

**IN THE CITY COUNCIL OF THE  
CITY OF  
PORTLAND OREGON**

**IN THE MATTER OF AN APPLICATION**

**BY**

Portland Water Bureau, Applicant,  
represented by Tom Carter and Teresa Elliott,  
City Of Portland, Owner  
c/o Portland Water Bureau  
1120 SW 5th Avenue Suite 600  
Portland, OR 97204

**FOR A**

**Type III Historic Resource Review and Type II Environmental Review at  
6325 SE Division (Mt. Tabor Park)  
LU 14-218444 HREN**

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**FINDINGS AND CONCLUSIONS**

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**ADOPTED BY THE CITY COUNCIL ON  
August 19, 2015**

**(APPROVAL of a TYPE III HISTORIC RESOURCE REVIEW and TYPE II  
ENVIRONMENTAL REVIEW)**

IN THE CITY COUNCIL OF THE  
CITY OF  
PORTLAND, OREGON

**IN THE MATTER OF AN APPLICATION  
BY PORTLAND WATER BUREAU, FOR A  
Type III Historic Resource Review and Type II Environmental Review at  
6325 SE Division (Mt. Tabor Park)  
LU 14-218444 HREN**

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FINDINGS AND CONCLUSIONS

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The findings and conclusions of the City Council in this matter are set forth below.

**I. GENERAL INFORMATION**

**Applicant:** Portland Water Bureau, represented by  
Tom Carter 503-823-7463  
Teresa Elliot, Property Manager 503-823-7622  
Patrick Easley, Contact Person 503-823-7005  
City of Portland, Owner  
c/o Portland Water Bureau  
1120 SW 5<sup>th</sup> Ave, # 600 / Portland, OR 97204

**Site Address:** 6325 SE DIVISION ST

**Legal Description:** TL 100 190.28 ACRES, SECTION 05 1S 2E  
**Tax Account No.:** R992050130  
**State ID No.:** 1S2E05 00100  
**Quarter Section:** 3236,3237,3136,3137

**Neighborhood:** Mt. Tabor, contact Stephanie Stewart at 503-230-9364.  
**Business District:** Eighty-Second Ave of Roses Business Association, contact  
Frank Harris at 503-774-2832.  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.

**Plan District:** None  
**Other Designations:** Mount Tabor Park Reservoirs Historic District was listed in the  
National Register of Historic Places on January 15, 2004.  
Mount Tabor Park, also a historic district, was listed in the  
National Register of Historic Places on September 22, 2004.

**Zoning:** OS, OSc – Open Space base zone with Environmental  
Conservation overlay zone

**Case Type:** HR (Historic Resource Review) & EN (Environmental Review)

**Procedure:** Type III, with a public hearing before the Historic Landmarks Commission. The decision of the Historic Landmarks Commission was appealed to City Council.

**Appellant #1:** **Portland Water Bureau**, represented by  
Tom Carter 503-823-7463  
Teresa Elliot, Property Manager 503-823-7622  
Patrick Easley, Contact Person 503-823-7005  
City of Portland, Owner  
c/o Portland Water Bureau  
1120 SW 5<sup>th</sup> Avenue, Suite 600  
Portland, OR 97204

**Appellant #2:** Mt. Tabor Neighborhood Association  
c/o Ty K. Wyman, Esq. 503-224-7324  
851 SW Sixth Avenue, Suite #1500  
Portland, OR 97204

## **II. INTRODUCTION AND PROCEDURAL HISTORY**

**Original Proposal:** To respond to the federal government's Long Term Enhanced Surface Water Treatment Rule (LT2), which requires that the City of Portland cap or treat its drinking water, the Portland Water Bureau (PWB) proposes to disconnect Reservoirs 1, 5, and 6 from the city's drinking-water system and construct new piped connections, valves, and other appurtenances on site that will allow continued operation of the water system without the use of the historic open reservoirs. When completed, the proposal will allow the reservoirs to continue to be used as water features that hold non-potable water. To comply with a federal drinking-water rule, the uncovered reservoirs must be physically disconnected in a way that prevents water in them from being released—even accidentally—into the drinking water distribution system.

The project occurs within Mount Tabor Park, in southeast Portland. The entire site is owned by the City of Portland and managed by the Portland Water Bureau and Portland Parks and Recreation. Mount Tabor was first established as a distribution site for Portland's water in 1894, when two reservoirs were constructed. The reservoirs at Mount Tabor and, separately, Mount Tabor Park itself were listed in the National Register of Historic Places in 2004.

As a part of the disconnection process, some underground pipes that convey water from the reservoirs into the drinking water system will be cut and their ends plugged, and a new bypass pipe will be installed. In order to continue to deliver the necessary volume of water to the drinking water distribution system, a bypass pipe and two connecting pipes will be constructed to carry it. PWB will also install two backflow preventers, two above-ground air vents, two sub-grade vaults, and covers of different sizes and shapes over manholes, sampling ports, and vaults. The proposed work will take place at 11 discrete work areas in the park and includes only the changes required to disconnect the reservoirs from the drinking water system and to continue to operate the City's water system without water from the Mount Tabor uncovered reservoirs. The proposed changes can be reversed if, in the future, the federal LT2 rule is reversed.

When the project is completed, the reservoirs will be filled using the existing inlet pipes, drained into the City's storm sewer system, cleaned and periodically refreshed. The Mt.

Tabor water utility infrastructure will remain an asset of the PWB, as its location and elevation are ideal to serve current and future water supply needs.

Upon completion of the project, park users and neighbors can expect the following:

- PWB will continue to fill the reservoirs and periodically refresh the water in them. (As described in more detail below, Council approved the application subject to Condition B, which governs filling and emptying the reservoirs)
- The reservoirs will retain existing inlet pipes or weirs maintaining the ability to fill the reservoirs in a manner comparable to the existing conditions.
- The reservoirs will continue to have the ability to be drained to the sewer system and the existing wash-down piping system used for cleaning the reservoirs will remain in place.
- The historic structures will have been protected from damage and kept in their current condition with no significant impacts or changes.
- Roads, trails and grassy areas that were disturbed by construction work will have been repaired and restored.
- All excavations will have been filled to restore and blend in with the original contours and all disturbed ground will be planted to blend with the surrounding vegetation.
- PWB will restore the west dog park entrance.

Because the proposed reservoir projects occur within the Mount Tabor Park Reservoirs Historic District and within Mount Tabor Park, also a historic district, and because some of the projects will occur within the city's Environmental Conservation overlay zone, both Historic Resource Review and Environmental Review are required, as noted below.

Historic Resource Review:

Specific to the Historic Resources Review, the applicant proposes the following alterations to the Mt. Tabor Reservoirs and surrounding parklands:

- Capping and plugging existing underground pipe. In some work areas, this requires excavation of earth and existing roadways, removal of existing pipe, and installation of new piping with restoration of the earth and roadways to existing or comparable conditions (Work Areas 2, 3, 4, 5, 6, 7, 8);
- Removal of existing underground vaults and construction of new underground vaults, including manhole covers, cast iron valve covers, air/vacuum release valves, above-ground vents. Work Area 7 will include two small concrete vaults beneath the walkway with concrete lids and brushed metal hatch covers. (Work Areas 3, 4, 5, 6, 7);
- Removal of existing gates at dog off-leash area and replacement with a new double-gate for pedestrians and new vehicle gate (Work Area 2);
- Removal of existing trees and landscaping and restoration of such landscaping, as feasible, based on location of existing and proposed piping, and areas capable of accepting new plantings Work Areas 2, 5);
- Installation of buried electrical conduit (Work Areas 3, 4, 7);
- Construction of underground thrust blocks and cathodic protection system (Work Area 7);
- Construction of an above-ground electrical cabinet on concrete pad with shrub screening (Work Areas 7, 8);

- Cutting and temporarily removing historic iron pipe handrail to provide temporary access of construction vehicles, after which it will be reinstalled via welding to approximately match the existing condition (Work Area 5);
- Capping or covering outlet pipe openings in the reservoir (Work Areas 9, 10);
- Screening the inlet weir opening (Work Areas 9, 10);
- Welding shut the inlet opening inside the gatehouse (Work Areas 9, 10);
- Placing bar grating across the drain pipe opening (Work Areas 9, 10, 11);
- Screening the openings of the two pipes connecting Reservoirs 1 and 5 (Work Areas 9, 10);
- Removing the sheet metal barrier from the fence above the weir opening (Work Area 9);
- Removal of existing pipe and installation of new pipe within and outside of the Chlorination Building (Work Area 10);
- Installation of alarms in the weir and reservoir to alert when water levels in the reservoir approach the weir, encroaching on the air gap (Work Areas 10, 11);
- Small penetrations and installation of vents and conduits at the roof and east wall Gatehouse 6 East, respectively (Work Area 11);
- Removing pipe ends and installing caps on the flanges of the outlet pipes (Work Area 11);
- Installation of new pipe inside Gatehouse 6 (Work Area 11); and
- Planting of new trees along the SE Harrison entrance (Work Area 12)

Historic Resource Review is required because the proposal is for non-exempt alterations to a Portland Historic Landmark and to resources in the Mount Tabor Park Reservoirs Historic District.

#### Environmental Review:

A portion of the Mt. Tabor site is within the City's Environmental Conservation overlay zone. Certain standards must be met to allow the work to occur by right. If the standards are not met, an Environmental Review is required. In this case, two elements of this project take place within the environmental overlay zones:

- **Construct a 48-inch steel pipe** from Conduit 3 to the pipe in SE Lincoln Drive near a park entrance (in Work Area 3). About 350 feet of the pipe are within the Environmental Conservation zone.

The main itself is 48 inches in diameter, and requires a trench that provides three feet of clearance on each side. The resulting excavation will be a trench approximately ten feet wide. To dig such a trench and work safely alongside and within it, a disturbance area approximately 35 feet wide is needed.

The work involves the following elements:

- Construct a new 48-inch pipe in SE Lincoln Drive. About 350 feet of the pipe is within the environmental conservation overlay zone, and all 350 feet in the EC overlay will be located beneath the existing pavement of SE Lincoln Drive. The remaining 500 feet of pipe is outside the EC overlay and not subject to environmental review.
- Install a flow meter, appurtenances and vault with two manholes in the paved driveway.
- Install two small electrical conduits and wiring in the paved driveway.
- Install five CIV covers in locations to be determined.
- **Vault Work in Gravel Access Road** (Work Area 6). Conduit 4 is 56-inches in diameter. It will be disconnected from the distribution system at this location by

cutting and plugging the pipe on the south side of the vault. The remaining portion of Conduit 4 will continue to service Reservoir 5. The second pipe (Conduit 2) is 44-inches in diameter and also follows this gravel road. It will be cut and plugged just past the vault, after it connects with the 30-inch diameter pipe. Valves will be installed on the conduits and the distribution pipe to control the direction of flow.

A new combination air/vacuum release valve will be installed inside the existing vault, to allow the release of entrapped air or relative vacuums and avoid damage to the pipes. A vent pipe will be installed on top of the same vault to allow air to freely flow in and out of it.

All of the excavation and ground disturbance required to complete this work will take place within the boundaries of the gravel driveway and existing vault disturbance areas.

The construction work in Work Areas 3 and 6 will avoid removing trees or other vegetation from environmental resource areas. In both locations work will occur in existing driveways and developed areas around existing vaults.

The disturbance areas described for the projects exceed the utility line development standards listed in Zoning Code section 33.430.150, and are therefore subject to environmental review.

**Relevant Approval Criteria:**

- **Historic Resource Review: 33.846.060. G** Other approval criteria
- **Environmental Review: 33.430.250 A** Public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments

**Procedural History:**

The proposal first appeared before the Historic Landmarks Commission on December 1, 2014. At this hearing BDS staff and the applicant made presentations and the Historic Landmarks Commission heard testimony from the public. The Historic Landmarks Commission requested that the applicant return on January 12, 2015 with additional information. At the January 12, 2015 hearing, BDS staff and the applicant again made presentations and additional public testimony was heard. The applicant at this hearing proposed an amendment to Condition B of the Historic Resource Review decision, and it was incorporated into the proposal. At this hearing, a request was made to hold the record open for the submission of additional testimony. The record was held open until 12:00pm on January 20, 2015, with an additional six days allowed for responding to the submitted testimony, with the record closing at 12:00pm on January 26, 2015.

The Historic Landmarks Commission reconvened at 1:30pm on January 26, 2015. At this hearing, the Commission further amended Condition B, amended Condition D, and added Condition E to the Historic Resource Review decision. A motion was made and seconded to approve the proposal as amended; the motion failed 3-3. The hearing was continued to February 9, 2015. Due to the prior tie vote, staff presented two staff reports dated February 2, 2015: one recommending approval and the other recommending denial. With the full 7-member Commission present, a motion was made and seconded to approve the proposal, amending Condition B; the motion passed 7-0.

The final findings and decision of the Historic Landmarks Commission were mailed February 13, 2015.

The applicant, the Portland Water Bureau (PWB), appealed the decision on February 26, 2015. The PWB is designated Appellant 1. The Mt. Tabor Neighborhood Association (MTNA) appealed the decision on February 27, 2015. The MTNA is designated Appellant 2.

Appellant 1's written statement submitted with the appeal indicated disagreement with the Historic Landmarks Commission's decision on two bases :

- 1) Condition B, as modified by the Commission, could not be satisfied and is not necessary to satisfy PCC 33.846.060.G1. The Commission added a specific limit to the amount of time during which the reservoirs could be "partially or fully" drained.
- 2) Condition E was not supported by the approval criterion cited (PCC 33.846.060.G.9), and also improperly required City Council to create and fund a program not envisioned by the original proposal.

Appellant 2's written statement, submitted with their appeal, stated five bases for its appeal:

- 1) The applicant failed to identify the legal lot boundaries within the subject property as required by PCC 33.730.060.C.3. Appellant 2 argued the applicant lacks sufficient authority over the property to undertake the project.
- 2) A new conditional use approval under PCC 33.815.040.A.4 was required because the amount of existing basic utility use would change more than 10 percent.
- 3) The applicant failed to provide sufficient evidence to show that the proposed alterations are exempt from the requirement for a new conditional use approval in PCC 33.815.040.B.1. In particular, Appellant 2 argued that the "exterior improvement area" of the project exceeds 1500 square feet.
- 4) The Historic Landmarks Commission erred in finding that "the historic character of the property will be retained and preserved" (approval criterion PCC 33.846.060.G.1) because the record lacks sufficient evidence to demonstrate that the applicant will retain and preserve the reservoirs.
- 5) The Commission also erred with respect to PCC 33.846.060.G.2 and G.9 because the project jeopardizes the existing conditional use status and does not ensure the possible future restoration of the historic function of the site.

On April 29<sup>th</sup>, 2015, Appellant 2 submitted an "Appeal Letter and Report" (Exh. I.10) that refined and explained its appeal. Appellant 2 stated that they were not asking Council to reverse its 2009 decision to disconnect the reservoirs, nor to overturn the Historic Landmarks Commission's decision in this case. Instead, they requested Council to:

1. Deny the Applicant's challenge to the clause in Condition B that protects constancy of the iconic views. Appellant 2 argued protecting that constancy is necessary to meet PCC 33.846.060.G.1.
2. Deny the Applicant's challenge to Condition E. Instead, retain the HLC mandate for historic preservation work at the historic Mt. Tabor reservoir site. Appellant 2 argued Condition E was necessary to meet PCC 33.846.060.G.1, 2, and 9.
3. Correct the "scrivener's error" in Condition B, *i.e.*, strike the "50%-75%" reference supplied by BDS staff during HLC deliberations, and replace it with "65%-85%,".
4. Clarify the language of Condition B, *i.e.*, revise the current text – "the normal historic operating range" – to read "the normal historic operation range producing iconic views."
5. Limit the timeline of Condition E's preservation work, so as to be concurrent with the May 2017 timeline of other project construction.
6. Within one year, craft a written, long-range preservation plan (including at least five years of budget projections) in concert with SHPO and under a Design

Advice Review with the HLC, to be formally adopted before Council to meet PCC 33.846.060 G.1, 2, and 9.

7. Direct the Applicant to 1) file for a conditional use review before proceeding further; and 2) develop a plan to protect the site's existing Conditional Use status ("basic utility") to support PCC 33.815.040 and PCC 33.846.060.G.9.

BDS mailed notice of the first hearing before City Council on March 5, 2015. The first appeal hearing before City Council, scheduled for May 14, 2015, was rescheduled to a 2 PM time certain on May 28, 2015. On May 28, 2015, Council held an evidentiary hearing. BDS staff, the PWB, and the MTNA made presentations and the Council heard testimony from all members of the public who wished to speak. Council held the record open until June 11, 2015 at 5 PM for additional evidence and argument and continued the hearing to 2 PM on June 25, 2015 for final rebuttal and Council deliberation. At the June 25<sup>th</sup> hearing, the two appellants jointly requested a continuance as they were working toward agreement on the appeal issues. Council continued the hearing to a 9:30 AM time certain on July 15, 2015. At the July 15<sup>th</sup> hearing, the two appellants confirmed they had reached agreement on the language of conditions for the land use application. Council made a unanimous tentative decision (5-0) to approve the application with modified conditions, and requested that City staff return with findings on August 19, 2015.

### III. ANALYSIS

**Site and Vicinity:** The project site, Mt. Tabor Park, is roughly bound by SE Division Street on the south, SE 64<sup>th</sup> Avenue and SE 60<sup>th</sup> Avenue on the east, SE Yamhill on the north, and SE 71<sup>st</sup> Avenue on the west.

Mt. Tabor Park is a 196-acre public park located in a residential area of southeast Portland. The park encompasses most of a volcanic butte, with four peaks. The tallest summit rises to an elevation of 643 feet, making it a prime landmark visible from points all around the city. Because of its elevation, the site became a distribution site for Portland's gravity-fed, mountain-source drinking water in 1894 with the construction of two open reservoirs, Reservoir 1, and the since-demolished Reservoir 2. In 1903, Mt. Tabor was identified as a potential city park in 1903 by John Charles Olmsted, adopted son of Frederick Law Olmsted, and who, along with his brother Frederick Law Olmsted Jr., operated the landscape firm Olmsted Brothers landscape firm which carried forth the legacy of their father. In 1909, voter-approved bonds were used to purchase the properties that made up the park. Emanuel Tillman Mische, who had previously worked for Olmsted Brothers, was hired the prior year at Portland's park superintendent and designed the park. Two additional open reservoirs, Reservoirs 5 and 6, were constructed in 1911 on the western slope of the park.

In January of 2004 the reservoirs were listed under Criterion A and Criterion C on the National Register of Historic Places as the Mt. Tabor Reservoirs Historic District due to their high integrity and historic significance to the city's water supply and the development of Portland, and because they are outstanding examples of intact historic architecture and engineering. In September of 2004, the entire site, Mt. Tabor Park, was also listed in the National Register of Historic Places as a historic district under Criterion A and Criterion C. A majority of the reservoirs' features have been kept largely intact, and contribute greatly to the integrity of Mount Tabor Park.

The National Register nomination for the reservoirs states: "All of these open reservoirs represent some of the finest examples of intact, still-in-use City Beautiful public works remaining in the nation...A majority of the reservoirs' features have been kept intact and contribute greatly to the integrity of Mt. Tabor Park. The surface of the water held



in the reservoir basins represents approximately twenty acres, about one tenth of the entire park acreage. The deep, open water provides a chiaroscuro effect to the landscape and is an integral part of the experience of Mount Tabor Park. The lighted walkways around the perimeter of each parapet wall and wrought iron fence, the cleared, grassy areas associated with the reservoir basins and the outstanding views provide important park amenities.”

The following resources are listed as contributing to either or both Mt. Tabor Park and Mt. Tabor Reservoirs Historic District: Reservoir 1, including basin, fountain, gatehouse, and weir building; Reservoir 5, including basin, gatehouse, and weir building; Reservoir 6, including basin and inlet and outlet gatehouses; covered concrete storage tank, covered storage tank building; the site, including the circulation system including drives, entrances at Lincoln Street, salmon Street and 69<sup>th</sup> Avenue, the historic lighting system, the Mt. Tabor Nursery and maintenance yard, parking lot and three play areas; Office-Horticultural Services Building; Administrative Building and Additions; Mechanical Offices Building (community Gardens Building); Caretaker House – Mount Tabor House; Volcano Comfort Station; Summit Comfort Station; Northeast Entrance Comfort Station; Crater Amphitheater; West and East Tennis Courts; 69<sup>th</sup> Avenue Stairs; Southside Stairs; and the Harvey W. Scott Statue and Terrace.

