



# City of Portland, Oregon - Bureau of Development Services

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



## Type III Decision Appeal Form

LU Number: LU 10-200954 CU AD

### FOR INTAKE, STAFF USE ONLY

Date/Time Received 5/23/11 1:00 pm

Received By Char Sharkey

Appeal Deadline Date 5/23/11

☐ Entered in Appeal Log

☒ Notice to Auditor

☒ Notice to Dev. Review

☒ Action Attached

Fee Amount 5,716.50

☒ [N] Fee Waived

Bill # 3236522

[Y] [N] Unincorporated MC

**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 6217 SW GARDEN HOME ROAD

Date 5/22/2011

Land Use Number LU-10-200954 CU AD

Appellant's Name ASHCREEK NEIGHBORHOOD ASSOCIATION (DEAN S. SMITH, PRESIDENT)

Street Address 8802 SW 52ND AVENUE

City PORTLAND

State OR

Zip Code 97219

Day Phone 503-351-0521

FAX

email smithd1111@comcast.net

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

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

THE PROPOSAL DOES NOT MEET THE PROVISIONS OF CHAPTER 33.815.101 THAT IT MUST BE COMPATIBLE WITH ADJACENT RESIDENTIAL DEVELOPMENTS BASED ON CHARACTERISTICS SUCH AS... BUILDING SCALE AND STYLE...

THE PROPOSAL DOES NOT MEET THE AUGUSTUS FAR AS SET FORTH IN CHAPTER 33.110.246.

Appellant's Signature

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

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

CASE NO. 10-200954 CUAD  
EXHIBIT #.1-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.



# City of Portland, Oregon - Bureau of Development Services

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## Type III Decision Appeal Fee Waiver Request for Organizations

FOR INTAKE, STAFF USE ONLY		ORGANIZATION NOTIFICATION	
LU Number: <u>LU 10-200954 CU AD</u>	Date/Time: <u>5/23/11</u>		
Date/Time Received: <u>5/23/11 1:00 pm</u>	Received By: <u>CS</u>		
Received By: <u>Char Sharkey</u>	<input checked="" type="checkbox"/> Waiver Approved	<input type="checkbox"/> Waiver Denied	

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

**This form is to request a waiver for the fee charged for an appeal. To file an appeal, a separate form must be completed.**

Development Site Address or Location 6217 SW GARDEN HOME ROAD  
PORTLAND OR 97219

File Number LU-10-200954 CU AD Appeal Deadline Date MAY 23, 2011

### Organization and Appeal Information

Organization Name ASHCREEK NEIGHBORHOOD ASSOCIATION

Person Authorized by the Organization to file the Appeal DEAN S. SMITH

Street Address 8802 SW 52ND AVENUE

City PORTLAND State OR Zip Code 97219

Day Phone 503-351-0521 FAX \_\_\_\_\_ email smithd1111@comcast.net

By signing this form, the organization confirms that:

- ☒ yes ☐ no The organization testified orally or in writing at the hearing, and the testimony was directed to a specific approval criterion;
- ☒ yes ☐ no The appeal is being made on behalf of the recognized organization, and not on behalf of an individual; and
- ☒ yes ☐ no The vote to appeal was done in accordance with the organization's bylaws.

Name/Title DEAN S. SMITH, PRESIDENT

Signature/Date [Signature], MAY 22, 2011

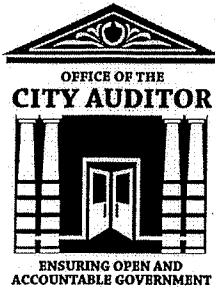
Please complete all of the information requested below.

See reverse side for additional information on fee waiver requirements.

Date of meeting when the vote to appeal the land use decision was taken :
The decision to appeal was made by a vote of (check one of the following):
<input checked="" type="checkbox"/> The general membership in a meeting of the organization as listed above.
<input type="checkbox"/> The board in a meeting of the organization as listed above.
<input type="checkbox"/> The land use subcommittee in a meeting of the organization as listed above.
Please include at least one of the following:
<input checked="" type="checkbox"/> A copy of the minutes from the meeting when the vote to appeal was taken.
<input checked="" type="checkbox"/> Vote results to appeal - Number of YES votes to appeal <u>9</u> Number of NO votes to appeal <u>0</u>

To request a waiver of an appeal fee for a land use review take:

☒ This completed fee waiver request form and any supplemental information necessary to qualify for a fee waiver. The appeal fee waiver request and the appeal must be filed by the deadline listed in the Decision. The appeal fee waiver request and the appeal can be filed concurrently. The form(s) 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.



## CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

### Hearings Office

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

Portland, OR 97201

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

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



## DECISION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File No.:** LU 10-200954 CU AD (HO 4100031)

**Applicants:** Mark Knudson, Chief Engineer  
Peter Boone, Project Manager  
Tualatin Valley Water District  
1850 SW 170th Avenue  
Beaverton, OR 97006

Garden Home Water District, property owner  
6217 SW Garden Home Road  
Portland, OR 97219-3140

**Applicants' Representatives:** Montey Hurley and Chris Goodell  
AKS Engineering and Forestry, LLC  
13910 SW Galbreath Drive, Suite 100  
Sherwood, OR 94140

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Sylvia Cate

**Site Address:** 6217 SW GARDEN HOME ROAD

**Legal Description:** TL 5700 0.35 ACRES, SECTION 19 1S 1E; TL 5600 0.30 ACRES,  
SECTION 19 1S 1E

**Tax Account No.:** R991193100, R991196590

**State ID No.:** 1S1E19CB 05700, 1S1E19CB 05600

**Quarter Section:** 3823

CASE NO. 10-200954 CUAD  
EXHIBIT T.2

**Neighborhood:** Ashcreek

**Business District:** None

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

**Plan District:** None

**Zoning:** R10: Single Dwelling Residential

**Land Use Review:** Type III, CU AD: Conditional Use and Adjustments

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

**Public Hearing:** The hearing was opened at 1:30 p.m. on February 16, 2011, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 3:19 p.m. The record was held open until 4:30 p.m. on April 15, 2011 for new written evidence and until 4:30 p.m. on April 22, 2011 for the Applicants' final rebuttal. The record was closed at that time.

**Testimony and Exhibits Considered in Making Decision:** The Hearings Officer considered all testimony offered at the public hearing and also all written documents contained in the public record excepting for Exhibit H.52. The Hearings Officer notes that extensive instructions were communicated by the Hearings Officer, at the close of the public hearing, regarding the submission of documents that would be considered by the Hearings Officer in making this decision. In particular, the Hearings Officer stated that the Hearings Office date/time stamp would be considered as the "official time" reference in determining if a document was to be considered submitted timely. Based upon the "official time" stamp, Exhibit H.52 was considered submitted after the record closed and therefore not considered in making this decision.

**Testified at the Hearing:**

Sylvia Cate, BDS Staff Representative

Chris Goodell, AKS Engineering, 13910 SW Galbreath Drive, Suite 100, Sherwood, OR 97140

Peter Boone, Tualatin Valley District, 1850 SW 170th Avenue, Beaverton, OR 97006

Joseph Carmody, 8116 SW 62nd Place, Portland, OR 97219

Jack Klinker, Ashcreek Neighborhood Association President/Representative, 8700 SW 54th Avenue, Portland, OR 97219

Dean Smith, 8802 SW 52nd Avenue, Portland, OR 97219

Nancy Donner, 6254 SW Garden Home Road, Portland, OR 97219

Dr. Charold Baer, 8039 SW 62nd Place, Portland, OR 97219

Lyndon Ruhnke, 8121 SW 62nd Place, Portland, OR 97219

**Proposal:** Applicant, Tualatin Valley Water District ("TVWD"), operates a water reservoir and distribution facility at real property generally described as 6217 SW GARDEN HOME ROAD

(legal description above- hereafter referred to as the "Site"). The other Applicant, Garden Home Water District, is the owner of the Site.

Currently located on the Site are two steel water tanks, each with the capacity of .5 million gallons ("MG"). One water tank was constructed in 1952 and the other water tank was constructed approximately ten years later. TVWD proposes to upgrade and redevelop the water tank facility at the Site by demolishing the existing water tanks and replacing them with a single 2 MG concrete reservoir. TVWD notes that the existing tanks are approaching 50 and 60 years old and do not meet current codes for seismic standards, nor do they contain an ideal amount of storage capacity to provide an adequate supply of water to the surrounding community.

The existing tanks are approximately 45 feet in height and the proposed concrete reservoir will be approximately 46 feet in height. The Site has a fenced compound around the two water tanks, with an open area to the southwest landscaped with low plants and shrubs with wide gravel pathways and public benches. The east and northern portion of the Site is landscaped with a relatively dense and mature border of sequoia trees. TVWD notes that a few of these trees will be removed to accommodate the improvements, but the majority will remain and be preserved.

At the time of the public hearing TVWD was requesting two Adjustments. Per Exhibits H.40b and H.48 TVWD now requests only one Adjustment. The remaining Adjustment, if granted, would allow vehicle access areas on the Site to remain in gravel rather than be paved with impervious asphalt.

This application triggers a Type III Conditional Use review due to the extent of the redevelopment of an existing conditional use in a residential zone. The requested Adjustment is reviewed concurrently.

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- 33.815.105 Conditional Use approval criteria
- 33.805.040. A-F, Adjustment approval criteria

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was filed, provided that the application is complete at the time of filing, or complete within 180 days. This application was filed on December 15, 2010, and determined to be complete on December 30, 2010.

## II. ANALYSIS

**Site and Vicinity:** The Site comprises two lots, approximately .63 acres in area, and is developed with two steel water tanks and associated vaults, valves and piping. The water facility is currently surrounded by a black chain-link security fence. The southwestern corner of the Site is landscaped with low plants and shrubbery with gravel pedestrian paths and three public benches situated at

various points in this landscaped area. The Site has frontage at the northeastern corner of the intersection of SW Garden Home and SW 62<sup>nd</sup> Avenue. The surrounding area in all directions is single dwelling residentially zoned lots, with R10 immediately surrounding the Site and north of SW Garden Home, and R7 zoned lots to the south of the Site and SW Garden Home Road. The vicinity is residential and characterized by relatively large lots and significant pockets of tree canopy. SW Garden Home Road is designated as a Neighborhood Collector Traffic Street and SW 62<sup>nd</sup> is designated as a Local Service Street for all modes. SW Multnomah Boulevard, running generally east-west, is approximately 600 feet north of the Site and is designated as a District Collector, Transit Access Street, City Bikeway, City Walkway, Truck Access, Major Emergency Response, Community Main Street and Greenscape Street; SW Multnomah Boulevard exerts less direct influence on the Site than SW Garden Home Road.

**Zoning:** The Site is zoned R10, a single dwelling residential zone.

**Land Use History:** City records indicate there are three prior land use reviews for this Site (the following information was taken from BDS staff comments found in Exhibit H.10):

- ZC 4405: Planning Commission initiation of adoption of City zoning for Maplewood Annexation Area, circa 1963-1964. Note: No additional information regarding this case (such as the Ordinance Number of the authorizing Ordinance) was found in the logbook of the microfiche record. Please see the Planning Commission Report in the original case file for a detailed discussion of the characteristics of each sub-area in the Maplewood Annexation Area as well as the Planning Commission's specific recommendation for each of the proposed zone changes.
- VZ 99-80: Variance request to six development standards reviewed concurrently with CU 99-80, a Conditional Use request to add two 1.15 MG water storage tanks together with a pump station on a .66 acre site developed with two existing water tanks.

The variances requested included an increase in maximum height from 35 feet to 45 feet; to decrease the front yard setback on SW 62<sup>nd</sup> Place from 20 to 7 feet; a decrease to the side yard setback along the north from 10 feet to 8 feet; to decrease the front yard setback along SW Garden Home for the proposed pump station from 30 feet to 12 feet; to increase the permitted height within the front yard setbacks for a fence from 3 ½ feet to 6 feet and to allow the height of an evergreen hedge from 3 ½ feet to 15 feet; and to increase the permitted height within the side and rear setbacks to the north and east from 6 feet to 35 feet for an evergreen hedge.

- CU 99-80: The Applicant requested a Conditional Use to locate two additional 1.15 MG water storage tanks and a pump station on the subject property, immediately west of the existing two water tanks. Landscaping and a six-foot fence are proposed to buffer the proposal from adjacent properties.

