow discharging to Johnson Creek ?

The standard says, "Outfalls may discharge storm water or overflow into Johnson Creek if designed to reduce potential erosive effects and if authorized by applicable state and federal permits." The issue that was raised was that no permits from state or federal agencies were submitted as proof that this standard has been met. In fact, this standard has not been met. Staff submitted to the Hearings officer a statement that Ms. Bauer was given a copy of a permit from DEQ, but that permit only covers regular maintenance discharges to Johnson

Creek and only in specific amounts. That permit does not cover overflows.

33.430.060 Where These Regulations Apply

These regulations apply to all environmental zones, except those in the Columbia South Shore Plan District that are south of NE Marine Drive, those in the Cascade Station/Portland International Center Plan District, those that are within the Smith and Bybee Lakes Natural Resources Management Plan area, City-owned land within the Forest Park Natural Resources Management Plan area, and the Peninsula Drainage District No. 1 Natural Resources Management Plan area. See Chapter 33.515, Columbia South Shore Plan District, Chapter 33.508, Cascade Station/Portland International Center Plan District, the Smith and Bybee Lakes Natural Resources Management Plan, the Forest Park Natural Resources Management Plan, or the Natural Resources Management Plan for the Peninsula Drainage District No. 1.

33.430.070 When These Regulations Apply

Unless exempted by Section 33.430.080, below, the regulations of this chapter apply to the following:

- A. Development;
- B. All land divisions and property line adjustments;
- C. Removing, cutting, mowing, clearing, burning, or poisoning native vegetation listed in the *Portland Plant List*;
- D. Planting or removing plants listed on the Nuisance Plants List;
- E. Changing topography, grading, excavating, and filling;
- F. Resource enhancement; and
- G. Dedication and expansions of rights-of-way.

33.430.080 Items Exempt From These Regulations

The following items, unless prohibited by Section 33.430.090, below, are exempt from the regulations of this chapter. Other City regulations such as Title 10, Erosion Control, must still be met:

- A. Change of ownership;
- B. Temporary emergency procedures necessary for the protection of life, health, safety, or property;
- C. Existing development, operations, and improvements, including the following activities:
 - 1. Maintenance, repair, and replacement of existing structures, exterior improvements, roads, public recreational trails, public rest points, public view points, public interpretative facilities, and utilities. Replacement is not exempt whenever coverage or utility size is increased;
 - 2. Continued maintenance of existing gardens, pastures, lawns, and other planted areas, including the installation of new irrigation and drainage facilities, new erosion control features, and the installation of plants except those listed on the Nuisance Plants List. Change of crop type or farming technique on land currently in agricultural use. Pruning trees and shrubs within 10 feet of structures;

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

- 10.70.050 Voluntary Compliance Agreement
- 10.70.060 Civil Penalties
- 10.70.070 Appeal of Notice of Violations and Penalties

10.70.010 ~~Violation of Title.~~

- A. The following actions shall constitute a violation of this Title:
 - 1. Any failure, refusal or neglect to comply with any requirement of this Title.
 - 2. Allowing or causing a condition that threatens to injure public health, the environment, or public or private property.
 - 3. Failure to correct ineffective erosion, sediment and pollutant control measures after being required to do so by the Director.
- ~~B. Each specific incident and each day of non-compliance shall be considered a separate violation of this Title.~~

10.70.020 Notice of Violation.

- A. Written Notice of Violation. When the Director determines that a violation of this Title has occurred, the Director shall notify the responsible party and the property owner in writing that a violation of this Title has occurred. The notice of violation shall either be delivered to the responsible party or posted at the property site of the violation, and mailed to all responsible parties. If the address of the responsible party is unknown, then the notice shall, in addition to being posted at the site, be published in a local newspaper for one week. This publication shall serve as the mailed notice.
- B. The written notice shall include the following information:
 - 1. Date violation has occurred;
 - 2. Permit number, where applicable;
 - 3. Site address, legal description or project location;
 - 4. Description of violation;
 - 5. Disclosure that civil penalties, charges and liens may result from a failure to remedy the violations;

Subj: FW: Emailing: April, 30,2010, March 11, 2010, March 19,2010
Date: 5/13/2010 11:50:32 P.M. Pacific Daylight Time
From: amanda@portlandoregon.gov
To: lbauerpvna@aol.com

Please tell me your reaction to this response.

Thank you,

Amanda

Amanda Fritz
Commissioner, City of Portland

Please note new e-mail address: amanda@portlandoregon.gov

To help ensure equal access to City programs, services and activities, the City of Portland will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities. Call 503-823-2036, TTY 503-823-6868 with such requests or visit http://www.portlandonline.com/ADA_Forms

From: Shaff, David
Sent: Thursday, May 13, 2010 9:18 AM
To: Commissioner Fritz
Cc: Leonard, Randy; Adams, Sam; Fish, Nick; Saltzman, Dan; 'Benninghoff.Benjamin@deq.state.or.us'; 'Jurries.Dennis@DEQ.state.or.us'; Stuhr, Michael; Elliott, Teresa
Subject: RE: Emailing: April, 30,2010, March 11, 2010, March 19,2010

Commissioner,

Thank you for your patience. I am taking the liberty of copying my answer to your question to the original recipients of Ms. Bauer's email below so that the rest of the Council has the information as well.

The short answer is that the work has been completed and there is no code violation. We have confirmed that with both BDS and BES special inspectors. There is of course a longer, more detailed answer as well.

The Powell Butte Project has five sets of erosion control requirements we are following – erosion control manual, site development permit, DEQ1200-c permit, land use review and the contract documents themselves. All of the requirements are similar with minor wording differences and are general guidelines using best management practices. When and if a requirement conflicts, we employ the most stringent of the requirements. The assumption and practice is that as conditions on a construction project change, we review and adjust the best management practices to fit the changed conditions.

The original Erosion Control Plans for the project (designed for us by BES) were approved without a rock construction entrance after the wheel wash facility. These plans were reviewed and approved for the Site Development Permit and the 1200C

Monday, May 17, 2010 AOL: lbauerpvna

permit for Erosion Control by both BDS and DEQ. The plans called for a 1/4 mile of gravel road after the wheel wash in place of a rock construction entrance (which is only 50 feet in length) to prevent tracking of dirt and mud into the paved right of way (SE Powell Blvd and SE 162nd Ave). The project ground disturbing activities began in September 2009. The erosion control measures are inspected and maintained daily by PWB and the contractor and has been regularly inspected by BDS, BES and PWB special inspectors to make sure the contractor is in compliance. Because of the project's location in the Nature Park and sensitivity to erosion control and storm water issues, we have gone above and beyond the erosion guidelines and requirements. In addition to going above and beyond meeting the established requirements to manage the stormwater and erosion control during the project, all public concerns and complaints were received and addressed in the most prompt manner (i.e. sweeping, washing etc.). This will be continued until the Phase 1 project is complete and will be followed between contracts and during Phase 2. The erosion control measures have been extremely successful in preventing visible or measureable sediments from entering the right of way or Johnson Creek. Our regulators have been very pleased with the efforts.