The following resources are listed as non-contributing: Garages/Shops on the West side Row and East Side Row; Lathe House; Equipment Building; Pole Barn Building; Duplex Screen House; 50”, 44” and 56” Meter Houses; Maintenance Building and Park Office; summit Radio Tower; Additional Greenhouses; Picnic Shelter; Greenhouse Complex; Basketball Court; Soap Box Derby Track; Out Building at Reservoir 5; chlorination Building and Mount Tabor Pump station at Reservoir 6.

Landscaping is described in the narrative descriptions in both nominations but is not specifically listed as contributing or noncontributing.

**Zoning:** The Open Space (OS) zone is intended to preserve public and private open, natural, and improved park and recreation areas identified in the Comprehensive Plan. These areas serve many functions including: providing opportunities for outdoor recreation; providing contrasts to the built environment; preserving scenic qualities; protecting sensitive or fragile environmental areas; preserving the capacity and water quality of the stormwater drainage system; and providing pedestrian and bicycle transportation connections.

The Historic Resource Protection overlay comprises Historic and Conservation Districts, as well as Historic and Conservation Landmarks, protects certain historic resources in the region, and preserves significant parts of the region’s heritage. The regulations implement Portland’s Comprehensive Plan policies that address historic preservation. These policies recognize the role historic resources have in promoting the education and enjoyment of those living in and visiting the region. The regulations foster pride among the region’s citizens in their city and its heritage. Historic preservation beautifies the city, promotes the city’s economic health, and helps to preserve and enhance the value of historic properties.

The Environmental Conservation Zone “c” overlay conserves important resources and functional values in areas where the resources and functional values can be protected while following environmentally sensitive urban development. The application of the environmental overlay zones is based on detailed studies that have been carried out within separate areas throughout the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these respective study areas.

The natural, open space, and scenic resources at Mount Tabor Park are inventoried in the East Buttes, Terraces, and Wetlands Conservation Plan. Mount Tabor Park is identified as part of Resource Site 133. Resource Site 133 extends beyond the park boundaries, particularly to the north, and includes identified resources and functional values outside the park boundaries.

At Resource Site 133, the following resources are identified: “Open space, forest, habitat, intermittent drainage, wetland, groundwater; City reservoirs; volcanic vent; archaeological site.”

The following functional values are described for Resource Site 133: “Domestic water supply; food, water, cover, and territory for wildlife; groundwater recharge and discharge; slope stabilization, sediment and erosion control; microclimate amelioration; air and water quality protection; scenic, recreational, geologic, and heritage values.”

The East Buttes, Terraces, and Wetlands Conservation Plan (the “East Buttes Plan”) provides additional description of the resource quality. It states that the vegetation on site is predominantly cultivated for urban park use, although the parts of the environmental zones where the proposed work will take place is less cultivated and provides slightly higher habitat value than the more cultivated areas of the park. The East Buttes Plan describes the habitat quality this way (pp. 60-62):

“This site's vegetation is cultivated extensively for urban park use, though some non-cultivated areas on the steeper slopes are present. The dominant species is Douglas fir, between 30 and 70 years in age, and thinned to a regular spacing. Trees are limbed (lower branches removed) and sub-canopy is open. Occasional deciduous trees include choke cherry, vine maple, bigleaf maple, red alder, dogwood, oak, birch and hawthorn. Shrubs include western hazel, red huckleberry, willow, rhododendron, juniper, forsythia, azalea, cedar and spiraea.

The herb layer is comprised of about 80 percent mowed lawn, yet in the less cultivated areas, sword fern, bracken fern, orchard grass, Oregon grape, salal, twisted stalk, fringe cup and poison ivy are common. The non-cultivated areas include a native shrub layer absent in other parts of the park; shrubs include wild rose, snowberry, oceanspray, serviceberry and thimbleberry. Certain areas of the park are threatened by the invasion of Himalayan blackberry, English ivy, Scot's broom and English holly.

The vegetative cover within the park provides limited habitat for wildlife. The trees provide some roosting and perching habitat for avians. In the cultivated areas, cover is limited and food production is low. In the non-cultivated areas, covering about 40 acres, the greater diversity of native understory vegetation provides more food and cover for wildlife. Wildlife observed in the park include hairy woodpecker, red-tailed hawk, owls, juncos, wrens, chickadees, pheasants, crows and squirrels.”

The East Buttes Plan states that the existing level of disturbance in both cultivated and non-cultivated areas is “high” (p. 62):

In the areas around the proposed work sites, there are native shrubs and ground covers as well as some nuisance species, such as Himalayan blackberry, English ivy, and English holly.

There are panoramic views identified at Mount Tabor, but Work Areas 3 and 6 (the only work areas within environmental zones) cannot be seen from the viewpoints. Native American artifacts were discovered on the north side of the butte, outside the park

itself, in prior years. There are no known archeological sites in the proposed work areas, which both have been previously excavated for reservoir water conduit installation, road building and reservoir construction.

**Land Use History:** City records indicate prior land use reviews include the following:

- LU 74-000650 (ref. file: CU 007-74) – Conditional Use approval for a greenhouse;
- LU 61-001380 (ref. file: CU 029-61) – Conditional Use approval for a small storage building;
- LU 65-002285 CU (ref. file: CU 056-65) – Approval with the condition that planting be provided to screen the facilities from adjacent park and residential areas.
- LU 74-002392 (ref. file: CU 059-74) – Conditional Use approval for a picnic shelter;
- LU 64-002651 (ref. file: CU 067-64) – Conditional Use approval to construct a plant potting building on the southwest corner of Mt. Tabor Park on park warehouse land;
- LU 77-002064 (ref. file: CU 49-77) – Conditional Use approval for a water pumping station;
- LU 67-003406 (ref. file: CU 93-67) – Conditional Use approval for a maintenance building and office;
- LU 89-003906 CU (ref. file: CU 26-89) – Conditional Use approval for parking lot expansion;
- LU 89-021552 (ref. file: MP 107-89) – Approval of a 3-lot minor partition;
- LU 99-017214 EN (ref. file: LUR 99-00809) – Environmental Review approval of trail constructions and improvements in the Environmental Concern zone;
- PR 03-186237 ZC – Zoning Confirmation that the existing reservoir use in Mt. Tabor Park was a basic utility and have the status of an automatic Conditional Use;
- EA 06-173412 PC – Pre-Application conference for interim security and deferred maintenance improvements for the reservoirs;
- LU 07-139442 HDZ – Historic Design Review approval for interim security and deferred maintenance improvements;
- LU 06-178213 HDZ – Historic Design Review approval for an 8' wide accessible path on the north side of Reservoir #6;
- EA 12-183947 APPT – Early Assistance appointment for the current proposal;
- LU 13-236792 HR & LU 13-240530 EN – Withdrawn Historic Resource Review and Environmental Review upon determination that a higher level of review was necessary; and
- EA 14-118276 PC – Pre-Application Conference for the current proposal.

**Summary of Applicant's Statement:** The City of Portland is required to disconnect three uncovered reservoirs at Mount Tabor from the City's drinking-water distribution system by December 2015 in order to comply with the US Environmental Protection Agency's (EPA) Long Term 2 Enhanced Surface Water Treatment Rule (LT2).

Federal and state law require that no public water system serve water from uncovered finished drinking water reservoirs unless the water is treated at the outlet for bacteria, viruses, and cryptosporidium. The City investigated the option of treating water at the outlet of the Mount Tabor reservoirs and determined that such an approach was probably infeasible and raised difficult land use issues because it would require the placement of sizeable industrial facilities in a residential zone. The City Council determined years ago that it would not cover the reservoirs at Mt. Tabor, reflecting vocal opposition from the community. The City also several times tried unsuccessfully to persuade the Oregon Health Authority (OHA) to grant a delay in the effective date of the

City's obligations. In June, 2013, City Council announced that it would seek no further delays and directed that the Water Bureau comply with the existing regulatory schedule, under which the City must physically disconnect its Mt. Tabor uncovered finished drinking water reservoirs from Portland's drinking water distribution system by December 31, 2015.

To disconnect the reservoirs, it is necessary to cut and plug in 15 places in 11 separate work areas the outlets that deliver water from the reservoirs into the drinking water system. The outlets will also be blocked at the reservoirs. The inlets and drains will be screened to prevent intrusion of insects, animals, humans, or waste into the pipes.

Then in order to continue to deliver the necessary volume of water to the drinking water distribution system, a bypass pipe and two connecting pipes must be constructed to carry it. In order to operate the water system successfully, PWB must also install two backflow preventers, two above-ground air vents, two sub-grade vaults, and covers of different sizes and shapes over manholes, sampling ports, and vaults.

PWB seeks to gain approval for several improvements that will help operate the water system. First, PWB proposes to install an emergency generator and fuel tank in Gatehouse 6 East. This generator will provide emergency power when needed to operate the buried Tabor Pump Station, which supplies water to Reservoir 7, a small covered storage reservoir near the crest of Mount Tabor. PWB proposes to install a cathodic protection system by the pump station. This system protects metal pipes and appurtenances from corroding. It requires an above-ground equipment cabinet. And finally, PWB proposes to install a SCADA (Supervisory Control and Data Acquisition) equipment cabinet above ground along SE 60th Ave behind the sidewalk. A detailed description of the project is included in the land use application narrative (Exhibit A-1).

Prior to submitting this land use application, PWB conducted a public outreach program including ten walking tours, two community meetings, and project website outreach. PWB convened a CAC (the Community Advisory Committee) and engaged a professional facilitator. The CAC consisted of people living in the Mount Tabor Neighborhood Association (MTNA) area. The bureau also worked closely with the CAC to identify and address public concerns about the project. This application includes many of the recommendations made by the CAC as well as input from the other sources.

As part of the public outreach process, PWB conducted 10 walking tours for the general public to look at the proposed work, and for PWB to explain what the project entailed and look for solutions to minimize impacts on the park and historical features. In all, over 70 citizens attended these tours. PWB posted the same information about the project on the website and provided materials for self-guided tours.

The purpose of this expanded public effort was to fully inform citizens about the project proposal, gather their comments and suggestions, and refine the proposal based on community priorities.

Approximately 75 percent of PWB's customers, including many wholesale customers, potentially receive water that has passed through one or more of the three uncovered drinking water reservoirs at Mount Tabor. The purpose of the project is to disconnect Reservoirs 1, 5, and 6 from the drinking water system and allow the reservoirs to continue to be used as water features that hold non-potable water.

## **Agency and Neighborhood Review:**

**1. Agency Review:** A “Request for Response” was mailed **October 29, 2014**. The following Bureaus responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Parks-Forestry Division
- Bureau of Transportation Engineering
- Life Safety Division of BDS
- Water Bureau
- Fire Bureau
- Site Development Section of BDS

**2. Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on November 10, 2014. The following responses were received on the proposal in response to the mailed notice:

- Mark Bartlett, on October 23, 2014, wrote with concerns that the application may be accepted as complete in error, and questions regarding what makes an application complete, who determines that the representations are accurate and that the application is compliant, what recourse citizens have to question the accuracy of representation and change the determination of completeness, and what happens to the 120-day decision making timeline. Exhibit F-1.
- Ty K. Wyman, on behalf of Brian Rohter and Eileen Brady, wrote on November 10, 2014, suggesting the application only be approved with a condition of approval that each above ground reservoir be filled with water and maintained as full to ensure preservation of historic character. Exhibit F-2.
- Mark Bartlett, on November 17, 2014, wrote with concerns that the Water Bureau does not have the authority to work in areas of the park not managed by the Water Bureau, and commented on what is and is not included in the case file. Exhibit F-3.
- Mark Wheeler, on November 17, 2014, wrote with strong disapproval of the reservoir system, requesting that the reservoirs remain open. Exhibit F-4.
- Jocelyn Goodall, on November 18, 2014, wrote with disappointment that the City did not further challenge the federal ruling to cap or treat the reservoirs, questioning the public cost of previous and current proposals, concerns about the future of the reservoirs if they are no longer used as a utility, support for the existing open reservoir system, and concerns with the safety of underground water storage. Exhibit F-5.
- Steven T. Wax, on November 19, 2014, wrote questioning the need for the current proposal, suggesting that the reservoirs be taken off-line rather than physically disconnecting them through the proposed cut-and-plug method. Exhibit F-6.
- Stephanie Stewart, on November 19, 2014, wrote on behalf of the Mt. Tabor Neighborhood Association (MTNA), requesting several conditions of approval including the requirement for filling the reservoirs, Water Bureau articulation of future maintenance and security responsibilities, incorporation of a future-use plan, formal study of impacts akin to Section 106, requirement of a preservation plan, requirement for preservation of historic resource with appropriate funding, and formal oversight from the Historic Landmarks Commission or a third party to ensure all approval criteria are met. MTNA also submitted several records into the file, by reference. Exhibit F-7.
- Mary Kinnick, Co-Chair of Friends of Mt. Tabor Park, on November 20, 2014, wrote with full endorsement of the MTNA letter, encouraging special consideration of MTNA’s requested conditions of approval. Exhibit F-8 .

Testimony received prior to Historic Landmarks Commission’s December 1, 2014 hearing:

- Bertha Guptil, on November 21, 2014, wrote in opposition. Exhibit H-3 .

- PWB Correspondence with Steven Wax, provided by Portland Water Bureau, on November 24, 2014. Exhibit H-4 .
- Kim Lakin, on November 23, 2014, wrote with suggestions for improvement. Exhibit H-5.
- Sandra Hay Magdaleno, South Tabor Neighborhood Association President, on November 24, 2014, wrote suggesting reversibility and maintenance of historic character and supporting MTNA letter. Exhibit H-6 .
- Floy Jones, Friends of the Reservoirs, on November 25, 2014, wrote in opposition with requests for additional mitigation measures. Exhibit H-7.
- Brad Yazzolino, on November 28, 2014 wrote with requests for conditions of approval and with support of MTNA letter. Exhibit H-8.
- Ty K. Wyman, representing Brian Rohter and Eileen Brady, on November 24, 2014, wrote requesting additional information and conditions of approval. Exhibit H-9 .

Testimony received at Historic Landmark Commission's December 1, 2014 hearing:

- Mary Ann Schwab, presented oral testimony in favor, provided certain conditions of approval were applied.
- John Laursen, representing Mt. Tabor Neighborhood Association, presented oral and written testimony, suggesting conditions of approval. Exhibit H-15 .
- Dawn Smallman, presented oral, visual, and written testimony, suggesting conditions of approval. Exhibit H-16 .
- Kim Lakin, presented oral and written testimony in opposition, suggesting denial of application or including conditions of approval. Ms. Lakin also submitted the Mt. Tabor Historic Structures Report, dated May 2009. Exhibit H-17 .
- Stephanie Stewart, presented oral and written testimony in opposition, suggesting conditions of approval. Exhibit H-18 .
- Brian Rohter, presented oral, visual, and written testimony in opposition, suggesting conditions of approval. Exhibit H-19 .
- Suzanne Sherman, presented oral and visual testimony in opposition, with concerns of the proposal's impacts on wildlife. Exhibit H-20.
- Christopher Lancefield, presented oral testimony in opposition.
- Mark Bartlett, presented oral and written testimony in opposition, with concerns regarding the land use process. Exhibit H-22.
- Matthew Byloos, presented oral testimony in opposition.
- David Hilts, presented oral testimony in opposition.
- Brad Yazzolino, presented oral and written testimony (see H-8) in opposition.
- Laura Orr, presented oral and written testimony in opposition, suggesting retention of water. Exhibit H-26.
- Mary Kinnick, Friends of Mt. Tabor Park, presented oral testimony in opposition, suggested retention of water.
- Eileen Brady, presented oral testimony in opposition, requested conditions of approval.
- Floy Jones, Friends of the Reservoirs, presented oral testimony in opposition, suggested conditions of approval.
- Valerie Hunter, presented oral and written testimony in opposition regarding reversibility. Exhibit H-30.
- Ty Wyman, representing Brian Rohter and Eileen Brady, presented oral testimony regarding land use process and Commission authority.
- Steve Reinemer, presented oral testimony in opposition.
- Johnny Dwork, presented oral testimony in opposition.
- Katherin Kirkpatrick, presented written testimony in opposition, as well as public documents regarding reservoirs use determination and LT2 compliance. Exhibit H-34.

- Daniel Berger, presented written testimony in opposition, suggested retention of water. Exhibit H-35.
- David Morrison, presented written testimony in opposition.
- Exhibit H-36.
- Jana Throckmorton, South Tabor Neighborhood Association, presented written testimony in opposition. Exhibit H-37.
- Susan Tompkins, presented written testimony in opposition. Exhibit H-38.
- Joy Ellis, presented written testimony in opposition. Exhibit H-39.
- Dee White, presented written testimony in opposition, suggested conditions of approval. Exhibit H-40.
- Kim Dianich, did not present testimony but noted her support. Exhibit H-41.
- Tom Koehler, did not present testimony but noted his opposition. Exhibit H-42.
- Alexander Aris, did not present testimony but noted his opposition. Exhibit H-43.
- Carrie Seitzinger, did not present testimony but noted her opposition. see Exhibit H-44.

Testimony received after Historic Landmarks Commission's December 1, 2014 hearing:

- Tana and David Cahill, on November 24, 2014, wrote in opposition, supporting MTNA suggested conditions of approval. Exhibit H-45.
- Mark Bartlett, on December 1, 2014, wrote in opposition, and provided evidence submitted at December 1, 2014 hearing (also see Exhibit H-22). Exhibit H-46
- Mark Bartlett, on December 7, 2014, wrote in opposition. Exhibit H-47 .
- Nate Klett, on December 11, 2014, wrote with suggestions for the future of the reservoirs. Exhibit H-48 .
- Kira Edmunds, on December 16, 2014, wrote in opposition. Exhibit H-49 .
- Anna Fritz, December 16, 2014, wrote in opposition. Exhibit H-50 .

Testimony received prior to Historic Landmarks Commission's January 12, 2015 hearing:

- Mark Bartlett, January 2, 2015 email with questions regarding administration, code interpretations, prior land use determinations and zone changes. Exhibit H-57 .
- Stephanie Stewart, January 5, 2015, wrote, listing expectations from PWB. Exhibit H-58 .
- Scott Fernandez, January 5, 2015, wrote in opposition, email citing health concerns with buried drinking water. Exhibit H-59 .
- Todji Kurtzman, January 5, 2015, wrote in opposition, citing health concerns. Exhibit H-60 .
- Jason Allen, Historic Preservation Specialist at the Oregon State Historic Preservation Office (SHPO), on January 6, 2015, wrote stating that the SHPO found that the proposed project would not adversely affect Mt Tabor Park or the Mt Tabor Park Reservoirs Historic District. Exhibit H-61 .
- Scott Fernandez, on January 7, 2015, wrote in opposition, citing health benefits of open reservoirs. Exhibit H-62 .
- Ty K. Wyman, representing Brian Rohter and Eileen Brady, wrote in opposition, proposing revised conditions of approval and suggesting there are errors in the applications. Exhibit H-63 .
- John Laursen and Stephanie Stewart, Mt. Tabor Neighborhood Association, wrote in opposition, responding to Portland Water Bureau's December 23, 2014 response, providing additional background information on SHPO response. Exhibit H-64 .
- Dee White, on January 11, 2015, wrote in opposition, requesting a denial. Exhibit H-66 .
- Patricia Aboussie, on January 11, 2015, wrote suggesting the reservoirs remain as-is and submitted a photo. Exhibit H-67 .
- Lisa Bell, on January 12, 2015, wrote in opposition. Exhibit H-68 .
- Jack Wells, on January 12, 2015, wrote in opposition. Exhibit H-69 .