The two land use reviews, CU 99-80 and VZ 99-80, were submitted to the City of Portland on November 14, 1980. The staff report to the Hearings Officer recommended approval with conditions. The Hearings Officer denied the entire request on February 20, 1981. The Hearings Officer's decision was subsequently appealed to the Planning Commission, which overturned the Hearings Officer's decision in part, and approved the Conditional Use and 5 of the 6 variances, but denied the variance for height. That decision was subsequently appealed to City Council; City Council remanded the matter back to the Planning Commission for reconsideration. While the appeal and remand were still pending, the Applicant requested, in writing, on April 16, 1982, that "...the application be withdrawn without further proceedings and without prejudice to the applicant."

**Agency Review:** A "Request for Response" was mailed January 3, 2011. The following bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services (BES) responded with no objections, but recommended that plants utilized for landscaping be native species.

The Portland Bureau of Transportation (PBOT) Engineering responded with no objections, but notes that a dedication and hardscaped pedestrian paths will be required at the time of building permit review.

**Neighborhood Review:** A Notice of a Public Hearing on a Proposal in Your Neighborhood (Exhibit H.1) was mailed on January 25, 2011. No written responses were received from either the recognized Neighborhood Association or notified property owners prior to the issuance of the BDS Staff Report and Recommendation to the Hearings Officer (Exhibit H.2). Extensive participation by the Ashcreek Neighborhood Association and owners/occupants of properties in the vicinity of the Site occurred through testimony at the public hearing and by written submissions (for example, see Exhibits H.6, H.21, H.22, H.34 H.45, H.47, H.49 and H.50 – not intended as a complete/comprehensive list of all written opponent submissions). Opponents' primary concerns related to Portland Zoning Code ("PCC") sections 33.815.105 A, B and C. Opponents also raised issues dealing with PCC 33.815.010, PCC 33.805.140 A, traffic, noise, safety, open space/park area on the Site, Floor Area Ratio ("FAR") calculations, notice (or lack thereof) to the Ashcreek Neighborhood Association ("Ashcreek NA") and property values. Where the issue raised relates to a relevant approval criterion, the Hearings Officer will address it within the findings for that approval criterion. The Hearings Officer will address the notice and property value issues in the "Preliminary Comments" section below.

**Preliminary Comments:**

A number of issues were raised by opponents that are not easily discussed in the findings for relevant approval criteria. The Hearings Officer will address these issues below.

**Property Values.**

Opponents stated (Exhibits H.45 and H.56 contain the same information) that approval of the application in this case "will most definitely drive our property values down..." Opponents asserted that the application in this case should be denied because of potential property value impacts if approved. The Hearings Officer takes note of PCC 33.800.050 A. which states, in relevant part, that:

"the approval criteria that are listed with a specific review reflect the findings that must be made to approve a request. The criteria set the bounds for the issues that must be addressed by the applicant and which may be raised by the City or affected parties."

The Hearings Officer finds no relevant approval criteria indicating that the impact of property values must be considered in this case. The Hearings Officer did not consider relevant the impact that approval of this application might have upon the value of properties in the nearby area.

**Notice.**

A letter submitted by the Ashcreek NA President (Exhibit H.21) states that, in part:

"Did not get proper notice: Ashcreek NA did not receive proper notice. We changed our Land Use Chair last spring and have notified the city 3 times of the change. The old LU chair was still listed as our contact and he is no longer active."

Written testimony of the Chairman of the Land Use Committee of the Ashcreek NA (Exhibit H.22), stated, in part:

"My name is Dean Smith. I am Chairman of the Land Use Committee of the Ashcreek Neighborhood Association. I have been in that position for over six months- a fact that I note only because notifications of this conditional use application were misdirected to the former Chair and, thus, our Association has had only a few days' advance warning of this proposal. We recognize that is not a fault of the City, as apparently the internal processes of our Southwest Neighborhood office were to blame."

The Hearings Officer finds that a Notice of a Public Hearing on a Proposal in Your Neighborhood ("Notice") is dated January 25, 2011, indicating a hearing before the City of Portland Land Use Hearings Officer was scheduled for February 16, 2011 (Exhibit D.5). The Hearings Officer finds that Exhibit D.5 indicates the Notice was mailed to the Ashcreek NA (Gary Miniszewski) and to Southwest Neighbors (Leonard Gard). (See also Exhibit D.6 showing a mailing date of January 25, 2011).

The Hearings Officer finds that the public hearing before the Hearings Officer was held on February 16, 2011. PCC 33.730.030 D.1 requires that written notice be mailed, to certain identified persons/entities/properties "at least 20 days before the scheduled hearing." Included within the list of persons/entities/properties are "recognized organization(s) in which the lot is located, and to all recognized organizations within 10,000 feet of the lot." (PCC 33.730.030 D.1.) The Hearings



Officer finds that written notice was mailed February 16, 2011, "at least 20 days before" the scheduled hearing. The Hearings Officer finds that the written notice requirements of PCC 33.730.030 D were met in this case.

The Hearings Officer also notes that the purpose of mailing notices is to give an opportunity of those identified in PCC 33.730.030 D to comment on an application before a decision making body. In this case, the record remained open from February 16, 2011 until April 15, 2011 (a period of approximately 58 days). The Hearings Officer finds that the extended open-record period (2/16/11-4/15/11) provided the Ashcreek NA adequate time to submit, in writing, any and all of its comments and concerns.

The Hearings Officer finds neither the Ashcreek NA nor any person entitled to notice in this case was prejudiced for lack of adequate notice.

#### **Floor Area Ratio.**

TVWD, BDS staff and opponents considered the planning concept of FAR in arguments relevant to findings for PCC 33.815.105. However, opponents disagreed with the interpretation of FAR offered by TVWD and BDS staff. The Hearings Officer will address this issue in the following findings.

FAR is defined in PCC 33.910 as:

"The amount of floor area in relation to the amount of site area, expressed in square feet. For example, a floor area ratio of 2 to 1 means two square feet of floor area for every one foot of site area."

Floor Area is defined in PCC 33.910 as:

"The total floor area of the portion of a building that is above ground. Floor area is measured from the exterior faces of a building or structure. Floor area includes the area devoted to structured parking that is above ground level. Floor area does not include the following:

- Areas where the elevation of the floor is 4 feet or more below the lowest elevation of an adjacent right-of-way;
- Roof area, including roof top parking;
- Roof top mechanical equipment; and
- Roofed porches, exterior balconies, or other similar areas, unless they are enclosed by walls that are more than 42 inches in height, of 50% or more of their perimeter."

Ashcreek NA argued that:

"the calculations of Staff are based on the notion that this structure is but one floor in height – a floor that is, in fact, 46 feet tall. The appropriate way to calculate FAR, as a measure of bulk and therefore visual impact and compatibility of scale, is to base it on the standard floor height of a structure, which is 10 feet per floor. Using Staff's basis for calculating FAR, the proposed structure would have to be 170.4 feet tall to exceed the allowable FAR. Staff's method of calculating FAR would render this metric in the code meaningless as a means of measuring visual impact and affect on neighborhood character." (Exhibit H.50)

Ashcreek NA, using its methodology as expressed above, calculated the FAR of the proposed water tower to be 1.06 (thereby exceeding the institutional development standard of 0.5 to 1). TVWD and BDS staff, using only one floor in their calculations, arrived at a FAR of 0.27 (within the institutional development standard of 0.5 to 1). (Exhibits H.48 and H.53)

The Hearings Officer views the disagreement related to FAR calculations between the Ashcreek NA and TVWD/BDS staff to simply be "how many floors" are to be considered. The Hearings Officer finds that the definition (PCC 33.910) of FAR uses the term "floor area." The Hearings Officer finds that "floor area," although also defined in PCC 33.910, does not define the word "floor." PCC 33.700.070 D.1 states that:

"words used in the zoning code have their dictionary meaning unless they are listed in Chapter 33.910, Definitions. Words listed in the Definitions chapter have the specific meaning stated, unless the context clearly indicates another meaning."

The word "floor" is defined in the Merriam-Webster Online Dictionary as:

1. the level base of a room
2.
  - a. the lower inside surface of a hollow structure (as a cave or bodily part)
  - b. a ground surface <the ocean *floor*>
3.
  - a. a structure dividing a building into stories; *also*: STORY
  - b. the occupants of such a floor
4. the surface of a structure on which one travels < the *floor* of a bridge>
5.
  - a. a main level space (as in a stock exchange or legislative chamber) distinguished from a platform or gallery
  - b. the specially prepared or marked area on which indoor sports events take place
  - c. the members of an assembly <took questions from the *floor*>
  - d. the right to address an assembly <the senator from Utah has the *floor*>
6. a lower limit

The Hearings Officer finds that "floor," in the context of "floor area" is best described as the "base level of a room" and "the lower inside surface of a hollow structure." The Hearings Officer finds that a water tank has a base level (the bottom surface of the water tank). The Hearings Officer finds that the PCC definition of "floor area" excludes the roof area. The Hearings Officer finds that a water tank is a hollow structure and the base level is the "floor." The Hearings Officer finds, based upon the dictionary definition of "floor," that the proposed water tower has one floor. The Hearings Officer finds TVWD/BDS staff's calculation of FAR correctly used one floor. The Hearings Officer finds the FAR for the water tower in this application is approximately 0.27 to 1.

#### **Prior Land Use Case.**

Opponents suggest that a prior "decision" related to the Applicant and the Site (CU 99-80) should be considered by the Hearings Officer in making the decision in this case (Exhibits H.6, H.21 and H.34). Ashcreek NA stated, in Exhibit H.21, that:

"while the specifics of the rules have changed the Planning Commission in 1981 denied requested variances and only allowed variances that were minor changes or to allow adequate screening. The

specified more screening, not less screening. Also they limited the tank heights that were proposed near to the street. They also insisted on a flood control system. There is no flood control system and TVWD is proposing twice as much water."

BDS staff provided comments, during the open record period, related to CU 99-80 and related case VZ 99-80 (Exhibit H.10). BDS opined that events surrounding the City's consideration of CU 99-80 and VZ 99-80 have:

"no bearing on the current proposal for a variety of reasons, including the following:

- 1] The 1980 proposal is substantially different from the current proposal;
- 2] The approval criteria in 1980 are substantially different from the zoning regulations and applicable approval criteria in effect for the current application;
- 3] The zoning in 1980 was R10 [R7] while today's zoning is R10 with no Comprehensive Plan Designation to a more dense residential zone;
- 4] Current zoning regulations include specific development standards for institutional and other uses in the R zones, and therefore there is no requirement to request a height variance as Title 33 [Table 110-5] allows such uses to have a maximum of 50 feet in height; and
- 5] There are no zoning regulations that prohibit an applicant from requesting a Conditional Use review and approval of the same proposal or a different proposal regardless of the outcome of a prior application."

The Hearings Officer concurs with the above-quoted BDS staff comments from Exhibit H.10. The Hearings Officer finds reliance, in any way, upon Applicant or City actions taken in case CU 99-80 or VZ 99-80 would be inappropriate.

## **ZONING CODE APPROVAL CRITERIA**

### **Conditional Uses**

#### **33.815.010 Purpose**

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

**Hearings Officer Note:** A number of opponents, in written submissions, appear to assert that PCC 33.815.010 is a relevant approval criterion (Exhibits H.6, H.22, H.25 and H.50). PCC 33.815.010 is a Purpose statement and as it is drafted it is not an independent relevant approval criterion. The Hearings Officer finds PCC 33.8015.010 is a general expression of goals and objectives that the City of Portland desired when adopting Conditional Use regulations. *Freeland v. City of Bend*, 45 Or LUBA 125, 130 (2003) *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006), *aff'd* 210 Or App 467

(2007) The Hearings Officer notes that relevant approval criteria are considered in the context of PCC.815.010.

### **33.815.105 Institutional and Other Uses in R Zones**

These approval criteria apply to all conditional uses in R zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in a residential zone that maintain or do not significantly conflict with the appearance and function of residential areas. The approval criteria are:

**A. Proportion of Household Living uses.** The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:

1. The number, size, and location of other uses not in the Household Living category in the residential area; and

**Findings:** There is no dispute, based upon the evidence in the record, that the “area” described by BDS staff of approximately 800 feet from the Site, is reasonable and appropriate. The Hearings Officer also notes that there is no dispute, based upon the evidence in the record, that the existing water towers on the Site constitute the only non-Household Living uses (excepting for vacant land) in the “area.”

The Hearings Officer notes, however, that the opponents and TVWD/BDS staff generally disagree as to how the evidence in the record should be considered in the context of this approval criterion.

