

Parsons, Susan

From: Parsons, Susan
Sent: Thursday, March 03, 2011 12:22 PM
To: 'jack@winterbrookplanning.com'
Cc: Elliott, Teresa; Cate, Sylvia; Castleberry, Stacey; Bauer, Linda; Matasar, Emily
Subject: LU 10-169463 Recording Confirmation

Attachments: LU 10-169463 Recording.pdf

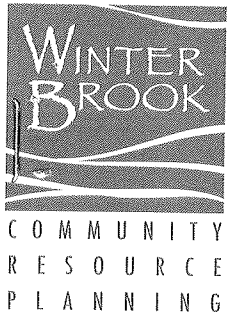
Mr. Harvey,
At your request I'm forwarding the Multnomah County Recorder recording confirmation. Our office received it this morning.



LU
53 Recording.

Sue Parsons

Assistant Council Clerk
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Adopted 2-16-11

February 16, 2011

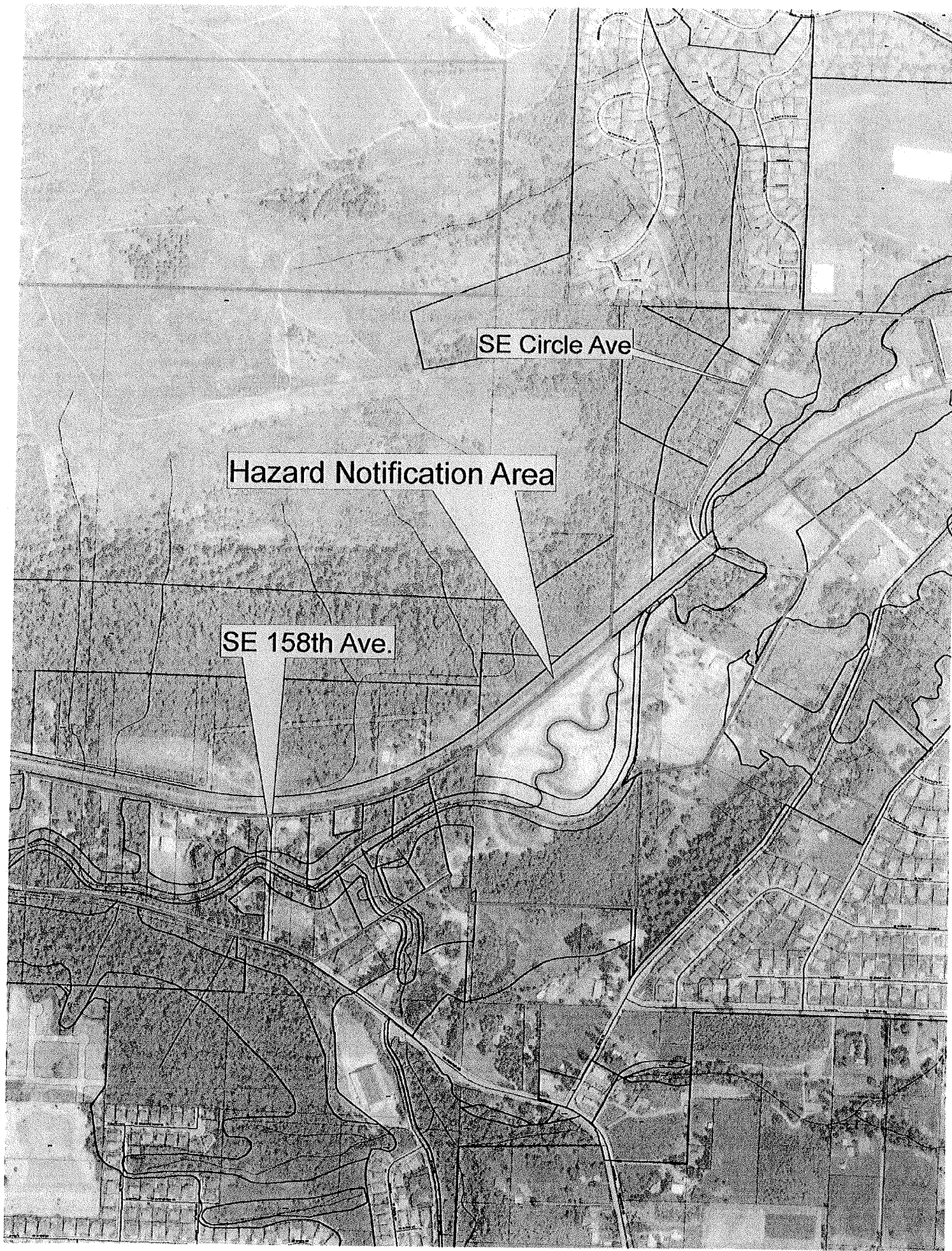
Powell Butte

LU 10-169463 CUMS EN AD

Proposed revision to Decision of Council, Page 67

- G. At time of building permit review, the Water Bureau will submit documentation that the Water Bureau has directed the Portland Office of Emergency Management [POEM] to develop a specific Emergency Notification Plan for ~~all residents downstream of Powell Butte~~ the residents in the Hazard Notification Area indicated on the attached map.

(4-3; Fish & Saltzman)
absent



SE Circle Ave

Hazard Notification Area

SE 158th Ave.

PWB Response to Powell Butte Appeal Issues 2/3/2011

LU 10-169463 CU MS EN AD

Issue	Issue	Reference	Response
1	Criterion 33.815.100.C is not met as it pertains to safety. Ms. Bauer requests as much early notification of a major /flood as is possible so downstream residents can get out of harm's way.	This issue was previously raised by appellant in Exhibit H.10, also in Q&A with PWB 11/2/10 (see Exh H-4L, line 56)	<p>As noted by the Hearings Officer on page 62 of his report, no new outfalls to Johnson Creek are planned, and there is no change to the existing overflow pipe. The emergency overflow system is an existing condition and the system's capacity and discharge volume will not change as a result of this project (also in Exhibit H.28).