- RoseMarie Opp, on January 12, 2015, wrote in opposition, suggesting that all citizens who drink Bull Run water should be informed of this proposal and invited to the process, and provided a copy of the January 7, 2015 Truthout article “Deep Questions Arise Over Portland’s Corporate Water Takeover” by Victoria Collier. Exhibit H-70 .
- Brad Yazzolino, on January 12, 2015, wrote with support of the MTNA response (Exhibit H-64) and provided a link to the Truthout article in Exhibit H-70. Exhibit H-71 .
- Joseph Mitchell, on January 12, 2015, wrote in opposition, citing cost concerns. Exhibit H-72 .
- Lela Prewitt, on January 12, 2015, wrote in opposition to the disconnection and tree removal. Exhibit H-73 .

Testimony received at Historic Landmarks Commission’s January 12, 2015 hearing:

- Joe Walsh, presented oral testimony in opposition. Exhibit H-77 .
- Stephanie Stewart, MTNA, presented oral and written testimony in opposition. Exhibit H-78 .
- John Laursen, MTNA, presented oral and written testimony in opposition, and suggested adding a condition of approval that requires the City to return to the Historic Landmarks Commission if the water is to go away permanently. Exhibit H-79 .
- Mark Bartlett, MTNA CAC, presented oral and written testimony in opposition. Exhibit H-80 .
- Roger Jones, presented oral testimony in opposition. Exhibit H-81 .
- Paul Cienfuegos, presented oral testimony in opposition. Exhibit H-82 for additional details.
- Johnny Dwork, presented oral and written testimony in opposition. Exhibit H-83.
- Georgia Lamprose Obradovich, presented oral testimony in opposition. Exhibit H-84.
- Jon Reinschreiber, presented oral testimony in opposition. Exhibit H-85.
- Dee White, Friends of the Reservoirs, presented oral and written testimony in opposition. Exhibit H-86.
- Floy Jones, Friends of the Reservoirs, presented oral and written testimony in opposition. Exhibit H-87.
- RoseMarie Opp, presented in oral testimony in opposition. Exhibit H-88.
- Daniel Berger, presented in oral testimony in opposition. Exhibit H-89.
- Charles Johnson, Sane and Honest People Against Joe Glicker, presented oral testimony in opposition. Exhibit H-90.
- Steven T. Wax, presented oral testimony in opposition. Exhibit H-91.
- Brian Rohter, presented oral testimony in opposition. Exhibit H-92.
- Eileen Brady, presented oral testimony in opposition and written correspondence with Jason Allen (SHPO) regarding retention of water. Exhibit H-93.
- Beth Giansiracusa, presented oral testimony in opposition. Exhibit H-94.
- Uriaka Asing, presented testimony in opposition. Exhibit H-95.
- Catherine Howells, presented testimony in support. Exhibit H-96.
- Michael Conley, presented oral testimony in opposition. Exhibit H-97.
- Matthew Long, presented oral testimony in opposition. Exhibit H-98.
- Mary Ann Schwab, presented oral and written testimony in opposition. Exhibit H-99.
- Galen Hefferman, presented oral testimony in opposition. Exhibit H-100.
- Ty Wyman, presented oral testimony in opposition. Exhibit H-101.
- Ryan B. Naumann, presented written testimony in opposition. Exhibit H-102.
- Katherine Mura, presented written testimony in opposition. Exhibit H-103.
- Carole Scholl, presented written testimony in opposition. Exhibit H-104.



- Patra Conley, presented written testimony in opposition. Exhibit H-105.
- Cathy Kuehn, presented written testimony in opposition. Exhibit H-106.
- Sarah Adams, presented written testimony in opposition. Exhibit H-107.
- Frank Martin, presented written testimony in opposition. Exhibit H-108.
- Kundalini Rose Bennett, presented written testimony in opposition. Exhibit H-109.
- Rachel Stern, presented written testimony in opposition. Exhibit H-110.
- Richard A. Burton, presented written in testimony in opposition. Exhibit H-111.
- Jeya Anderson, presented written in testimony in opposition. Exhibit H-112.
- Katherin Kirkpatrick, presented testimony in opposition. Exhibit H-113.
- Treothe Bullock, presented written testimony in opposition. Exhibit H-114.
- Anna Fritz, presented written testimony in opposition. Exhibit H-115.
- Noah Kleiman, presented written testimony in opposition. Exhibit H-116.
- Leslie Piper, presented written testimony in opposition. Exhibit H-117.
- John Parker, presented written testimony in opposition. Exhibit H-118.
- Daniel F. Haley, presented written testimony in opposition. Exhibit H-119.
- Rachael Rice, presented written testimony in opposition. Exhibit H-120.
- Tavish McNaughton, presented written testimony in opposition. Exhibit H-121.
- Nancy Newell, Citizens for Portland's Water, presented written testimony in opposition. Exhibit H-122.
- Herschel Soles, presented written testimony in opposition. Exhibit H-123.
- Marian Drake, did not present testimony, but noted her opposition. Exhibit H-124.
- Neil Pinholster, did not present testimony, but noted his opposition. Exhibit H-125.
- Talor Lee-Stiles, did not present testimony, but noted his opposition. Exhibit H-126.

Received after January 12, 2014 Historic Landmarks Commission hearing:

- Scott Fernandez, on January 12, 2015 wrote in opposition and provided a document "Scientific and Public Health Basis to Retain Reservoir Water Health System for the City of Portland Oregon" by Scott Fernandez. Exhibit H-127.
- Mark Bartlett, on January 13, 2015, wrote regarding use restrictions. Exhibit H-128.
- Marian Drake, on January 13, 2015, wrote in opposition, with concerns about the process. Exhibit H-129.
- Steven T. Wax, on January 14, 2015, wrote in opposition, suggesting an additional condition of approval to require preservation of the reservoir structures. Exhibit H-130.
- Scott Fernandez, on January 19, 2015, wrote in opposition, referencing the scientific benefits of open reservoirs. Exhibit H-131.
- Mary Ann Schwab, on January 20, 2015, wrote with concerns about radon and forwarding a letter sent from Robert McCullough of SE Uplift to City Council. Exhibit H-132.
- Brad Yazzolino, on January 20, 2015, wrote in opposition with concerns regarding the long-term preservation of the reservoirs and the expense of the proposal. Exhibit H-133.
- Mary Ann Schwab, on January 20, 2015, wrote with corrections and emphasis to her prior correspondence, regarding the expenditure for this proposal and suggested use for Columbia South Shore Well Field. Exhibit H-134.
- Stephanie Stewart and John Laursen, Mt. Tabor Neighborhood Association, on January 20, 2015, wrote encouraging the Commission to mandate further mitigation through a condition of approval requiring formal adoption and implementation of the 2009 Historic Structures Report. Exhibit H-135.
- Katherin Kirkpatrick, on January 20, 2015, wrote in opposition, stating that the applicant must prove the reservoirs will remain in use as public works and prove their credibility in the assertion that the proposed alterations are reversible. She

also provided an article from the July 2014 Bull Run Dispatch regarding the PWB-partnered Portland State University Capstone course. Exhibit H-136.

- Mary Ann Schwab, on January 20, 2015, forwarded similar comments to those in H-132 and H-134 to City Council. Exhibit H-137.
- Mark Bartlett, on January 20, 2015, wrote in opposition, requesting that notes be made available, clarifying LT2 language, and suggesting that a Conditional use review is required and that the Water Bureau's proposal is a taking of Parks and Recreation lands. Exhibit H-138.
- Helga Fuller, on January 20, 2015, wrote in opposition, suggesting that the proposal is unnecessary and a waste of money. Exhibit H-139.
- RoseMarie Opp, on January 20, 2015, wrote in opposition, with concerns about the potential future demolition of the reservoirs, and closed reservoir systems. Exhibit H-140.

Response testimony received after 12:00pm on January 20, 2015:

- Katherin Kirkpatrick, on January 20, 2015, wrote in opposition, stating that the applicant has not demonstrated its burden of proof that the resources will be preserved. Exhibit H-141.
- Mark Bartlett, on January 23, 2015, wrote in opposition with comments regarding a previous proposal at the maintenance yard. Exhibit H-143.
- Katherin Kirkpatrick, on January 20, 2015, wrote in opposition, stating that the applicant has not demonstrated its burden of proof that the resources will be preserved. Exhibit H-144.

Applicant Response to the Historic Landmarks Commission: At the December 1, 2014 Historic Landmarks Commission hearing, the applicant provided responses to some of the concerns raised in testimony. The applicant also provided a written response on December 23, 2014, in anticipation of the January 12, 2015 hearing, and in response to additional questions and concerns raised by the public and the Historic Landmarks Commission. See Exhibits H-51 through H-55.

Testimony received as part of the Council appeal: The Council received additional oral and written testimony at and prior to its hearing on May 28, 2015 and during the open record period ending June 11, 2015. The written testimony is referenced as Exhibit numbers I.1 – I.143 to this decision.

The record for this decision includes the BDS case file that was placed before the Council.

***Council findings in response to public concerns received prior to the record closing on June 11, 2015:***

To the extent testimony pertained to approval criteria for this land use application, the findings below regarding each approval criterion address the testimony. For example, a number of participants expressed the desire to keep water in the reservoirs. This was part of the original proposal by the Water Bureau and is discussed in the findings regarding PCC 33.846.060.G.1.

Many other testifiers asked that the reservoirs not be destroyed, which is not part of the applicant's proposal, or stated that the reservoirs are valuable historic resources, which is acknowledged by the historic designation of the property. The Council recognizes that many Portlanders care a great deal about the condition and fate of these reservoirs.

Council received one comment prior to its first hearing asking whether the Council had ex parte contacts or conflicts of interest. The Mayor opened both the May 28, 2015 and

July 15, 2015 hearings by asking for disclosure of ex parte contacts and conflicts of interest. At the May 28, 2015 hearing, Commissioner Fish stated that his office had received a number of communications regarding the land use case, but his staff had screened him from that communication. Commissioner Novick stated that he had received email correspondence from Floy Jones and that he had forwarded that email to his staff. It is routine practice for Council staff to forward such correspondence to the Council Clerk for inclusion in the record. At the July 15, 2015 hearing, Commissioner Fritz disclosed that she had met with Stephanie Stewart and John Laursen of the MTNA since the last hearing. On neither occasion did any participant challenge these disclosures or present evidence of any improper ex parte contacts or conflicts of interest. Regarding the more specific assertion in Exhibit I-40 that the Mayor should have recused himself because of “a long history of working for HDR,” HDR is not the applicant in this land use application and there is no evidence in the record that HDR is involved with or will receive financial benefit from the land use approval. Furthermore, there is no evidence in the record that HDR is a business with which the Mayor is currently associated. The Council finds there is no basis for recusal.

Other testifiers raised a variety of issues, some of which are not relevant to this land use review for various reasons. For example, some of the issues raised in testimony included the credibility of the Portland Water Bureau, prior decision making by City Council and the Water Bureau, the future of the LT2 regulations, the costs of the City’s response to the LT2 ruling, and the benefits of open reservoirs and the chemical interaction of sunlight and oxygen on drinking water. Many testifiers stated simple opposition to the proposal to stop using the Mount Tabor reservoirs for finished drinking water storage. While acknowledging community concerns about these issues, Council finds that these comments were not tied to, and therefore are not relevant to, specific approval criteria for Historic Resource Review or Environmental Review for this particular project. The following is a more detailed response to two of the broader policy issues raised by testifiers

*1. Objections to the city’s approach to complying with the federal LT2 rule.*

Within this category fall assertions that the City did not work hard enough to get a waiver or variance, that the strategy did not receive enough public participation, that the rule will soon be overturned by an EPA review, and similar objections to LT2 compliance. PWB presented evidence that the city’s LT2 compliance strategy was decided through a public process over a period of years and that Council decided to stop fighting LT2 compliance in June, 2013 (Ex. A.1 and H.13). The current approach to LT2 compliance has been publicly considered, was previously adopted by the Council, and is not the subject of this review. Council finds PWB’s evidence credible. It further finds that this issue is not within the scope of and is not relevant to the approval criteria for Historic Resource Review and Environmental Review.

*2. Water quality will be made worse without the open reservoirs.*

Project opponents asserted that covering the reservoirs will harm the quality of the water stored in them as compared to the open reservoirs, and further asserted that open reservoirs actually improve water quality. Using these arguments, they sought to have City Council reverse the Historic Landmarks Commission’s decision to approve the proposal. As noted above, City Council adopted the current LT2 compliance strategy to provide covered drinking water storage after a public process over a period of years, and the purpose of the City’s strategy is to comply with the LT2 federal regulation. The Water Bureau is required to continue to meet or exceed state and federal water quality standards. The Environmental Protection Agency is requiring all open finished drinking water reservoirs to be either covered or treated at the point of discharge in order to continue to meet new federal standards for water quality. The proposal is PWB’s response to these new standards; non-compliance would be a violation of the federal

regulation. Following a multi-year public process, City Council made the decision to no longer use Mt. Tabor's open reservoirs for drinking water. Water quality does not pertain to any of the approval criteria for Historic Resource Review or Environmental Review, and City Council therefore did not consider it in making a decision.

***Council response to issues raised by Appellant 1:***

Appellant 1—PWB—appealed on two matters, both of which relate to the approval criteria, and are discussed under the findings for the applicable criteria.

***Council response to issues raised by Appellant 2:***

Appellant 2—MTNA—appealed on five matters in its original statement. Of these, the first three are matters outside the scope of the Historic Resource Review and Environmental Review criteria, and are discussed here. The last two address the Historic Resource Review approval criteria, and are discussed under the findings for the applicable criteria. The three matters discussed here are:

1) **PCC 33.730.060.C.3:** Appellant 2 asserted PCC 33.730.060.C.3 required PWB to identify the legal lot boundaries within the subject property and PWB failed to do so. Further, Appellant 2 asserted that the failure to provide historic plat lines "violated Appellant 2's substantial rights" because without that information, Appellant 2 could "not show that the applicant lacks sufficient authority over the subject property to undertake the project." The Council finds this argument unpersuasive for several reasons.

PCC 33.730.060.C.3 is a submittal requirement, not an approval criterion, requiring a land use application to include, among other things: "a site plan... [showing] all property lines with dimensions and total lot area". However, "the Director of BDS may waive items listed if they are not applicable to the specific review" (PCC 33.730.060.C). That is what happened here; the Water Bureau was not required to show all pre-existing lot lines because BDS decided those boundaries were not necessary to evaluate the Water Bureau's project under the relevant approval criteria.

There is persuasive evidence in the record that the Portland Water Bureau, as an agent of the City, has authority to apply for and undertake the project. All of the land in Mount Tabor Park is owned by the City of Portland, a municipal corporation. PWB provided a copy of the ordinance through which City Council allocated management responsibilities to the Portland Water Bureau and Portland Parks and Recreation (Ex. H-55). That ordinance also affirms the City of Portland's ownership of the entire park and demonstrates that the two bureaus act as the City's agents, not as "owners" of the park. For the purposes of a development proposal, a "site" is defined as an "ownership" (PCC 33.931, Definitions), and here the ownership is unified in the City. As a result, the underlying platted lot lines are unnecessary in order to address any of the approval criteria or development standards that apply to this proposal.

In any event, the information asked for by Appellant 2 is in the record. Some testifiers provided a copy of a map of the underlying platted lots and related information (Ex. H.22 and H.46).

Based on this analysis of the applicable provisions and definitions in the Zoning Code, City Council finds that the property description, which in this case is the single tax lot comprising Mount Tabor Park, satisfies the requirement of PCC 33.730.060.C.3. The underlying platted lot lines have no significance for the ownership of the park as it relates to this land use review, and they are not related to any of the applicable approval criteria. BDS properly waived any requirement to show the underlying platted lots and deemed the application complete. The Council further finds, based on the

credible evidence in the record, that the PWB, as an agent of the City, has authority to seek land use approvals for the work contemplated by this application on City property.

2) **PCC 33.815.040.A.4:** Appellant 2 stated that “A new conditional use approval should have been required because the amount of existing basic utility use would change more than 10 percent.”

The Council agrees with BDS and PWB that no conditional use review is required for this proposal.

Mount Tabor Park is zoned OS, and Park and Open Areas uses are allowed outright with four exceptions that do not apply here. Basic Utilities uses are conditional uses in this zone. (See PCC 33.100.100).

The Portland Water Bureau infrastructure at Mount Tabor Park has “automatic conditional use status” because it was constructed before the Zoning Code was established. On August 27, 2003, the City Council adopted Use Determination File 03-186237-PR (upheld by the Land Use Board of Appeals), which concluded that the Mount Tabor Park reservoirs, including the inlet and outlet piping, are classified as a Basic Utility use. The 2003 use determination notes the following:

*“The Mt. Tabor Park reservoirs exist primarily as a utility infrastructure that provides water service to Water Works’ customers in east Portland. These characteristics place the reservoirs, including the inlet and outlet piping, in the Basic Utilities use category. Specifically, Basic Utilities are described in PCC 33.920.400.A as “infrastructure services which need to be located in or near the area where the service is provided.” Among the cited examples of a Basic Utility uses are reservoirs, water conveyance systems and water pump stations (PCC 33.920.400.C).*

*Mt. Tabor Park is located in an Open Space (OS) zone (Exhibit 2). Basic Utilities are allowed in the OS zone only as a Conditional Use. Because the reservoirs were constructed in 1894 (Reservoir 1) and in 1911 (Reservoirs 5 and 6), and thus predate the Portland Zoning Code, the reservoirs have automatic Conditional Use status (PCC 33.815.030). Subsequent changes to automatic Conditional Uses are regulated by the Conditional Use procedures of PCC 33.815 (Conditional Uses).”*  
Exhibit A-1, Appendix I.

Whether or not a conditional use review is required for the Water Bureau proposal pursuant to PCC 33.815.040.A depends on how the current proposal affects the “use” at the site and, specifically, whether there is a change in use. The Council finds there is no change in use that triggers conditional use review here.

There are two existing and, in some cases, overlapping, uses at Mount Tabor Park: “Parks and Open Areas” and “Basic Utilities.” The Code anticipates such circumstances. PCC 33.920.030A.1.: “development may have more than one primary use.” Each use at Mt Tabor has physical development associated with it. In general, the areas with Basic Utilities development (e.g., the reservoirs and pipes) are also used for Parks and Open Areas uses, such as walking, viewing, and similar pastimes.

Some testifiers argued that the disconnection of the reservoirs constituted a change in use category under PCC 33.815.040.A.2.b. The Council disagrees. PWB’s proposal will alter some piping at Mount Tabor and redirect the flow of water, but the reservoirs will still contain water piped in from the water system. This will help preserve the historic character of the site by maintaining the aesthetic experience of open water in Mount

Tabor Park. At the same time, the Portland Water Bureau will continue its “Basic Utilities” use of Mount Tabor Park by filling and maintaining the reservoirs from its distribution system. The “Basic Utilities” designation applies to the “site,” as that term is defined in PCC 33.910 (Definitions), and is not limited to the reservoirs but rather includes all of the Portland Water Bureau (PWB) infrastructure located on the site. Regarding the reservoirs, PWB noted in Exhibit A.1 of its application that the public may expect the following after completion of the project:

- PWB will continue to fill the reservoirs and periodically refresh the water in them until the future use planning is completed or until City Council directs otherwise.
- The reservoirs will retain existing inlet pipes or weirs maintaining the ability to fill the reservoirs in a manner comparable to the existing conditions.
- The reservoirs will continue to have the ability to be drained to the sewer system and the existing wash-down piping system used for cleaning the reservoirs will remain in place.
- The historic structures will have been protected from damage and kept in their current condition with no significant impacts or changes.
- That the outflow disconnection can be reversed if, in the future, the federal rules regarding LT2 are reversed.

The reservoirs are specifically referred to as an example of a Basic Utilities use in PCC 33.920.400, and will continue to be connected to (via inlet piping), and therefore a component of, the City’s water system within Mount Tabor Park. While the proposal to disconnect the outflow pipes of Reservoirs 1, 5, and 6 from the city’s drinking-water system in order to comply with the EPA’s LT2 rule will render the outflow function dormant, the reservoirs will be filled with water and maintained on-site in a functional condition to allow for outflow reconnection if allowable via reversal of the LT2 rule at a later date. This continued use means the project at Mount Tabor will retain the reservoirs’ basic utility function and is “reversible” if drinking water regulations are altered in the future to allow again the use of open reservoirs. The open reservoirs, in essence, remain part of the water system, held in reserve. Council finds the Mount Tabor Park reservoirs will remain a component of the Basic Utilities use at Mount Tabor Park following completion of PWB’s proposal.