Ashcreek NA argues that this approval criterion is not met because:

“this increases the size. The proposal would double the total amount of above ground storage. It’s going to be twice as big. Check their tank on Cornell and Miller Rd. It is the same diameter and it’s shorter. It’s huge. We are getting something even bigger. That one is, thankfully, in a non-residential area.” (Exhibit H.21)

PCC 33.815.105 A.1 demands an inquiry into the “number, size and location of other uses not in the Household Living category in the residential area” to determine if the “overall residential appearance and function of the area” will be “significantly lessened due to the increased proportion of uses not in the Household Living category.” This particular section of PCC 33.815.105 requires two issues to be addressed. First, identify non-Household Living category uses in the “area.” Second, if there is an increase in the proportion of non-Household Living category uses, will the overall residential appearance and function of the “area” be significantly lessened.

The Hearings Officer, based upon experience in many other Conditional Use cases, finds that PCC 33.815.105 A.1 was included by City Council in the PCC to discourage the proliferation of Conditional Uses in a particular residential area. The Hearings Officer finds, for example, that an applicant may seek Conditional Use approval in a residential area where there already exists many other non-Household Living category uses. This approval criterion provides the analysis to determine if there are "just too many" non-Household Living category uses already existing in a residential area. Such analysis may determine that adding "just one more" non-Household Living category use will significantly change the overall residential appearance and function of the residential area.

The Hearings Officer finds that no other non-Household Living category use, except for the water towers on the Site, was identified by BDS staff, TVWD or opponents to exist within the "area." The Hearings Officer finds that the existing use of the Site is properly labeled a non-Household Living use. The Hearings Officer finds that if the application is approved, the number of non-Household Living category uses will remain the same: one. The Hearings Officer finds that the proportion of Household Living Uses in the "area" will remain the same whether or not this application is approved or denied.

The Hearings Officer finds this approval criterion is met.

2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

**Findings:** This approval criterion does take into consideration the intensity and scale of the proposed water tower at the Site.

Ashcreek NA, in Exhibit H.21, stated that if this application is approved, it "increases the intensity and scale of use by a factor of 2. The new tank will be twice as big. They are going to store twice as much water there." Another opponent (Lamb), in Exhibit H.6, stated that:

"the new tank doubles the building land coverage from the existing 12% to 24%, excluding the gravel access. The size of the tank and surrounding gravel access will have a much larger footprint and significantly alter, and in some areas obliterate, the existing landscape...the scale and larger overall footprint of the proposed tank will negatively impact the residential appearance and significantly reduce the amount of sunlight my property receives. The overall bulk of the replacement reservoir will NOT be similar to the exiting two smaller tanks as those have a north-south orientation and the replacement will be east-west with a diameter of 91.5 ft., far greater than the existing two tanks." (Exhibit H.6)

The Hearings Officer notes that TVWD revised its proposal and eliminated the gravel access that previously circled the proposed new water tank; thus, TVWD no longer seeks a landscaping Adjustment.

Opponents Carmody, Smith and Donner testified at the public hearing and argued that the intensity and scale of the proposed water tank is significantly greater than the two existing water tanks.

TVWD's proposal is to demolish the two existing metal water tanks (.5 MG each; total capacity of 1 MG) and replace it with a single concrete water tank (2 MG capacity). The proposed new water tank would be approximately the same height as the two existing steel water tanks, but double the holding capacity.

PCC 33.815.010, although not an approval criterion, does describe the "purpose" of the Conditional Use regulations. PCC 33.815.010 states, in part, that:

"Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effect and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides and opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved."

Typical applications for Conditional Use approval include, but are not limited to, requests for the location of a school, church, public safety facility and radio transmission facilities to be located in a residential neighborhood. The Hearings Officer finds that in most Conditional Use applications, the proposed development is quite different in appearance and size if compared to the nearby residential structures. PCC 33.815.010 provides a process where a proposed Conditional Use project is considered; what, if any, are the impacts of the proposed Conditional Use upon the environment? Will the proposed Conditional Use overburden public services? Will the proposed Conditional Use significantly change the character of the area? Will the Conditional Use create one or more major nuisance(s)? The analysis provided for by Condition Use review does not prohibit a proposed Conditional Use just because it looks different, is not a residential use, or is different in size.

The Hearings Officer finds that one water tank, even a .5 MG water tank (similar to the ones currently on the Site), is really different in appearance, function and size as compared to a typical residential dwelling. Similarly, the Hearings Officer would find that a typical public school, a medium/large church, a fire station or a cellular transmission tower are different in appearance, function and size as compared to a

typical residential dwelling. Different is not the primary focus, as established by PCC 33.815.010, in a Conditional Use review. The Hearings Officer finds that the focus of a Conditional Use review, in particular approval criteria PCC 33.815.105 A.2, B and C, is the impact the proposed Conditional Use proposal will have upon the nearby residential area.

This approval criterion (PCC 33.815.105 A.2) focuses on the “intensity and scale” of the proposed replacement water tower. BDS staff, in Exhibit H.48, expended considerable effort to identify factors to be considered in an “intensity” analysis. BDS staff made reference to the PCC definition of “intensity”:

“Intensity. The amount or magnitude of a use on a site or allowed in a zone. Generally, it is measured by floor area. It may also be measured by such things as number of employees, amount of production, trip generation, or hours of operation.” (PCC 33.910)

The Hearing Officer agrees with BDS staff that “given the use of the proposed reservoir, there are no typical impacts that are normally associated with floor area.” (Exhibit H.48, page 5). The Hearings Officer also agrees with BDS staff comments that:

“the proposal does not increase trips, traffic, or parking associated with the increased storage capacity. The hours of operation remain the same, which is 24/7, but the operation of this facility is passive. [Please see Exhibit A.1, Applicant’s Narrative for a discussion regarding the passive use]. There are no adverse impacts associated with the increased water storage aside from the visual impacts of the proposed reservoir in relation to the immediately surrounding residential area.”

It is possible that water storage capacity could be considered in the context of “amount of production” per the definition of “intensity.” The Hearings Officer, however, finds that the typical neighborhood impacts resulting from an increase of production at a facility may include traffic, employees, noise, pollution and litter. The Hearings Officer finds that the increase in volume of water stored at the Site will not result in an increase in traffic, employees, noise, pollution or litter.

The term “scale” is not defined in PCC and therefore the Hearings Officer considers the dictionary definition. “Scale” is defined in the Merriam-Webster Online Dictionary as “a proportion between two sets of dimensions” and “a distinctive relative size, extent, or degree.” The Hearings Officer finds that two houses approximately the same size and design on a flat lot would be considered to be at the same scale. The Hearings Officer finds that a typical residential structure and a water tower (whether .5 MG or 2 MG) would not be at the same scale.

Because the scale is different between the proposed use and the existing Household Living uses, the Hearings Officer must consider whether or not such difference significantly lessens the overall residential appearance and function of the “area.”

The Hearings Officer finds that whether or not this application is approved, at least two .5 MG water tanks have the right to be located on the Site. The Hearings Officer finds that the "area" currently functions as a residential neighborhood. The Hearings Officer finds the "area" currently has the appearance of a residential neighborhood.

TVWD, in its final argument, provided the following analysis related to "scale" (Exhibit H.53):

"In addition to stating that the proposed replacement reservoir is too big for the site, testimony in opposition to the application asserts that the size (bulk, mass and setbacks) of the proposed replacement water reservoir significantly lessens the overall residential appearance of the neighborhood. As the proposed replacement reservoir complies with all the required institutional development standards for single family zones, the scale of the proposal is entirely appropriate for the site. Additionally, a substantial amount of evidence in the record shows that the scale of the proposed *replacement* reservoir will not significantly lessen the residential appearance and function of the area as it now exists. This information and its relevance are described below.

Some testimony in the record states that the proposed replacement reservoir is too large compared with the existing reservoirs, which have been characterized as having dramatically less bulk and mass, especially when viewed from the west. Misleading photos have been submitted to support this assertion.

- To accurately illustrate the scale of the existing reservoirs from the west:
  - 2 site photographs were submitted. These photographs include a shot taken of both existing reservoirs from SW 62<sup>nd</sup> Place near the site's existing driveway access and a shot taken of one of the existing reservoirs from just inside the site perimeter fence. These photographs were taken with a person standing next to the reservoirs to accurately reflect the large size of the existing reservoirs.
- To accurately compare the scale of the existing reservoirs with the scale of the proposed replacement reservoir:
  - A plan prepared by a professionally licensed engineer (dated 4/15/2011) was submitted, illustrating the height and width of the existing reservoirs together with the height and width of the proposed replacement reservoir (as viewed from the west). This plan clearly demonstrates that the scale of the proposed replacement reservoir is proportional to the existing reservoirs (combined). This plan demonstrates that if anything, the existing reservoirs have a slightly wider combined width (+/- 0.5 feet) than the proposed replacement reservoir when the space between the existing reservoirs is included, they take up a significantly greater area (+/- 876 square feet) than the proposed replacement reservoir when viewed from the west.

Other testimony in the record states that that the proposed replacement reservoir will shade and negatively affect the property to the north of the Garden Home Reservoir Site.



- To illustrate the potential for shading of the property to the north, a tree height survey (dated 4/15/2011) prepared by certified professional arborist and forester, and preliminary shadow plans (dated 4/15/2011), prepared by a licensed professional engineer have been included in the record. These plans included shading patterns based upon two different times of year, summer and winter. The plans demonstrate how shading created by the existing reservoirs, the proposed replacement reservoir, and the existing Sequoia trees affect this property. The shadow plans conclusively demonstrate that the shading that affects this property is created by the existing sequoia trees and not by the existing and/or proposed reservoir.

In addition to the above, three-dimensional renderings prepared by a professionally licensed landscape architect have been submitted. These renderings show the site with the proposed replacement reservoir from the multiple perspectives (including from the south and west) at the planting stage and at maturity. These documents depict the scale of the proposed replacement reservoir and provide context with landscaping and people included. Photo simulation models prepared by a professionally licensed architect have also been included in the record. The photo simulation models demonstrate the scale of the existing reservoirs as well as the scale of the proposed reservoir with existing and proposed landscaping as context."

The Hearings Officer finds the above comments, along with the referenced exhibits (Exhibits H.40b, H.40, H.40e, H.40f, H.51a, H.51b, H.51c, H.51d and H.51e), constitute substantial evidence that the existing two water tanks (with current landscaping) create impacts upon the adjacent residential properties. The Hearings Officer finds that the impacts will not significantly increase if this proposal is approved.

The Hearings Officer found written comments submitted by BDS staff (Exhibit H.48) regarding water tanks situated within the City of Portland to be instructive. According to the comments in Exhibit H.48, the City operates 64 water tanks in the metropolitan area. BDS staff noted that water tanks, in Portland, vary in shapes, sizes and configuration. The Hearings Officer finds that just because a water tank looks different, a siting application may be approved if the Conditional Use approval criteria are satisfied.

The Hearings Officer finds that the overall bulk and scale of the replacement reservoir will be somewhat larger than the existing water tanks. The new facility will have a concrete finish rather than the aging steel exteriors of the existing tanks. Overall, the proposal may increase the intensity and scale of the non Household use currently existing at the Site but, in the Hearings Officer's opinion, not significantly. The Hearings Officer finds that any increase in intensity and/or scale that might result from an approval of this application will not significantly lessen the overall residential

appearance and function of the "area." The Hearings Officer finds this approval criterion is met.

**B. Physical compatibility.**

1. The proposal will preserve any City-designated scenic resources; and

**Findings:** City-designated scenic resources are indicated by an 's' overlay on the official City zoning maps. None exist in the immediate area or on the Site itself. Therefore, this criterion is not applicable.

2. The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, and landscaping; or

**Findings:** As stated earlier, in findings for PCC 33.815 A.1, it is common for a Conditional Use proposal to include a structure that is not "just like" the surrounding residential improvements. PCC 33.815 does not prohibit Conditional Use proposals because the proposed structure is different; it requires, however, an analysis of the impacts arising from an approval of a Conditional Use application. In this specific approval criterion, the Conditional Use impact analysis takes into consideration site size, building scale and style, setbacks and landscaping of the proposed Conditional Use in comparison to adjacent residential developments.

The Hearings Officer finds that the Site consists of two tax lots and, in total, is 27,007 square feet in size. The Site is zoned for lots of 10,000 square feet or more. Many of the nearby residential lots are between 10,000 and 30,000 square feet in size. The Hearings Officer finds that the Site size is compatible with adjacent and nearby residential properties.

The Hearings Officer finds that the proposed water tank does not have the same building style as nearby residences. The Hearings Officer also finds that the existing two water tanks do not have the same building style as do nearby residences. The existing tanks and the proposed tank cannot be made to look like the adjacent residential structures; the tanks have a very institutional style as compared to the nearby residential structures.

