OFFICE OF THE CITY AUDITOR
ENSURING OPEN AND ACCOUNTABLE GOVERNMENT

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No.: LU 11-141640 CU EN AD (HO 4110020)

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

Owners: Central Church of the Nazarene
9715 SE Powell Boulevard
Portland, OR 97266-1805

Ho Investments LLC
7610 SE Taggart Court
Portland, OR 97206

City of Portland Water Bureau
1120 SW 5th Avenue #609
Portland, OR 97204

Applicant's Representative: Winterbrook Planning
Attn: Ben Schonberger
310 SW 4th Avenue, Suite 1100
Portland, OR 97204

Hearings Officer: Gregory J. Frank

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

Site Address: 3404 SE 97th Avenue and 9715 SE Powell Boulevard

Legal Description: TL 100 10.97 ACRES, SECTION 09 1S 2E; TL 800 15.92 ACRES, SECTION 09 1S 2E; TL 200 0.23 ACRES, SECTION 09 1S 2E; TL 4300

0.05 ACRES, SECTION 09 1S 2E; TL 700 5.12 ACRES, SECTION 09 1S 2E; TL 900 6.62 ACRES, SECTION 09 1S 2E; TL 4600 0.01 ACRES, SECTION 09 1S 2E; TL 4500 0.02 ACRES, SECTION 09 1S 2E; TL 4400 0.01 ACRES, SECTION 09 1S 2E

Tax Account No.: R992090030, R992090640, R992091850, R992091970, R992095480, R992096030, R992096350, R992096360, R992096530

State ID No.: 1S2E09AC 00100, 1S2E09AD 00800, 1S2E09AC 00200, 1S2E09DA 04300, 1S2E09AD 00700, 1S2E09AD 00900, 1S2E09DA 04600, 1S2E09DA 04500, 1S2E09DA 04400

Quarter Section: 3340, 3440

Neighborhood: Powellhurst-Gilbert

Business District: Midway

District Coalition: East Portland Neighborhood Office

Plan District: Johnson Creek Basin Plan District

Other Designations: Potential Landslide Hazard

Zoning: Open Space (OS), General Industrial 2 (IG2), Residential 1000 (R1), and Residential 5000 (R5) base zones, with Environmental Conservation (c), Environmental Protection (p), and Alternative Design Density (a) overlay zones.

Land Use Review: Type III, Conditional Use, Environmental, and Adjustment Reviews

BDS Staff Recommendation to Hearings Officer: Approval of Conditional Use Review, Approval of Environmental Review and Approval of Adjustment Review with Conditions

Public Hearing: The hearing was opened at 9:00 a.m. on September 28, 2011, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 10:20 a.m. The record was held open until 4:30 p.m. on October 5, 2011, for new evidence, and until 4:30 p.m. on October 12, 2011, for applicant's rebuttal. The record was closed at that time. On October 6, 2011, a representative of the applicant requested that the record be reopened. The Hearings Officer issued an Interim Order and reopened the record for new written evidence from October 11, 2011 to 4:30 p.m. on October 18, 2011, and until 4:31 p.m. on October 18, 2011, to 4:30 p.m. on October 25, 2011, for the applicant's final argument. The record was closed on October 25, 2011.

Testified at Hearing:
Stacey Castleberry, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201
Sylvia Cate, BDS
Teresa Elliott, 1120 SW 5th Avenue, Room 600, Portland, OR 97204
Tim Brooks, 310 SW 4th Avenue, Suite 1100, Portland, OR 97204
Linda Bauer, 6232 SE 158th, Portland, OR 97236

Proposal: The Portland Water Bureau ("PWB") proposes to construct a buried 25-million gallon water reservoir at its property on Kelly Butte ("Subject Property"). The new reservoir will be a reinforced concrete, rectangular, buried reservoir placed in approximately the same location on the Subject Property as an existing, above-ground steel tank. Two valve vault structures are proposed immediately to the south and northwest of the reservoir. These structures will be partially buried.

The reservoir will be served by a new access drive, climbing the south slope of the Butte from SE Powell Boulevard. The driveway will be paved to a cul-de-sac, and then continue with pervious pavement to the vaults and reservoir hatches. Two open basins will be located adjacent to the entrance road, at the south end of the Water Bureau property—a vegetated one for managing stormwater runoff and another for reservoir drain/overflow. The reservoir drain/overflow basin will be located in the southeast corner of the Subject Property and the stormwater treatment basin in the southwest corner of the property. Security fencing will protect the reservoir, vault structures, and two basins. The existing dirt utility access route that follows the underground Parkrose Water Supply line from the existing tank to SE 101st Avenue will be improved with compacted crushed gravel. Proposed grading and tree removal from construction will be mitigated through an extensive native revegetation plan.