Linda Bauer complained to BDS in March 2010 that a rock entrance had not been installed. After review by BDS, BES and PWB staff it was determined the rock entrance is one of many best management practice suggestions. Some of the language in the Erosion Control Manual results in conflicting direction between "should" and "shall" regarding rock construction entrances after a wheel wash facility. In the past the Erosion Control Manual has been regarded as a recommendation, not a mandate, with each project reviewed for site specific erosion control. Even though BDS (and the original BES Erosion Control Plans designer) agreed that we were meeting erosion control from a visual and functional standpoint with the existing situation, and were meeting all approved plan requirements, BDS suggested we add a rock entrance prior to the pavement as another tool. We agreed in good faith to construct the rock entrance, even though we believed it was not needed.

We had the contractor put in a rock entrance, and there was a miscommunication regarding size of rock. The contractor put in 2 1/2 -inch minus rock, 50 feet long, in early April. This rock does not meet the manual requirements. The manual defines a rock entrance as 2-inch to 6-inch rock, 50 feet long. We have redirected the contractor to place the required rock as specified in the manual. The contractor did not work very many days in April hauling material because of the unusually wet weather. This was another protective measure to control sediment tracking into the right of way. Because of the limited work in April, we allowed the contractor to defer reinstalling the second rock entrance until dryer weather in order to avoid the risk of creating erosion of the wet soils. The contractor completed the rework of the rock entrance this week.

Although the hauling activity is completed for Phase I, the new rock entrance will be used for Phase II. As part of the Phase 1 work the erosion control measures are being repaired or replaced in preparation for the Phase 2 Construction. In addition we are looking at what additional best management practices would be effective over the next six months to maintain the project until Phase II begins.

As always, if you would like to have more information please let me know.

David Shaff, Administrator
Portland Water Bureau

Monday, May 17, 2010 AOL: lbauerpvna

From: Commissioner Fritz
Sent: Monday, May 10, 2010 8:42 AM
To: Shaff, David
Subject: FW: Emailing: April, 30,2010, March 11, 2010, March 19,2010

Please tell me why there's been a two month delay since the absence of this facility was brought to the Water Bureau's attention, and when it will be installed.

Thank you,

Amanda

Amanda Fritz
Commissioner, City of Portland

Please note new e-mail address: amanda@portlandoregon.gov

To help ensure equal access to City programs, services and activities, the City of Portland will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities. Call 503-823-2036, TTY 503-823-6868 with such requests or visit http://www.portlandonline.com/ADA_Forms

From: lbauerpvna@aol.com [mailto:lbauerpvna@aol.com]
Sent: Monday, May 10, 2010 7:50 AM
To: Leonard, Randy; Adams, Sam; Commissioner Fritz; dsaltzman@ci.portland.or.us; Commissioner Fish; Benninghoff.Benjamin@deq.state.or.us; Jurries.Dennis@DEQ.state.or.us
Subject: Emailing: April, 30,2010, March 11, 2010, March 19,2010

Commissioner Leonard, Mayor Adams, and Portland City Council Members:

WILL THERE BE ANY ENFORMCEMENT ACTION TAKEN IN THE POWELL BUTTE II TITLE # 10 CODE VIOLATION CASE ?

- March 11,2010, the Bureau of Development Services sent an e-mail to the Water Bureau requesting the installation of a construction access entrance which was required by code to be installed in October,2009. March 11,2010, e-mail details dimensions, exact location, and code citation of the requirements requested.
- March 19,2010, the Water Bureau informed BDS that the required entrance would be installed "next week". Seven weeks passed!
- April 30,2010, the Water Bureau told BDS that the required entrance would be installed "next week". Again the "next week" passed without the requirements being installed.

Will there be any enforcement action taken in the Powell Butte Reservoir II Title # 10 Code Violation ? (e-mails attached)

Monday, May 17, 2010 AOL: lbauerpvna

Linda Bauer

Your message is ready to be sent with the following file or link attachments:

April, 30,2010
March 11, 2010
March 19,2010

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Monday, May 17, 2010 AOL: lbauerpvna

Subj: **RE: Powell Butte Reservoir 2**
Date: 12/8/2010 4:02:10 P.M. Pacific Standard Time
From: WIREN.Mer@deq.state.or.us
To: lbauerpvna@aol.com

Hi Linda,

I have made some calls/emails to discuss your concerns. It seems to me that your concern for notification in the event of catastrophic failure of two reservoirs is a subject for the Water Bureau's 'Emergency Response and Notification Plan'. I don't know the particulars of the Bureau's plan but I understand that they have such a document and perhaps you have been given a copy via Teresa Elliot. Questions concerning the emergency plan or the engineering of the project are outside my expertise and are best directed to Teresa Elliot.

The existing NPDES permit which I manage is not a permit or permission to discharge 100 million gallons of water at one time via Johnson Creek. The permit is for normal routine maintenance activities that require releases of water in far smaller quantities than that. Those releases are subject to monitoring and measurement with regular monthly reporting of results. Chlorinated water is subjected to de-chlorination prior to release. The permit is explicit and specific.

I hope this is helpful. Thanks for your inquiry.

Mer

Mer Wiren, P.E.
Environmental Engineer, Permit Writer
Northwest Region Water Quality, Source Control Section
Department of Environmental Quality
2020 SW 4th Ave, Ste 400
Portland, OR 97201-4987

503-229-5292
wiren.mer@deq.state.or.us

From: lbauerpvna@aol.com [mailto:lbauerpvna@aol.com]
Sent: Wednesday, December 01, 2010 2:47 PM
To: WIREN Mer
Subject: Powell Butte Reservoir 2

Let me know if I can get you anything else ! Staff person is Teresa Elliott 503-823-7622

Linda Bauer

Wednesday, December 29, 2010 AOL: lbauerpvna



City of Portland, Oregon
Bureau of Development Services
Land Use Services

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

**NOTICE OF A PUBLIC HEARING BEFORE
THE CITY COUNCIL ON AN APPEAL OF THE
PORTLAND LAND USE HEARINGS OFFICER**

CASE FILE: LU 10-169463 CU MS EN AD Powell Butte Master Plan Amendment
WHEN: Thursday, February 3, 2011, at 2:00 PM
WHERE: COUNCIL CHAMBERS, 1221 SW FOURTH AVENUE

Date: January 10, 2011
To: Interested Person
From: Stacey Castleberry, Land User Services, 503-823-7586
Sylvia Cate, Land Use Services, 503-823-7771

A public hearing will be held to consider an appeal of the Hearings Officer's decision to approve amendments to the 2003 Powell Butte Master Plan, Environmental and Adjustment reviews, all to allow final construction of Portland Water Bureau water system facilities, Portland Parks & Recreation park center amenities, stormwater management facilities and trails on Powell Butte, in Southeast Portland. The Hearings Officer's decision of approval with conditions has been appealed by the East Portland Neighborhood Organization Land Use and Transportation Committee, chaired by Linda Bauer.