As described in the findings for PCC 33.815.105 A.2 above, the scale of the proposed water tank can be viewed from the perspective of whether or not the proposal meets Institutional Development Standards. The Hearings Officer finds it important to keep in mind that PCC 33.110.245 A (Institutional Development Standards – Purpose) states that:

"general base zone development standards are designed for residential buildings. Different development standards are needed for institutional uses which may be

allowed in single-dwelling zones. The intent is to maintain compatibility with and limit the negative impacts on surrounding residential areas."

The Hearings Officer takes this opportunity to reiterate that approval of a Conditional Use proposal does not require the proposed use to "look just like" houses in the nearby residential area (PCC 33.815.010). This perspective is reinforced by PCC 33.110.245 A (Institutional Development Standards – Purpose). The Hearings Officer finds that often times institutional uses that locate in residential zones do not look like, and are bigger, than residences in the surrounding area. The focus, therefore, of both the Conditional Use approval criteria and the Institutional Development Standards is to approve a Conditional Use application so long as negative impacts are considered and, where possible, those impacts are mitigated.

In this case there is no practicable alternative, according to TVWD, to an above-ground water tank. The Hearings Officer also finds that it is not practicable to design the proposed water tower in a way that eliminates differences in scale and style. This case is similar to cell tower cases in that to accomplish the intended purpose, the structure will look different than surrounding development. (See BDS staff comments Exhibit H.48, pages 6 and 7, related to various water tank designs/sizes).

The Hearings Officer finds that the building scale does meet the Institutional Development Standards and therefore the scale of the proposed development can be considered compatible with adjacent residential development.

The Hearings Officer finds that setbacks (from the water tank) that are **proposed** in this application are (Exhibit H.42d):

East side of Site:	23.3 feet
North side of Site:	33.8 feet
West side of Site:	23.1 feet
South side of Site:	73.6 feet

The Hearings Officer finds that setbacks (from two water tanks) that **currently exist** at the Site are (Exhibit H.42a):

East side of Site:	
North water tank	15.6 feet
South water tank	13.5 feet
North side of Site:	53.2 feet
West side of Site:	
North water tank	76.4 feet
South water tank	78.5 feet
South side of Site:	38.8 feet

**R10** zoned property setbacks are as follows (Table 110-3):

[properties north of Garden Home Road]

Front (south side): 20 feet

Side/Rear (north,  
west and east): 10 feet

**R7** zoned property setbacks are as follows (Table 110-3):

[properties south of Garden Home Road]

Front: 15 feet

Side/Rear: 5 feet

**Institutional Development Standards** (Table 110-5):

Minimum building setbacks: 1-foot setback for every 2 feet height

[water tank height 46 feet = 23 foot setback]

The Hearings Officer finds that the proposed water tank will meet setback requirements for the R10 and R7 zones and also meet setback requirements as set out in the Institutional Development Standards. The Hearings Officer finds that setbacks in the current proposal are consistent with adjacent residential development and also consistent with the Institutional Development Standards.

The Hearings Officer finds that the landscape plan submitted by TVWD (Exhibit H.42g) proposes landscaping equal to or exceeding that found on adjacent residential properties. TVWD's landscape plan (Exhibit H.42g) shows extensive and mature landscaping along much of the eastern property boundary; the remaining area will be planted with trees and shrubs. TVWD stated that "the proposal includes approximately 2 ½ times more landscaped area than the required minimum." The Hearings Officer finds that the landscape plan (Exhibit H.42g) is generally compatible with the residential area.

The Hearings Officer finds that this approval criterion can be interpreted in more than one way. The Hearings Officer finds that a proposal may be considered compatible with adjacent residential developments if *each and every one* of the listed characteristics (site size, building style, setbacks, and landscaping) are found to be similar to the adjacent. Or, in the alternative, this approval criterion can be interpreted to require consideration of all of the listed characteristics followed by a determination that, on balance, the proposed development is considered compatible. In this case, the Hearings Officer finds that the building scale and style characteristics of the proposed water tank are not physically similar with adjacent residential development. Therefore, if the correct interpretation is that *each and every* listed characteristic must be similar/compatible, then this approval criterion is not met.

The Hearings Officer finds that the list of characteristics is not intended to be an exclusive checklist. The Hearings Officer finds that this approval criterion can still be

met even if one of the characteristics is found to be incompatible with the adjacent residential properties. The Hearings Officer finds that relevant characteristics need to be considered collectively and a balance test employed. The Hearings Officer finds that if, on balance, the characteristics of a proposal are compatible, then this approval criterion is met.

The Hearings Officer, above, found that all of the listed characteristics were compatible excepting that of style; the Hearings Officer found that the style of a water tower is not compatible with the adjacent residential development. However, when considering all of the characteristics listed in PCC 33.815.105 B.2 (site size, building scale and style, setbacks, and landscaping) the Hearings Officer finds that on balance the proposed water tank will be compatible with adjacent residential development. The Hearings Officer finds that the proposed water tower will not significantly conflict with the appearance and function of the "area." The Hearings Officer finds this approval criterion is met.

3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, and other design features.

**Findings:** The Hearings Officer finds that PCC 33.815.105 B.2 and B.3 are to be considered as alternatives. Between PCC 33.815.105 B.2 and B.3 is the conjunction "or." PCC 33.700.070 D.3 states, in part, that, "Unless the context clearly indicates otherwise, the following conjunctions have the following meanings: b. 'Or' indicates that the connected items or provisions may apply singly, or in combination." The Hearings Officer interprets the use of the conjunction "or" between PCC 33.815.105 B.2 and B.3 as giving an applicant who is unable to satisfy PCC 33.815.105 B.2 the right to satisfy only PCC 33.815.105 B.3.

As noted above, the Hearings Officer found that the only characteristic that was not compatible was "style;" not scale as identified in this approval criterion. However, even assuming that the proposed water tank is not compatible with adjacent residential development because of scale, the Hearings Officer finds that the proposal mitigates differences in appearance with landscaping, screening and other design features.

TVWD provided extensive discussion, including photos, photo simulations and site plans (Exhibits H.40 [all], H.42 [all] and H.51 [all]) to demonstrate that through landscaping and park-like amenities (bench and path), any appearance and scale differences that may be created as a result of construction of the proposed water tank will be mitigated.

The Hearings Officer finds that the proposed landscaping plan does mitigate, to the extent possible, the difference in appearance of the water tank and adjacent residential development. The Hearings Officer finds that so long as approval of this application is conditioned upon the conformance with the landscape plan (and

maintenance/monitoring), then this approval criterion can be met. TVWD intends to preserve a number of existing mature sequoia trees along the north and east property lines. The facility will be landscaped and behind a security fence as it is presently. In order to ensure that visual appearance remains similar to the existing facility, the proposal will be conditioned to utilize the same or similar existing black finish on the chain-link security fence.

To the extent that the Adjustment to landscaping depth and density, discussed below, is met, this criterion is met.

**C. Livability.** The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:

1. Noise, glare from lights, late-night operations, odors, and litter; and

**Findings:** There is nothing inherent in this proposal that would result in noise, odors or litter. As a basic node of water district infrastructure, the use operates around the clock all year, but the actual operation of the facility is virtually generally passive and unobservable to passersby or neighbors. The facility will be lit by low height security lighting that will not throw glare onto adjacent properties. Only during an emergency would there be noticeable exterior work activities during the late night hours. Normal operations will be intermittent maintenance visits that would occur during normal workday hours. The facility is not regularly staffed. There are no adverse impacts, as set forth in the exclusive list above, anticipated to result from this proposal. The Hearings Officer finds that this approval criterion is met.

2. Privacy and safety issues.

**Findings:** Currently there are two metal water tanks, .5 MG each, located on the Site. The Site is currently fenced and gated to preclude unlawful entry. The current water tanks are not accessible to the public. The proposed water tank, 2 MG, will also be fenced and gated and not accessible to the public.

The Hearings Officer finds a brief discussion of the two existing metal water tanks is relevant at this point. The Hearings Officer excerpts a portion of TVWD's March 17, 2011 evidentiary submission (Exhibit H.40b). In part, Exhibit H.40b states:

"The two existing reservoirs at TVWD's Garden Home facility are 0.5 million gallons (MG) each and were built in 1952 and 1962, respectively. In 1997, these reservoirs were analyzed in a preliminary seismic evaluation of the District's steel reservoirs. Many of TVWD's steel reservoirs, including the Garden Home facility, were found to be seismically deficient. Since then, several of the District's steel reservoirs were retro-fitted or replaced to meet current seismic design codes. TVWD takes preparedness very seriously given the risks of a significant seismic event in our region and the importance of a reliable water system.

In 2009, engineers conducted a full structural evaluation of the Garden Home reservoirs to analyze how they would perform in a seismic event. The tanks were found to be seismically deficient due to lack of proper foundations and other issues. It was discovered that even a relatively minor earthquake could cause considerable damage and take the reservoirs out of service, even if they did not collapse. This engineering study also included preliminary repair concepts with cost estimates. We learned that the cost of repairing the existing tanks was comparable to the cost of replacing them."

Ashcreek NA and other opponents (Exhibits H.39, H.47, H.49 and H.50) raised safety as an issue in this case. The following statement is representative of comments related to safety:

"ANA has further concerns about the proposed project with respect to neighborhood safety. Given the unfortunate recent events in Japan and the location of Portland along a recognized earthquake fault and proximity to the Cascadia Subduction Zone, it is clear that it is only a matter of time before we are subjected to a significant seismic event locally. A doubling of the proposed capacity of the water tanks at this site clearly increases the risk of severe damage and potential loss of life in the area surrounding the proposed tank should a catastrophic event of this nature occur. We are not convinced that the seismic engineering of the proposed tank will be sufficient to withstand an earthquake of similar magnitude to that experienced in Japan. Moreover, there is no mitigation at the site for this potentiality; a sudden release of water from a compromised or failed tank would have devastating impact on the neighborhood." (Exhibit H.50)

The Hearings Officer finds that one of TVWD's expressed goals in this project is to replace two aging and seismically deficient water tanks (.5 MG each) with a new water tank (2 MG) meeting current seismic standards. The Hearings Officer finds that safety of the nearby residential area will be improved, despite the larger volume of the new water tank. However, the Hearings Officer also finds that the Ashcreek NA, and a number of opponents, raised a legitimate safety concern.

A recent Conditional Use decision by the Hearings Officer related to the construction of a 50 MG water storage reservoir at the top of Powell Butte (LU 10-169463 CU MS EN AD). In that case, City Council upheld the Hearings Officer's decision of approval with one modification: adding a condition of approval regarding emergency notification of nearby residents. The Hearings Officer finds adding a condition of approval providing for emergency notification of nearby residents is necessary to ensure there are not significant adverse safety impacts. Prior to building permit approval, TVWD must have an Emergency Notification Plan approved by the City of Portland Office of Emergency Management ("POEM"). The Hearings Officer finds that the POEM-approved Emergency Notification Plan should be considered a requirement for the issuance of a final building permit for the proposed water tower.

There are no full-time employees at the Site, nor are there any buildings or windows as part of the redevelopment that could impinge on privacy. The facility will be behind a fully fenced and secured compound. The Hearings Officer finds privacy related issues will not have a significant impact on the livability of nearby residentially zoned lands.

The Hearings Officer finds that with conditions of approval, this approval criterion is met.

**D. Public services.**

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

**Findings:** PBOT/Development Review reviewed the application for its potential impacts regarding the public right-of-way and conformance with adopted policies and street designations, Title 33, Title 17, and for potential impacts upon transportation services.

At this location, SW Garden Home Road is classified as a Neighborhood Collector, Community Transit Street, City Bikeway, City Walkway, and Local Service street for all transportation modes in the City's Transportation System Plan.

SW 62<sup>nd</sup> Avenue is classified as a Local Service Street for all transportation modes in the City's Transportation System Plan.

According to City database sources, SW Garden Home Road is a 60-foot wide right-of-way improved with center strip paving, but lacking curbs and sidewalks. SW 62<sup>nd</sup> Avenue is a 36-foot wide right-of-way adjacent to the site improved with center strip paving with no curbs or sidewalks.

To accommodate potential future street improvements to SW Garden Home Road, a 5-foot dedication of property for right-of-way purposes will be required. This will allow for a curb 18-feet from the right-of-way centerline, an 8-foot swale, a 6-foot sidewalk, and a 1.5-foot buffer behind the sidewalk. The dedications and sidewalk improvements identified above will be conditions of building permit approval.



TVWD anticipates fewer vehicle trips to the Site due to the fact that the new facility will require less maintenance. There will be no offices or buildings on the Site. Vehicle access from SW Garden Home Road must be designed in a way that allows forward ingress and egress. PBOT expressed support of gravel driveways once out of the public right-of-way. Within the right-of-way, standard asphalt driveway aprons will be required.