The Subject Property consists of approximately 27 acres, located on the west side of Kelly Butte, adjacent to Interstate 205. Between the Subject Property and the Interstate is an 11-acre property owned by the Church of Nazarene, part of which will be used for construction staging and therefore is included as part of the project site. The Subject Property is bordered to the south by SE Powell Boulevard, an undeveloped right-of-way and several industrial lots and to the north by residential lots along SE Taggart Street at the base of the Butte. The northeast corner of the Subject Property fronts on SE 101st Avenue. To the west of the Subject Property is Interstate 205 (I-205). To the east of the Subject Property are private, mostly undeveloped residential lots.

As part of the project, an existing dirt utility access route on the north slope of the Butte will be upgraded. This maintenance access, which follows the buried Parkrose supply pipeline, will be improved with compacted ¼ inch-minus crushed aggregate, approximately four feet in width, along roughly the same alignment as presently exists. The improvements will reduce existing erosion by installing gravel and stairs. By following the same alignment no tree removal or other significant disturbance within the environmental zone is proposed.

The property to the west of the proposed reservoir is owned by the Central Church of the Nazarene (Church). Access to the existing tank currently runs across this property via an easement through the church parking lot. The Church has agreed to allow PWB to use the cleared area near the

existing tank and the area in and adjacent to the rock quarry for staging and equipment storage during the 2½ year construction period. The additional staging area is included as part of the overall project site. No permanent structures or pipes related to the reservoir will be built on Church property, except some minor permanent grading.

The PWB proposes to plant native trees shrubs and herbaceous plants, and to implement an invasive species management program at the Subject Property. PWB proposes to plant an oak savanna/meadow habitat on portions of the Subject Property south of the reservoir. Native and nuisance trees will be removed from the southeast portion of the Subject Property. Native prairie grasses and flowering plants are proposed above the buried reservoir structure. Invasive species in the forested areas are proposed, by PWB, to be removed and native conifers planted in the forest understory north of the reservoir.

The base zone for the Subject Property on which the reservoir will be located is Open Space (OS). Basic utilities such as water reservoirs are conditional uses in the Open Space zone. Because the basic utility use is conditional in the Open Space zone, a Conditional Use review is required.

A significant portion of the Subject Property, except for the area including and around the existing tank, is covered by Portland's environmental overlay zones: "c" for Environmental Conservation or "p" for Environmental Protection.

For proposed work within environmental zones, Zoning Code standards require development to be set back from the Environmental Protection overlay zone, limit the amount of disturbance area in all environmental zones, and limit the removal of native trees. If the standards are not met, an Environmental Review is required. In this case, the proposal includes construction in the protection zone, exceeds the allowed disturbance area, and does not meet the tree removal (within 10 feet of a structure or 5 feet of a paved surface), or replacement standards (at least one inch in diameter (trees), or at leas a 2-gallon container (shrubs). Therefore the work must be approved through an Environmental Review.

Finally, the application requests an Adjustment to the landscaping standards to waive the requirement for 15 feet of L3 landscaping between the Church and Water Bureau properties, directly west of the reservoir.

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

- **33.815.100** Conditional Uses in the Open Space Zone
- **Section 33.430.250 A.** Environmental Review of Public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments
- **33.805.040** Adjustment Approval Criteria

II. ANALYSIS

Site and Vicinity: Kelly Butte is located in southeast Portland, roughly between SE Powell Boulevard and SE Clinton Street and between Interstate 205 and SE 109th Avenue. The Portland Water Bureau (PWB) owns and maintains the site of the existing 10 million gallon above-ground steel tank and valve house, on the western side of the Butte. The project site, which includes the Subject Property and the Church property to the west, is 31 acres in size. The Subject Property is bordered by residential uses to the north, residential uses and undeveloped lands to the east, commercial/industrial uses to the south along Powell Boulevard, and Interstate 205 to the west. PWB submitted a description and analysis of the Subject Property, and the following information, providing background information for this land use review:

History of Kelly Butte:
Kelly Butte rises above the surrounding landscape of southeast Portland. Its prominence as a feature of the local area is due to its geologic formation: it is one of a group of formerly active cinder cone volcanoes. These landforms are known as the Boring Lava Domes, which formed five million years ago across the lower Willamette Valley. Three of the most prominent volcanoes of this grouping are iconic features of the east Portland landscape: Rocky Butte, Mount Tabor, and Kelly Butte. Unlike Rocky Butte and Mount Tabor, Kelly Butte is predominately Troutdale formation with a volcanic intrusion. The rocky masses of these volcanic formations resisted the erosive forces of the enormous floods— such as the Missoula floods—which smoothed and flattened surrounding areas. In contrast to the hilly west side of Portland, Kelly Butte is one of the few prominent elevated sites on an otherwise flat east side landscape.