At the hearing, City Council will consider the appeal. You are invited to testify at the hearing. This will be an On-the-Record hearing, one in which new evidence cannot be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

GENERAL INFORMATION

File No.: LU 10-169463 CUMS EN AD (HO 4100019)

Applicant: Teresa Elliott, Project Manager
Portland Water Bureau
1120 SW 5th Avenue, Room 600
Portland, OR 97204

**Applicant's
Representative:** Tim Brooks, Main Contact
Winterbrook Planning
310 SW 4th Avenue, #1100
Portland, OR 97204

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representatives: Sylvia Cate and
Stacey Castleberry

Site Address: 15800 SE Powell Boulevard
Legal Description: BLOCK 5 LOT 1 TL 2300, ANDEREGG MEADOWS; LOT 5&6 TL 3400
SPLIT LEVY R562710 (R42850-0510 & R562741 (R42850-0520),
JENNELYND AC; LOT 13 TL 2500, JENNELYND AC; LOT A, JOHNSON

CREEK PK; LOT 5-10, SYCAMORE AC; LOT 11&12, SYCAMORE AC; LOT 13-18, SYCAMORE AC; LOT 19, SYCAMORE AC; TL 1100 0.63 ACRES, SECTION 12 1S 2E; TL 700 115.48 ACRES, SECTION 12 1S 2E; TL 100 160.00 ACRES, SECTION 13 1S 2E; TL 400 7.88 ACRES, SECTION 13 1S 2E; TL 300 108.60 ACRES, SECTION 13 1S 2E; TL 200 121.00 ACRES, SECTION 13 1S 2E; TL 400 6.73 ACRES, SECTION 07 1S 3E; TL 500 6.36 ACRES, SECTION 07 1S 3E; TL 6900 11.40 ACRES, SECTION 18 1S 3E; TL 3700 12.41 ACRES SPLIT MAP R340557 (R993180870), SECTION 18 1S 3E; TL 6700 2.67 ACRES SPLIT LEVY R495375 (R428501910), SECTION 18 1S 3E; TL 900 2.85 ACRES, SECTION 18 1S 3E; TL 1700 22.00 ACRES SPLIT MAP R340528 (R993180520), SECTION 18 1S 3E; TL 1800 0.56 ACRES SPLIT MAP R340558 (R993180880), SECTION 18 1S 3E

Tax Account No.: R025703610, R428500500, R428501850, R431100010, R816600170, R816600400, R816600480, R816600720, R992124320, R992124390, R992130010, R992130040, R992130050, R992130060, R993071210, R993075180, R993180510, R993180520, R993180740, R993180750, R993180870, R993180890

State ID No.: 1S3E18B 02300, 1S3E18B 03400, 1S3E18B 02500, 1S2E13C 00600, 1S2E13D 00500, 1S2E13D 00600, 1S2E13D 00700, 1S2E13D 00800, 1S2E12DA 01100, 1S2E12 00700, 1S2E13 00100, 1S2E13D 00400, 1S2E13 00300, 1S2E13 00200, 1S3E07C 00400, 1S3E07C 00500, 1S3E18BB 06900, 1S3E18C 03700, 1S3E18BB 06700, 1S3E18B 00900, 1S3E18B 01700, 1S3E18B 01800

Quarter Section: 3445, 3446, 3447, 3545, 3546, 3547, 3645, 3646, 3647
Neighborhood: Pleasant Valley
Business District: Midway
District Coalition: East Portland
Plan District: Johnson Creek Basin Plan District – South Subdistrict
Zoning: OS, R10, R2, a, c, p: Open Space, Single Dwelling Residential 10,000, Multi-Dwelling Residential 2,000 with Environmental Conservation, Protection and Alternative Design Density overlay zones
Land Use Review: Type III, Conditional Use Master Plan Amendment and Environmental Review with Adjustments (CUMS EN AD)

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 9:00 a.m. on November 15, 2010, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 10:47 a.m. The record was held open until 4:30 p.m. on November 23, 2010 for new evidence, and until 4:30 p.m. on December 3, 2010 for Applicant's final rebuttal. The record was closed at that time.

Testified at the Hearing:

Stacey Castleberry, BDS Staff Representative

Sylvia Cate, BDS Staff Representative

Teresa Elliott, City of Portland Water Bureau, 1120 SW 5th Avenue, Room 600, Portland, OR 97204

Tim Brooks, Winterbrook Planning, 310 SW 4th Avenue, #1100, Portland, OR 97204

Ariana Longanecker, personally and on behalf of the Audubon Society of Portland and the Powell Butte Advisory Committee, 2535 SE Salmon Street, Portland, OR 97214

Linda Bauer, personally and on behalf of the East Portland Land Use Transportation Committee, 6232 SE 158th, Portland, OR 97236

Carol Pernar, personally and on behalf of Friends of Powell Butte, 2105 SE 142nd, Portland, OR 97233

Proposal: In 2003, the City approved the Powell Butte Conditional Use Master Plan, which implemented the first 10 years (through 2013) of planned water system improvements and park improvements set forth in the 1996 Powell Butte Master Plan ("1996 Plan").

The Applicant, the Portland Water Bureau ("PWB"), seeks approval of a Conditional Use Master Plan Amendment and Environmental Review, with Adjustments to development standards. This request, if approved, will effectively amend and update the 2003 Powell Butte Conditional Use Master Plan - LUR 00-00414 MS CU EN AD (the "2003 Plan"), and approve construction of water system, park facility, and trail improvements in the area addressed by the Master Plan.

The 2003 Plan approved development, including construction of a new underground water reservoir (Reservoir #2), water system components and park improvements. The current application seeks to amend the 2003 Plan, as specific footprints of various features have been refined via analysis of wetlands, etc., and with input from a sustained public input process.

The main features of the **water system development** currently proposed include: final construction of Reservoir #2, the new underground 50 million gallon water reservoir (site preparation for the 50 million gallon reservoir was approved as 'Stage 1' in LU 09-125820 EN AD); an emergency overflow pipe that connects to an existing overflow structure located at Johnson Creek; and Conduit 5, a new water pipeline that will connect to Conduits 2, 3 and 4 to supply water to the reservoirs from the Bull Run Watershed.

Stormwater facilities for the reservoir area will be mostly replaced with shallow, meandering swales, one north and northeast of Reservoir #2, and one south of Reservoir #1. Swales will be planted with native vegetation and shaded by deciduous trees. Stormwater flows moving through the vegetated swales will be filtered at the soil/root interface, reducing velocities and allowing sediments to be removed from the runoff before leaving the project site. Revisions to the Stormwater Plan trigger amendments to the 2003 Plan.

Park center improvements will include a new caretaker's residence, a maintenance facility building and storage yard, an interpretive center (with ADA-accessible restrooms), an outdoor teaching amphitheater, reconfigured and paved parking area, revised Trail Master Plan ("Trail Plan"), and the SE 162nd Avenue entry road will be repaved after construction and configured with bike and pedestrian lanes.

Stormwater from the maintenance facility and park center area will flow to a new stormwater detention pond north of the bus parking area to provide quantity and quality control. The 12-inch sewer will be extended and will direct stormwater from the pond to the expanded infiltration area at the base of the Butte. Stormwater runoff from the interpretive center and caretaker's residence will be routed to either soakage trenches or flow-through facilities, depending on conditions found during construction.

This proposal also includes an update to the Trail Plan. The new Trail Plan has been modified to minimize impacts to wildlife, vegetation and potential wetlands, and provide an outdoor recreational experience that is more compatible with the natural qualities of the site. The proposed design resulted from months of collaboration among community groups, park users, City agencies, and project landscape architects and ecologists. These changes also trigger amendments to the 2003 Plan.

The Applicant requests three **Adjustments** to Master Plan Development Standards as follows:

- An Adjustment to allow a wider disturbance area (greater than 40 feet in width) for construction of Conduit 5 pipeline;

- An Adjustment to allow a more effective shrub replanting standard for the Conduit 5 corridor and the open meadow area, which will result in a higher density planting of shrubs than required; and
- An Adjustment to allow a wider tree removal exemption area (greater than 5 feet) in order to construct the new maintenance facility, stormwater detention pond, stormwater line, Conduit 5 and parking areas, all which require an excavation beyond the 5-foot limit on moderate slopes.