TVWD has constructed gravel pathways separated from the roadway surface along both frontages. These must be reconstructed to provide a minimum 6-foot wide concrete path. Where it is not practical to locate the paths in the public right-of-way, public pedestrian easements must be provided.

Since the project will result in fewer vehicle trips and the Site will not have any employees, there are no expected impacts on the transportation facilities. The Hearings Officer finds that the transportation system can safely support the proposal in addition to existing uses in the area.

The Hearings Officer finds this approval criterion is met.

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

**Findings:** Responses from service agencies indicated no concerns from the Portland Water Bureau, Portland Fire Bureau or the Urban Forester. A response from the Portland Police Bureau indicated that services are available and noted that TVWD should contact the Central Precinct Commander to coordinate on any public safety issues. BES noted that sanitary services are available via an 8-inch concrete public sanitary gravity sewer located in SW Garden Home Road. BES also noted that the proposed stormwater management methods are acceptable. Based on these responses, the Hearings Officer finds that adequate public services exist. The Hearings Officer finds that this approval criterion is met.

- E. **Area plans.** The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.

**Findings:** The Site lies within the Ashcreek NA and within the Southwest Community Plan area. There are no specific policies or objectives within the Southwest Community Plan that are directly relevant to the proposal. Given the preservation of as many significant mature trees on the Site as proposed, the overall natural appearance of the Site will be preserved to as great an extent as is feasible. The Hearings Officer finds this approval criterion is met.

### **Development Standards**

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

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A through F of Section 33.805.040, Adjustment Approval Criteria, have been met.

#### **33.805.010 Purpose (Adjustments)**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply citywide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

#### **33.805.040 Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A through F below have been met.

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** TVWD requests one Adjustment to applicable development standards for the facility improvements. (Note: In its original application and at the time of the public hearing, TVWD sought two Adjustments; the one described throughout these findings and another requesting Adjustment to the 15-foot landscaping requirement on the north and east boundaries of the Site – the landscaping Adjustment request was withdrawn by TVWD per Exhibit H-40a).

The requested Adjustment is to allow the vehicle areas on the Site to remain in gravel so that unnecessary additional impervious surface area is not installed on the Site. The purpose for the paving regulations is found at 33.266.130.D.1, Paving, which states:

*Paving. In order to control dust and mud, all vehicle areas must be paved.*

The Hearings Officer finds that a very small amount of vehicle traffic will travel to/from the Site. The Hearings Officer finds that the additional support provided by paving is not necessary. Given the limited number of vehicle trips to the Site, the Hearings Officer does not anticipate dust and mud being generated in amounts that would impact properties off of the Site. With a condition of approval that the entrance driveway into the Site from SW 62<sup>nd</sup> remains in pavers or other hard surface to prevent gravel from being dragged off of the Site onto adjacent public rights-of-way, the Hearings Officer finds that this approval criterion is met.

- B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** The Site is in a residential area. The Hearings Officer finds that the proposal to keep designated areas in gravel to eliminate unnecessary additional impervious surface area on the Site is fully supportive and enhances both the livability and appearance of the immediate residential area by eliminating unnecessary paving. The Hearings Officer finds that this approval criterion is met.

- C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** Only one Adjustment is being requested. The Hearings Officer finds that this approval criterion is not applicable.

- D. City-designated scenic resources and historic resources are preserved; and

**Findings:** City-designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. The Hearings Officer finds that this approval criterion is not applicable.

- E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** The Hearings Officer finds that there are no discernible impacts that would result from granting the requested Adjustment. The Hearings Officer finds that this approval criterion is met.

- F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** The Site is not within an environmental zone. The Hearings Officer finds that this approval criterion is not applicable.

### III. CONCLUSIONS

The proposal, in this case, is to demolish two existing steel water tanks (each with a capacity of .5 MG) and replace them with a single concrete water tank (capacity not to exceed 2 MG). The Ashcreek NA and a number of owners/occupants of nearby properties expressed concerns about the replacement water tank's large size. Opponents argued that approval of the proposal in this case would significantly lessen the overall residential appearance and function of the surrounding area. Opponents argued that the proposed replacement water tank would not be physically compatible with the surrounding neighborhood. Opponents argued that the replacement tank would present greater safety risks than the two existing water tanks.

The Hearings Officer found that certain non-residential uses are allowed, following a review process, as "conditional uses." The Hearings Officer found that a water tank is permitted in a residential zone only if the water tank application is processed and approved through a Conditional Use review process. The Hearings Officer found that an above-ground water tank is much larger and looks different than the neighboring residential structures. However, the Hearings Officer found, in this case, that despite having a different size and appearance, the proposed water tank would not significantly conflict with the appearance and function of the nearby residential area. The Hearings Officer found that so long as TVWD constructed the water tank as proposed and included and maintained the landscaping (as proposed), this application should be approved.

### IV. DECISION

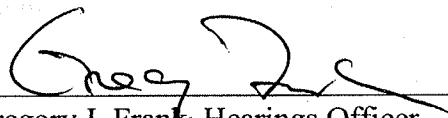
Approval of

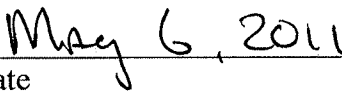
- A Conditional Use to demolish two water tanks and replace with one water reservoir not to exceed 2 million gallon storage capacity consistent with Exhibits H.41, H.41a, H.41b, H.41c, H.41d, H.41e and H.41f;
- An Adjustment to 33.266.130.D.1 to allow vehicle areas on site to remain in gravel;

subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through D) must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-200954 CU AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. In order to ensure that visual appearance remains similar to the existing facility, the new facility must utilize the same black finish on the existing chain link security fence and any new sections of security fencing must have the same black finish.

- C. Any plant materials that need to be substituted in lieu of those called out in the landscaping plan should be native species, as recommended by the Bureau of Environmental Services. Applicant shall maintain all berms, trees, shrubs, pathways, pavers and ground cover consistent with Exhibit H.40d.
- D. Applicant shall submit to the Bureau of Development Services, as part of the building permit review process, a specific Emergency Notification Plan that has been approved by the City of Portland Office of Emergency Management, to provide emergency notice alerts to owners/occupants of real property with an elevation of 396 feet elevation or lower (such notification area not to extend beyond 500 feet from any Site boundary).

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

  
\_\_\_\_\_  
Date

<b>Application Determined Complete:</b>	December 30, 2010
<b>Report to Hearings Officer:</b>	February 4, 2011
<b>Revised Staff Report to Hearings Officer:</b>	February 11, 2011
<b>Decision Mailed:</b>	May 9, 2011
<b>Last Date to Appeal:</b>	4:30 p.m., May 23, 2011
<b>Effective Date (if no appeal):</b>	May 24, 2011    Decision may be recorded on this date.

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

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

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

Desk on the 5th Floor. **An appeal fee of \$5,716.50 will be charged (one-half of the application fee for this case).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

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

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

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

#### **Recording the final decision.**

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

- *Unless appealed*, The final decision may be recorded on or after the day following the last day to appeal. **This date will be identified in the Hearings Officer's decision.**
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

For further information on recording, please call the County Recorder at 503-988-3034

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

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

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

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

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

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

**EXHIBITS**  
**NOT ATTACHED UNLESS INDICATED**

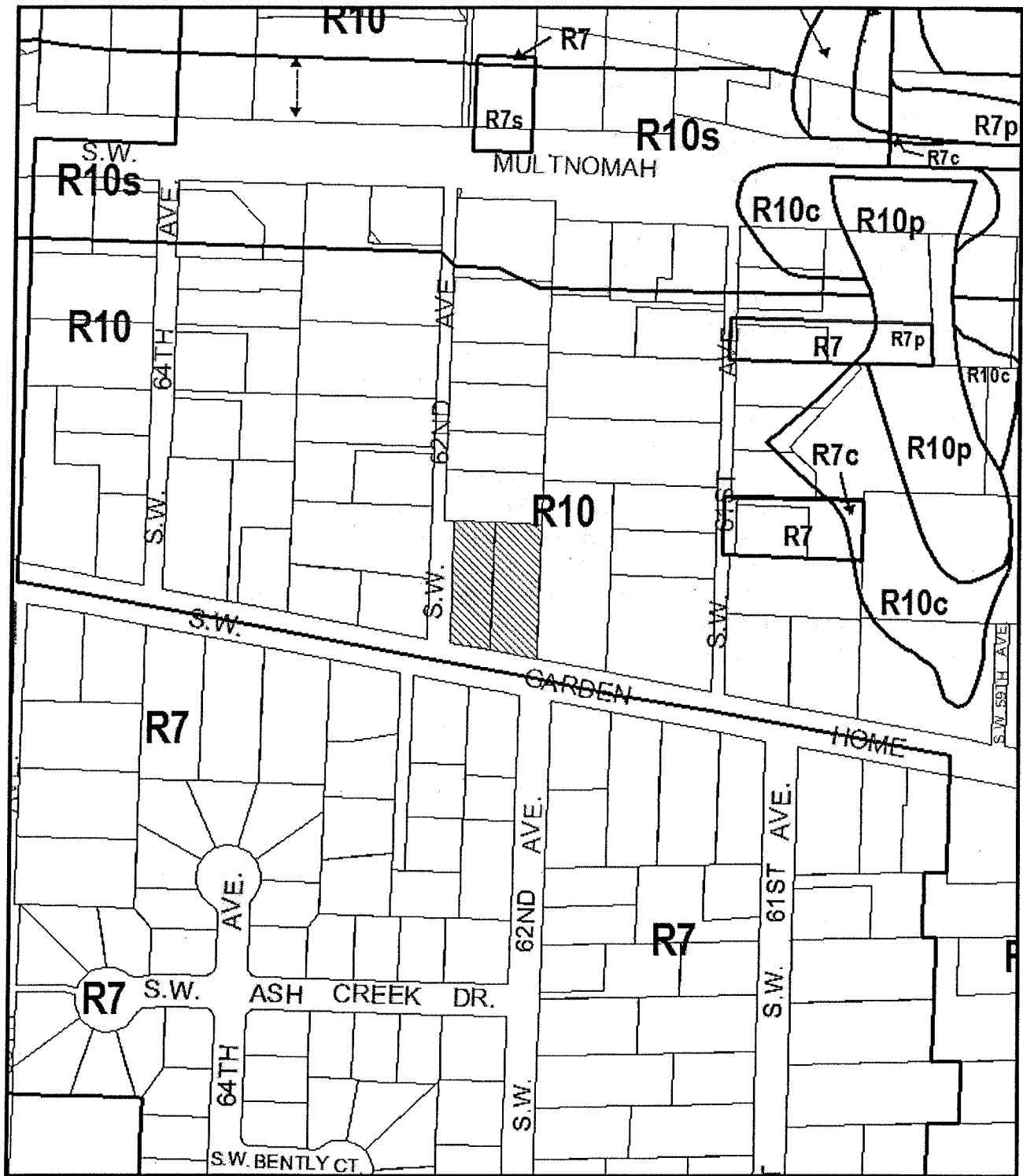
- A. Applicants' Statement
  - 1. 120-day waiver
- B. Zoning Map (**attached**)
- C. Plans and Drawings
  - 1. Site Plan existing conditions
  - 2. Site plan proposed landscaping and development
- D. Notification information
  - 1. Request for response
  - 2. Posting letter sent to applicant
  - 3. Notice to be posted
  - 4. Applicant's statement certifying posting
  - 5. Mailing list
  - 6. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of Bureau of Development Services
  - 6. Bureau of Parks, Forestry Division
- F. Letters: None received by publication date
- G. Other
  - 1. Original LUR Application
  - 2. Site History Research
- H. Received in the Hearings Office
  - 1. Hearing Notice - Cate, Sylvia
  - 2. Staff Report - Cate, Sylvia
  - 3. 2/10/11 Memo - Cate, Sylvia
  - 4. Revised Staff Report - Cate, Sylvia
  - 5. 2/14/11 letter - Leopold, Kayla Mary
  - 6. Letter - Lamb, Olivia
  - 7. 2/10/11 letter - Ottmar, Virginia
  - 8. 2/11/11 letter - Carmody, Joseph
  - 9. 2/14/11 letter - Scribner, Terri
  - 10. 2/15/11 Memo with attachments - Cate, Sylvia
    - a. Site History Research - Cate, Sylvia
    - b. Land Use Reviews - Cate, Sylvia
    - c. 4/16/82 Letter regarding Metzger Water District Application for Conditional Use Permit - CU 99-80 - Cate, Sylvia