</p> <ul style="list-style-type: none"> • Because the reservoir storage capacity will double with the new reservoir and there is no change to the overflow or inflow pipes (Exhibit A.1), the new reservoir will reduce the risk of overflow occurrence by half; that is, twice as much water can be held before any emergency release would be necessary which increases the safety margin. • In terms of stormwater impacts to potential flooding, the Stormwater Management Report (Exhibit A.19) shows that pre- and post-development stormwater flows discharged to Johnson Creek are 5.39 cubic feet per second (CFS) and 4.80 CFS, respectively. Thus, this project reduces stormwater flows by 11% compared with existing conditions. • The City's Stormwater Management Manual establishes regulations that protect the environment and provide prudent levels of safety to the public. The Water Bureau has demonstrated in the record, and the Hearings Officer agreed, that the stormwater management system at Powell Butte far exceeds the level of protection required by City regulations. This system clearly provides more than adequate safety to the nearby residential areas, as required by this Approval Criterion. • This issue is further addressed by the Hearings Officer on pages 28-31, and page 62, H.O. Decision. The Hearings Officer also cites Exhibits H.25, H.26, H.27 and H.28 in support of his findings. In Exhibit H.26, BES addresses stormwater issues and a hypothetical 1,000-year flood event. In Exhibit H.25, BDS addresses safety concerns and land use review criteria applicable to stormwater. In Exhibits H.27 and H.28, PWB respond to the overflow issue and safety concerns.