PCC 33.815.040.A.4 requires that, even if there is no change in use category, some changes in the intensity of an existing conditional use require review. It provides that:

- Changes to a conditional use that will change any specifically approved amounts of the use such as members, students, trips, and events are reviewed as follows:
- a. Changes of 10 percent or less of the amount are processed through a Type II procedure.
  - b. Changes of over 10 percent of the amount are processed through a Type III procedure.

Although the infrastructure at Mt. Tabor is considered an approved conditional use, there was never a land use review to establish the use and there are no specifically approved quantities or conditions of approval. Because the Mt. Tabor Basic Utilities uses received automatic conditional use status, there are no specifically approved amounts of use for the conditional use. As the PWB proposal changes no “specifically approved amounts of the use,” the code does not require a conditional use review under PCC 33.815.040.A.4.

3) **PCC 33.815.040.B.1:** Appellant 2 cited PCC 33.815.040.B.1 in asserting that “The applicant failed to provide sufficient evidence to show that the proposed alterations are exempt from the requirement for a new conditional use approval.” Appellant 2 alleged that the “exterior improvement area” of the project exceeds 1500 square feet. Appellant 2 sought to require a conditional use review.

Section 33.815.040.B regulates “Proposals that alter the development of an existing conditional use.” It sets out numerous circumstances under which changes to the developments associated with an existing conditional use trigger or do not trigger additional conditional use review.

PCC 33.815.040.B governs proposals that alter the development of an existing conditional use, which may be allowed, require an adjustment or modification, or require a conditional use review. The Water Bureau proposes to alter some developments at its Mt Tabor facilities but the alterations meet or can meet the criteria found in PCC 33.815.040.B.1. under which certain limited changes to development are “allowed by right. . . .” Paragraph B.1 states:

- “1. Conditional use review not required.** A conditional use review is not required for alterations to the site that comply with Subparagraphs a through g. All other alterations are subject to Paragraph 2, below. Alterations to development are allowed by right provided the proposal:
- a. Complies with all conditions of approval;
  - b. Meets one of the following:
    - (1) Complies with the development standards of this Title, or
    - (2) Does not comply with the development standards of this Title, but an adjustment or modification to the development standards has been approved through a land use review;
  - c. Does not increase the floor area by more than 1,500 square feet;
  - d. Does not increase the exterior improvement area by more than 1,500 square feet. Fences, handicap access ramps, and on-site pedestrian circulation systems , ground mounted solar panels, Community Gardens, Market Gardens, and parking space increases allowed by 33.815.040.B.1.f, below, are exempt from this limitation;
  - e. Will not result in a net gain or loss of site area; and
  - f. Will not result in an individual or cumulative loss or gain in the number of parking spaces, except as follows: *(list not reproduced here).*”

As noted above, the reservoirs have automatic conditional use status and therefore there are no conditions of approval. The Land Use History (Exhibit A.1, Appendix G) shows that no subsequent land use reviews established conditions of approval to be met. Therefore, 1.a does not apply.

Subparagraph 1.b requires either that the alterations comply with the Zoning Code’s development standards or that the applicant seek an adjustment or modification. However, this analysis typically occurs at the time of a building permit application, not before discretionary land use reviews are approved. As explained in the 2003 Use Determination (Exhibit A.1, Appendix I),

“The development standards for conditional uses in the Open Space zone (PCC 33.100.200.B) address building setbacks, parking, and other standards included in Table 110-7 of PCC 33.110 (Single-Dwelling Zones). Development standards in Table 110-7 regulate such things as maximum floor area, maximum building height, maximum building coverage, minimum landscaped

area, buffering from residential zones, and setbacks for detached accessory structures.

Based on the preliminary information provided by the Bureau of Water Works, it appears the proposed alterations to the reservoirs would comply with the applicable development standards (see below). *However, the Bureau of Water Works will need to demonstrate compliance with applicable development standards at time of building permit application. Should the proposed alterations not comply with one or more of the applicable development standards, consistent with PCC 33.815.040.B.2.b, the Bureau of Water Works would have the option to apply for an adjustment or modification to the standard(s).*” (Italics added; note that the code has since been amended, changing some citations.)

Depending on the details of proposed alterations, a conditional use review could be required in order to acquire a building permit, but it is not required in order to apply for, or get approval of, Historic Resource Review or Environmental Review. If, at the time of building permit application, the proposal does not meet all development standards, the applicant may alter the proposal to meet them, or may apply for an adjustment or modification to the standards. PCC 33.815.040.B.1 sets a threshold for determining whether alterations are allowed by right or must go through an additional review. It has nothing to do with the criteria for Historic Resource or Environmental Review and thus does not defer compliance with any of the criteria for those reviews.

While PWB was not required to address the development standards, it nevertheless did so (See exhibit I-19, May 22 letter from PWB to Council). The Council finds there is credible and substantial evidence in the record demonstrates that the project can comply with the relevant development standards at the time of building permit application.

Next, the proposal “does not increase the floor area by more than 1,500 square feet.” PCC 33.815.040B.1.c. In fact, the proposal increases floor area by zero feet. Floor area as defined in Chapter 33.910 as “the total floor area of the portion of a building that is above ground.” Building is defined as “a structure that has a roof and is enclosed on at least 50 percent of the area of its sides.” Most of the Bureau facilities—reservoirs, pipes, underground vaults-- included in the proposal have no floor area because they are not “buildings” and they are underground, not “above ground.” This is consistent with Council’s adopted interpretation in the 2003 Use Determination (Exhibit A-1, Appendix I). The two features of a building to be altered—the roof and one wall of a Gate House—do not change the Gate House floor area. In short, nothing in the proposal would increase floor area by more than 1,500 feet. Based on the information provided in PWB’s narrative and January 12, 2015, “Conditional Uses” memorandum (Exhibits A.1 and H.75), the LT2 compliance proposal does not involve the construction or expansion of any buildings on the site, and therefore does not add floor area. Accordingly, this provision is not applicable.

Further, the proposal “does not increase the exterior improvement area by more than 1,500 square feet.” PCC 33.815.040.B.1.d. Exterior improvements are defined in PCC 33.910 as “all improvements except buildings or other roofed structures.” According to the exterior improvement area summary provided in PWB’s January 12, 2015, “Conditional Uses” memorandum (Exhibit H.75), the LT2 compliance proposal will result in a net reduction of exterior improvement area of 108 square feet. This results from the elimination of 254 square feet of improvements through the removal of three at-surface vaults in Work Area 7 and an addition of approximately 146 square feet of improvements due to installation of one new vault and two concrete pads for electronic equipment cabinets.



In Exhibit I-2, Appellant 2 argued that a conditional use review is triggered because “the record shows that the ‘exterior improvement area’ of the project exceeds 1500 square feet.” To the extent that Appellant 2 argued that the conditional use is triggered because there are more than 1500 square feet of exterior improvement area on the site, City Council finds that a plain reading of the code language shows that the exterior improvement area must *increase* by 1500 square feet or more to trigger the review. That is not the case here as explained above.

Appellant 2 expands on this point in Exhibit I-10 and again in Exhibit I-134, arguing that that by removing existing trees and prohibiting trees from growing within 10 feet of its major water lines, PWB will increase the exterior improvement area. That is, Appellant 2 argues that creating an area where trees are not allowed to grow amounts to creation of “exterior development area.” However, “exterior improvements” are defined in the Zoning Code (33.910, Definitions) as “all improvements except buildings or other roofed structures. Exterior improvements include surface parking and loading areas, paved and graveled areas, and areas devoted to exterior display, storage, or activities. It includes improved open areas such as plazas and walkways, but does not include vegetative landscaping, synthetic turf, natural geologic forms, or unimproved land.”

City Council finds whether trees are prohibited or not, an area where shrubs and ground cover plants grow constitutes “vegetative landscaping,” and the Code does not distinguish between plant species in this regard. See definition of “vegetation.” PCC 33.910. Vegetative landscaping is not an “exterior improvement” as defined in PCC 33.910.

Appellant 2 also argues that the buried water pipeline is an exterior improvement because it prohibits the growth of trees above it (Exhibit I-134). This interpretation of the definition of “exterior improvement” would mean that all buried items would be regarded as “exterior development.” Provision of sewer, water, or other buried utility to a private residence could then be subject to Historic Resource Review (or other discretionary reviews). City Council finds that the plain reading of the definition of “exterior improvement” shows that it applies to development on the surface of the ground and excludes buried utilities and areas of vegetative landscaping.

In summary, Council finds that constructing a buried pipeline, restoring the ground surface to its pre-construction condition and changing the vegetative landscaping do not change the exterior improvement area. Council finds the evidence presented by PWB regarding the changes in exterior improvement area is credible and persuasive, and therefore finds that the exterior improvement area will not increase as a result of the proposed work.

Finally, the provisions of PCC 33.815.040.B.1.e and f are not applicable. The project “will not result in a net gain or loss of site area.” PCC 33.815.040.B.1.e. The site is defined as Mount Tabor Park. There are no additions or subtractions to the park area. The proposal will not result in any change of site area. The project also “will not result in an individual or cumulative loss or gain in the number of parking spaces . . . .” PCC 33.815.040.B.1.f. The project has no effect on parking spaces.

City Council finds PWB’s evidence and evaluation of PCC 33.815.040.B.1 credible and persuasive. Based on this and on the 2003 Use Determination, City Council finds that the applicant in this case does not need a conditional use review to receive approval of historic resource review.

#### IV. ZONING CODE APPROVAL CRITERIA AND FINDINGS

##### (1) Chapter 33.846.060 - Historic Resource Review

###### **Purpose of Historic Resource Review**

Historic Resource Review ensures the conservation and enhancement of the special characteristics of historic resources.

###### **Historic Resource Review Approval Criteria**

Requests for Historic Resource Review will be approved if the review body finds the applicant has shown that all of the approval criteria have been met.

**Findings:** The site is within Mount Tabor Park, a National Register Historic District, and the Mt. Tabor Park Reservoirs Historic District and the proposal is for non-exempt treatment. Therefore Historic Resource Review approval is required. The approval criteria are those listed in *33.846.060 G – Other Approval Criteria*.

*The Council considered all guidelines and addressed only those applicable to this proposal.*

##### **33.846.060 G - Other Approval Criteria**

**1. Historic character.** The historic character of the property will be retained and preserved. Removal of historic materials or alteration of features and spaces that contribute to the property's historic significance will be avoided.

**Findings:** This criterion contains two elements: (1) The proposed alterations will retain and preserve historic character and (2) The proposal will avoid removing materials or altering features and spaces that contribute to its significance.

The second of these elements was not the primary focus of testimony or the appeals. The proposal to disconnect the reservoirs from the City's drinking water system will result in minimal physical changes visible to the public, to either the historic reservoirs or the Park's landscape, as most of the materials removed are relatively small portions of below-grade conduits and concrete vaults not listed as contributing resources. Above-grade alterations proposed include: new manhole covers, cast iron valve covers, air/vacuum release valves, above-ground vents, electrical cabinets, all of which currently exist within the reservoir area of the park. Installation of screening and grating at inlet and outlet pipes and weirs is proposed to be located 1'-0" to 2'-0" in from the opening of the pipes and weirs, respectively, and will be minimally visible, if at all. Removal of small portions of exterior cast iron pipe at Reservoir 6 with metal caps welded to the ends is also proposed. Small penetrations in the east wall and near the southwest corner of the roof of Gatehouse #6 East, are also proposed. Removal of the existing non-historic gate at the dog off-leash area and replacement with a new double-gate will be minimally different from the existing condition and will have no effect on the historic character of the park. Removal of existing trees and landscaping, as well as removal of existing roadway asphalt, and restoration of trees, landscaping, and roadway asphalt is also proposed in association with removal and installation of underground piping. In order to provide temporary access to Work Area 5, a historic pipe handrail is proposed to be cut and then welded back in place after construction is completed.

The applicant describes the proposed work in detail and shows how it satisfies the second element of this approval criterion by avoiding removal of historic materials or alteration of any features or spaces. City Council finds no evidence that the reservoirs will be demolished or altered in a way that prevents them from continuing to hold water. Therefore, Council finds that the second part of this approval criterion is met.

The first element of this criterion is a factor in both appeals. The aspect of the historic character of the property that is relevant to this proposal is described by the National Register nomination for Mt. Tabor Park which states “the deep, open water provides a chiaroscuro effect to the landscape and is an integral part of the experience of Mt. Tabor Park”. The nomination for the Mt. Tabor Park Reservoirs Historic District states “striking vistas of the city skyline and west hills over the large bodies of deep, sparkling water are the most defining landscape characteristic of Mount Tabor Reservoirs 5 and 6. Reservoir 1, located in a steeper basin, has a more intimate feel with the towering coniferous forest reflected in the deep water.” In addition, the reservoirs were listed in the National Register under Criterion A for “its association with significant historic events, in the areas of community planning and development, engineering, architecture/landscape architecture, and recreation” and Criterion C for “its embodiment of distinctive characteristics of a type, period, or method of construction using masterful techniques, as an early example of concrete construction and romantic eclectic architectural and landscape design.”

Although the work proposed is relatively minor in terms of visible exterior alterations, the criterion calls on Council to consider whether the result of the work preserves and retains the existing historic character described above.

The Historic Landmarks Commission found that the aesthetics of the reservoirs as a historic resource, rather than its use for drinking water, must be maintained in order to satisfy the criterion. As noted above, the visible open water of the reservoirs is an integral part of the character of both the reservoirs and Mt. Tabor Park. The Historic Landmarks Commission found that in order for this criterion to be met, the reservoirs must continue to hold water. The Council agrees. The applicant originally proposed to fill and periodically refresh water in the reservoirs, and expected to drain and clean each reservoir several times a year. PWB provided evidence that the level of water in the Mount Tabor Reservoirs has regularly fluctuated over the past 15 years for cleaning, maintenance, and operational reasons (Exhibit I-143). City Council agrees that a condition of approval mandating that the reservoirs continue to hold water is appropriate, as long as the condition allows for empty periods as needed for cleaning, draining, and operational reasons.

An issue raised by both appellants is the language of the condition requiring water in the reservoirs (Condition B). The Historic Landmarks Commission imposed a condition of approval that imposed a limit of 60 days per calendar year during which all the reservoirs in aggregate could be “partially or fully” drained, as necessary, and in addition to cleaning, to address system operational requirements, to maintain security, regulatory compliance, or for safety concerns.

In its appeal, Appellant 1 (PWB) stated that the City could not meet Condition B as imposed by the Historic Landmarks Commission because 60 days was too restrictive a time limit on draining and cleaning activities. In addition, based on historical use, the 60 day limitation was not required to retain and preserve

historic character. PWB submitted graphics and operating information that demonstrated that this limit could not be met if the reservoirs were to be cleaned three times a year, as is expected to be necessary (Exhibit I.143). PWB also presented evidence to Council showing that the reservoirs have been empty for periods of time during normal operations during the past 15 years. PWB showed that the rate of draining of the reservoirs was limited and that the restrictive time limit was added late during the Historic Landmarks Commission's proceedings without giving PWB the opportunity to provide evidence of the reservoirs' operating requirements. PWB provided a graphic representation of the annual cleaning cycle showing that under normal future operation conditions with three cleaning cycles per year, the reservoirs will be approximately full as much or more than they have been historically (Exhibit I-143). Project opponents provided no evidence to the contrary.

This evidence leads Council to the conclusion that the historic character of the reservoirs includes limited periods of time when the reservoirs are empty for operational reasons. Council finds PWB's evidence credible and persuasive, and relies upon this evidence in amending Condition B as requested by Appellant 1.

City Council finds that the presence of water in the reservoirs in a manner similar to historic operations will ensure the preservation of the historic aesthetic experience of visitors to Mount Tabor Park and satisfy approval criterion G.1.

Other issues raised in testimony relevant to this criterion include:

Appellant 2 explained its Objection #4 by asserting that "improvement and use of the property as reservoirs is the material facet of its historic character." If by this, the appellant meant to say that the Zoning Code requires that the reservoirs continue to be used for the storage of potable, rather than non-potable water, it misconstrues the Code. The conflation of "historic character" with historic "use" in this way would lead to incorrect outcomes under the code. Under that interpretation, no historic use could be abandoned and no historic structure under review could be put to a different future use. That is not what the code requires. The Council finds that while maintaining water in the reservoirs is important to retaining and preserving historic character, the code cannot require the applicant to continue to use these reservoirs to store and deliver finished drinking water.

Appellant 2 also argued that Criterion G.1 requires the Water Bureau to repair, restore, and upgrade the reservoirs as proposed in the Historic Landmarks Commission's decision of February 9, 2015, as discussed with regard to Criterion G.9 and the original Condition E. Condition E of the Historic Landmarks Commission's decision required actions beyond the scope of the PWB's Mt. Tabor project. A condition to restore resources not altered by the project cannot be justified under the text of Criterion G.1 or G.9. PWB's current proposal itself does not alter or harm the exterior of the historic resources in any material way. While City Council acknowledges the City's stewardship role in repairing and maintaining historic publicly-owned facilities, it is not appropriate under criterion G.1, G.9, or any other criterion to require comprehensive repair and deferred maintenance of the Mt. Tabor facilities when the physical impact to the exterior of the historic resources, as proposed under the current proposal, is so limited.

The Water Bureau's proposal retains and preserves the historic character of the reservoirs because the very minor visible alterations of historic features will not change that character. Instead the reservoirs will continue to appear the way they have looked for years, consistent with the character described in the National Register nomination.

*Some argued that cutting and plugging the large water mains was unnecessary and that other methods of disconnection should be used instead.*

PWB presented evidence that the Oregon Health Authority requires either complete disconnection by cutting the pipes, providing an "air gap," or else by installing a certified backflow prevention device. In addition, PWB provided evidence that the backflow prevention devices would require larger excavations and removal of more pipe, and at the same time would require construction of relatively large above-ground structures in the historic districts (Ex. H.51, H.53, and H.54). As a result, PWB asserted that the "cut and plug" technique was the least expensive and least intrusive, and thus would best retain and preserve the historic character. City Council finds this evidence credible and was persuaded by it in making its decision that this criterion is met.

*Appellant 2 argued that SHPO's comments undermine PWB's appeal.*

Appellant 2 provided an email from Jason Allen at the State Historic Preservation Office (Ex. I.12) stating that SHPO's finding of no adverse effect depended on fulfilling Condition B including the time restriction that was appealed by PWB. Mr. Allen later wrote to correct this statement (Ex. I.137) and confirmed that SHPO finds no adverse effect with a proposal that maintains water levels in all four reservoirs 50% of the calendar year and drains, cleans, and refills reservoirs one at a time. Council finds that this statement convincingly resolves any concern about SHPO's assessment of the proposed work. SHPO's finding of no adverse effect supports Council's determination that the proposal, with Condition B, retains and preserves the historic character of the property.

*Appellant 2 asked for amendment of the historic operating range in Condition B from 50-75% to 65-85%. The Bureau addressed this issue in a technical memorandum provided to the Council:*

BDS originally proposed in its staff recommendation that the reservoirs must continue to hold water, while some commenters demanded that they be kept "full." PWB does not keep any of the reservoirs "full," but rather keeps them within an operating range. This operating range has historically changed seasonally with consumer demands and operational needs. PWB has stated both in writing and orally that the historic range is 50-75% and 65-85% full. Both ranges are correct. The difference is an operational issue weighing distribution needs against supply needs.

Based on this information, the Council agrees with both appellants and determines the appropriate historic range for Condition B is 50-85%.

*With the following condition of approval, this criterion is met:*

*Following completion of the disconnection, Reservoirs #1, #5, and #6 must continue to hold water between 50% and 85% of capacity, which is the range accepted to produce the site's characteristic iconic views. Periods outside of that range must be kept to a minimum. The reservoirs must be maintained and cleaned*

*and the City shall use its best efforts to manage the reservoirs so that three out of four reservoir basins will be kept full (as close to 85% as possible) while the fourth is being drained, cleaned and refilled. The reservoirs may be emptied (partially or fully) for brief periods, as necessary, to address system operational requirements, to maintain security, regulatory compliance, or for safety concerns. Any proposal to permanently remove visible water from the site, as required in the preceding sentence, will require a follow-up land use application.*

**2. Record of its time.** The historic resource will remain a physical record of its time, place, and use. Changes that create a false sense of historic development, such as adding conjectural features or architectural elements from other buildings will be avoided.