- d. Staff Report and Recommendation to the Hearings Officer - PC File CU 99-80 - Cate, Sylvia
- e. Staff Report and Recommendation to the Planning Commission - PC File CU 99-80 - Cate, Sylvia
- f. Appeal of the Hearings Officer or Planning Commission's Decision - Cate, Sylvia
- g. Appeal reasons - Cate, Sylvia
- h. Report and Decision of the Hearings Officer - CU 99-80 - Cate, Sylvia
- i. Appellant Statement - Cate, Sylvia
- j. Report and Decision of the Hearings Officer - CU 99-80 - Cate, Sylvia
- k. Page received 11/4/80 at Bureau of Planning - Labeled Exhibit 1 - Cate, Sylvia
- l. Report and Decision of the Hearings Officer - CU 99-80 - Page 10 - Cate, Sylvia
- m. 12/1/80 letter from Robert L. Fuller, Ch2M Hill - Cate, Sylvia
- n. Zoning Map - CU 99-80 Exhibit 3 - Cate, Sylvia
- o. Vicinity Map - CU 99-80 Exhibit 2 - Cate, Sylvia
- p. Proposed Storage Facilities Site Plan - Exhibit 5 - Cate, Sylvia
- q. Land Use Map - CU 99-80 Exhibit 4 - Cate, Sylvia
- r. 1/28/81 Memo from Bureau of Water Works, Engineering Division, CU 99-80 - Cate, Sylvia
- s. Proposed Storage Facilities - Cate, Sylvia
- t. 1/29/81 Supplemental Information, CU 99-80 - Cate, Sylvia
- u. Sun Shadows - Cate, Sylvia
- v. Existing Site Plan - Cate, Sylvia
- w. Proposed Pump Station - Cate, Sylvia
- x. Comprehensive Plan Considerations - Attachment 3 - CU 99-80 - Cate, Sylvia
- y. 5/29/81 letter to Council from Frank N. Frost, Chief Planner - Cate, Sylvia
- 11. Letter from Ester D. McGinnis - Cate, Sylvia
- 12. 2/13/11 letter from Irwin C. Schoonover - Cate, Sylvia
- 13. Letter from Jim Linman - Cate, Sylvia
- 14. 2/14/11 letter - Perkins, Robert
- 15. 2/15/11 letter - Trullinger, Nancy
- 16. Letter - Osborne, Charles S.
- 17. 2/15/11 letter - Ruckwardt, Matthew and Elizabeth
- 18. PowerPoint Presentation printout - Cate, Sylvia
- 19. Testimony - Smith, Dean
  - a. FAR Comparisons - Smith, Dean
- 20. 2/15/11 letter - Clopton, Mike and Gayle
- 21. Letter from Jack Klinker, Ashcreek NA - Klinker, Jack
- 22. Testimony (5 copies) - Smith, Dean
  - a. FAR Comparisons (5 copies) - Smith, Dean
  - b. FAR Comparisons - Smith, Dean
- 23. Letter - Donner, Nancy
  - a. PortlandMaps printouts - Donner, Nancy
- 24. Photos - Ruhnke, Lyndon
- 25. Memo - Ruhnke, Lyndon

26. Google Maps printout - 8011 SW 62nd Place - Ruhnke, Lyndon
27. 2/10/11 letter from Tara Ruhnke with attachment - Ruhnke, Lyndon
  - a. PPDS Address/Case Display - 6217 SW Garden Home Rd. - Ruhnke, Lyndon
28. Google Maps printouts - Ruhnke, Lyndon
29. Drawing by Grace Ruhnke - Ruhnke, Lyndon
30. Petition - Ruhnke, Lyndon
31. 2/15/11 letter - Ottmar, Perry
32. Letter - Phillips, Sharon R.
33. Letter - Crall, Mike
34. Letter - Osborne, Charles S.
35. 2/11/11 letter - Ruhnke, Tara
36. Record to be held open further - Goodell, Chris
37. Record to be held open further - Cate, Sylvia
38. 2/17/11 letter - Baer, Dr. Charold
39. 2/13/11 letter - Larson, Robert M.
40. Letter of Transmittal with attachments - Goodell, Chris
  - a. 4/5/11 letter - Goodell, Chris
  - b. 3/17/11 Project Update - Goodell, Chris
  - c. Updated Draft Landscape Plan - Goodell, Chris (**attached**)
  - d. Full-size Updated Draft Landscape Plan - Goodell, Chris
  - e. At Planting - Goodell, Chris
  - f. At Maturity - Goodell, Chris
41. Preliminary Plans - Cover Sheet with Vicinity and Site Map - Goodell, Chris (**attached**)
  - a. Existing Conditions Plan - Goodell, Chris (**attached**)
  - b. Preliminary Tree Removal and Preservation, Demolition, Clearing, Grading, and Erosion Control Plan - Goodell, Chris
  - c. Preliminary Tree Removal, Preservation, and Mitigation Notes - Goodell, Chris
  - d. Preliminary Site Plan - Goodell, Chris (**attached**)
  - e. Preliminary Storm Drainage Plan - Goodell, Chris
  - f. Preliminary Water Facility Plan - Goodell, Chris
  - g. Preliminary Landscape Plan - Goodell, Chris
  - h. Household Living Analysis Plan - Goodell, Chris
42. Full size plans - Cover Sheet with Vicinity and Site Map - Goodell, Chris
  - a. Full size plans - Existing Conditions Plan - Goodell, Chris
  - b. Full size plans - Preliminary Tree Removal and Preservation, Demolition, Clearing, Grading, and Erosion Control Plan - Goodell, Chris
  - c. Full size plans - Preliminary Tree Removal, Preservation, and Mitigation Notes - Goodell, Chris
  - d. Full size plans - Preliminary Site Plan - Goodell, Chris
  - e. Full size plans - Preliminary Storm Drainage Plan - Goodell, Chris
  - f. Full size plans - Preliminary Water Facility Plan - Goodell, Chris
  - g. Full size plans - Preliminary Landscape Plan - Goodell, Chris
  - h. Full size plans - Household Living Analysis Plan - Goodell, Chris
43. Exhibit Number Not Used - Hearings Office

44. Exhibit Number Not Used - Hearings Office
45. Letter - Stenerson, Travis
46. Letter - Stenerson, Elizabeth
47. Letter - Carmody, Joseph and Liam
48. 4/14/11 Memo - Cate, Sylvia
49. Letter dated 4/15/11 - Lamb, Olivia
50. Letter dated 4/15/11 - Smith, Dean
51. Letter of Transmittal with attachments - Goodell, Chris
  - a. Submittal - Goodell, Chris
  - b. Preliminary Tree Height Survey - Goodell, Chris
  - c. Preliminary Existing and Proposed Widths - Goodell, Chris
  - d. Preliminary Shadow Plan - Goodell, Chris
  - e. Preliminary Shadow Plan - Goodell, Chris
  - f. Stormwater Management Report - Pavement Alternative - Goodell, Chris
  - g. Pre-Developed Stormwater Catchment Map - Goodell, Chris
  - h. Post-Developed Stormwater Catchment Map - Goodell, Chris
52. 4/15/11 letter - Ruhnke, Lyndon - Submitted After Record Closed
53. 4/22/11 Applicant's Final Written Argument to the Hearings Officer letter from Mark Knudson - Goodell, Chris
  - a. 4/22/11 letter - Goodell, Chris



# ZONING

 Site



File No. LU 10-200954 CU,AD  
 1/4 Section 3823  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E19CB 5700  
 Exhibit B (Dec 21, 2010)

RECEIVED

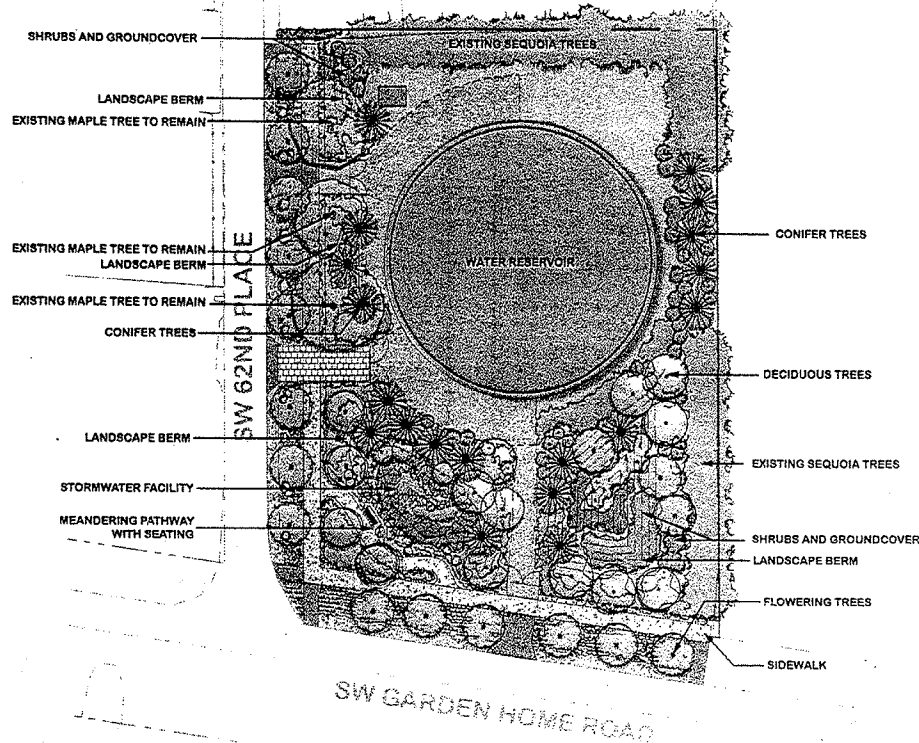
APR 05 2011

HEARINGS OFFICE

## GARDEN HOME RESERVOIR UPDATED DRAFT LANDSCAPE PLAN

### Additional Landscape Features:

- ✿ Eliminates gravel on east and west side of water reservoir to allow for additional landscaping.
- ✿ Adds pedestrian amenities such as a bench and meandering pathway.
- ✿ Contouring and berming add a natural appearance to the site and further screen water reservoir from the street.
- ✿ Uses larger plant sizes at planting for a more mature appearance and fuller screening.
- ✿ Preserves three existing trees on west side of the site for additional mature screening.
- ✿ Stormwater facility has a less uniform and more natural appearance.
- ✿ Includes additional evergreen screening on the south and west sides of the site with a mix of flowering and pyramidal deciduous trees to add four-season color, texture, and form.
- ✿ Understory of mixed evergreen and deciduous shrubs and groundcovers provide pedestrian scale relating to the surrounding neighborhood.



SCALE 1" = 20' FT  
PREPARED BY AKS  
2/24/2011

CITY OF PORTLAND  
HEARINGS OFFICE  
Exhibit #H-40C  
Case # 4100031  
Bureau Case # 10-200954 CU AD

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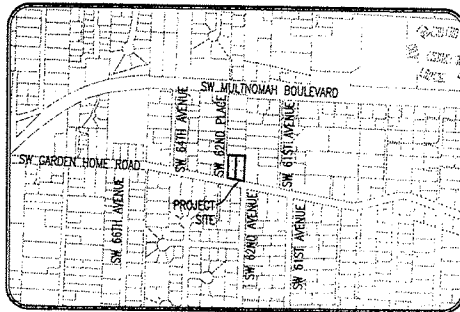
APR 05 2011