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			<ul style="list-style-type: none"> • The Water Bureau has provided in the record and to the appellant a copy of the City's Emergency Operations Plan, which explains the steps we would take in the unlikely event of an emergency at Powell Butte. Notification procedures are well-established for all types of emergencies.
2	<p>Powell Butte Master Plan Criterion #7 is not met. This criterion requires zoning code requirements to be met unless superseded by Master Plan. Environmental Review required for grading, excavation and fills using 33.430.070.E approval criteria.</p>	<p>This issue was previously raised by appellant in Exhibit H.10</p> <p>Also addressed in Q&A, see EXh H.4L</p>	<ul style="list-style-type: none"> • The Hearings Officer prepared environmental review findings (pages 33-46) and imposed conditions specific to grading, erosion control, and site revegetation (pages 72-75). Grading plans in Exhibit A.1 clearly show all grading work as part of the disturbance areas that are reviewed, minimized and mitigated in the Environmental Review. In addition to the set of grading plans, Figure 5.6 shows specific areas of fill and excavation, with calculations of cut and fill quantities. The Construction Management Plan and Mitigation Plan also address grading impacts, including erosion control and site revegetation. The Hearings Officer found that all environmental review criteria are met or can be met subject to specific conditions related to construction management and site mitigation and monitoring. • The CUMP clearly states how environmental review is to be carried out, and therefore supersedes 33.430.070.E. • Reservoir excavation and site grading was the primary focus of the environmental review completed in 2009 (LU 09-125820 EN AD). Most of the major earthwork for this project was specifically addressed in that review, and there was no challenge on this issue at that time. • The Approval Criteria cited (33.430.070.E) are not applicable in this case because the Zoning Code section 33.430.070.E applies only to grading, excavation or fill unrelated to development. All proposed grading, excavation and fill is related to development – e.g., reservoir and pipes, buildings, parking area, stormwater facilities – and is addressed in that context. • Excavation and Fill Review is not applicable to this proposal as addressed by the Hearings Officer on page 63, H.O. Decision. This is also addressed on page 48 of Staff Report (Exhibit H.2). Code Section 33.700.110.B.4 further supports this finding as

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			<p>noted in Exhibit H.28.</p> <ul style="list-style-type: none"> • This issue is further addressed by the Hearings Officer on pages 46-54 (review of adjustment for additional excavation and fill), H.O. Decision. BDS Staff also addressed the broader issue in Exhibit H.21.
3	Powell Butte Master Plan development standard for erosion control is not met. Past Title 10 erosion control violations are offered as evidence.	<p>This issue was previously raised by appellant in Exhibit H.10</p> <p>Also see Q&A, Exhibit H-4L</p>	<ul style="list-style-type: none"> • The Hearings Officer found that PWB will employ best management practices for erosion control, following the current City Erosion Control Manual and Title 10, and DEQ's 1200-C requirements, and therefore will meet the subject standard (page 64, H.O. Decision). • As noted in Exhibit H.28, this is a code compliance issue relating to erosion control permits that are not subject to review in this land use proceeding. • There is no evidence of any local erosion control violations in the record. As the excerpt from Title 10 submitted in the appellant states: "10.70.020.A. Written Notice of Violation. When the Director determines that a violation of this Title has occurred, the Director shall notify the responsible party and the property owner in writing that a violation of this Title has occurred." No notice of violation was received by PWB, nor is there any evidence of such notice in the record. • Similarly, there is no evidence of any DEQ erosion control violations in the record. Exhibit H.27 provides a written confirmation from DEQ that there were no erosion control violations related to the project. One erosion complaint was investigated by DEQ, but this was withdrawn after DEQ determined that there was no violation. • Also Exhibits H.18-19 provided by appellant, David Shaff, PWB Administrator said there was no violation and explained issue.
4	Powell Butte Master Plan development standard for outfalls is not met. The	Part of this issue was previously	<ul style="list-style-type: none"> • The Hearings Officer found that "no new outfalls are proposed as a result of this project" (page 62, and Exhibit H.28). The outfall structure to Johnson Creek and the outfall pipe draining Reservoir 1 exist today. There is no change to the size or capacity

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	<p>permits from applicable state and federal agencies have not been obtained. It says "Outfalls may discharge stormwater or overflow only if... authorized by ..."</p> <p>QUOTE THIS STANDARD</p>	<p>raised in Exhibit H.10; appellant submitted copies of emails dated 12/1/10 and 12/8/10 that are new evidence, not part of the public record</p>	<p>of these facilities. The only proposed change to the structure is to heighten the wing walls by one foot to further reduce any potential for erosion; there is no change to the footprint of the structure or its discharge capacity.</p> <ul style="list-style-type: none"> • Because the reservoir storage capacity will double with the new reservoir and there is no change to the overflow or inflow pipes (Exhibit A.1), the new reservoir will reduce the risk of overflow occurrence by half; that is, twice as much water can be held before any emergency release would be necessary which increases the safety margin. • PWB offers to provide the authorizations and permits that authorize discharges of stormwater, overflows, and routine maintenance. This could be made a Condition of Approval for acquiring the construction permits, thus answering this concern.