**Findings:** As noted above, minimal alterations are proposed to the historic resources listed as contributing. The applicant has worked with the local community, resulting in a proposal that is essentially reversible should the federal rule requiring enclosure or treatment of open reservoirs be reversed. For instance, the evidence in the record shows the proposed grates, screens, and pipe welds, are easily reversible (Exhibit A-1). Such appurtenances are not conjectural features but are utilitarian and will be minimally visible. As such, they will not create a false sense of historic development. The same is true for vaults proposed for removal and construction as the existing vaults are not noted as contributing and the proposed vaults will differ minimally from the existing.

PWB has provided evidence that, following the proposed work, the reservoirs will be able to be filled with water and will have essentially the same appearance as they do currently. As noted under Criterion G.1, the continued presence of water in the reservoirs will contribute to maintaining the historic character of the reservoir site. It will also contribute to the site remaining a physical record of its time, place, and use.

Water is not a historic resource, and the water that flows through these reservoirs does not remain in place. The term “historic resource” is defined in the Zoning Code (33.910) as “a place, structure or object that has historic significance.” “Record” means something that recalls or relates past events. The historic structures—the reservoirs, gatehouses, and associated structures—are the resources that create the physical record of a time, place, and use. Thus, after the PWB project is completed, the historic structures on the site, in their essentially unchanged state, will continue to serve as “physical record(s) of (their) time, place, and use.”

However, the reservoirs are part of the history of the park and of Portland, and a part of their function is changing from drinking water storage. This change is not visually obvious, but it is significant.

For these reasons, educational programming is needed for the reservoirs to remain a complete record of their time, place, and use, recognizing the proposed alterations at this period in their history. This can be done through development of an interpretation program that tells the history of the Mt. Tabor Reservoirs and the Bull Run water delivery system, including the proposed disconnection. This should be developed through a Design Advice Request, followed by a Historic Resource Review, which would most likely be a Type II level review.

In one of its objections, Appellant 2 argued that because the project jeopardizes the existing conditional use status (basic utility), the decision does not ensure possible future restoration of the historic function of the site. The record demonstrates that the historic resources in Mt Tabor will “remain . . . a physical record of . . . [their] time, place and use. . . .” because they will not change. The Bureau proposes to make underground piping and vault changes and a minor modification to Gatehouse 6. The historic resources will suffer no adverse effects. Moreover, while nothing in the Code requires that developments be reversible, the record shows that nothing in the proposal undermines the integrity of the historic resources and, if drinking water rules change, the proposed project allows the possibility of the reservoirs’ re-use in Portland’s drinking water system. Further, as discussed elsewhere in these findings, the Council finds that the appropriate use category for the Mt. Tabor water facilities remains a Basic Utilities use, and future restoration to historic function is not precluded.

*With the following condition of approval, this criterion is met.*

*Within 5 years of final approval of this land use review, the City of Portland shall develop an interpretation program that tells the history of the Mt. Tabor Reservoirs and the Bull Run water delivery system, including the proposed disconnection. Prior to application for a Type II land use review, the City of Portland shall request and complete a Design Advice Request with the Historic Landmarks Commission in order to obtain advice on the parameters of the interpretation program.*

**3. Historic changes.** Most properties change over time. Those changes that have acquired historic significance will be preserved.

**Findings:** The periods of significance listed in the 2004 National Register nominations are 1888-1939 for Mt. Tabor Park and 1894-1953 for the Mt. Tabor Reservoirs historic district. The reservoirs period of significance encompasses the 1953 construction of Conduit 4. While the construction of below-grade piping marks the end of the period of significance, the piping is not specifically listed as a contributing feature. Since 2004, no additional features not listed as contributing resources in the original documentation have acquired historic significance. The Commission considered the listed contributing resources in the other applicable findings as noted above and below.

*This criterion is not applicable.*

**4. Historic features.** Generally, deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement, the new feature will match the old in design, color, texture, and other visual qualities and, where practical, in materials. Replacement of missing features must be substantiated by documentary, physical, or pictorial evidence.

**Findings:** Council interprets this criterion only to apply if the scope of the project involves repair or replacement of missing or deteriorated features. In this case, no deteriorated features are proposed to be repaired or replaced and no missing features are proposed for replacement as part of the scope of this project. Therefore, this criterion does not create an affirmative obligation on an applicant to repair historic features that are not already proposed to be physically altered within the project’s scope. As such, this criterion does not apply to the work proposed.

Council notes that the original application included a proposal to repair the Reservoir 1 parapet wall. At the suggestion of BDS staff, this aspect was removed from the proposal, as it was found incongruous with the basic scope of the project and may, in fact, be exempt from historic resource review. This was not meant to discourage repair of the Reservoir 1 parapet wall, or to discourage preservation maintenance of any other historic features, but rather to focus the conversation on the specific proposal to disconnect the reservoirs from the drinking water system and the alterations necessary for such a task, and to not create additional delays for repair of the parapet wall by tying it to this land use review. The Historic Landmarks Commission noted that the Reservoir 1 parapet wall is in need of repair, or restoration, and encouraged the City to present a proposal for repair of the parapet wall to BDS staff.

*Council finds that this criterion is not applicable.*

**5. Historic materials.** Historic materials will be protected. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials will not be used.

**Findings:** No chemical or physical treatments are proposed as part of this proposal. Minor alterations, such as the installation of grates and screens, removal of small portions of above-grade pipe and welding caps to the ends of pipe, and introduction of two conduit holes on the east side of Gatehouse #6 East and four vents at the southwest corner of the roof of Gatehouse #6 East will result in a loss of relatively minute amount of historic material. With regard to long-term protection of historic materials, this was addressed under Criterion #4.

*This criterion is met.*

**6. Archaeological resources.** Significant archaeological resources affected by a proposal will be protected and preserved to the extent practical. When such resources are disturbed, mitigation measures will be undertaken.

**Findings:** While much of the proposed work is located in previously disturbed areas and there is no evidence of significant archaeological resources in the areas to be excavated, excavation is proposed in areas that may not have been previously disturbed. Therefore, there is potential that archaeological resources could be disturbed or affected. *With the following condition of approval, this criterion is met.*

*The applicant will engage a qualified archaeologist to assess the project's potential to impact archaeological resources. This assessment should include review by a qualified geo-archaeologist and be completed prior to issuance of construction permits. In the event of any archaeological discovery, work potentially affecting the archaeological resources will be stopped, the State Archaeologist will be notified, and the procedures specified by state regulations will be followed.*

**7. Differentiate new from old.** New additions, exterior alterations, or related new construction will not destroy historic materials that characterize a property. New work will be differentiated from the old.

**Findings:** As noted above, the alterations proposed to the contributing resources, such as the reservoirs and gatehouses, are minimal and will not destroy the historic materials that characterize the resource. The majority of the



work proposed will take place below ground with restoration of the earth, landscaping, and road to match or closely match existing conditions upon completion. New vaults are designed to blend in with the landscape, either by being located completely underground or built into the landscape. New mechanical equipment, such as electrical cabinets and vents are clearly of modern design but are not foreign elements to the park as examples of these elements are already existing within the park and are not identified as historic. The Council finds that the project appropriately differentiates new work from old.

*This criterion is met.*

**8. Architectural compatibility.** New additions, exterior alterations, or related new construction will be compatible with the resource's massing, size, scale, and architectural features. When retrofitting buildings or sites to improve accessibility for persons with disabilities, design solutions will not compromise the architectural integrity of the historic resource.

**Findings:** As noted above, the alterations proposed to the contributing resources, such as the reservoirs and gatehouses, are minimal and will not have any impact on the resources' massing, size, or scale. Impacts on the architectural features of these resources will also be minimal as grates, screens, and pipe end caps will not be seen, particularly once the reservoirs are filled with water. The proposed conduit holes and vents proposed at Gatehouse 6 East are also relatively minor in their impact to the historic resource. The proposed conduit holes are proposed within an existing area of conduit holes and does not expand this area, while the proposed vents are minimally visible, with one proposed to not extend beyond the top of the parapet and another aligned with the parapet crenel.

*This criterion is met.*

**9. Preserve the form and integrity of historic resources.** New additions and adjacent or related new construction will be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic resource and its environment would be unimpaired.

**Findings:** This criterion requires that new construction work or additions not impair the form and integrity of a historic resource if such work or additions are removed in the future. Council finds that neither the text nor context of this approval criterion require "reversibility." Instead, it requires that the historic resources not be physically impaired – that is, damaged or made worse -- if the proposed work were removed in the future, whether by removing essential elements or by making it appear to be of an age or style different from that of its actual age or style.

The proposal to disconnect the Mt. Tabor Reservoirs from the City's drinking water system is the Portland Water Bureau's response to a federal ruling that the City of Portland cover or treat the water held in open reservoirs. The Water Bureau evaluated several different approaches and found that disconnection presents the least adverse impact to the historic resources in Mount Tabor Park and thus, if removed in the future, would not impair the form and integrity of the historic resources. One option, covering the reservoirs, would require installation of a membrane supported by a large-scale metal structure and result in the disappearance of visible water. Another option, treating the water in

the reservoirs, would require construction of significant structures and piping inside and outside the park and could result in a requirement to pump water instead of allowing gravity flow to drive the system. As the Council found previously, the visible water in and gravity flow from the reservoirs are important aspects of the historic resources at Mt. Tabor. The current proposal preserves the essential form and integrity of the reservoirs historic district and Mt. Tabor Park as it does not propose any significant irreversible changes to the listed contributing resources. As noted in the discussion of approval criterion G.2, the proposed grates, screens, pipe welds, are easily reversible. Likewise, the new vaults can be removed and underground piping proposed for removal could be reinstalled if the Water Bureau decided to return the open reservoirs to drinking water service. The work could be reversed without impairing the “essential form and integrity of the historic resource and its environment.”

PWB has demonstrated that it is not impairing the form or integrity of any of the historic structures through its work. Only the new wall and roof penetrations at Gatehouse #6 cause visible alterations of a historic structure. These penetrations are small, and if removed could easily be repaired to match the existing structure. The new construction will predominantly be buried and invisible, except for the lids of several vaults and the two new equipment cabinets. None of this work changes the form of any of the historic structures or the historic landscape of the site, nor does it affect their essential integrity. BDS staff found that the limited scope of the work contemplated by this application would not impair the form or integrity of the historic resources if the work is later removed. Council agrees.

The State Historic Preservation Office came to a similar conclusion (Exhibit H.61 and I.137). It found that the Water Bureau’s proposal will have no adverse effects on the Mount Tabor Park and Mount Tabor Reservoirs Historic Districts.

Appellant 2 argued that because the proposed changes threaten the conditional use status of the reservoirs as “Basic Utilities,” the changes do not satisfy Criterion G.9. This criterion applies to construction and additions—that is, the physical structures—not to changes in use category. In any event, as discussed previously in these findings, Council finds that the reservoirs remain a part of the Basic Utilities uses on the property, and this concern is unfounded.

Members of the public and Historic Landmarks Commission described deterioration of elements of the historic structures on the property over a long period of time and asked that PWB undertake a historic restoration program applicable to the entirety of the facilities under its control despite the limited nature of the development proposal. The Historic Landmarks Commission imposed such a requirement in Condition E, which PWB appealed.

This condition appears to be based on an assumption that an applicant must comply with the heading of PCC 33.846.060.G.9 that reads “Preserve the form and integrity of historic resource” as though it were an independent approval criterion. The Council disagrees with that assumption. The Council finds that the above-quoted text is simply the heading of the criterion, just as there are headings for each of the other criteria (e.g., G.1. “Historic Character,” G.2 “Record of its time,” G.3 “Historic changes”). The criterion itself is the language following the heading, which establishes how an applicant is to address the topic identified by the heading. This is consistent with the interpretational provision in PCC 1.01.070 which states that Title, Chapter and Section heading “shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning

or intent of the provisions of any Title, Chapter, or Section hereof.” In this case, the criterion is narrow in scope. It requires only that new additions and construction be completed so that if they are removed, the form and integrity of the underlying historic resource is not impaired.

Condition E of the Historic Landmarks Commission’s decision required actions beyond the scope of the PWB’s Mt. Tabor project. A condition to provide mitigation through comprehensive restoration of resources not altered by the project cannot be justified under the text of Criterion G.9 when PWB’s current proposal does little to alter those historic resources. While City Council acknowledges the City’s stewardship role in repairing and maintaining historic publicly-owned facilities, it is not appropriate under criterion G.9, or any other criterion of this land use review, to require comprehensive repair and deferred maintenance of the Mt. Tabor facilities when the physical alterations to the exterior of the historic resources, as proposed by the current project, are so limited.

Based on Council’s interpretation of PCC 33.846.060.G.9, the historic preservation work required by the Historic Landmark Commission’s Condition E is outside the scope of the impacts of the work proposed and is not necessary or appropriate to satisfy this criterion.

City Council upheld this part of Appellant 1’s appeal and removed Condition E for the following reasons:

- 1) As noted above, the proposed alterations are minor and relatively unnoticeable. They will not impair the form and integrity of the historic resources if removed in the future.
- 2) None of the approval criteria mention historic restoration, and repair is exempt from the historic resource review. Because the proposed work involves very few alterations to the exterior of the historic resources, a comprehensive program of historic restoration, such as Condition E, is not supported by the approval criteria.

In summary, City Council finds that the applicant has developed a proposal that minimizes the adverse effects on the historic resources of the site and plans to undertake the work using methods and approaches that will avoid significant visible changes to the resources or the site to the extent possible. Because of this, the essential form and integrity of the historic resource and its environment will be unimpaired as a result of the proposal if the new additions and construction are ever removed.

*This criterion is met.*

**10. Hierarchy of compatibility.** Exterior alterations and additions will be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally, if located within a Historic or Conservation District, with the rest of the district. Where practical, compatibility will be pursued on all three levels.

**Findings:** As noted under Criterion G.8, the proposed alterations were found to be compatible with the historic resources, specifically the resources’ architectural features. The majority of the alterations take place within the interior of the Mt. Tabor Park property and will have minimal effect on adjacent properties, except during the period of construction, which is a temporary condition and not subject to Historic Resource Review. The proposed removal of existing pipe segments and installation of new pipe includes installation of below

grade vaults, manhole covers, cast iron valve covers, and restoration of roadways, landscaping and mitigation tree plantings upon completion. The intended result is that the park roadways and landscaping will have an appearance significantly as it exists currently. Mitigation tree plantings are proposed along the Harrison Street entrance to enhance the forested character of the park at this entrance as trees cannot be planted within 10 feet of the new underground bypass pipe.

*This criterion is met.*

## **(2) – 33.430.250 Environmental Review**

### **33.430.250 Approval Criteria for Environmental Review**

An environmental review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .190, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

**Response:** Environmental Review is required for two of the project's work elements because part or all of the work will take place in the resource area of the environmental conservation overlay zone, and the development standards of Section 33.430.140 through .190 are not met by the project.

The first project that requires approval through Environmental Review is the construction of a 48-inch diameter steel pipe, which will include about 350 linear feet of construction in the environmental conservation overlay zone (Work Area 3). This work involves digging a trench approximately ten feet wide and burying a 48-inch diameter water transmission main. This pipe will connect the existing Conduit 3 on the east side of the environmental zone, to the new pipe in Work Area 2 outside the environmental overlay zone. This pipe will route water from Conduit 3 to the water distribution system west of Mount Tabor.

All work construction to occur in the environmental zone will be within the footprint of the existing paved driveway (SE Lincoln Drive). The driveway will be restored its original conditions after construction of the pipe is complete.

Second, the terminations of Conduits 2 and 4, installation of backflow prevention features, and installation of a combination air/vacuum release valve and air vent will take place in the resource area of the environmental conservation zone in Work Area 6. Work Area 6 is south of the Chlorine Building and Reservoir 5, along the west edge of SE Reservoir Loop Drive. This work involves excavation of the pipes, plugging and capping them, removing a section of pipe and installing a backflow prevention device on it, then burying it, installing an air valve in an existing vault, installing an above-ground vent pipe on the vault, and restoring the ground surface. The construction activities will take place within the footprint of an existing gravel driveway.

This work will provide a route for potable water flow to bypass Reservoir 5, a means to periodically fill Reservoir 5 with non-potable water, and the equipment needed to satisfy regulations governing disconnection and separation of potable and non-potable water.

The approval criteria that apply to the proposed utility construction are found in PCC 33.430.250 A. The applicant has provided an extensive analysis of these approval

criteria, in Exhibit A.1 in the application case file, which the Council finds persuasive and are summarized below.

Because this activity is neither a Public Safety Facility nor a Land Division or Planned Development, the criteria in PCC 33.430.250 A.2 and A.4 do not apply and are not included.

**A.** Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments. Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met:

**A.1.** General criteria for public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments;

**A1.a.** Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;

**Findings:** This criterion requires the applicant to demonstrate that alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values.

### **1) Work Area 3 - Pipe in Lincoln Drive**

The work in Area 3 involves the following elements:

- Construct new 48-inch pipe in SE Lincoln Drive--about 350 feet of the pipe is within the environmental conservation overlay zone.
- Install a flow meter, appurtenances and vault with two manholes in the paved drive.
- Install two small electrical conduits and wiring in the paved drive.
- Install five CIV covers in locations to be determined.

A 48-inch-diameter pipe will be installed in SE Lincoln Drive, partially within the environmental zone. Outside of the environmental zone, a vault containing a flow meter and appurtenances will be installed in the driveway about 50 feet west of Conduit 3. Also outside the environmental zone, two electrical conduits and wiring will be installed from the flow meter vault in Work area 3 to the existing building in Work Area 4 next to the stairs.

All of the excavation or other ground disturbance within the environmental zone will take place within the boundaries of the developed portion of the paved SE Lincoln Drive driveway. The environmental review only applies to that portion of this work element that takes place within the environmental conservation overlay zone boundaries.

The pipe to be constructed in SE Lincoln Drive is 48-inches in diameter, and requires a trench that provides three feet of clearance on each side. The resulting excavation will be a trench approximately ten feet wide.

To dig such a trench and work safely alongside and within it, a disturbance area approximately 35 feet wide is needed at the ground surface. This width is needed because the pipe is four feet wide, two feet of working space on either side is required,

and about one foot for shoring on either side is required, giving a total excavation of 10 feet wide. In order to do the work, there must be about 25 feet of space for trench setbacks, equipment, vehicles, and materials on either one side or split between both sides of the trench.

Five alternatives were considered by the applicant and are described in detail on pages 130 -135 in the application case file Exhibit A.1. The highlights of each alternative are described below.

Alternative 1.A. No action: do not construct the new connection. In order to comply with the federal rule, there must be a connection between the existing Conduit 3 near Reservoir 1 and the City's distribution system in SE Lincoln Street that will allow water to bypass the reservoirs. This alternative is therefore impracticable.

Alternative 1.B. (The preferred alternative): 48-inch pipe alignment follows paved SE Lincoln Drive to Conduit 3 through approximately 350 feet of the environmental zone.

Alternative 1.C. Construct the 48-inch pipe with the shortest possible route between SE Lincoln Street entrance, east-southeast, through the dog park, to Conduit 3, through roughly 375 feet of environmental zone, on forested steep slopes. This alternative increased environmental impacts above those of Alternative 1.B.

Alternative 1.D. Bury the entire length of the 48-inch pipe beneath the paved portion of SE Lincoln Drive from SE Lincoln Street all the way from the entrance to Conduit 3. This approach would substantially increase the cost of the project because the overall length of new pipe to be installed would increase by more than 50 percent, with comparable increases in the amount of excavation. It would provide no environmental benefits since the only differences with Alternative 1.B occur outside the environmental zone, and it is impracticable due to cost.

Alternative 1.E. Route the connecting pipe completely outside of the resource area of the environmental zone. The construction area needed to construct a new pipe along the southern edge of the park would encroach into the environmental zone and impact many mature native trees. Such a route would also conflict with the Mt. Tabor Park Master Plan. The option of routing the pipe through SE Division Street, would approximately double the project cost and make this option impracticable.

Alternative 1.B was selected because it is practicable and has no detrimental impact to identified resources and functional values.