The proposal triggers Environmental Review for the new water system components (as approved in the 2003 Plan), as well as the park center facilities and the new trail system, as amended by this Master Plan Amendment. The proposed projects are located in the Environmental zones and must comply with the approval criteria established by the 2003 Plan.

Review Summary

In order to amend the 2003 Plan, to gain approval of the proposed project elements in the Environmental zones, and to Adjust the 2003 Plan development standards, the Applicant requests the following approvals:

1. Type III Conditional Use Master Plan Amendment (CUMS) to reflect revised plans for park center components, stormwater facilities, and the updated Trail Plan;
2. Type II Environmental Review (EN) using existing 2003 Plan criteria to construct the amended Master Plan components (from 1, above) and construct other 2003 Plan components (such as Reservoir #2 and Conduit 5); and
3. Type II Adjustment Review (AD) using Adjustment criteria in Portland City Code ("PCC") Zoning Code section 33.805, as directed by the 2003 Plan) to address needed Adjustments to 2003 Plan development standards.

Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria specified in the PCC Title 33, Zoning Code. The applicable approval criteria are:

- | | |
|---|--|
| ▪ Conditional Use Master Plan 33.820.050 and 33.820.070 | ▪ Powell Butte Master Plan approval criteria for Environmental Review. |
| ▪ Conditional Use 33.815.100 | ▪ Adjustments 33.805.040 A-F |

REVIEW BODY DECISION

Approval of:

- Amendments to the Conditional Use Master Plan for Powell Butte, with the duration of the amended Master Plan to extend at least the requested five years from the date of the final decision of this Land Use Review, or until the approved Master Plan is superseded by a request to further amend and update the Master Plan, or until all proposed development approved under this amendment is completed, within a maximum of ten years from the date of the final decision;
- Environmental Review to construct water system and park center components, stormwater facilities, and trails; and
- Adjustment Review to allow a disturbance area wider than 40 feet for Conduit 5; to allow shrub plantings as shown on Exhibits C.46 through C.60; to allow tree removal as shown on Exhibits C.78 through C.89; and to allow parking lot plantings as shown on Exhibits C.46 through C.60;

which together, allows the implementation and development of 'Stage 2' construction of a new underground water reservoir, water system components, trails, and park improvements; in substantial conformance with Exhibits C.8 through C.91.

The main features of the water system development include: final construction of Reservoir #2, a new underground 50 million gallon water reservoir; an emergency overflow pipe which connects to an existing overflow structure located at Johnson Creek; and Conduit 5, a new

water pipeline which will connect to Conduits 2, 3 and 4 to supply water to the reservoirs from the Bull Run Watershed.

Associated stormwater facilities for the reservoir area and park center improvements, including a new caretaker's residence, a maintenance facility building and storage yard, an Interpretive Center (with ADA-accessible restrooms), an outdoor teaching amphitheater, reconfigured and paved parking area, a revised trail plan, and the SE 162nd Avenue entry road reconfigured with bike and pedestrian lanes are projects included in this approval.

The Environmental Review and Adjustment Review approvals are subject to Conditions of Approval A through D, and F presented below:

The Conditional Use Master Plan Amendment Review approval is subject to Conditions of Approval E and F, presented below:

- A. All Permits:** As part of any Site Development permit, grading permit, and/or building permit application submittal, the following development-related conditions (B through D) must be noted on each of the required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-169463 CU MS EN AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Site plans required for permit review:** The following site plans shall be submitted with applications for permit review of the project elements. Trail plans shall be at a scale of 1"= 100' or larger. All other site plans listed below shall be at a scale of 1 inch = 60 feet, or larger.
1. Construction management plans shall be included. They shall conform with Exhibits C.62 through C.88 and graphically show the following:
 - a. Temporary 4-foot or 6-foot high construction fencing shall be placed along the Limits of Construction Disturbance for the approved development, as depicted on Exhibits C.62 through C.88 Construction Management and Tree Protection Plans, or as required by inspection staff at permit time.
 - b. No mechanized construction vehicles are permitted outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence or in the case of trail construction, the 'limits of Construction Disturbance' designated for each trail construction corridor. Such equipment is restricted to small-scale walk-behind or ride-on mechanized equipment with a track width no larger than 48 inches. All planting work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
 - c. Accurately show the clearing limits required for the outfall improvements noted on Exhibit C.25 Proposed Development Johnson Creek Outfall Structure.
 - d. Construction management plans shall include details of the culvert extension pipes and armoring along Pipeline Road, and include construction notes as needed to prescribe erosion and sediment control measures (including incorporating more vegetation) around the culverts, and shall show BES-required drainage reserves over all drainageways.
 2. Detailed construction plans for trail improvements shall be included at the time of permit review for trails. They shall conform with Exhibits C.31 through C.36 and C.75 through C.77, and graphically show the following:
 - a. Accurate topography, delineation of wetlands and water bodies and plant composition existing within 50 feet of each proposed trail.
 - b. Site-specific construction plans, including grading, and construction details, footing details, and sections/elevations for each proposed trail, bridge, boardwalk, causeway, and stairway. Grading (earthwork) may be shown using cross sections and details; proposed grading contours need only be shown for hard-surfaced trails.

- c. Accurate alignment, width and paving materials of each trail.
 - d. Proposed grading showing existing and proposed contours on hard surface trails.
 - e. Proposed temporary construction area delineated and dimensioned along each trail.
 - f. Proposed restoration measures for temporary construction areas.
 - g. Identify construction techniques (hand held equipment, track hoe, etc.).
 - h. Tree protection measures graphically depicted, and approved by the City Forester.
 - i. Barricading or restoration measures for trails to be closed.
3. A graphic Tree Protection Plan shall be included with any permit application, indicating the location of construction fencing for tree protection for all trees to be retained, in conformance with attached Exhibit A.2, Alternative Tree Protection Plan. Temporary tree protection fencing shall conform with the Alternative Tree Protection Plan and Tree Protection Plan, or as required by inspection staff during the Plan Review and/or inspection stages.
4. Final Planting plans shall be submitted at permit time, for Planning and Zoning review and approval. The plan shall illustrate the location, species, quantity, spacing and sizes of all required landscape and mitigation plantings. Landscape plans shall include parking lot landscaping and shall demonstrate that all parking-lot landscaping requirements from PCC 33.266 are met.