Native American settlement occurred in areas on and around the confluence of the Columbia and Willamette Rivers; however, no cultural resources have been identified specifically at Kelly Butte. Available evidence indicates that the natural state of the west side of Kelly Butte was meadow or oak savanna until recent times. In the early 20th century, the buttes in east Portland were included in planning efforts and identified as neighborhood features to be recognized for their natural and scenic values. Preservation of Mt. Tabor, Rocky Butte, and Kelly Butte was generally discussed in both the Olmsted *Report to the Parks Board* of 1903 and the *Greater Portland Plan* of 1912.
The butte has a history of development starting with the Plimpton Kelly Donation Land Claim in 1860's (source: Oregon Historical Society Research Library, "Kelly Family Paper," MSS 871). Property was cleared and farmed. Prior to purchase by PWB in 1954, portions of the site was part of the rock quarry used by ODOT and Multnomah County for local road construction, the Multnomah County Shops, Multnomah County Rifle Range, a convalescent home, and some farm community. Prior to PWB taking possession of the property, the Quigg's were allowed to harvest the timber. This is evident in the historical aerial photos.

PWB purchased the property from Edmund and Margaret Quigg in July 1954. Kelly Butte was outside of the city limits in unincorporated Multnomah County (Ordinance 100743). When the property was purchased by PWB (then the Bureau of Water Works), the bureau's vision for the property included 3 large storage reservoirs along the hydraulic grade line between Bull Run and

Mt. Tabor to serve the growing east side of Portland (source: PWB Financial Report 1954-55 and 1967 site map of the proposed Kelly Butte Reservoir Complex).

The existing Kelly Butte Tank is located on the western side of Kelly Butte. The tank is an aboveground 10 MG circular steel tank. Construction started in 1967 and was completed in 1969. Access to the Kelly Butte Tank was originally through the Multnomah County Shops and the Multnomah County Rifle Range, which is now the Central Church of the Nazarene (CoN) property. The eastern side of Kelly Butte, owned by Portland Parks and Recreation (PP&R), has a longer history of development than the PWB property located on the west side of the Butte. However, PP&R's properties are not contiguous with the Subject Property and are not part of this land use review.

The west side of the Butte, including the PWB property where the new reservoir is proposed, had no permanent structures until the construction of the existing water tank in 1969. Construction of the segment of I-205 just west of the Subject Property occurred in 1979. Historic photos of the Subject Property show the condition of the property at the time and the development of the surrounding area. At the time the above ground tank was constructed, much of the south and top of the Butte was covered by open meadows and the north side was forested.

Natural Features:
This section describes the natural features at the Subject Property, including geology, soils, topography, slopes, surface and groundwater, vegetation and wildlife resources.

Geology
The geology of Kelly Butte is a driving force behind its persistence in the landscape and is a limiting factor with respect to reservoir development. The primary geologic formation in the region is the Columbia River basalt formation, which was established during the Pliocene Epoch from massive lava flows that poured into the area through the Columbia Gorge from northwestern Oregon. These basalts decomposed readily and over time were overlain with the Troutdale Formation, a weak or unconsolidated layer of gravels that were washed in by the Columbia River over an eight million year period ending approximately two million years ago. About five million years ago, the Boring Lavas began flowing from numerous small vents in the northern Willamette Valley. Portland Hills Silt overlays the Boring Lavas, which blankets most of the Portland Metropolitan Area. These silts are believed to be wind-deposited during the Pleistocene Epoch. On Kelly Butte, some of these silts were eroded away by the Clackamas and Columbia Rivers; the Butte exhibits evidence of water erosion but the Boring Lavas provided protection against the erosive forces.

Between 15,000 and 13,000 years ago, a series of cataclysmic floods occurred in the Columbia River drainage. Repeated releases of water from glacial Lake Missoula caused a series of large-scale floods across the scablands of eastern Washington and through the Columbia Gorge, forming a lake in the Willamette Valley. Glacial erratics have been found as far south as Eugene, indicating the southerly extent of floodwaters. These floods covered the Portland area in as much as 400 feet of water; only the summit of Kelly Butte would likely have been exposed. The flood waters left

behind coarse- to fine-grained Missoula Flood deposits, which are generally found below an elevation of 300 feet.