## **2) Work Area 6 – Vault Work along SE Reservoir Loop Drive**

Construction in Work Area 6 within the environmental conservation overlay zone includes:

- Cut and plug both Conduit 2 and a portion of Conduit 4 near existing connections to an existing distribution pipe.
- Install valves to direct water from Conduit 2 into the distribution system.
- Install a new above-ground air vent on an existing vault or within the developed portion of the roadway adjacent to it.

These changes will allow water from Conduit 2 to be directed either to the drinking-water distribution system or to Reservoir 5 through the “downstream” portion of Conduit 4.

After these modifications are made, this will be a local high point on Conduit 2, so a combination air/vacuum release valve must be installed to relieve excessive pressures and vacuums. The above-ground air vent is needed in order to allow air to move in and out of the pipe.

Depending on the conditions discovered in the field, it may be necessary to excavate limited areas within the existing roadway adjacent to the existing vaults. If excavation is necessary, the roadway will be repaired to its approximate original condition following the improvements.

This portion of the work occurs within Work Area 6. All excavation will take place within the graveled driveway that runs parallel to SE Reservoir Loop Drive. Site access will also be via the existing driveway, as well as all material staging and stockpiling, and all equipment maneuvering and access. The driveway will be temporarily closed to public access during construction. The work area will be fenced to protect vegetation beyond the construction area from disturbance, and sediment control fences will be installed on the inside (project side) of the construction fences.

Construction areas will be restored and the gravel drive repaired where it has been disturbed.

Work Area 6 is within the resource area of the Environmental Conservation zone, on a west-facing forested slope of primarily of native plant species. East of Work Area 6 and uphill, is Reservoir Loop Drive, and to the west (downhill), the slope is heavily forested, with very little understory vegetation. Most of the trees nearby are big leaf maples. The work will avoid disturbing vegetation, including trees, in this Work Area.

Four alternatives were considered by the applicant and are described in detail on pages 137 -140 in the application case file Exhibit A.1. The highlights of each alternative are described below.

Alternative 2.A. No Action – do not make these changes to the pipes. This alternative is not practicable because it does not meet the objective of disconnecting Reservoirs 5 and 6 from the drinking-water distribution system.

Alternative 2.B. Cut and plug the 30-inch distribution pipe leading downhill from Conduit 4 in the below-grade vault adjacent to Conduit 4 and also downhill from the roadway where it joins with another 30-inch pipe leading downhill from Conduit 2. This alternative requires excavation on the steep forested slope below the existing vaults in the roadway, damaging native vegetation, and utilizing heavy excavation equipment and a new construction access road. This alternative would require more equipment and materials and would be more expensive than the selected alternative. It also would create additional hazards for workers because of the need to work on a slope. The loss of trees and forest habitat resulting from this alternative would create greater impacts on resources and functions than the selected alternative.

Alternative 2.C. (the Selected Alternative) Cut and plug the 30-inch distribution pipe and Conduit 4 in the below-grade vault (or use part of the adjacent

roadway if necessary), and add the two valves in the below-grade vaults. All excavation would take place in the gravel drive, in existing vaults, or on top of existing vaults, avoiding disturbance to the surrounding steeply sloping forest. There would be no impacts to the vegetation in the area as a result. In addition, it minimizes the amount of equipment that must be brought to the site and avoids using tracked excavators. All of the proposed work will take place inside the existing vaults (and, only if necessary, in a portion of the roadway immediately adjacent to a vault). No vegetation or open soils will be disturbed by the work. This approach will preserve the identified resources of forest, habitat, intermittent drainage, and groundwater. As a result, this alternative would have no adverse effects on any of the functional values that Work Area 6 provides.

Alternative 2.D. Cut and plug Conduit 2 elsewhere and construct a new pipeline from that termination to the distribution system. The available and practical locations for such a pipeline all cross through the environmental zone at Mount Tabor. Any such new connection would cost far more than any of the other alternatives because it would involve longer length of pipe. In addition, laying new pipeline through the environmentally-zoned land would create significant new adverse impacts on resources and functional values in this part of the park. This alternative was rejected because it would be the most expensive and destructive of environmental resources of any of the alternatives considered.

For any alternative that achieves the project purpose-- disconnecting Reservoirs 5 and 6 from the drinking-water distribution system, the proposed work will include the existing vault, since the existing vault is within the resource area of the environmental zone, none of the alternatives considered is entirely outside the resource area of the environmental zone.

As the only practicable alternatives that also minimize impacts on resources and functional values in the environmental zone, Council finds Alternatives 1B and 2C have the least significant detrimental impact to identified resources and functional values. *This criterion is met.*

**A.1.b.** There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

**Findings:** This approval criterion requires the protection of resources outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation beyond the approved limits of disturbance, and erosion of soils off the site. The applicant provided a detailed construction management plan in the application case file (page 125 and Appendix C of Exhibit A.1).

Construction management techniques have been proposed by the applicant to minimize impacts to identified resources and functional values designated to be left undisturbed. The construction techniques proposed include:

Prior to beginning construction, the following activities will be completed:

- Pre-construction meeting with contractor;
- Installation of erosion control devices (for the area where work is to begin); and
- Establishment of construction disturbance limit and installation of tree protection fencing in the areas where construction is to begin.



After construction, the following activities will be completed:

- Site restoration and revegetation;
- Construction waste management and removal; and
- Removal of erosion control devices.

To ensure that the impacts of the construction are confined to the approved construction areas (and the disturbance areas in environmental zones), a temporary construction fence will be installed around the construction site, including stockpile and staging areas. This construction fence is a chain link fence that also serves as tree protection fencing and will be installed per City of Portland standards.

In addition, in order to minimize impacts on public access and use of the park, the maximum length of open trench is limited to 100 feet at any one time along the 48-inch pipeline route. The fenced-off area will move as the contractor completes each work area.

Prior to construction, temporary erosion control will be installed around the areas to be disturbed and construction staging and stockpiling areas using best management practices from the City's Erosion and Sediment Control Manual and in compliance with the City's Erosion and Sediment Control Regulations (Title 10). Erosion control measures will be implemented and monitored by City staff through a daily inspection and maintenance program. Erosion control measures may include, but are not limited to: rock construction entrances; silt fencing; dust control and abatement; inlet protections; and installation of temporary and permanent stormwater management.

All construction work, including staging, storage, and equipment maneuvering will be confined within the construction disturbance limits, which will be fenced. Contractors will be shown the work limits, the designated root protection zones, and instructed to avoid damage to the canopy of any trees overhanging the work limits. Selective pruning of such trees may occur prior to construction as directed by the City Forester.

Trees to be protected adjacent to work areas are identified in Exhibits Sheets 31 to 40 in Appendix A. These trees will be clearly marked in the field by PWB prior to construction. Trees to be protected that border or are within the work area will be fenced at the edge of the root protection zone or as otherwise directed by the City Forester and noted in Appendix F, Alternative Tree Protection Plan.

Tree protection fencing will be six-foot tall chain link fencing secured to the ground with 8-foot metal posts driven into the ground except in the roadway, which will be a movable fence. Fencing will be installed before any site preparation or construction work begins in a given work area and will remain in place until all construction work is complete in a work area.

The PWB contractor will be responsible for ensuring that all tree protection fences are properly installed and maintained throughout the construction period. Damaged or improperly functioning fencing and other tree protection devices will be replaced immediately by the contractor upon discovery.

Additional temporary construction fencing may be installed by the contractor to ensure worker safety and to provide construction site security and individual tree protection fencing where needed. All trees to be protected are outside of the disturbance limits. All tree protection zones except those specifically noted as "modified" meet the City Foresters requirements and are addressed in the Tree Protection Plan, Appendix F of Exhibit A.1 in the application case file. Trees labeled as modified have been reviewed with the City Forester.

Restoration of all temporary disturbance areas will include amendments of soil and landscaping. Landscaping will include seeding and planting of disturbed areas with a native seed mix developed in coordination with PWB's ecologist.

Landscaping work will be completed at the conclusion of the project. Once all construction and restoration work is completed in a work area, erosion control facilities, construction fencing and other temporary construction management measures will be removed.

These construction management measures, along with the additional measures detailed in the applicant's Construction Management Plan (Appendix C, Exhibit A.1), and the tree protection measures described in the Tree Protection Plan (Appendix F, Exhibit A.1), will ensure that there are no impacts to environmental resources beyond the approved disturbance area.

One opponent expressed concern that the applicant planned to work during the bird nesting season and had not described plans for protecting the bird and wildlife habitat in the park and cited Portland's guidance document "Avoiding Impacts on Nesting Birds during Construction and Re-vegetation Projects."

The detailed work schedule will not be developed until the construction contract is awarded, so the work periods in specific work areas is not yet known. However, the Construction Management Plan submitted by the applicant states that PWB will follow the cited guidance document in carrying out the proposal:

"Care during construction will be taken to minimize impacts on wildlife by limiting night construction, fencing or covering trenches when not off shift, and not disturbing nesting birds. As part of the City's nesting bird guidelines, trees will not be removed if there is an active bird nest in it until the birds have fledged.

In accordance with the US Migratory Bird Act, nests will be identified and construction activities will remain 75 feet away from an active nest (i.e. one with young birds or eggs in it) until the birds have fledged." (Exhibit A.1, Appendix C).

This document directs city bureaus to schedule work in natural areas outside of nesting seasons and, if this is not practical, to have a professionally-conducted nesting bird survey carried out and to avoid disturbance of any nesting sites discovered.

Council finds persuasive PWB's representation that it will indeed follow City policy to protect wildlife and birds in carrying out this project, and relies on this information in finding that this concern is satisfactorily addressed.

With conditions that the above-described plans will be followed during construction, *this criterion is met.*

**A.1.c.** The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

**A.1.d.** Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

**A.1.e.** The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out

and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

**Findings:** These criteria require the applicant to assess unavoidable and significant impacts, and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace lost resource functions and values.

Zoning Code Section 33.910.030 defines Significant Detrimental Impact: *An impact that affects the natural environment to the point where existing ecological systems are disrupted or destroyed. It is an impact that results in the loss of vegetation, land, water, food, cover, or nesting sites. These elements are considered vital or important for the continued use of the area by wildlife, fish, and plants, or the enjoyment of the area's scenic qualities.*

The applicant proposes to contain construction disturbance areas within the footprints of existing gravel and paved driveways. Native vegetation will not be disturbed by the construction activities, and there will be no loss of land, water, food, cover, or nesting sites. The proposal will not cause significant detrimental impacts on resources and functional values identified within the environmental zones.

The discussion of approval criteria 33.430.250.A.1.a and A.1.b. showed that the selected alternatives 1) produce no significant detrimental impacts to identified resources and functional values of the portions of the site within the environmental zones; and 2) that the proposal will produce no significant detrimental impact on resources and functional values in areas designated to be left undisturbed.

No significant detrimental impacts will result from the project and these criteria do not apply.

### **A.3. Rights-of-way, driveways, walkways, outfalls, and utilities;**

**A.3.a.** The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;

**Findings:** This criterion applies to development within the environmental protection overlay zone, and since the work proposed will not occur within environmental protection overlay zones, this criterion does not apply.

**A.3.b.** There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and

**Findings:** The project area does not contain water bodies that are used for migration, rearing, feeding or spawning of fish. The nearest water body is the Willamette River, about three miles to the west. Due to its distance from the Willamette River, the project will have no direct impact on water bodies for the migration, rearing, feeding or spawning of fish.

To ensure that stormwater runoff from the project and site does not have a detrimental impact on the Willamette River, (or the city's storm sewer system) during construction, the applicant will follow an Erosion and Sediment Control Plan (ESCP) that meets or exceeds Title 10 and the City's Erosion Control Manual. The ESCP will include the use of erosion control best management practices.

When the work is completed, all disturbed areas will be revegetated with ground cover plants that will stabilize the soils, as well as with woody plants that will provide longer-term stabilization. All paved or graveled areas will be restored to their approximate original condition. Therefore, the project will not change the amount of impervious surface contributing to the existing stormwater management system at Mount Tabor Park. That stormwater system will continue to operate as it does today.

Therefore, no impacts to water bodies will occur as a result of this project. Because of this, there will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish, *and this criterion is met.*

**A.3.c.** Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.

**Findings:** No water bodies will be crossed by the proposed development. *This criterion does not apply.*

#### **Response to other Environmental Zone concerns:**

Some members of the public raised concerns relating to work performed in environmental zones. These concerns are primarily highlighted in Exhibits H-20, H-80, and I-131.

Among these concerns were questions about when the environmental zoning in Mt. Tabor Park had changed, whether the new piping is subject to Environmental Review as new development, and potential negative impacts to nesting wildlife.

First, the change to the Environmental zones occurred as part of a land use review, LU 99-017214 EN (reference file: LUR 99-00809). Second, as stated in the application (Exhibit A-1, p 121-22) and a memo from BDS staff (Exhibit H-142), the proposed piping was determined not to be exempt from Environmental Review under PCC 33.430.080 and does not meet the standards for utilities in PCC 33.430.150. Therefore, the new pipe had to be processed through an Environmental Review. Council concurs with this conclusion, and as discussed above, the pipe work satisfies the criteria for Environmental Review.

The project's impact on wildlife is addressed in the findings under A.1.b of the Environmental Review portion of this decision.

#### **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.

### **V. CONCLUSIONS**

#### **Historic Resource Review**

City Council shares many of the same concerns raised in the public comments, and has adopted conditions of approval as a means to mitigate the loss of information that could occur as the reservoirs change from open drinking water reservoirs to large-scale features that are integral to an important city park. Condition B will help to maintain

the presence of visible water in the reservoirs at historic levels, which is integral to the experience of the park and its landscape. The proposed disconnection appears to be the least invasive means for the Water Bureau to respond to the federal LT2 ruling. The disconnection involves, and is proposing alterations that will have minor impacts on the historic resources overall, as the majority of alterations will be below-grade, minimally visible, or not visible. Landscaping and roadways are proposed to be restored and mitigated with new plantings. With the conditions of approval below, City Council believes that the proposed work will allow the Water Bureau to meet its regulatory obligations while preserving the Mount Tabor Reservoirs for the enjoyment of the citizens of Portland for many years to come.

The Council was pleased that the two appellants were able to agree on the language of conditions for this land use approval. Although, as described in the findings above, Council finds it is not appropriate to impose a condition requiring comprehensive restoration of Mt. Tabor's historic resources under the approval criteria for this land use review, Council has stated separately its intention to address maintenance of the reservoirs as part of its budget process. Council thanks the MTNA for its collaborative work on this project.

### **Environmental Review**

The applicant proposes to construct a new 48-inch diameter pipe in Work Area 3, and to cut and plug pipes, and to install 2 valves in an existing vault in Work Area 6. Construction activities in both work areas will take place on or under the paved or graveled surfaces of existing driveways that pass through the environmental zone. Sediment will be kept from leaving the site, and all vegetation adjacent to the driveways will be protected from damage. After construction, driveways will be returned to their previous graveled or paved conditions. The paved and graveled areas will not be expanded or reduced as a result of the project. Adjacent construction areas outside the environmental zone, will also be restored to their approximate original contour and revegetated.

Because the amount of pavement or gravel will not change, and the vegetation and nearby topography will not change, the work will have no effect on the open space, forest, habitat, intermittent drainage, or groundwater resources in the environmentally-zoned areas. There will be no significant detrimental impacts on resources identified within environmental zones on the site. The applicants and the above findings have shown that the proposal meets the applicable Environmental Review approval criteria. Therefore, the Environmental Review for this proposal should be approved.

## **VI. DECISION**

### **It is the decision of Council to:**

Approve in part, and deny in part, the appeals of the Historic Landmarks Commission decision of Approval of a Historic Resource Review and Environmental Review in the Mt. Tabor Park and Mt. Tabor Park Reservoirs Historic Districts. The Council approves the application of the Portland Water Bureau as follows:

### **Historic Resource Review**

Council **approves** the following alterations to the Mt. Tabor Reservoirs and surrounding parklands:

- Capping and plugging existing underground pipe. In some work areas, this requires excavation of earth and existing roadways, removal of existing pipe, and installation of new piping with restoration of the earth and roadways to existing or comparable conditions (Work Areas 2, 3, 4, 5, 6, 7, 8);

- Removal of existing underground vaults and construction of new underground vaults, including manhole covers, cast iron valve covers, air/vacuum release valves, above-ground vents. Work Area 7 will include two small concrete vaults beneath the walkway with concrete lids and brushed metal hatch covers. (Work Areas 3, 4, 5, 6, 7);
- Removal of existing gates at dog off-leash area and replacement with a new double-gate for pedestrians and new vehicle gate (Work Area 2);
- Removal of existing trees and landscaping and restoration of such landscaping, as feasible, based on location of existing and proposed piping, and areas capable of accepting new plantings Work Areas 2, 5);
- Installation of buried electrical conduit (Work Areas 3, 4, 7);
- Construction of underground thrust blocks and cathodic protection system (Work Area 7);
- Construction of an above-ground electrical cabinet on concrete pad with shrub screening (Work Areas 7, 8);
- Cutting and temporarily removing historic iron pipe handrail to provide temporary access of construction vehicles, after which it will be reinstalled via welding to approximately match the existing condition (Work Area 5);
- Capping or covering outlet pipe openings in the reservoir (Work Areas 9, 10);
- Screening the inlet weir opening (Work Areas 9, 10);
- Welding shut the inlet opening inside the gatehouse (Work Areas 9, 10);
- Placing bar grating across the drain pipe opening (Work Areas 9, 10, 11);
- Screening the openings of the two pipes connecting Reservoirs 1 and 5 (Work Areas 9, 10);
- Removing the sheet metal barrier from the fence above the weir opening (Work Area 9);
- Removal of existing pipe and installation of new pipe within and outside of the Chlorination Building (Work Area 10);
- Installation of alarms in the weir and reservoir to alert when water levels in the reservoir approaches the weir, encroaching on the air gap (Work Areas 10, 11);
- Small penetrations and installation of vents and condulets at the roof and east wall Gatehouse 6 East, respectively (Work Area 11);
- Removing pipe ends and installing caps on the flanges of the outlet pipes (Work Area 11);
- Installation of new pipe inside Gatehouse 6 (Work Area 11); and
- Planting of new trees along the SE Harrison entrance (Work Area 12)

Approvals per Exhibits C-1 through C-52, signed, stamped, and dated February 9, 2015, subject to the following conditions:

- A.** As part of the building permit application submittal, the following development-related conditions (A – D) must be noted on each of the 4 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 14-218444 HR EN. All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled “REQUIRED.”
- B.** Following completion of the disconnection, Reservoirs #1, #5, and #6 must continue to hold water between 50% and 85% of capacity, which is the range accepted to produce the site’s characteristic iconic views. Periods outside of that range must be kept to a minimum. The reservoirs must be maintained and cleaned and the City shall use its best efforts to manage the reservoirs so that three out of four reservoir basins will be kept full (as close to 85% as possible) while the fourth is being drained, cleaned and refilled. The reservoirs may be emptied (partially or fully) for

brief periods, as necessary, to address system operational requirements, to maintain security, regulatory compliance, or for safety concerns. Any proposal to permanently remove visible water from the site, as required in the preceding sentence, will require a follow-up land use application.

- C. Within 5 years of final approval of this land use review, the City of Portland shall develop an interpretation program that tells the history of the Mt. Tabor Reservoirs and the Bull Run water delivery system, including the proposed disconnection. Prior to application for a Type II land use review, the City of Portland shall request and complete a Design Advice Request with the Historic Landmarks Commission in order to obtain advice on the parameters of the interpretation program.
- D. The applicant will engage a qualified archaeologist to assess the project's potential to impact archaeological resources. This assessment should include review by a qualified geo-archaeologist and be completed prior to issuance of construction permits. In the event of any archaeological discovery, work potentially affecting the archaeological resources will be stopped, the State Archaeologist will be notified, and the procedures specified by state regulations will be followed.

### **Environmental Review**

Council **approves** an Environmental Review for:

- Construct approximately 350 feet of 48-inch steel pipe in Work Area 3, within the Environmental Conservation zone; and
- Conduct Vault Work in Work Area 6, within the Environmental Conservation zone.