The plans shall show each of the following:

- a. A total of 1,414 trees, 27,357 shrubs, and native groundcovers, selected from the Portland Plant List, shall be planted, in substantial conformance with Exhibits C.46 through C.61 and C.90 and C.91.
 - b. All temporary construction areas shall be planted with native vegetation.
 - c. Plantings shall be installed between October 1 and March 31.
 - d. Prior to installing required plantings, non-native invasive plants (including invasive hawthorn and blackberry) shall be removed from all areas within ten feet of plantings.
 - e. The Applicant shall water plantings as necessary for survival.
 - f. All required trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector. All tape shall be a contrasting color that is easily seen and identified.
 - g. After installing the required plantings, the Applicant shall request inspection of Permanent Erosion Control Measures (IVR 210) by BDS, who will confirm that all required mitigation plantings have been installed. A letter of certification from the landscape professional or designer of record may be requested by BDS to document that the plantings have been installed according to the approved plans.
5. Final Wetland Mitigation plans shall be provided at permit review and shall include all proposed grading, proposed hydrologic conditions (Ordinary High Water), and all proposed plant species, locations, quantities, sizes, and spacing. These plans shall be consistent with wetland mitigation descriptions presented in Exhibits A.21, C.90 and C.91.
6. Stormwater plans demonstrating that all new parking lot landscaping areas shall be shown to meet the requirements of Section 1.5 of the Stormwater Management Manual, to be reviewed and approved by BES.
7. The Applicant shall submit a plan showing all drainageways and any drainage reserve locations, along with detailed information regarding all work proposed to be done within drainage reserve areas, to be reviewed and approved by BES.
- C. An inspection of Permanent Erosion Control Measures** shall be required to document installation of the required mitigation plantings.
- 1. The **Permanent Erosion Control Measures** inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described in Condition B.4 above);
- OR--

2. If the **Permanent Erosion Control Measures** inspection (IVR 210) occurs outside the planting season (as described in Condition B.4 above), then the Permanent Erosion Control Measures inspection may be approved prior to installation of the required mitigation plantings – if the Applicant obtains a separate **Zoning Permit** for the purpose of ensuring an inspection of the required mitigation plantings by March 31 of the following year.
- D.** The landscape professional or designer of record shall monitor the required plantings for five years to ensure survival and replacement as described below. The land owner is responsible for ongoing survival of required plantings beyond the designated five-year monitoring period. The landscape professional shall:
1. Provide a minimum of five letters (to serve as monitoring and maintenance reports) to the Pleasant Valley Neighborhood Association and to the Land Use Services Division of BDS (Attention: Environmental Review LU 10-169463 CU MS EN AD), containing the monitoring information described below. Submit the first letter within 12 months following approval of the Permanent Erosion Control Inspection of the required mitigation plantings. Submit subsequent letters every 12 months following the date of the previous monitoring letter. All letters shall contain the following information:
 - a. A count of the number of planted trees that have died. For the 1,177 required trees, an 80% survival rate is required (replacement must occur within one planting season).
 - b. The percent coverage of native shrubs and ground covers. If less than 80 percent of the planting areas, and restored temporary disturbance areas, are covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
 - c. A list of replacement plants that were installed.
 - d. Photographs of the mitigation area and a site plan, in conformance with Final Planting Plans described above in Condition B.4, showing the location and direction of photos.
 - e. A description of the method used and the frequency for watering mitigation trees, shrubs, and groundcovers for the first two summers after planting. All irrigation systems shall be temporary and above-ground.
 - f. An estimate of percent cover of invasive species (invasive hawthorn, English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis) within ten feet of all plantings. Invasive species must not exceed 20 percent cover during the monitoring period.
- E.** At time of reconfiguration of parking lot, a minimum of 65 passenger vehicle spaces and four bus/horse trailer spaces must be provided.
- F.** Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to PCC, Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

APPEAL

The Hearings Officer's decision of approval with conditions has been appealed by the East Portland Neighborhood Organization Land Use and Transportation Committee. According to the appellants' statement, the appeal of the Hearings Officer's decision is based on arguments that:

- Approval Criterion 33.815.100 C is not met as it pertains to safety. The appellant requests as much early notification of a 1,000-year flood as is possible for residents downstream of the flood so that families can get out of harm's way in time.
- Powell Butte Master Plan Approval Criterion #7 is not met. Criterion #7 requires all Zoning Code requirements be met unless superseded by the Master Plan. Changing topography,

grading, excavating and filling requires environmental review. The applicant did not address grading excavating or filling as part of the environmental review.

- The Development Standard of the Powell Butte Master Plan, that requires erosion control, is not met. The rock construction entrance required by City Title 10 was not built.
- The Development Standard of the Powell Butte Master Plan, that pertains to outfalls discharging to Johnson Creek is not met. The permits from applicable state and federal agencies have not been obtained.

Review of the case file: The Hearings Officer's decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4th Avenue, # 5000, Portland OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies. We can provide some of the information over the phone.

We are seeking your comments on this proposal. The hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. A description of the City Council Hearing process is attached.

If you choose to provide testimony by electronic mail, please direct it to the Council Clerk (kmoore-love@ci.portland.or.us). Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.

If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.