Soils
Soils mapped on Kelly Butte reflect its geologic and alluvial origins. The mapped soil types are Multnomah silt loam and Quatama silt loam. According to USDA soil survey, Multnomah soils are found on the north slope of the project site. Quatama soils are found on the ridge and south slope of the project site. The Multnomah soil profile exhibits silt loam conditions in the upper 25 inches, with the gravelly fraction increasing considerably with increasing depth. These soils generally have moderate permeability and belong to hydrologic group B, which indicates moderate infiltration rates and moderately coarse soil texture. Quatama soils are loamy in their upper part, with less gravels at depth than Multnomah soils. They generally have moderately slow permeability and belong to hydrologic group C, which indicates slower infiltration rates. The Troutdale Formation underlies these soils and comprises a variable mix of cemented and non-cemented gravel and cobbles in a matrix of sand and silt.

Soil testing conducted as part of the *Geotechnical Report* (Exhibit A.6) found that soils in the area of existing tank have been extensively modified. Thick layers of uncontrolled fill are present in the area of the existing tank, particularly to the south of the tank with smaller areas to the west and north. This fill material is a non-engineered, uncompacted fill placed during construction of the tank on top of the native soil and Troutdale Formation material. The fill is highly variable in consistency and density and contains localized areas of organic debris. The silt fill component is highly compressible and may be subject to settlement; evidence of shallow slope failures and slope creep was noted in fill material on the north side of the Butte. The report notes that this material and some of the native soils are not suitable for reservoir construction due to settlement concerns. The report considers the Troutdale Formation less likely to exhibit differential settlement. The need for the reservoir structure to be founded firmly on Troutdale Formation, and for it to avoid the non-engineered fill material, was a major driver for determining the final location and orientation of the reservoir. Additionally, the generally poor soil infiltration capability documented in the *Geotechnical Report* – worse than expected for these soil types – led to the project's proposed stormwater management approach, described later in this application, that uses detention and release into a public system.

Topography/ Slopes
The western end of Kelly Butte has rolling terrain, with steep slopes on all sides. Ground elevations within the study area range between approximately 300 feet (NGVD) at the base of the Butte to 593 feet at the Kelly Butte summit. Elevations at the project site range from approximately 290 to 485 feet, and the existing reservoir is at elevation 415 feet on a relatively flat bench.

According to the *Geotechnical Report*, the north side of the Butte is the steepest, with slopes exceeding 40 percent. The south and southwest side of the Butte slopes at 18 to 22 percent. The area near the existing tank is flat and comprised of fill material, graded during tank construction, though there is evidence of prior grading in historical aerial photos.

Surface and Groundwater Features
Kelly Butte lies at the boundary between the Johnson Creek and Lower Willamette River watersheds. No drainageways or other surface water features were identified within the area of potential project impact. At the far northern boundary of the site a seasonally wet area has been observed. This area lies within the tank drain/overflow basin created by the PWB during the construction of the original tank. No proposed development or impacts are planned near this area.

Based on groundwater testing documented in the *Geotechnical Report*, groundwater was not encountered in the test pits on Kelly Butte. An observation standpipe was installed to a depth of 60 feet at the top of the Butte[1]; the pipe was dry when measured in July, 2009. The report estimates that the regional groundwater table is significantly below the proposed reservoir, but notes that local groundwater levels do respond to seasonal precipitation, and perched groundwater may occur during periods of intense rainfall.

Vegetation
Three primary vegetation types occur at the project site: mixed forest, mixed woodland, and an invasive-dominated open field (Graphics 2 and 3 in Exhibit A.1 depict these areas).

North slope mixed forest. Approximately half of the site is a mixed conifer-hardwood forest, beginning near the hillcrest and extending north to the base of the Butte. The primary overstory species are big-leaf maple (*Acer macrophyllum*) and Douglas fir (*Pseudotsuga menziesii*), accompanied by beaked hazelnut (*Corylus cornuta*), vine maple (*Acer circinatum*), osoberry (*Oemleria cerasiformis*), dull Oregon grape (*Mahonia nervosa*), and common snowberry (*Symphoricarpos albus*). Swordfern (*Polystichum munitum*) is the dominant understory species. Cover by invasive vegetation is limited in this community.