This approval is per Exhibits C.15, C.18, C.32, C.35, C.52, and Exhibit A.1 Appendices C and F, signed, stamped, and dated February 9, 2015, and subject to the following conditions:

- A. **A BDS construction permit may be required.** Copies of the approved Exhibits C.15, C.18, C.32, C.35, C.52, and Exhibit A.1 Appendices C and F. LU 14-218444 HR EN and Conditions of Approval listed below, shall be included within all plan sets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc. See "Other Technical Requirements" listed above). These exhibits shall be included on a sheet that is the same size as the plans submitted for the permit and shall include the following statement, "Any field changes shall be in substantial conformance with approved LU 14-218444 HR EN Exhibits C.15, C.18, C.32, C.35, and C.52."
- B. Temporary construction fencing shall be installed according to Section 33.248.065 or 33.248.068 (Tree Preservation Plans/Tree Protection Requirements), except as specified below. Temporary chain link, construction fencing shall be placed along the Limits of Construction Disturbance for the approved development, as depicted on Exhibit C.32 & C.35 Construction Management Plans, and as described in Exhibit A.1 Appendices C and F (Construction Management Plan and Tree Protection Plan) or as required by inspection staff during the plan review and/or inspection stages.
  - 1. No mechanized construction vehicles are permitted *in the environmental zones* outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
  - 2. All temporary construction areas *in the environmental zones* shall be revegetated, using native vegetation, as described in the Construction Management Plan in Exhibit A.1 Appendix C.

- C. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

**Note:** In addition to the requirements of the Zoning Code, all uses and development must comply with other applicable City, regional, state and federal regulations.

This decision applies to only the City's environmental regulations. Activities which the City regulates through PCC 33.430 may also be regulated by other agencies. In cases of overlapping City, Special District, Regional, State, or Federal regulations, the more stringent regulations will control. City approval does not imply approval by other agencies.

**Both appellants prevailed in part, with revised conditions to satisfy the approval criteria.**

## **VII. APPEAL INFORMATION**

### **Appeals to the Land Use Board of Appeals (LUBA)**

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of the decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period or this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

EXHIBITS NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
1. Application Narrative
  2. 120-day waiver
  3. Original Drawing Set, sheets 1-53, not including 50-52
  4. Pre-Application Conference Facilitator Summary Memo
  5. Email from Tom Carter, removing repair of the Reservoir 1 parapet walls from the application, dated October 22, 2014.
  6. Email from Tom Carter, clarifying rights and responsibilities regarding ownership and management of Mt. Tabor Park, dated November 20, 2014
  7. Letter from Maija Spencer, Property Management Specialist for Portland Parks and Recreation, regarding coordination with PWB and requirements for proposed work, dated November 21, 2014
  8. Email from Maya Agarwal, Portland Parks and Recreation, regarding size of replacement trees, dated November 26, 2014
- B. Zoning Map (attached)
- C. Plans & Drawings:
1. Zoning, Property Boundaries, and Overall Site Map
  2. List of Drawings and Index to Work Areas (attached)
  3. Existing Conditions and Proposed Work, Work Area 1
  4. Existing Conditions, Work Area 2
  5. Existing Conditions, Work Area 3
  6. Existing Conditions, Work Area 4
  7. Existing Conditions, Work Area 5
  8. Existing Conditions, Work Area 6
  9. Existing Conditions, Work Area 7
  10. Existing Conditions, Work Area 8



11. Existing Conditions, Work Area 9 – Reservoir 1
12. Existing Conditions, Work Area 10 – Reservoir 5
13. Existing Conditions, Work Area 11 – Reservoir 6
14. Proposed Work, Work Area 2
15. Proposed Work, Work Area 3
16. Proposed Work, Work Area 4
17. Proposed Work, Work Area 5
18. Proposed Work, Work Area 6
19. Proposed Work, Work Area 7
20. Proposed Work, Work Area 8
21. Proposed Work, Work Area 9 – Reservoir 1
22. Proposed Work, Work Area 9 – Reservoir 1
23. Proposed Work, Work Area 9 – Reservoir 1
24. Proposed Work, Work Area 10 – Reservoir 5
25. Proposed Work, Work Area 10 – Reservoir 5
26. Proposed Work, Work Area 10 – Reservoir 5
27. Proposed Work, Work Area 11 – Reservoir 6
28. Proposed Work, Work Area 11 – Reservoir 6
29. Proposed Work, Work Area 11 – Reservoir 6
30. Schematic of Proposed Work
31. Construction Management, Work Area 2
32. Construction Management, Work Area 3
33. Construction Management, Work Area 4
34. Construction Management, Work Area 5
35. Construction Management, Work Area 6
36. Construction Management, Work Area 7
37. Construction Management, Work Area 8
38. Construction Management, Work Area 9 – Reservoir 1
39. Construction Management, Work Area 10 – Reservoir 5
40. Construction Management, Work Area 11 – Reservoir 6
41. Erosion Control Detail Sheet
42. Temporary Chain Link Fencing Details
43. Landscaping Plan and Mitigation Trees, Work Area 2
44. Landscaping Plan, Work Area 4
45. Landscaping Plan and Mitigation Trees, Work Area 5
46. Landscaping Plan, Work Area 7
47. Landscaping Plan, Work Area 8
48. Planting Work Areas 12A and 12B West Park Area
49. Planting Work Areas 12C and 12D SE Harrison Drive Area
50. Legend and Abbreviations
51. Landscaping and Mitigation Details
52. Construction Management Details in SE Lincoln Drive
- 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 Parks, Forestry Division
  3. Bureau of Transportation Engineering and Development Review
  4. Life Safety Division of Bureau of Development Services
  5. Water Bureau

F. Letters:

1. Mark Bartlett, on October 23, 2014, wrote with procedural questions regarding determination of application completeness.
2. Ty K. Wyman, on behalf of Brian Rohter and Eileen Brady, wrote on November 10, 2014, suggesting the application only be approved with a condition of approval that each above ground reservoir be filled with water and maintained as full to ensure preservation of historic character.
3. Mark Bartlett, on November 17, 2014, wrote questioning the water Bureau's authority to work in areas not managed by them and comments on what is and is not included in the case file.
4. Mark Wheeler, on November 17, 2014, wrote with strong disapproval of the reservoir system, requesting that the reservoirs remain open.
5. Jocelyn Goodall, on November 18, 2014, wrote with concerns about the future of the reservoirs if they are no longer used as a utility, support for the existing open reservoir system, and concerns with the safety of underground water storage.
6. Steven T. Wax, on November 19, 2014, wrote questioning the need for the current proposal, suggesting that the reservoirs be taken off-line rather than physically disconnecting them through the proposed cut-and-plug method.
7. Stephanie Stewart, on November 19, 2014, wrote on behalf of the Mt. Tabor Neighborhood Association (MTNA), requesting several conditions of approval including the requirement for filling the reservoirs, Water Bureau articulation of future maintenance and security responsibilities, incorporation of a future-use plan, formal study of impacts akin to Section 106, requirement of a preservation plan, requirement for preservation of historic resource with appropriate funding, and formal oversight from the Historic Landmarks Commission or a third party to ensure all approval criteria are met. MTNA also submitted several records into the file, by reference.
8. Mary Kinnick, Co-Chair of Friends of Mt. Tabor Park, on November 20, 2014, wrote with full endorsement of the MTNA letter, encouraging special consideration of MTNA's requested conditions of approval.

G. Other:

1. Original LUR Application
2. National Register Nomination for Mt. Tabor Reservoirs Historic District
3. National Register Nomination for Mt. Tabor Park
4. Use Determination for Reservoirs at Mt Tabor Park, dated September 3, 2003

H. Historic Landmarks Commission hearing

1. Staff Memo to the Historic Landmarks Commission, dated November 21, 2014
2. Staff Report and Recommendation, dated November 21, 2014

Prior to December 1, 2014 Historic Landmarks Commission hearing:

3. Bertha Guptil, on November 21, 2014, wrote in opposition.
4. PWB Correspondence with Steven Wax, dated November 24, 2014
5. Kim Lakin, on November 23, 2014, wrote with suggestions for improvement.
6. Sandra Hay Magdaleno, South Tabor Neighborhood Association President, on November 24, 2014, wrote suggesting reversibility and maintenance of historic character and supporting MTNA letter.
7. Floy Jones, Friends of the Reservoirs, on November 25, 2014, wrote in opposition and with requests for additional mitigation measures.
8. Brad Yazzolino, on November 28, 2014, wrote with requests for conditions of approval and with support of MTNA letter.
9. Ty K. Wyman, representing Brian Rohter and Eileen Brady, on November 24, 2014, wrote requesting additional information and conditions of approval.

At December 1, 2014 Historic Landmarks Commission hearing:

10. Staff Presentation, dated December 1, 2014
11. Applicant Presentation, dated December 1, 2014

12. Work Areas at Mount Tabor, map distributed by PWB at December 1, 2014 hearing
13. LT2 Compliance timeline, distributed by PWB at December 1, 2014 hearing
14. Mary Ann Schwab, presented oral testimony in favor, provided certain conditions of approval were applied.
15. John Laursen, representing Mt. Tabor Neighborhood Association (MTNA), presented oral and written testimony, suggesting conditions of approval.
16. Dawn Smallman, presented oral, visual, and written testimony, suggesting conditions of approval.
17. Kim Lakin, presented oral and written testimony in opposition, suggesting denial of application or including conditions of approval. Ms. Lakin also submitted the Mt. Tabor Historic Structures Report, dated May 2009.
18. Stephanie Stewart, presented oral and written testimony in opposition, suggesting conditions of approval.
19. Brian Rohter, presented oral, visual, and written testimony in opposition, suggesting conditions of approval.
20. Suzanne Sherman, presented oral and visual testimony in opposition, with concerns of the proposal's impacts on wildlife.
21. Christopher Lancefield, presented oral testimony in opposition.
22. Mark Bartlett, presented oral and written testimony in opposition, with concerns regarding the land use process, and email received at 10:55pm same day.
23. Matthew Byloos, presented oral testimony in opposition.
24. David Hiltz, presented oral testimony in opposition.
25. Brad Yazzolino, presented oral and written testimony (see H-8) in opposition.
26. Laura Orr, presented oral and written testimony in opposition, suggesting retention of water.
27. Mary Kinnick, Friends of Mt. Tabor Park, presented oral testimony in opposition, suggested retention of water.
28. Eileen Brady, presented oral testimony in opposition, requested conditions of approval.
29. Floy Jones, Friends of the Reservoirs, presented oral testimony in opposition, suggested conditions of approval.
30. Valerie Hunter, presented oral and written testimony in opposition regarding reversibility. Exhibit H-30 for additional details.
31. Ty Wyman, representing Brian Rohter and Eileen Brady, presented oral testimony regarding land use process and Commission authority.
32. Steve Reinemer, presented oral testimony in opposition.
33. Johnny Dwork, presented oral testimony in opposition.
34. Katherin Kirkpatrick, presented written testimony in opposition, as well as public documents regarding reservoirs use determination and LT2 compliance.
35. Daniel Berger, presented written testimony in opposition, suggested retention of water.
36. David Morrison, presented written testimony in opposition.
37. Jana Throckmorton, South Tabor Neighborhood Association, presented written testimony in opposition.
38. Susan Tompkins, presented written testimony in opposition.
39. Joy Ellis, presented written testimony in opposition.
40. Dee White, presented written testimony in opposition, suggested conditions of approval.
41. Kim Dianich, did not present testimony but noted her support.
42. Tom Koehler, did not present testimony but noted his opposition.
43. Alexander Aris, did not present testimony but noted his opposition.
44. Carrie Seitzinger, did not present testimony but noted her opposition.

After December 1, 2014 Historic Landmarks Commission hearing:

45. Tana and David Cahill, on November 24, 2014, wrote in opposition, supporting MTNA suggested conditions of approval.
46. Mark Barlett, on December 1, 2014, wrote in opposition, and provided evidence submitted at December 1, 2014 hearing (also see Exhibit H-22).
47. Mark Bartlett, on December 7, 2014, wrote in opposition.
48. Nate Klett, on December 11, 2014, wrote with suggestions for the future of the reservoirs.
49. Kira Edmunds, on December 16, 2014, wrote in opposition.
50. Anna Fritz, December 16, 2014, wrote in opposition.
51. PWB December 23, 2014 Response for HLC Hearing #2 on 1/12/15
52. PWB December 23, 2014 Response Attachment A – Mount Tabor Reservoir Historic Structures Report 2009 (Table revised Dec. 2014) Condition Analysis and Recommendations Tabular Summary
53. PWB dated December 23, 2014 Response Attachment B, Air Gap Details
54. PWB December 23, 2014 Response Attachment C, OAR 333-061-0070 Cross Connection Control Requirements and OAR 333-061-0071 Backflow Prevention Assembly Installation and Operation Standards
55. PWB December 23, 2014 Response Attachment D, Ordinance No. 182457, Affirming Management Authority at Mt. Tabor
56. Revised Staff Report and Recommendation to the Historic Landmarks Commission, dated December 31, 2014

Prior to January 12, 2015 Historic Landmarks hearing:

57. Mark Bartlett, January 2, 2015 email with questions regarding administration, code interpretations, prior land use determinations and zone changes.
58. Stephanie Stewart, January 5, 2015, wrote, listing expectations from PWB.
59. Scott Fernandez, January 5, 2015, wrote in opposition, email citing health concerns with buried drinking water.
60. Todji Kurtzman, January 5, 2015, wrote in opposition, citing health concerns.
61. Jason Allen, Historic Preservation Specialist at the Oregon State Historic Preservation Office (SHPO), on January 6, 2015, wrote stating that the SHPO found that the proposed project would not adversely affect Mt Tabor Park or the Mt Tabor Park Reservoirs Historic District.
62. Scott Fernandez, on January 7, 2015, wrote in opposition, citing health benefits of open reservoirs.
63. Ty K. Wyman, representing Brian Rohter and Eileen Brady, wrote in opposition, proposing revised conditions of approval and suggesting there are errors in the applications.
64. John Laursen and Stephanie Stewart, Mt. Tabor Neighborhood Association, wrote in opposition, responding to Portland Water Bureau's December 23, 2014 response, providing additional background information on SHPO response.
65. Tom Carter and Teresa Elliott, Portland Water Bureau, on January 9, 2015, wrote with revised suggested conditions of approval.
66. Dee White, on January 11, 2015, wrote in opposition, requesting a denial.
67. Patricia Aboussie, on January 11, 2015, wrote suggesting the reservoirs remain as-is and submitted a photo.
68. Lisa Bell, on January 12, 2015, wrote in opposition.
69. Jack Wells, on January 12, 2015, wrote in opposition.
70. RoseMarie Opp, on January 12, 2015, wrote in opposition, suggesting that all citizens who drink Bull Run water should be informed of this proposal and invited to the process, and provided a copy of the January 7, 2015 Truthout article "Deep Questions Arise Over Portland's Corporate Water Takeover" by Victoria Collier.
71. Brad Yazzolino, on January 12, 2015, wrote with support of the MTNA response (Exhibit H-64) and provided a link to the Truthout article in Exhibit H-70.

72. Joseph Mitchell, on January 12, 2015, wrote in opposition, citing cost concerns.
  73. Lela Prewitt, on January 12, 2015, wrote in opposition to the disconnection and tree removal.
- At January 12, 2015 Historic Landmarks Commission hearing:
74. Staff Presentation, dated January 12, 2015
  75. Tom Carter and Teresa Elliott, Portland Water Bureau, on January 12, 2015, Discussion of Conditional Uses in the OS Base Zone.
  76. Tom Carter and Teresa Elliott, Portland Water Bureau, on January 12, 2015, Comments about “Reversibility”.
  77. Joe Walsh, presented oral testimony in opposition.
  78. Stephanie Stewart, MTNA, presented oral and written testimony in opposition.
  79. John Laursen, MTNA, presented oral and written testimony in opposition, and suggested adding a condition of approval that requires the City to return to the Historic Landmarks Commission if the water is to go away permanently.
  80. Mark Bartlett, MTNA CAC, presented oral and written testimony in opposition.
  81. Roger Jones, presented oral testimony in opposition.
  82. Paul Cienfuegos, presented oral testimony in opposition.
  83. Johnny Dwork, presented oral and written testimony in opposition.
  84. Georgia Lamprose Obradovich, presented oral testimony in opposition.
  85. Jon Reinschreiber, presented oral testimony in opposition.
  86. Dee White, Friends of the Reservoirs, presented oral and written testimony in opposition.
  87. Floy Jones, Friends of the Reservoirs, presented oral and written testimony in opposition.
  88. RoseMarie Opp, presented in oral testimony in opposition.
  89. Daniel Berger, presented in oral testimony in opposition.
  90. Charles Johnson, Sane and Honest People Against Joe Glicker, presented oral testimony in opposition.
  91. Steven T. Wax, presented oral testimony in opposition.
  92. Brian Rohter, presented oral testimony in opposition.
  93. Eileen Brady, presented oral testimony in opposition and written correspondence with Jason Allen (SHPO) regarding retention of water.
  94. Beth Giansiracusa, presented oral testimony in opposition.
  95. Uriaka Asing, presented testimony in opposition.
  96. Catherine Howells, presented testimony in support.
  97. Michael Conley, presented oral testimony in opposition.
  98. Matthew Long, presented oral testimony in opposition.
  99. Mary Ann Schwab, presented oral and written testimony in opposition.
  100. Galen Hefferman, presented oral testimony in opposition.
  101. Ty Wyman, presented oral testimony in opposition.
  102. Ryan B. Naumann, presented written testimony in opposition.
  103. Katherine Mura, presented written testimony in opposition.
  104. Carole Scholl, presented written testimony in opposition.
  105. Patra Conley, presented written testimony in opposition.
  106. Cathy Kuehn, presented written testimony in opposition.
  107. Sarah Adams, presented written testimony in opposition.
  108. Frank Martin, presented written testimony in opposition.
  109. Kundalini Rose Bennett, presented written testimony in opposition.
  110. Rachel Stern, presented written testimony in opposition.
  111. Richard A. Burton, presented written in testimony in opposition.
  112. Jeya Anderson, presented written in testimony in opposition.
  113. Katherin Kirkpatrick, presented testimony in opposition.
  114. Treothe Bullock, presented written testimony in opposition.
  115. Anna Fritz, presented written testimony in opposition.

116. Noah Kleiman, presented written testimony in opposition.
  117. Leslie Piper, presented written testimony in opposition.
  118. John Parker, presented written testimony in opposition.
  119. Daniel F. Haley, presented written testimony in opposition.
  120. Rachael Rice, presented written testimony in opposition.
  121. Tavish McNaughton, presented written testimony in opposition.
  122. Nancy Newell, Citizens for Portland's Water, presented written testimony in opposition.
  123. Herschel Soles, presented written testimony in opposition.
  124. Marian Drake, did not present testimony, but noted her opposition.
  125. Neil Pinholster, did not present testimony, but noted his opposition.
  126. Talor Lee-Stiles, did not present testimony, but noted his opposition.
- After January 12, 2014 Historic Landmarks Commission hearing:
127. Scott Fernandez, on January 12, 2015 wrote in opposition and provided a document "Scientific and Public Health Basis to Retain Reservoir Water Health System for the City of Portland Oregon" by Scott Fernandez.
  128. Mark Bartlett, on January 13, 2014, wrote regarding use restrictions.
  129. Marian Drake, on January 13, 2015, wrote in opposition, with concerns about the process.
  130. Steven T. Wax, on January 14, 2015, wrote in opposition, suggesting an additional condition of approval to require preservation of the reservoir structures.
  131. Scott Fernandez, on January 19, 2015, wrote in opposition, referencing the scientific benefits of open reservoirs.
  132. Mary Ann Schwab, on January 20, 2015, wrote with concerns about radon and forwarding a letter sent from Robert McCullough of SE Uplift to City Council.
  133. Brad Yazzolino, on January 20, 2015, wrote in opposition with concerns regarding the long-term preservation of the reservoirs and the expense of the proposal.
  134. Mary Ann Schwab, on January 20, 2015, wrote with corrections and emphasis to her prior correspondence, regarding the expenditure for this proposal and suggested use for Columbia South Shore Well Field.
  135. Stephanie Stewart and John Laursen, Mt. Tabor Neighborhood Association, on January 20, 2015, wrote encouraging the Commission to mandate further mitigation through a condition of approval requiring formal adoption and implementation of the 2009 Historic Structures Report.
  136. Katherin Kirkpatrick, on January 20, 2015, wrote in opposition, stating that the applicant must prove the reservoirs will remain in use as public works and prove their credibility in the assertion that the proposed alterations are reversible. She also provided an article from the July 2014 Bull Run Dispatch regarding the PWB-partnered Portland State University Capstone course.
  137. Mary Ann Schwab, on January 20, 2015, forwarded similar comments to those in H-132 and H-134 to City Council.
  138. Mark Bartlett, on January 20, 2015, wrote in opposition, requesting that notes be made available, clarifying LT2 language, and suggesting that a Conditional use review is required and that the Water Bureau's proposal is a taking of Parks and Recreation lands.
  139. Helga Fuller, on January 20, 2015, wrote in opposition, suggesting that the proposal is unnecessary and a waste of money.
  140. RoseMarie Opp, on January 20, 2015, wrote in opposition, with concerns about the potential future demolition of the reservoirs, and closed reservoir systems.