Attachments

1. Zoning Map
2. Site plan
3. Appeal Statement
4. City Council Appeal Process



ZONING

Site



NORTH

File No. LU 10-169463 CUMS.EN.AD

3445,3446,3447,3545,3546
1/4 Section 3547,3548,3645,3646,3647

Scale 1 inch = 900 feet

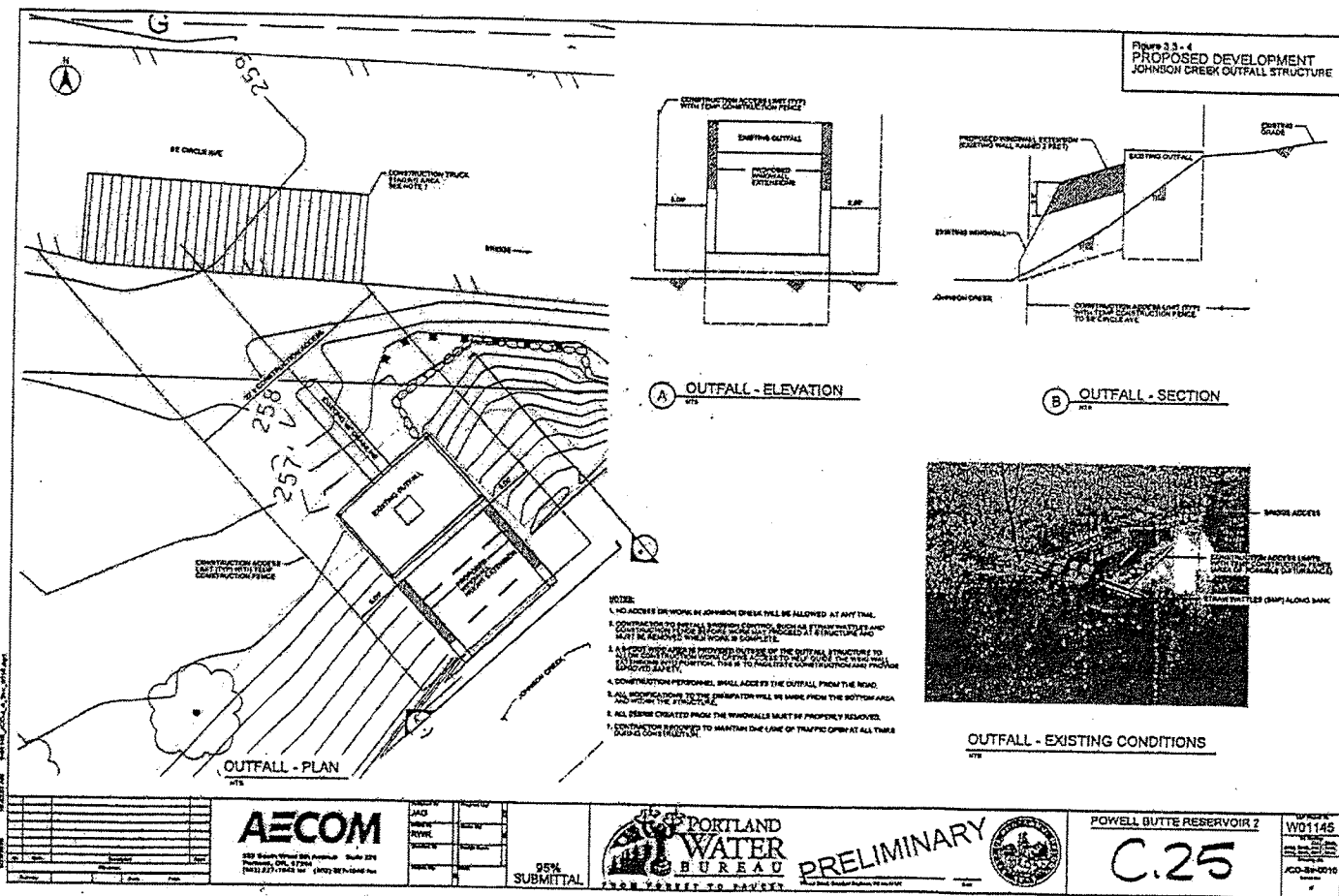
State Id 1S2E12 700

Exhibit B (Aug 25,2010)

FROM CONCEPT TO CONSTRUCTION

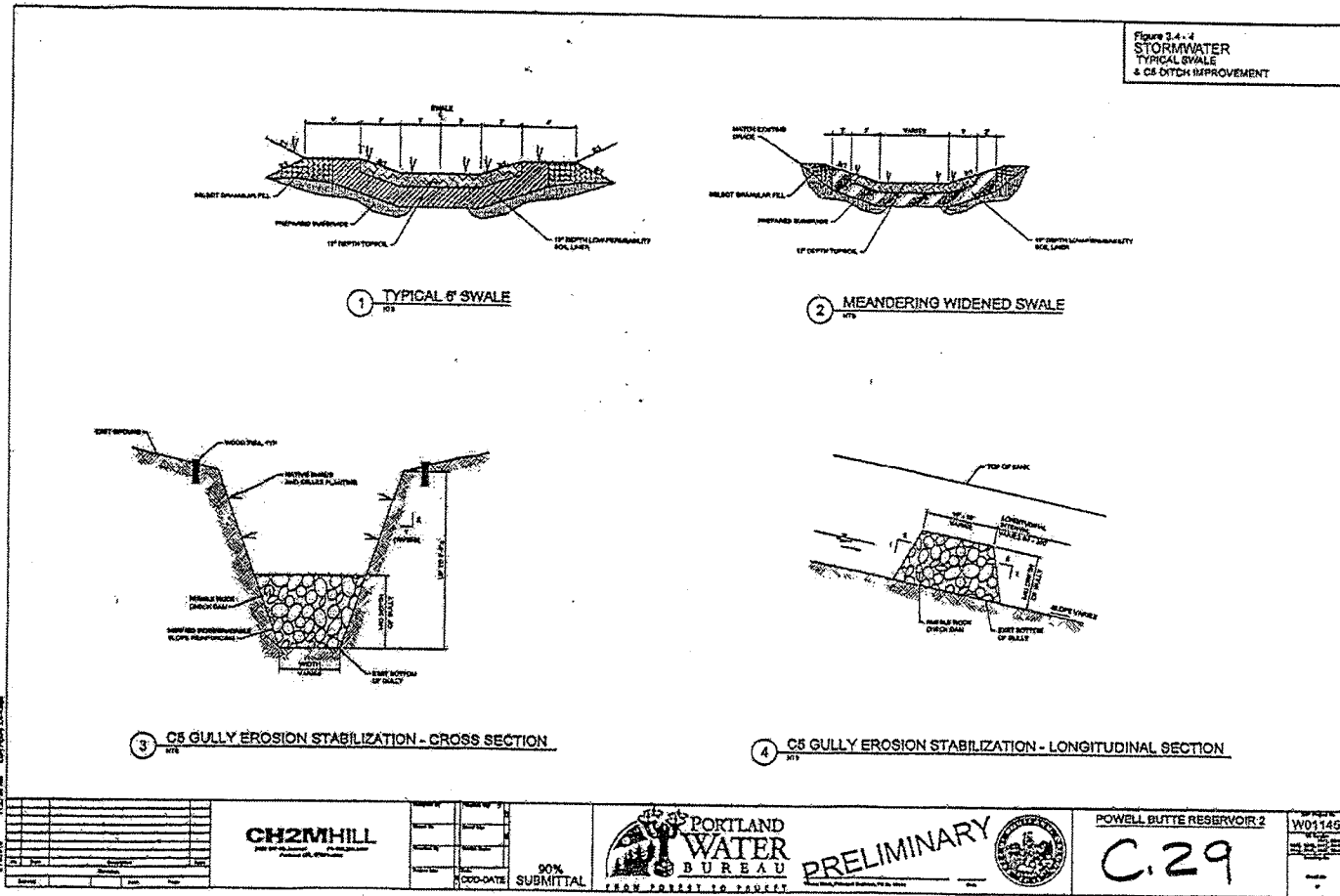
[illegible]

FROM CONCEPT TO CONSTRUCTION



[illegible]

FROM CONCEPT TO CONSTRUCTION



See Exhibits C.63 ~ C.74



City of Portland, Oregon - Bureau of Development Services

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



Type III Decision Appeal Form

LU Number: 00-169463 CUMSENAD

FOR INTAKE, STAFF USE ONLY

Date/Time Received 1/3/11 7:55 AM

☒ Action Attached

Received By CS

Fee Amount \$15,028.50

Appeal Deadline Date 1/3/11

☒ [Y] [N] Fee Waived

☒ Entered in Appeal Log 1/3/11

Bill # 3189599

☒ Notice to Auditor 1/4/11

☒ [Y] [N] Unincorporated MC

☒ Notice to Dev. Review 1/3/11

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

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

Development Site

Address or Location 15800 SE Powell

Date Jan. 3, 2011

Land Use Number LU. 10-169463

Appellant's Name East Portland Land Use & Transportation Co.

Street Address 6232 SE 158

City Portland

State Oregon

Zip Code 97236

Day Phone 503-761-2941 FAX Sam

email LBauerPVNA@aol.com

Appellant's Interest in the case (applicant, neighbor, etc.) Land Use Committee

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

attached

RECEIVED

JAN 03 2011

Appellant's Signature

Linda Bauer

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

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

CASE NO. 00-169463
EXHIBIT I.1

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

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

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

JAN 03 2011 1

Approval Criteria 33.815.100 C. Livability page 31 of the Decision of the Hearings Officer states, "A 1,000 year storm event, in staff's opinion, is such potential magnitude that the event could potentially overwhelm *any* carefully engineered system that meets all regulator requirements. Therefore, staff disagrees with the argument that the proposed stormwater system is not safe." If the committee was asking for ,say, the Water Bureau to flood-proof all of the houses down stream of the Water-Bureau-made flood event, then we would agree with staff and the Hearings Officer. But the request is for "as much early notification of a 1,000-year flood as is possible for residents downstream of the flood so that families can get out of harm way in time". Staff notes that the specified approval criteria is discretionary and requires, "The proposal will not have significant adverse impacts on the livability of nearby residential -zoned lands due to safety issues." A 1,000-year event may overwhelm any engineering system, but with advanced notice from the Water Bureau, loss of life can be kept to a minimum .