Transition mixed woodland. East of the existing reservoir is a mixed woodland community that is transitional between the higher quality forest to the north and a highly disturbed area to the south. There are scattered large Douglas fir trees, but trees are generally smaller and the community composition trends increasingly toward non-native or invasive vegetation with decreasing elevation (moving south).

Invasive-dominated South Open slope. South of this transition community and south of the reservoir, is an open field dominated by Himalayan blackberry (*Rubus armeniacus*), with scattered trees comprised mostly of invasive English hawthorn (*Crataegus monogyna*), sweet cherry (*Prunus avium.*) and Chinese chestnut (*Castanea mollissima*). Tree cover varies from low to moderate, with most trees less than 12 inches diameter at breast height (dbh). The PWB has initiated invasive vegetation removal and management efforts in the area (restoring the open field meadow and removing the invasive species). These efforts will be expanded as part of the proposed project and followed by a rigorous native species revegetation program.

None of the species identified as locally rare in the *East Buttes, Terraces, and Wetlands Conservation Plan* (EBTWCP) (including trout lily and hairy manzanita) were detected at this

[1] *Shallower borings at the base of the Butte did not encounter groundwater.*

project site during multiple field surveys, though they were spotted on the east side of the Butte away from the project site.

Wildlife
The EBTWCP indicates that Kelly Butte as a whole provides relatively high habitat values (scoring 64 using the City's *Wildlife Habitat Assessment* (WHA) method). The Subject Property's vegetation provides the primary source of wildlife habitat, and thus the mapping of relative habitat values (see Graphic 4 in Exhibit A.1) parallels the vegetation map (Graphic 2, Exhibit A.1). In particular, the presence of a mixed conifer/hardwood forest on the north side provides food, nesting, cover, and perching sites for woodpeckers and a variety of songbirds. Shrub-dominated areas provide food and cover for songbirds and small mammals. Open areas at the site provide hunting areas for hawks, owls, and falcons and the nearby forest provides nest sites.

Wildlife habitat values vary markedly across the Subject Property. Relative habitat ratings at the Subject Property ranged from low on the south slope to moderately high in the north slope forest habitat. The lack of water sources and absence of rare species are partially responsible for scores at the Subject Property being lower than those for the Butte as a whole. As noted previously, habitat values generally vary with vegetation communities:

- The north slope of the Subject Property is in good condition and provides moderately high quality wildlife habitat. The plant community is fairly diverse, with varying age classes of trees, shrub and herbaceous strata providing structural diversity. Invasive species cover is low. The north slope forest habitat received a WHA score of 53 (compared to 64 for the entire Butte).
- The eastern transitional habitat extending south from the ridge top provides moderate to low habitat values, corresponding to the range of cover values and native-to-invasive species ratios within the community. This habitat received a WHA score of 30 (again, compared to 64 for the entire Butte).
- The invasive-dominated south slope of the Subject Property, with Himalayan blackberry at the ground level and scattered hawthorns as the tree dominant, provides very limited habitat value. The south slope habitat received a WHA score of 15.

Zoning: The zoning designation on the Subject Property includes Open Space (OS), General Industrial 2 (IG2), Residential 5000 (R5), and Residential 1000 (R1) base zones, with Environmental Conservation (c), Environmental Protection (p), and Alternative Design Density (a) overlay zones (see zoning on Exhibit B).

The Open Space base zone is intended to preserve public and private open and natural areas to provide opportunities for outdoor recreation and a contrast to the built environment, preserve scenic qualities and the capacity and water quality of the stormwater drainage system, and to protect sensitive or fragile environmental areas. Basic Utilities are Conditional Uses in the Open Space base zone. The purpose of this land use review is to ensure that the Zoning Code requirements for conditional uses are met by this proposal.

The General Industrial 2 zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. IG2 areas generally have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverage and buildings which are usually set back from the street. The provisions of this zone allow this use.

The Single-Dwelling Residential 5,000 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet. Newly created lots must have a minimum density of 1 lot per 5,000 square feet of site area. This designation continues Portland's most common pattern of single-dwelling development. It is intended for areas with good public services and no development constraints. Single-dwelling residential will be the primary use. The maximum density is generally 8.7 units per acre.

The Multi-Dwelling Residential 1,000 zone is a medium density multi-dwelling zone. It allows approximately 43 units per acre. Density may be as high as 65 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to four story buildings and a more building coverage than in the R2 zone. The major type of new housing development will be multi-dwelling structures (condominiums and apartments), duplexes, townhouses, and rowhouses. Generally, R1 zoning will be applied near Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

The Alternative Design Density overlay zone is intended to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements. The regulations of this overlay zone does not apply to the new water reservoir.