# GARDEN HOME RESERVOIRS

## TUALATIN VALLEY WATER DISTRICT

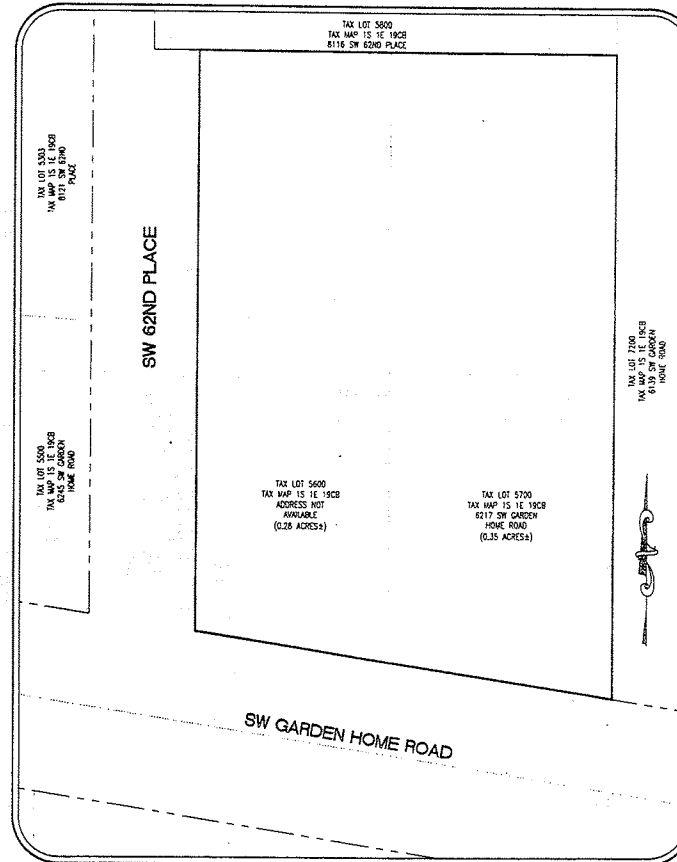
### PRELIMINARY PLANS

HEARINGS OFFICE



**VICINITY MAP**  
SCALE: 1"=500'

LEGEND			
EXISTING	PROPOSED	EXISTING	PROPOSED
DECIDUOUS TREE		STORM SEWER CLEAN OUT	
CONIFEROUS TREE		STORM SEWER CATCH BASIN	
FIRE HYDRANT		STORM SEWER MANHOLE	
WATER BLOWOFF		GAS WATER	
WATER METER		GAS VALVE	
WATER VALVE		CITY WIRE ANCHOR	
DOUBLE CHECK VALVE		POWER POLE	
AIR RELEASE VALVE		POWER VAULT	
SANITARY SEWER CLEAN OUT		POWER JUNCTION BOX	
SANITARY SEWER MANHOLE		POWER PEDISTAL	
SON		COMMUNICATIONS VAULT	
STREET LIGHT		COMMUNICATIONS JUNCTION BOX	
MAILBOX		COMMUNICATIONS RISER	
EXISTING		PROPOSED	
RIGHT-OF-WAY LINE		BOUNDARY LINE	
PROPERTY LINE		CENTERLINE	
DITCH		CURB	
EDGE OF PAVEMENT		EASEMENT	
FENCE LINE		GRAVEL EDGE	
POWER LINE		OVERHEAD WIRE	
COMMUNICATIONS LINE		GAS LINE	
STORM SEWER LINE		SANITARY SEWER LINE	
WATER LINE			



**SITE MAP**  
SCALE: 1"= 20 FEET

**APPLICANT/OWNER**

TUALATIN VALLEY WATER DISTRICT  
CONTACT: PETER BOONE  
1850 SW 170TH AVENUE  
BEAVERTON, OR 97006  
PHONE: (503) 848-3054

**PLANNING / CIVIL ENGINEERING SURVEYING FIRM**

AKS ENGINEERING & FORESTRY, LLC  
CONTACT: MONTY HURLEY  
13910 SW CALBREATH DRIVE, SUITE 100  
SHERWOOD, OR 97140  
PH: 503-925-8799  
FAX: 503-925-8969

**SITE DESCRIPTION:**

LOCATED IN THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 1 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

**SITE ADDRESS:**

6217 SW GARDEN HOME ROAD  
PORTLAND, OR 97219

**EXISTING LAND USE:**

SITE OF TWO EXISTING WATER RESERVOIR TANKS

**PROJECT PURPOSE:**

REPLACE THE TWO EXISTING WATER RESERVOIR TANKS WITH A SINGLE RESERVOIR TANK

**BENCHMARK:**

ELEVATIONS ARE BASED ON THE FOLLOWING INFORMATION:

PER CH2M HILL SURVEY DATED 4-21-09 (NAVD 88). ELEVATIONS WERE BASED ON CITY OF PORTLAND BENCHMARK NO. 306, WHICH IS NOW MISSING (CITY OF PORTLAND DATUM ELEVATION = 388.06). PER CITY OF PORTLAND INFORMATION, ADD 2.10 TO THE PUBLISHED DATUM ELEVATION, WHICH RESULTS IN A NAVD 88 ELEVATION = 390.16.

**BASIS OF BEARING:**

THE BASIS OF BEARINGS FOR THIS SURVEY WAS ESTABLISHED BETWEEN A CENTERLINE MONUMENT AND THE SOUTHERLY RIGHT-OF-WAY MONUMENTS ALONG SW GARDEN HOME ROAD, PER MULTNOMAH COUNTY SURVEY NUMBER 29817.

**TOTAL SITE AREA:**

27,623 SF± (0.63 ACRES±)

## SHEET INDEX

- COVER SHEET WITH VICINITY AND SITE MAP
- EXISTING CONDITIONS PLAN
- PRELIMINARY TREE REMOVAL AND PRESERVATION, DEMOLITION, CLEARING, GRADING, AND EROSION CONTROL PLAN
- PRELIMINARY TREE REMOVAL, PRESERVATION, AND MITIGATION NOTES
- PRELIMINARY SITE PLAN
- PRELIMINARY STORM DRAINAGE PLAN
- PRELIMINARY WATER FACILITY PLAN
- PRELIMINARY LANDSCAPE PLAN
- HOUSEHOLD LIVING ANALYSIS PLAN

Tualatin Valley Water District

COVER SHEET  
WITH VICINITY AND  
SITE MAP

ENGINEERING • PLANNING

LOCATED IN OR, WA, & AK

13910 SW CALBREATH DR., SUITE 100  
SHERWOOD, OR 97140  
PHONE: (503) 925-8799  
FAX: (503) 925-8969



SURVEYING • FORESTRY

Office Located In:  
SHERWOOD, OREGON  
REDAWOOD, OREGON  
VANCOUVER, WASHINGTON  
WWW.AKS-OR.COM

DESIGNED BY:

RSW

CHECKED BY:

MBH/CS

PREPARED FOR:

DRAWING NO.:

P2-01

SCALE:

AS NOTED

TUALATIN VALLEY WATER DISTRICT

1850 SW 170TH AVENUE  
BEAVERTON, OR 97006  
PHONE: (503) 848-3054

GARDEN HOME RESERVOIRS  
TWD

PORTLAND  
TAX LOTS 5600 AND 5700

OREGON  
MULTNOMAH COUNTY TAX MAP 15 1E 19C8

DATE: 04/03/11



JOB NUMBER  
2572

SHEET  
1

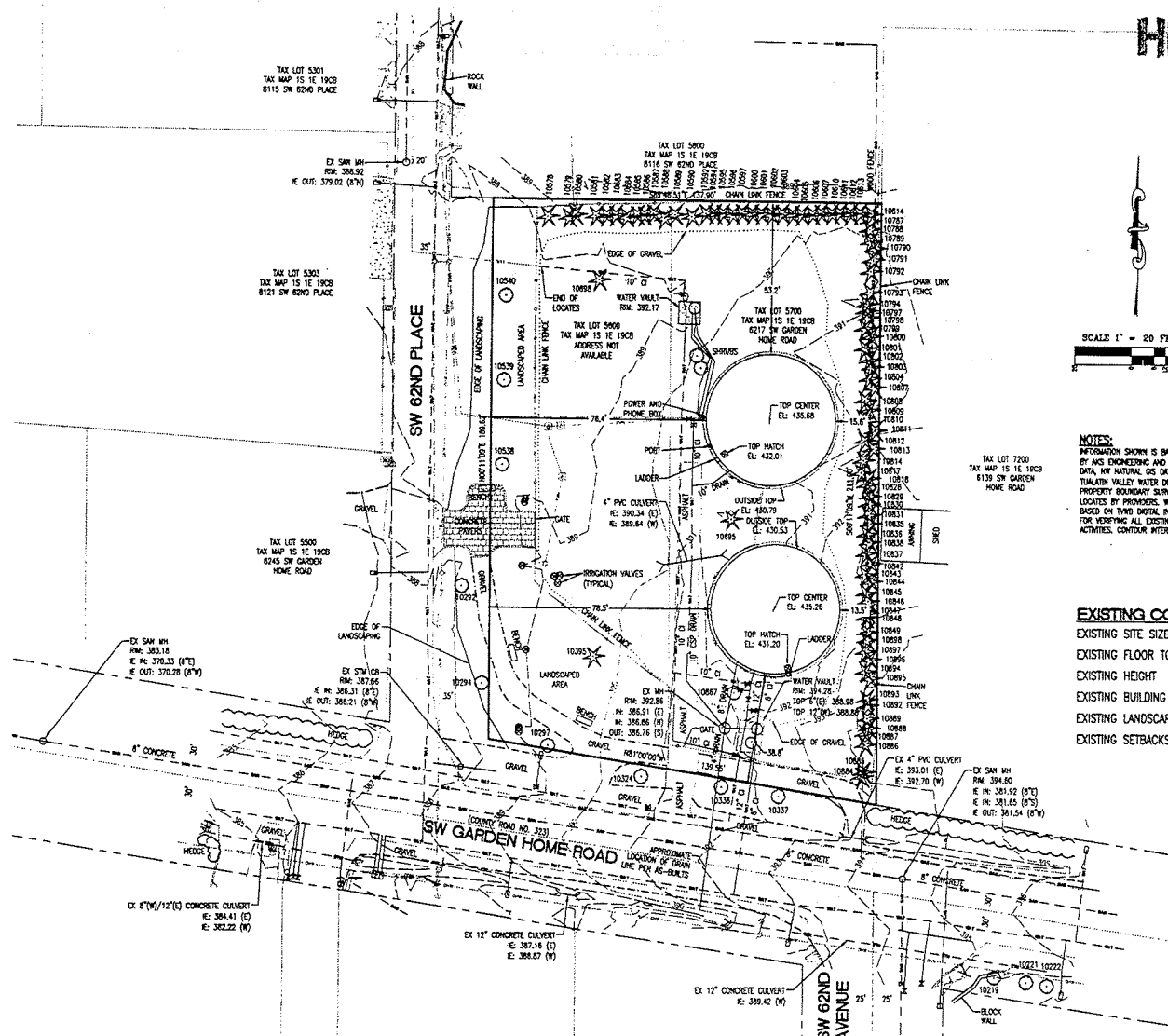
CITY OF PORTLAND  
HEARINGS OFFICE  
Exhibit #H-41  
Case # 4100031

APR 05 2011

**HEARINGS OFFICE**

TREE TABLE

TREE NUMBER	SPECIES	DBH (IN.)
12021	UNKNOWN DECID.	CLUMP
12022	UNKNOWN DECID.	7.7
12023	UNKNOWN DECID.	2
12024	UNKNOWN DECID.	2
12025	UNKNOWN DECID.	2
12026	UNKNOWN DECID.	2
12028	UNKNOWN DECID.	2
12030	INTERIOR SEQUOIA	22.8.8
12036	SG LEAF MAPLE	14
12037	SG LEAF MAPLE	10, 10, 12.12
12038	INTERIOR SEQUOIA	18
12041	INTERIOR SEQUOIA	8
12042	INTERIOR SEQUOIA	11
12043	INTERIOR SEQUOIA	6
12044	INTERIOR SEQUOIA	38
12045	INTERIOR SEQUOIA	10
12046	INTERIOR SEQUOIA	7
12047	INTERIOR SEQUOIA	10
12048	INTERIOR SEQUOIA	4
12049	INTERIOR SEQUOIA	9
12050	INTERIOR SEQUOIA	31
12051	INTERIOR SEQUOIA	23
12052	INTERIOR SEQUOIA	23
12053	INTERIOR SEQUOIA	23
12054	INTERIOR SEQUOIA	23
12055	INTERIOR SEQUOIA	20
12056	INTERIOR SEQUOIA	19
12057	INTERIOR SEQUOIA	21
12058	INTERIOR SEQUOIA	22
12059	INTERIOR SEQUOIA	19
12060	INTERIOR SEQUOIA	21
12061	INTERIOR SEQUOIA	10
12062	INTERIOR SEQUOIA	13
12063	INTERIOR SEQUOIA	21
12064	INTERIOR SEQUOIA	27
12065	INTERIOR SEQUOIA	26
12066	INTERIOR SEQUOIA	26
12067	INTERIOR SEQUOIA	16
12068	INTERIOR SEQUOIA	7
12069	INTERIOR SEQUOIA	25
12070	INTERIOR SEQUOIA	18
12071	INTERIOR SEQUOIA	17
12072	INTERIOR SEQUOIA	21
12073	INTERIOR SEQUOIA	31
12074	INTERIOR SEQUOIA	19
12075	INTERIOR SEQUOIA	8
12076	INTERIOR SEQUOIA	20
12077	INTERIOR SEQUOIA	15
12078	INTERIOR SEQUOIA	24
12079	INTERIOR SEQUOIA	22
12080	INTERIOR SEQUOIA	22
12081	INTERIOR SEQUOIA	22
12082	INTERIOR SEQUOIA	22
12083	INTERIOR SEQUOIA	30
12084	INTERIOR SEQUOIA	25
12085	INTERIOR SEQUOIA	18
12086	INTERIOR SEQUOIA	12
12087	INTERIOR SEQUOIA	38
12088	INTERIOR SEQUOIA	25
12089	INTERIOR SEQUOIA	16
12090	INTERIOR SEQUOIA	19
12091	INTERIOR SEQUOIA	16
12092	INTERIOR SEQUOIA	12
12093	INTERIOR SEQUOIA	18
12094	INTERIOR SEQUOIA	24
12095	INTERIOR SEQUOIA	25
12096	INTERIOR SEQUOIA	25
12097	INTERIOR SEQUOIA	25
12098	INTERIOR SEQUOIA	15
12099	INTERIOR SEQUOIA	20
12100	INTERIOR SEQUOIA	23
12101	INTERIOR SEQUOIA	19
12102	INTERIOR SEQUOIA	18
12103	INTERIOR SEQUOIA	16
12104	INTERIOR SEQUOIA	19
12105	INTERIOR SEQUOIA	21
12106	INTERIOR SEQUOIA	20
12107	INTERIOR SEQUOIA	19
12108	INTERIOR SEQUOIA	19
12109	INTERIOR SEQUOIA	18
12110	INTERIOR SEQUOIA	12
12111	INTERIOR SEQUOIA	38
12112	INTERIOR SEQUOIA	25
12113	INTERIOR SEQUOIA	16
12114	INTERIOR SEQUOIA	19
12115	INTERIOR SEQUOIA	21
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12130	INTERIOR SEQUOIA	21
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12133	INTERIOR SEQUOIA	21
12134	INTERIOR SEQUOIA	21
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12137	INTERIOR SEQUOIA	21
12138	INTERIOR SEQUOIA	21
12139	INTERIOR SEQUOIA	21
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12147	INTERIOR SEQUOIA	21
12148	INTERIOR SEQUOIA	21
12149	INTERIOR SEQUOIA	21
12150	INTERIOR SEQUOIA	21
12151	INTERIOR SEQUOIA	21
12152	INTERIOR SEQUOIA	21
12153	INTERIOR SEQUOIA	21