Received after 12:00pm on January 20, 2015:

141. Katherin Kirkpatrick, on January 20, 2015, wrote in opposition, stating that the applicant has not demonstrated its burden of proof that the resources will be preserved.
  142. Stacey Castleberry Memo, dated January 22, 2015, responding to Environmental Zone concerns.
  143. Mark Bartlett, on January 23, 2015, wrote in opposition with comments regarding a previous proposal at the maintenance yard.
  144. Katherin Kirkpatrick, on January 20, 2015, wrote in opposition, stating that the applicant has not demonstrated its burden of proof that the resources will be preserved.
  145. Staff Presentation, dated January 26, 2014
  146. 2<sup>nd</sup> Revised Staff Report, dated January 26, 2015
  147. Staff Memo to Historic Landmarks Commission, dated February 2, 2015
  148. Staff Report and Recommendation – Denial, dated February 2, 2015
  149. Staff Report and Recommendation – Approval with Conditions, dated February 2, 2015.
  150. Final Findings and Decision, dated February 10, 2015
  151. Mailing List for Historic Landmarks Commission decision
- I. Appeal to City Council
1. Appeal Submittal, Portland Water Bureau
  2. Appeal Submittal, Mt. Tabor Neighborhood Association
  3. Christine Yun, on February 8, 2015, wrote in opposition
  4. Notice of Appeal
  5. Notice of revised Appeal hearing date
  6. Mark Wheeler, on April 15, 2015, wrote in opposition
  7. Ning Fu, on April 16, 2015, wrote in opposition
  8. Joan Simko, on April 19, 2015, wrote in opposition
  9. Georgia Lampros Obradovich, on April 28, 2015, wrote in opposition
  10. Mt. Tabor Neighborhood Association Appeal documents, received April 29, 2015
  11. Ty Wyman letter of January 7, 2015, resubmitted by MTNA April 29, 2015
  12. Stephanie Stewart, on April 30, 2015, forwarded email by Jason Allen, SHPO, noting “no adverse effect” is contingent on retention of water in reservoirs
  13. Teresa Elliott (PWB), Memo to City Council, dated May 12, 2015
  14. David Shaff, Teresa Elliott, and Tom Carter (PWB), Memo to City Council, dated May 14, 2015
  15. PWB Tabor Reservoir Adjustments Land Use Review Application, dated September 2014, resubmitted for City Council Appeal hearing
  16. Land Use Review Drawings, resubmitted for City Council Appeal hearing
  17. Alice West, on May 18, 2015, wrote in opposition
  18. Sandra Hay Magdaleno and Shem Harding, South Tabor Neighborhood Association, on May 22, 2015, submitted a letter in opposition, dated April 15, 2015
  19. David Shaff, Portland Water bureau, on May 22, 2015, submitted a response to the MTNA’s appeal points, in a letter erroneously dated April 9, 2015
  20. Mark Wheeler, on May 26, 2015, wrote in opposition
  21. Thomas Jefferson Cole, on May 27, 2015, wrote in opposition
  22. Brian Emerick and Jessica Engeman, Historic Landmarks Commission, on May 27, 2015, provided a letter explaining the Commission’s 3-1 vote to support the proposal
  23. Public Involvement Summary for Mt. Tabor Reservoirs Adjustments Project, provided by Tom Carter, PWB, on May 27, 2015
  24. Jane Hansen, on May 26, 2015, wrote in support of restoration of the reservoirs
  25. Mark Schlemmer, on May 28, 2015, wrote in opposition

26. Floy Jones, on May 28, 2015, wrote in opposition and provided additional documents including an April 9, 2015 letter, and two copies of City of Portland Resolution #36237
27. Floy Jones, on May 28, 2015, wrote in opposition and provided additional documents including contracts and contract upgrade documents between the City of Portland and Natt McDougal, Black & Veatch Corporation, and Slayden Construction Group, Inc.
28. Leslie Rose, on behalf of the Rose/Woodward/Popiel family, on May 28, 2015, wrote in opposition to the PWB appeal and support for the MTNA appeal
29. Kathy Bue, on May 28, 2015, wrote in opposition
30. Floy Jones, on May 28, 2015, wrote in opposition and provided a copy of the 2011 PWB Drinking Water Quality Report
31. Floy Jones, on May 28, 2015, wrote in opposition and provided additional documents including a September 6, 2012 letter from the Federal Energy Regulatory Commission to Frank Galida, a February 4, 2013 letter from Steve Novick to the Oregon Health Authority, and the Executive Summary of the November 2011 Open Reservoir Study by Montgomery Watson Harza
32. Floy Jones, on May 28, 2015, wrote in opposition and provided a copy of the May 2009 Mount Tabor Reservoirs Historic Structures Report by Cascade Design Professionals and Robert Dortignacq, AIA
33. Floy Jones, on May 28, 2015, wrote in opposition, and provided additional documents including a 2012 report and photos of the Reservoir 7 security breach
34. Floy Jones, on May 28, 2015, wrote in opposition, and provided a 2010 article entitled "Battling Nitrification with Blacklights" by Brian White and Martin Adams
35. Floy Jones, on May 28, 2015, wrote in opposition and provided copies of an April 19, 2015 letter to City Council and a March 2, 2015 letter to Governor Kate Brown from Friends of the Reservoirs
36. Suzanne Sherman, on May 28, 2015, wrote in opposition
37. Katherin Kirkpatrick, on May 28, 2015, wrote in opposition, and provided additional documents including testimony dated April 15, 2015, survey results for possible future Mt. Tabor Reservoirs proposals, and the 2009, 2010, 2011, and 2012 PWB Drinking Water Quality Reports
38. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documents to support Exhibit I-37, including the 2013 and 2014 PWB Drinking Water Quality Reports, a map of Portland's drinking water sources, a 2014 map of indoor radon levels, EPA web information on radon and radon protection accessed April 21, 2015, and a May 2012 EPA Report to Congress: Radon in Drinking Water Regulations
39. Katherin Kirkpatrick, on May 28, 2015, providing additional documents to support Exhibit I-37, including a 1999 report entitled "Risk Assessment of Radon in Drinking Water" by the National Academy of Sciences and the Environmental Protection Agency
40. RoseMarie Opp, on May 28, 2015, wrote in opposition, and provided a flyer titled "Save the Open Reservoirs"
41. Mark Bartlett, on May 28, 2015, wrote providing an email from Jason Allen at the State Historic Preservation Office and provided a recording of a voicemail by Jill Grenda, BDS
42. Mark Bartlett, on May 28, 2015, provided copies of emails dating from 2009
43. Lawrence Hudetz, on May 28, 2015, wrote in opposition and provided information on radon retrieved from Wikipedia
44. Scott Fernandez, on May 28, 2015, wrote in opposition with concerns about the health risks of buried reservoirs



45. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documents to support Exhibit I-37, including a June 10, 1980 Journal of Geophysical Research article entitled “Radon Anomalies and Microearthquakes at Lake Jocassee, South Carolina” by Pradeep Talwani, W.S. Moore, and Jin Chiang
  46. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documents to support Exhibit I-37, including a 1997 Environmental Science & Technology article entitled “Experimental Assessment of the Short- and Long-Term Effects of <sup>222</sup>Rn from Domestic Shower Water on the Dose Burden Incurred in Normally Occupied Homes” by B. Fitzgerald, P.K. Hopke, V. Datye, T. Raunemaa, and K. Kuuspal
  47. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documents to support Exhibit I-37, including a 2006 article on the Chartered Institute of Environmental Health website entitled “Risk Factors for Osteosarcoma in Young People in Cornwall: A Case Study” by Mel Wright and Dr. Derek Pheby, access March 12, 2014
  48. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documents to support Exhibit I-37, including a 2009 Technophysics article entitled “A systematic compilation of earthquake precursors” by Robert D. Cicerone, John E. Ebel, and James Britton, as well as LinkedIn information on Dan Carol, accessed January 11, 2015, and information on West Coast Infrastructure Exchange, accessed January 11, 2015
  49. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documents to support Exhibit I-37, including information related to West Coast Infrastructure Exchange
  50. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documents to support Exhibit I-37, including presentation slides, potentially related to West Coast Infrastructure Exchange
- Received at the May 28, 2015 City Council hearing
51. BDS Staff Presentation to City Council, dated May 28, 2015
  52. PWB Presentation to City Council
  53. MTNA Presentation to City Council
  54. PWB Response Presentation
  55. Brian Emerick, Chair of the Historic Landmarks Commission, provided oral testimony in support
  56. Jessica Engeman, Vice-chair of the Historic Landmarks Commission, provided oral testimony in support
  57. Harris Matarazzo, Historic Landmarks Commission, provided oral and written testimony in opposition to the PWB appeal
  58. Mary Ann Schwab, provided oral and written testimony in opposition, including a January 21, 2015 letter from Robert McCullough, President of SE Uplift Board of Directors
  59. Mark Bartlett, provided oral testimony in opposition
  60. Dr. Steve Gordon, provided oral and written testimony in opposition to PWB appeal and support of preservation of the reservoirs and water levels
  61. Steve Wax, provided oral testimony in opposition to PWB appeal and support for maintaining water levels
  62. Eileen Brady, provided oral testimony in opposition to PWB appeal and requesting the HLC decision be upheld
  63. Dr. Daniel Berger, provided oral and written testimony in opposition to PWB appeal and requesting the HLC decision be upheld
  64. Brian Rohter, provided oral testimony in opposition to PWB appeal and requesting the HLC decision be upheld
  65. Mary Kinnick, Friends of Mt. Tabor Park Board, provided oral and written testimony in opposition to PWB appeal and supporting the MTNA appeal

66. Valerie Hunter, provided oral and written testimony in opposition to PWB appeal and supporting the MTNA appeal
67. Laura Orr, provided oral and written testimony in opposition to PWB appeal and requesting the HLC decision be upheld
68. Kim Lakin, provided oral testimony in opposition to PWB appeal and requesting the HLC decision be upheld
69. Tom Walsh, provided oral testimony in opposition to PWB appeal and noted that there was more agreement in the two appellants than not
70. Dave Hiltz, provided oral and written testimony in opposition to PWB appeal and advocated for maintenance of the reservoirs
71. Miriam Berman, provided oral and written testimony requesting maintenance of water levels and restoration of the reservoirs
72. Tom Koehler, provided oral testimony in opposition to PWB appeal and requesting the HLC decision be upheld
73. Dawn Smallman, provided oral testimony in opposition to PWB appeal and requesting the HLC decision be upheld, with a commitment to maintain and refresh the water and City Council to serve as a steward of the reservoirs
74. Martha Mitchell, provided oral testimony in opposition to PWB appeal and advocated for preservation of the reservoirs
75. Robert Bernstein, provided oral testimony in opposition, noting a concern for loss of trees
76. Mark Schlemmer, provided oral testimony in opposition, noting a concern for increased radon exposure
77. Mary Eng, provided oral testimony in opposition, noting concerns with radon
78. Katherin Kirkpatrick, provided oral testimony in opposition to the project and questioned whether there was merit in taking the reservoirs offline
79. Charles Johnson, provided oral testimony in opposition to the project
80. Camille Day, provided oral testimony in opposition to the project
81. Brad Yazzolino, provided oral testimony in opposition to PWB appeal and requesting water levels be preserved and the project be reversible
82. Dee White, provided oral testimony in opposition, requesting City Council to request an extension form OHA
83. Paul Cienfuegos, provided oral testimony in opposition, stating there had been no public process on the City's LT2 response
84. Laurel Crissman, provided testimony in opposition, requesting that City Council listen to the people.
85. Luke Dolkas, provided oral testimony in opposition to PWB appeal and requesting the HLC decision be upheld
86. Floy Jones, provided oral testimony in opposition to the proposal but requesting the HLC decision be upheld
87. Kathryn Cherie Holenstein, provided oral and written testimony in opposition to the proposal, noting the EPA regulation is under review
88. Janet Marcley-Hayes, provided oral testimony in opposition, stating the City Council should represent the public
89. Jessie Sponberg, provided oral testimony in opposition, stating the City Council should represent the public
90. Carole Scholl, provided oral testimony in opposition to PWB appeal and requesting the HLC decision be upheld and trees should be maintained
91. Nan Wigore, provided oral testimony in opposition, stating the reservoirs should be preserved for the future
92. Michael Conley, provided oral testimony in opposition, noting concerns for the quality of water in buried tanks
93. Joy Ellis, provided oral testimony in opposition to PWB appeal and requesting the HLC decision be upheld

94. Georgia Lampros Obradovich, provided oral testimony in opposition, stating the reservoirs should be maintained
95. Sign-in sheet for May 28, 2015 City Council hearing
96. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documents to support Exhibit I-37, including several a June 16, 2011 from Gail Shibley to Ben Cannon, a June 15, 2011 letter from Shannon K. O'Fallon to Gail Shibley, a December 9, 2011 letter from Dave Leland to David Shaff, a January 27, 2012 letter from Nancy K. Stoner to Jeff Merkley, and Gail Shibley's LinkedIn profile page, accessed May 27, 2015.
97. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documents to support Exhibit I-37, including Charlie Hales' LinkedIn profile, accessed May 27, 2015, Ordinance #178997, and "Infrastructure Crisis, Sustainable Solutions: Rethinking Our Infrastructure Investment Strategies" by Rhys Roth, Director of the Center for Sustainable Infrastructure at the Evergreen state College
98. Floy Jones, on May 28, 2015, wrote in opposition, and provided a 2010 article entitled "Battling Nitrification with Blacklights" by Brian White and Martin Adams
99. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documentation to support Exhibit I-37, including a screen capture of an upcoming event at Climate Week NYC entitled "Regional Action on Climate Mitigation and Resilient Infrastructure"
100. Katherin Kirkpatrick, on May 28, 2015, wrote providing additional documentation to support Exhibit I-37, including an Oregonian article, dated April 4, 2015, updated April 6, 2015, and accessed May 27, 2015, entitled "Governor's office releases 94,000 Cylvia Hayes emails"
101. Carole Scholl, on May 28, 2015, wrote in opposition
102. Carole Scholl, on May 28, 2015, wrote in opposition
103. Mark Colman, on May 28, 2015, wrote in opposition
104. Jane Hansen, on May 28, 2015, wrote in support of restoration and maintenance of the historic reservoirs
105. Lela Prewitt, on May 28, 2015, wrote in support of the Historic Landmarks Commission's decision to repair and maintain the reservoirs and keep the water at historic levels
106. Tony Schaefer, on May 29, 2015, wrote urging Council to keep the reservoirs
107. Katherin Kirkpatrick, on May 28, 2015, wrote in opposition
108. Daniel Berger, on May 28, 2015, wrote in opposition
109. Floy Jones, on May 28, 2015, wrote in opposition and provided additional documents including the MTNA January 12, 2015 presentation to the Historic Landmarks Commission, and a portion of a staff report for LU 07-139442 HDZ
110. Mark Bartlett, on May 28, 2015, wrote in opposition and with comments on his records request and requested use determination
111. Mark Bartlett, on May 28, 2015, wrote responding to an email from Jill Grenda regarding the requested use determination
112. Courtney Scott, on May 30, 2015, wrote in opposition
113. Susan Tompkins, on May 31, 2015, wrote in opposition
114. Susie Snyder, on May 31, 2015, wrote encouraging preservation of the reservoirs and keeping them filled
115. Paul Floding, on June 1, 2015, wrote in opposition
116. Cynthia Mooney, on June 1, 2015, wrote in opposition
117. Teresa McGrath, on June 1, 2015, wrote in support of the MTNA appeal and in opposition to the PWB appeal, recommending the Historic Landmarks Commission's decision be upheld
118. Melissa Stewart, on June 1, 2015, wrote in opposition of disconnection and in support of restoration of the reservoirs

119. Nancy Coles, on June 2, 2015, wrote suggesting the reservoirs be converted to skate parks
120. Kathryn Notson, on June 3, 2015, wrote in opposition to approval conditions B and E, stating that the Historic Landmarks Commission does not have the authority to impose these conditions
121. Kathryn Notson, on June 3, 2015, wrote in opposition to approval conditions B and E, stating that the Historic Landmarks Commission does not have the authority to impose these conditions
122. Julia Hannegan, on June 5, 2015, wrote with concerns about the future of the reservoirs
123. Eva Curry, on June 5, 2015, wrote urging preservation of the reservoirs
124. Amy Pitts, on June 8, 2015, wrote in opposition
125. Nancy Franken, on June 9, 2015, wrote in opposition and provided a petition with 116 signatures
126. Stephanie Stewart, MTNA, on June 9, 2015, wrote providing documentation from PWB on tree location requirements, PWB's Public Works Permit Process Manual 2010, and conduit protection requirements
127. Mark Bartlett, on May 28, 2015, wrote providing several emails, documents, and maps related to ownership and allowed and conditional uses
128. Stephanie Stewart, on June 10, 2015, wrote forwarding a June 8, 2015 email from Jason Allen at SHPO
129. Wade Hilts, on June 10, 2015, wrote contesting PWB's statements on the time needed to drain the reservoirs for cleaning
130. Mary Kinnick, Friends of Mt. Tabor Park, on June 10, 2015, wrote recommending a Conditional use review, preservation and maintenance plan, planting plan, detailed metrics on draining, cleaning, and filling, and oversight through periodic reporting be required
131. Suzanne Sherman, on June 10, 2015, wrote with concerns about construction impacts on wildlife
132. Susan McKay, on June 11, 2015, wrote urging City Council to protect the reservoirs
133. Audry Bond, on June 11, 2015, wrote with concerns regarding the City's decision to limit attendance within Council Chambers on May 28, 2015
134. Stephanie Stewart and John Laursen, MTNA wrote requesting the record be held open longer so that interested parties can reach a resolution, with suggestions for Conditions B and E, and with comments on Conditional use review and PWB's policy to not allow trees within 10 feet of piping
135. Hillary Adam, BDS, on June 11, 2015, submitted comments concurring with PWB's assessment regarding Conditional use review
136. Dexter Ledford, on June 11, 2015, wrote urging City Council to carefully consider their decision and protect the reservoirs
137. Jason Allen, SHPO, on June 11, 2015, wrote to correct statements made in a previous email dated June 8, 2015 to Tom Carter, PWB, and confirming SHPO's position that no adverse effect is found with a proposal that maintains water levels for 50% of the calendar year
138. Floy Jones, on June 11, 2015, wrote addressing statements made by Nick Fish concerning Washington Park Reservoirs
139. Darvel Lloyd, on June 11, 2015, wrote urging City Council to uphold the Historic Landmarks Commission decision
140. Glen Anderson, on June 11, 2015, wrote with concerns about the future of the reservoirs
141. Brad Yazzolino, on June 11, 2015, wrote in opposition of disconnection and PWB's appeal and in support of MTNA's appeal
142. Mark Bartlett, on June 11, 2015, wrote in opposition and with comments about ownership and maintenance funding

143. Tom Carter, Portland Water Bureau, on June 11, 2015, wrote, providing additional information including comments on Conditions B and E and the SHPO response, information on drain, clean, fill requirements, historical operation data, drain pipe summary, BES batch discharge request procedures, DEQ information on discharge requirements, Potable Water Discharge Request Forms, Summary of anticipated costs of preservation and maintenance actions listed in the 2009 Historic Structures Report, background information on Condition B, and conduit protection requirements