On Page 46 of the Decision of the Hearing Officer , "7. All Zoning Code requirements are met unless superseded by the Master Plan." The Hearings Officer finds in error that all zoning code requirements that are not superseded by the Master Plan

CASE NO. 00-169463
EXHIBIT I.12

have been met. "88.430.070 (E.) Changing topography, grading, excavating, and filling :" was not superseded by the Master Plan and requires that an environmental review be done when grading, excavating, or filling is proposed to occur in an environmental zone, such as Powell Butte Park . The applicant did not address any grading, excavating , or filling impacts as part of the environmental review that was done even though the requirement for environmental review is clearly stated. In fact, the words excavating or filling do not appear anywhere in the environmental review section of the application.

Page 64 of the Decision of the Hearings Officer says, that the standard for erosion control "will be met." The same requirements was supposed to be met in the last land use approval, but the Water Bureau has 35 out-standing Title # 10 violations which mean that the erosion control standards were not met and may not be met in this land use process either. Attached is Mr. Shaff's letter that states, " We agreed in good faith to construct the rock entrance,". Development Services requested the Water Bureau to install the construction entrance on March 11,2010, but as you can see from Mr. Shaff's letter, the entrance was not installed until the week of May 13, 2010.

“Title # 10 Violations of Title” (Attached) (A.) explains what a violation is and (B.) explains that “Each specific incident and each day of non-compliance shall be considered a separate violation of this Title.” The Water Bureau did not comply with BDS’s repeated requests for installation of the rock entrance which resulted in 35 out-standing violations to Title # 10.

On page 62 of the Hearings Officer Decision states, “Further analysis has concluded that changes to the reservoir associated with this project will not alter the probability or severity of an emergency overflow event discharging to Johnson Creek.” How can the release of an additional 50-million gallons of water not affect the severity of an emergency overflow discharging to Johnson Creek ?

The standard says, “Outfalls may discharge storm water or overflow into Johnson Creek if designed to reduce potential erosive effects and if authorized by applicable state and federal permits.” The issue that was raised was that no permits from state or federal agencies were submitted as proof that this standard has been met. In fact, this standard has not been met. Staff submitted to the Hearings officer a statement that Ms. Bauer was given a copy of a permit from DEQ, but that permit only covers regular maintenance discharges to Johnson

Creek and only in specific amounts. That permit does not cover overflows.

33.430.060 Where These Regulations Apply

These regulations apply to all environmental zones, except those in the Columbia South Shore Plan District that are south of NE Marine Drive, those in the Cascade Station/Portland International Center Plan District, those that are within the Smith and Bybee Lakes Natural Resources Management Plan area, City-owned land within the Forest Park Natural Resources Management Plan area, and the Peninsula Drainage District No. 1 Natural Resources Management Plan area. See Chapter 33.515, Columbia South Shore Plan District, Chapter 33.508, Cascade Station/Portland International Center Plan District, the Smith and Bybee Lakes Natural Resources Management Plan, the Forest Park Natural Resources Management Plan, or the Natural Resources Management Plan for the Peninsula Drainage District No. 1.

33.430.070 When These Regulations Apply

Unless exempted by Section 33.430.080, below, the regulations of this chapter apply to the following:

- A. Development;
- B. All land divisions and property line adjustments;
- C. Removing, cutting, mowing, clearing, burning, or poisoning native vegetation listed in the *Portland Plant List*;
- D. Planting or removing plants listed on the Nuisance Plants List;
- E. Changing topography, grading, excavating, and filling;
- F. Resource enhancement; and
- G. Dedication and expansions of rights-of-way.

33.430.080 Items Exempt From These Regulations

The following items, unless prohibited by Section 33.430.090, below, are exempt from the regulations of this chapter. Other City regulations such as Title 10, Erosion Control, must still be met:

- A. Change of ownership;
- B. Temporary emergency procedures necessary for the protection of life, health, safety, or property;
- C. Existing development, operations, and improvements, including the following activities:
 - 1. Maintenance, repair, and replacement of existing structures, exterior improvements, roads, public recreational trails, public rest points, public view points, public interpretative facilities, and utilities. Replacement is not exempt whenever coverage or utility size is increased;
 - 2. Continued maintenance of existing gardens, pastures, lawns, and other planted areas, including the installation of new irrigation and drainage facilities, new erosion control features, and the installation of plants except those listed on the Nuisance Plants List. Change of crop type or farming technique on land currently in agricultural use. Pruning trees and shrubs within 10 feet of structures;

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

- 10.70.050 Voluntary Compliance Agreement
- 10.70.060 Civil Penalties
- 10.70.070 Appeal of Notice of Violations and Penalties

10.70.010 Violation of Title.

- A.** The following actions shall constitute a violation of this Title:
 - 1. Any failure, refusal or neglect to comply with any requirement of this Title.
 - 2. Allowing or causing a condition that threatens to injure public health, the environment, or public or private property.
 - 3. Failure to correct ineffective erosion, sediment and pollutant control measures after being required to do so by the Director.
- B.** Each specific incident and each day of non-compliance shall be considered a separate violation of this Title.

10.70.020 Notice of Violation.

- A.** Written Notice of Violation. When the Director determines that a violation of this Title has occurred, the Director shall notify the responsible party and the property owner in writing that a violation of this Title has occurred. The notice of violation shall either be delivered to the responsible party or posted at the property site of the violation, and mailed to all responsible parties. If the address of the responsible party is unknown, then the notice shall, in addition to being posted at the site, be published in a local newspaper for one week. This publication shall serve as the mailed notice.
- B.** The written notice shall include the following information:
 - 1. Date violation has occurred;
 - 2. Permit number, where applicable;
 - 3. Site address, legal description or project location;
 - 4. Description of violation;
 - 5. Disclosure that civil penalties, charges and liens may result from a failure to remedy the violations;

09/30/10

Subj: **FW: Emailing: April, 30,2010, March 11, 2010, March 19,2010**
Date: 5/13/2010 11:50:32 P.M. Pacific Daylight Time
From: amanda.fritz@portlandoregon.gov
To: lbauerpvna@aol.com

Please tell me your reaction to this response.

Thank you,

Amanda

Amanda Fritz
Commissioner, City of Portland

Please note new e-mail address: amanda@portlandoregon.gov

To help ensure equal access to City programs, services and activities, the City of Portland will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities. Call 503-823-2036, TTY 503-823-6868 with such requests or visit http://www.portlandonline.com/ADA_Forms

From: Shaff, David
Sent: Thursday, May 13, 2010 9:18 AM
To: Commissioner Fritz
Cc: Leonard, Randy; Adams, Sam; Fish, Nick; Saltzman, Dan; 'Benninghoff.Benjamin@deq.state.or.us'; 'Jurries.Dennis@DEQ.state.or.us'; Stuhr, Michael; Elliott, Teresa
Subject: RE: Emailing: April, 30,2010, March 11, 2010, March 19,2010

Commissioner,

Thank you for your patience. I am taking the liberty of copying my answer to your question to the original recipients of Ms. Bauer's email below so that the rest of the Council has the information as well.

The short answer is that the work has been completed and there is no code violation. We have confirmed that with both BDS and BES special inspectors. There is of course a longer, more detailed answer as well.

The Powell Butte Project has five sets of erosion control requirements we are following – erosion control manual, site development permit, DEQ1200-c permit, land use review and the contract documents themselves. All of the requirements are similar with minor wording differences and are general guidelines using best management practices. When and if a requirement conflicts, we employ the most stringent of the requirements. The assumption and practice is that as conditions on a construction project change, we review and adjust the best management practices to fit the changed conditions.