Metro Title 13 Requirements: An opponent ("Ms. Bauer") asserted that the requirements of Metro Title 13 should have been applied as part of the review of this application (Exhibit H.15). Ms. Bauer stated, in Exhibit H.15, the following:

> "Metro (Regional Government) notified the City of Portland of its obligation to either fully comply with Title 13 within 120 days or apply Title #13 to individual land use reviews under Metro code section 3.07.080 in a letter from Michael Jordan to Mayor Sam Adams dated January 22, 2009.

> Because Portland, Oregon is still NOT in compliance with the requirements of Metro Title #13 as required by Metro Code 3.07.810, Portland is required to address Metro Title #13 for land use reviews when 'The requested land use review is for a use that would not otherwise be allowed by right by the underlying zoning. .Conditional Use;' Also, 'Section III, Land Use Review Findings' states 'The City will also make findings that the application of the regulations as outlined above meets Metro requirements, citing the adopting City Ordinance number.' How can this application show that it meets the requirements of Metro Title #13 when the applicant does not tell us whether the disturbance areas in the Environmental Protection Zone are temporary or permanent. Or whether disturbance areas in the Environmental Conservation Zone is temporary or permanent. In the Memorandum dated July 8, 2011, the applicant finally does tell us the disturbance areas in acres…
>
> I was not able to locate any proposed Findings that comply with the above requirements in effect at this time."

PWB submitted a letter during the open record period (Exhibit H.16) requesting the evidentiary record be reopened to admit additional evidence in response to Ms. Bauer's letter (Exhibit H.15). The Hearings Officer admitted Exhibit H.16 and reopened the evidentiary record (Interim Order of the Hearings Officer). PWB submitted, along with Exhibit H.16, a copy of a City Ordinance (No. 182960), a copy of a Metro Ordinance (No. 05-1077C), a Metro Habitat conservation areas map, and a City Bureau of Planning and Sustainability Memorandum to Mayor Adams (the City Ordinance, Metro Ordinance, Metro Habitat map and the City Memo to Mayor Adams are collectively referred to as Exhibit H.17). BDS staff submitted, during the open-record period, a Memo date October 11, 2011 (Exhibit H.18) with an attached Garth Map. Applicant's planning consultant submitted, during the open-record period, final rebuttal discussion/argument (Exhibit H.19).

The Hearings Officer notes that the City Ordinance (Exhibit H.17) does, as stated by Ms. Bauer, require the City to "apply Title 13 to individual land use reviews under Metro code section 3.07.080 in a letter from Michael Jordan to Mayor Sam Adams dated January 22, 2009" (Exhibit H.17, City Ordinance General Findings, Section 1, paragraph 8). The Hearings Officer agrees with Ms. Bauer that the land use reviews, referenced in paragraph 8, are the uses "not allowed by right in the underlying zone (e.g., comprehensive plan amendments, zone map modifications; conditional uses)" (Exhibit H.17, City Ordinance General Findings, Section 1, paragraph 7). However, the Hearings Officer also notes that the City Ordinance (Exhibit H.17, City Ordinance General Findings, Section 1, paragraph 2) identifies only land, within the City, identified on an accompanying map (Exhibit H.17, Metro Title 13 Habitat conservation areas Exhibit B). The Hearings Officer finds that PWB marked, in red ink, the general location of the Subject Property. The Hearings Officer finds that the Subject Property is not within an identified habitat conservation area.

The City Memo to Mayor Adams states that "staff proposes to add language to Exhibit G which establishes the circumstances and procedures the City will use to meet the ordinance directives" (Exhibit H.17, City Memo to Mayor Adams). The Hearings Officer notes that Exhibit G., Section 1,

states, in relevant part, that "Effective May 22, 2009, the city will be required to apply the requirements of Title 13 (Nature in Neighborhoods) to specified 'land use decisions' to meet Metro Code 3.07.810. The City will address Title 13 requirements if all of the following are met: 1) The site is in an area mapped as a Metro Title 13 'Habitat Conservation Area,' which are identified in the Garth as 'Metro Title 13.'

Applicant's planning consultant, in Exhibit H.19, states "in short, Metro Title 13 regulations are not applicable to the Kelly Butte application." Applicant's planning consultant points out that "as BDS staff notes in Exhibit H.18, 'the nearest Metro mapped Title 13 Habitat Conservation Area is approximately 1.3 miles from the Kelly Butte site" (Exhibit H.19).