**NOTES:**  
INFORMATION SHOWN IS BASED ON A TOPOGRAPHIC SURVEY PERFORMED BY A/S ENGINEERING AND FORESTRY, LLC (MAY 4-5, 2010). TAX MAP DATA, NW NATURAL GAS DATA, AND DIGITAL INFORMATION PROVIDED BY TUALATIN VALLEY WATER DISTRICT (TWWD). THIS MAP IS NOT A PROPERTY BOUNDARY SURVEY. UTILITIES SHOWN ARE BASED ON FIELD LOCATIONS BY PROMOTERS. WATER LINE LABELS (SIZE AND TYPE) ARE BASED ON THIRD DIGITAL INFORMATION. CONTRACTORS ARE RESPONSIBLE FOR VERIFYING ALL EXISTING CONDITIONS PRIOR TO CONSTRUCTION ACTIVITIES. CONTOUR INTERVAL 15.1' EXIST.

EXISTING CONDITIONS:

EXISTING SITE SIZE	0.63 ACRES±
EXISTING FLOOR TO AREA RATIO	0.12 TO 1±
EXISTING HEIGHT	45'±
EXISTING BUILDING COVERAGE	12%±
EXISTING LANDSCAPED AREA	25%±
EXISTING SETBACKS	NORTH = 53'± SOUTH = 39'± EAST = 14'± WEST = 76'±

**STORMWATER NOTE:**

EXISTING STORMWATER RUNOFF FROM THE SITE SHEET FLOWS WESTERLY. THERE IS NO POINT OF DISCHARGE.

**Tualatin Valley Water District**

### EXISTING CONDITIONS PLAN

ENGINEERING • PLANNING  
LOCATED IN DC, MD & VA

13010 SW GALEBREATH DR., SUITE 100  
SHERWOOD, OR 97140  
PHONE: (503) 825-8798  
FAX: (503) 825-8962

SURVEYING • FORESTRY

Offices Located In:  
SHERWOOD, OREGON  
REDMOND, OREGON  
VANCOUVER, WASHINGTON  
[www.slae-eng.com](http://www.slae-eng.com)

UNITED STATES
---------------

DATE: \_\_\_\_\_

CHARGE NO.

PREPARED FOR:

	ORANGE
--	--------

NAME:

---

TUALATIN VALLEY WATER DISTRICT  
1850 SW 170TH AVENUE  
BEAVERTON, OR 97008  
PHONE: (503) 848-3054

GARDEN HOME RESERVOIRS  
TUSD

**PORTLAND**  
TAX LOTS 5600 AND 5700

**OREGON**  
COUNTY TAX MAP 15 1E 1008

DATE: 04/03/11

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

~~SECRET~~

OSCEON  
JUL 18, 2003  
MOOREY & HURLEY  
CREATIV

JOB NUMBER  
2572

2372

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GUEST

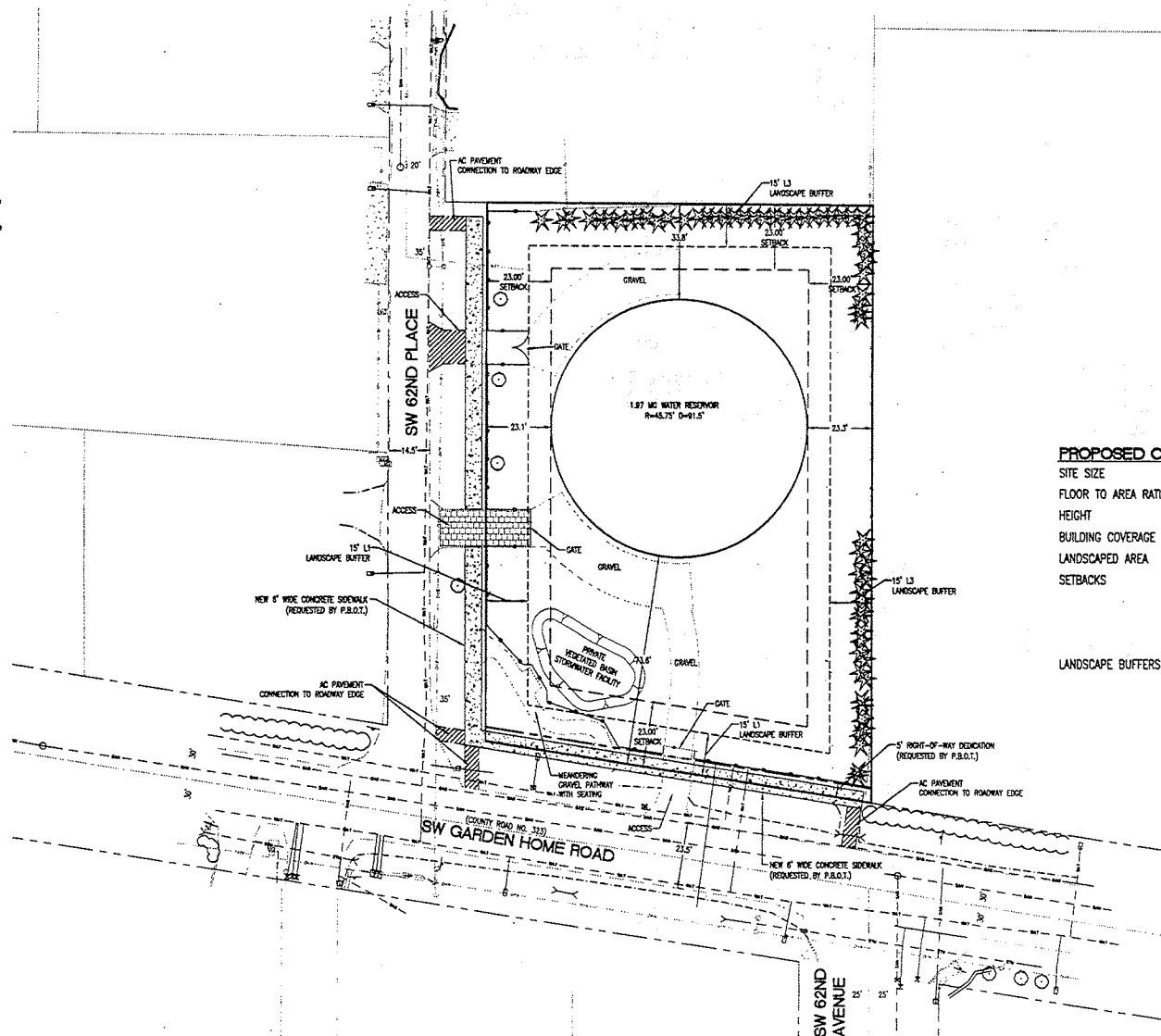
SHEET  
2

CITY OF PORTLAND  
HEARINGS OFFICE  
Exhibit #H-41a  
Case # 4100031  
Previous Case # 10-200954 CU AD

RECEIVED

APR 05 2011

HEARINGS OFFICE



**PROPOSED CONDITIONS:**

SITE SIZE	0.62 ACRES±
FLOOR TO AREA RATIO	0.27 TO 1±
HEIGHT	46'±
BUILDING COVERAGE	27%±
LANDSCAPED AREA	62%±
SETBACKS	NORTH = 34' SOUTH = 74' EAST = 23' WEST = 23' L1 WEST & SOUTH SIDE 15' L3 NORTH & EAST SIDES 15'

LANDSCAPE BUFFERS

Tualatin Valley Water District

PRELIMINARY SITE PLAN

ENGINEERING • PLANNING  
LOCATED BY: M. A. K.

13910 SW GALEBREATH DR., SUITE 100  
SHERWOOD, OR 97140  
PHONE: (503) 825-8799  
FAX: (503) 825-8868



SURVEYING • FORESTRY

Office Located In:  
SHERWOOD, OREGON  
BEAVERTON, OREGON  
VANCOUVER, WASHINGTON  
97140-1001

DESIGNED BY: M. A. K.  
DRAWN BY: M. A. K.  
CHECKED BY: M. A. K.  
PREPARED FOR: TUALATIN VALLEY WATER DISTRICT  
1850 SW 170TH AVENUE  
BEAVERTON, OR 97005  
PHONE: (503) 848-3054

**GARDEN HOME RESERVOIRS**  
**TWWD**

PORTLAND  
TAX LOTS 5600 AND 5700

OREGON  
MULTICOUNTY TAX MAP 15 1E 1903

DATE: 04/03/11

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
M. A. K.  
EXPIRATION: 12/31/11

JOB NUMBER  
2572

SHEET  
5

CITY OF PORTLAND  
HEARINGS OFFICE  
Exhibit #H-41d  
Case # 4100031  
Bureau Case # 10-200954 CLAD





City of Portland  
**Bureau of Development Services**  
Land Use Services Division

1900 SW Fourth Ave., Suite 5000  
Portland, Oregon 97201  
Telephone: (503) 823-7300  
TDD: (503) 823-6868  
FAX: (503) 823-5630  
www.portlandonline.com/bds

Request for:

☐ Land Use Hearing to be Rescheduled

☒ Record to be held open further  
for appeal hearing

Case Information:

1. Applicant: TUALATIN VALLEY WATER DISTRICT
2. LU Case Number: 10-200954 CUAD
3. Hearings Office Case Number: HO 4100031
4. BDS Planner: SYLVIA CATE
5. Date Application Deemed Complete:

Select one column → → → →		Hearing: OR	Record Closing:
6.	Scheduled Date:	JULY 14 2011	
7.	Requested Date:		
8.	Present 120-day deadline	JULY 2, 2011	
9.	New 120-day deadline		
10.	# Days between scheduled and requested dates:		

**Request for Rescheduled Hearing Date OR Request for Record to be Held Open Further**

**AND**

**Waiver (for limited time) of 120-day rule:**

The applicant requests the continuance of the process by ☐ rescheduling the hearing OR ☒ holding the record open further from 7/2/2011 (line 6 date above) to 8/1/2011 (line 7 date above).

The applicant agrees to extend the 120-day clock deadline for 30 days (a length of time not less than the number of days set forth in line 10 above).

Applicant's Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date

OR

Representative's Signature: \_\_\_\_\_

6/7/11

Print Name: CHRIS GADDELL

Date

**BDS Approval:**

BDS staff concurs with the above Applicant's request for a rescheduled hearing date or request to hold the record open further.

BDS Planner's Signature: \_\_\_\_\_

6-6-2011

Print Name: SYLVIA CATE

Date:

6/1/09

Y: \TEAM\_Records Management\Yvonne\HO FORMS\RESCHEDULE or Record Open Extension Request

CASE NO. 10-200954CUAD  
EXHIBIT E-3

## **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 4<sup>th</sup> 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.**