The original Erosion Control Plans for the project (designed for us by BES) were approved without a rock construction entrance after the wheel wash facility. These plans were reviewed and approved for the Site Development Permit and the 1200C

Monday, May 17, 2010 AOL: lbauerpvna

permit for Erosion Control by both BDS and DEQ. The plans called for a 1/4 mile of gravel road after the wheel wash in place of a rock construction entrance (which is only 50 feet in length) to prevent tracking of dirt and mud into the paved right of way (SE Powell Blvd and SE 162nd Ave). The project ground disturbing activities began in September 2009. The erosion control measures are inspected and maintained daily by PWB and the contractor and has been regularly inspected by BDS, BES and PWB special inspectors to make sure the contractor is in compliance. Because of the project's location in the Nature Park and sensitivity to erosion control and storm water issues, we have gone above and beyond the erosion guidelines and requirements. In addition to going above and beyond meeting the established requirements to manage the stormwater and erosion control during the project, all public concerns and complaints were received and addressed in the most prompt manner (i.e. sweeping, washing etc.). This will be continued until the Phase 1 project is complete and will be followed between contracts and during Phase 2. The erosion control measures have been extremely successful in preventing visible or measureable sediments from entering the right of way or Johnson Creek. Our regulators have been very pleased with the efforts.

Linda Bauer complained to BDS in March 2010 that a rock entrance had not been installed. After review by BDS, BES and PWB staff it was determined the rock entrance is one of many best management practice suggestions. Some of the language in the Erosion Control Manual results in conflicting direction between "should" and "shall" regarding rock construction entrances after a wheel wash facility. In the past the Erosion Control Manual has been regarded as a recommendation, not a mandate, with each project reviewed for site specific erosion control. Even though BDS (and the original BES Erosion Control Plans designer) agreed that we were meeting erosion control from a visual and functional standpoint with the existing situation, and were meeting all approved plan requirements, BDS suggested we add a rock entrance prior to the pavement as another tool. We agreed in good faith to construct the rock entrance, even though we believed it was not needed.

We had the contractor put in a rock entrance, and there was a miscommunication regarding size of rock. The contractor put in 2 1/2 -inch minus rock, 50 feet long, in early April. This rock does not meet the manual requirements. The manual defines a rock entrance as 2-inch to 6-inch rock, 50 feet long. We have redirected the contractor to place the required rock as specified in the manual. The contractor did not work very many days in April hauling material because of the unusually wet weather. This was another protective measure to control sediment tracking into the right of way. Because of the limited work in April, we allowed the contractor to defer reinstalling the second rock entrance until dryer weather in order to avoid the risk of creating erosion of the wet soils. The contractor completed the rework of the rock entrance this week.

Although the hauling activity is completed for Phase I, the new rock entrance will be used for Phase II. As part of the Phase 1 work the erosion control measures are being repaired or replaced in preparation for the Phase 2 Construction. In addition we are looking at what additional best management practices would be effective over the next six months to maintain the project until Phase II begins.

As always, if you would like to have more information please let me know.

David Shaff, Administrator
Portland Water Bureau

Monday, May 17, 2010 AOL: lbauerpvna

From: Commissioner Fritz
Sent: Monday, May 10, 2010 8:42 AM
To: Shaff, David
Subject: FW: Emailing: April, 30,2010, March 11, 2010, March 19,2010

Please tell me why there's been a two month delay since the absence of this facility was brought to the Water Bureau's attention, and when it will be installed.

Thank you,

Amanda

Amanda Fritz
 Commissioner, City of Portland

Please note new e-mail address: amanda@portlandoregon.gov

To help ensure equal access to City programs, services and activities, the City of Portland will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities. Call 503-823-2036, TTY 503-823-6868 with such requests or visit http://www.portlandonline.com/ADA_Forms

From: lbauerpvna@aol.com [mailto:lbauerpvna@aol.com]
Sent: Monday, May 10, 2010 7:50 AM
To: Leonard, Randy; Adams, Sam; Commissioner Fritz; dsaltzman@ci.portland.or.us; Commissioner Fish; Benninghoff.Benjamin@deq.state.or.us; Jurries.Dennis@DEQ.state.or.us
Subject: Emailing: April, 30,2010, March 11, 2010, March 19,2010

Commissioner Leonard, Mayor Adams, and Portland City Council Members:

WILL THERE BE ANY ENFORMCEMENT ACTION TAKEN IN THE POWELL BUTTE II TITLE # 10 CODE VIOLATION CASE ?

- March 11,2010, the Bureau of Development Services sent an e-mail to the Water Bureau requesting the installation of a construction access entrance which was required by code to be installed in October,2009. March 11,2010, e-mail details dimensions, exact location, and code citation of the requirements requested.
- March 19,2010, the Water Bureau informed BDS that the required entrance would be installed "next week" . Seven weeks passed!
- April 30,2010, the Water Bureau told BDS that the required entrance would be installed "next week". Again the "next week" passed without the requirements being installed.

Will there be any enforcement action taken in the Powell Butte Reservoir II Title # 10 Code Violation ? (e-mails attached)

Monday, May 17, 2010 AOL: lbauerpvna

Linda Bauer

Your message is ready to be sent with the following file or link attachments:

April, 30,2010
March 11, 2010
March 19,2010

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Monday, May 17, 2010 AOL: lbauerpvna

Subj: **RE: Powell Butte Reservoir 2**
Date: 12/8/2010 4:02:10 P.M. Pacific Standard Time
From: WIREN.Mer@deq.state.or.us
To: lbauerpvna@aol.com

Hi Linda,

I have made some calls/emails to discuss your concerns. It seems to me that your concern for notification in the event of catastrophic failure of two reservoirs is a subject for the Water Bureau's 'Emergency Response and Notification Plan'. I don't know the particulars of the Bureau's plan but I understand that they have such a document and perhaps you have been given a copy via Teresa Elliot. Questions concerning the emergency plan or the engineering of the project are outside my expertise and are best directed to Teresa Elliot.

The existing NPDES permit which I manage is not a permit or permission to discharge 100 million gallons of water at one time via Johnson Creek. The permit is for normal routine maintenance activities that require releases of water in far smaller quantities than that. Those releases are subject to monitoring and measurement with regular monthly reporting of results. Chlorinated water is subjected to de-chlorination prior to release. The permit is explicit and specific.

I hope this is helpful. Thanks for your inquiry.

Mer

Mer Wiren, P.E.

Environmental Engineer, Permit Writer

Northwest Region Water Quality, Source Control Section

Department of Environmental Quality

2020 SW 4th Ave, Ste 400

Portland, OR 97201-4987

503-229-5292

wiren.mer@deq.state.or.us

From: lbauerpvna@aol.com [mailto:lbauerpvna@aol.com]

Sent: Wednesday, December 01, 2010 2:47 PM

To: WIREN Mer

Subject: Powell Butte Reservoir 2

Let me know if I can get you anything else ! Staff person is Teresa Elliott 503-823-7622

Linda Bauer

Wednesday, December 29, 2010 AOL: lbauerpvna

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

1. SUBMISSION OF LEGAL ARGUMENT

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

2. COUNCIL REVIEW

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

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

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

3. OTHER INFORMATION

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

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