The Hearings Officer finds that Ms. Bauer's assertion that Metro Title 13 findings are required, in this decision, is not correct. The Hearings Officer finds, based upon Exhibits H.17 and H.18, that the Subject Property is not mapped as a Metro Title 13 Habitat Conservation Area and as such Metro Title 13 findings are not required in this case.

Environmental Resources: The application of the environmental overlay zones is based on detailed studies carried out within eight separate areas of the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these study areas.

Zoning Code section 33.430.020 lists the eight City Council-adopted environmental reports that describe the City's environmental policy objectives for each study area. Each report identifies the resources and describes the functional values of the resource sites.

The Subject Property is mapped within the *East Buttes, Terraces and Wetlands Conservation Plan* ("the Plan") as Site #132, Kelly Butte. Resources identified for Site #132 include open space, forest, habitat, wetland, intermittent drainage, groundwater, cinder cone volcano, rare plant and bird habitat. The listed functional values include: Food, water, cover and territory for wildlife; groundwater recharge and discharge; slope stabilization, sediment and erosion control; microclimate amelioration; air and water quality protection; habitat unique to the city, with scientific/educational values; scenic, recreational and geologic values (Exhibit G.6).

The Plan more specifically describes Kelly Butte as approximately 75 percent undeveloped and forested; it describes the scenic viewpoints from Kelly Butte as "framed by towering evergreen trees." The plan stresses the uniqueness of the forest habitat on Kelly Butte in several places, "The 165-acre resource site contains a half-acre wetland and approximately 120 acres of forest in varying stages of succession." It goes on:

> "The Kelly Butte forest is one of the last remaining examples of the Pacific Northwest's western hemlock forest community within the planning area. The forest community is unique among all temperate forests in the world (Waring and Franklin 1979)," with the footnote that, "The western hemlock forest of the Pacific Northwest has the greatest biomass accumulation of any plant community in the temperate zone and in it are found

> the largest and (usually) longest lived species of conifers within the zone."
>
> "Kelly Butte's vegetation spans a range of successional stages from scrub/shrub to conifer topping hardwood. The forest is a mix of conifer and broadleaf deciduous trees with Douglas fir being the dominant species. Intermixed with the fir are other, predominantly deciduous trees: bigleaf maple, willow, Pacific dogwood, red alder, bitter cherry, black cottonwood, Oregon ash, western red cedar, cascara, oak, birch, and European hawthorn...The forested slopes in varying stages of succession provide some of the highest habitat values within the East Buttes and Terraces planning area."

Site #132 has a wildlife habitat score of 64 in a range of 5 to 65 for the planning area.

Impact Analysis and Mitigation Plan: A description of the proposal was provided earlier in this decision. The following discusses development alternatives other than the one proposed, that were considered by the applicant. The following additionally describes the proposed construction management plan, mitigation and monitoring proposal as provided by the applicant.

Development Alternatives: PWB provided an in-depth analysis of alternative locations and designs for the proposed reservoir, access driveway, stormwater and reservoir overflow system, tank demolition, maintenance access improvements, vegetation plan, and construction staging area (Exhibit A.2 contains the complete description of the alternatives analysis). A summary of these alternatives is briefly described below (quoted material from Exhibit A.2).

> "A set of basic needs for the project set the outer boundaries of the designs and locations that were considered. These limitations are related to the overall purpose of the project and inform the alternatives analysis.
>
> First, to comply with the Long Term 2 Enhanced Surface Water Treatment Rule (U.S. Environmental Protection Agency, 2006), the Portland Water Bureau (PWB) is charged with providing covered storage for its drinking water supply. The existing tank on Kelly Butte does not have the capacity to meet the needs of the new system, to maintain adequate water pressure, or to ensure service reliability to the large area of east Portland it serves.
>
> Second, the existing tank is too high: it has an overflow elevation higher than the system hydraulic grade line between Powell Butte and Mt. Tabor. This means that while the existing tank is still in operation, it provides insufficient storage capacity to meet current system objectives. Building a new reservoir will modernize the structure, increase storage capacity, and establish the proper hydraulic elevation. In addition to providing more storage, the new reservoir will be buried to achieve the appropriate elevation between the Powell Butte and Mt. Tabor facilities.

> Third, the PWB determined that the Kelly Butte site is the only viable location for the new facility because of the generally flat, low-lying topography of East Portland, the requirement that the site be along the existing hydraulic grade line, the site's proximity to existing water transmission lines, and the need for a site with sufficient land to accommodate a large reservoir. Placing the new reservoir in the same location as the existing tank will minimize intrusions into the surrounding environmentally-zoned lands, because the developed area immediately surrounding the existing tank is not regulated by environmental zoning.
>
> Fourth, after determining that the reservoir needs to be located at Kelly Butte at the same location as the existing tank, the size and volume of the new reservoir was driven by system-wide needs for storage and the number of water users within the service area.
>
> These considerations created the core element of the overall project purpose, *i.e.*, a 25 million gallon reservoir at this location and elevation. Beyond establishing the reservoir itself, there are associated needs: vehicular access to the facility (access road) and dealing with stormwater and drainage/overflow. Each of these project elements generated a series of sub-alternatives.
>
> For each of the alternatives that were considered, additional technical or site considerations limited or informed the analysis. These include the quality of natural resources within the same zoning designation, geological conditions existing on the site, and basic needs for safe site access."

In Exhibit A.2, PWB described the constraints presented by unstable soils in certain locations on the site, and design limitations for the access driveway to the site.

The alternatives analysis begins with identifying the best option for the placement, shape and orientation of the reservoir. Four placement alternatives were considered, each with sub-options for shape and orientation of the reservoir. For each of these four placement alternatives, the tank was "rotated" to see if minor changes to its orientation could minimize environmental impacts and improve project practicability. Detailed tables identifying pros, cons, and practicability are presented in Exhibit A.2, for each to the four placements. PWB refined the analysis to the three alternatives determined to be practicable, and demonstrates that the preferred alternative (Alternative 3) will result in significantly less disturbance area than the others (Alternative 1 would result in 69,300 square feet of resource area disturbance; Alternative 3A, 53,800 square feet and Alternative 3 would disturb 49,100 square feet).

Having chosen a location and orientation for the reservoir structure, PWB then assessed how to best access it. There were two access considerations: first, construction access, and second, long-term access for periodic monitoring, maintenance, and cleaning. To provide for reasonable vehicular access, each roadway alignment must allow for two-way truck access via a 24-foot roadway. PWB

provided an evaluation of the practicability and environmental impacts of access alternatives in Exhibit A.2. Six alternative alignments were evaluated, only one was determined to be practicable. The other alternatives were deemed impracticable due to steep slopes, the need for easements across private property, the need for Oregon Department of Transportation approval, or a combination of these impediments. PWB selected the alignment (Alternative 5) that could be constructed and would avoid mature Douglas fir forest on the north side of the reservoir.

Having chosen a location and design of the buried reservoir structure and a method for vehicular access to it, PWB evaluated how to manage the stormwater runoff generated by the reservoir and its access road. In addition to ordinary stormwater runoff, the reservoir requires placement of a drainage and overflow facility where water can be detained in the event of an overflow that results from operational failure, or periodic wash down of the facility. The volume of the proposed reservoir was established according to system-wide needs for storage, and provision of adequate pressure and reliability for current City of Portland water customers. Given the reservoir, roadway, and volume of water at the top of Kelly Butte, the PWB calculated the needs for stormwater detention based on anticipated stormwater runoff and typical rainfall. The needs for a reservoir drainage and overflow facility were based on the volume needed in the event of an operations system failure and for periodic draining and cleaning of the reservoir.

Preliminary evaluations of drainage facilities focused on four general approaches: (a) reservoir structural modification, (b) buried circular tank structures, (c) open detention basins, and (d) underground piping. Seven design alternatives were considered, some of which combined elements of the four approaches. PWB's alternatives analysis (Exhibit A.2) described (a) practicability of construction, and (b) environmental impacts, defined as impacts within environmental conservation and protection zones, and impacts to functional values. The results of the analysis indicated that of the three alternatives found to be practicable, Alternative #7 moves a significant portion of the system outside of the resource area of the environmental zones and therefore poses the least impact to identified resources.

PWB's analysis goes on to discuss alternatives considered for demolishing the tank, for improving the construction access over the Parkrose supply pipe, for removing existing native vegetation beyond the disturbance area to replace it with oak savanna plantings, and for staging areas. PWB's plan for demolishing the existing tank will contain all demolition work within the limits of disturbance for the construction of the replacement facilities. Therefore, the demolition phase will have no additional tree- or ground-disturbance impacts beyond the construction phase limits of disturbance.

The utility access along the Parkrose supply pipeline is currently a dirt pathway. The dirt surface will be replaced with compacted gravel, approximately four feet in width, along the same alignment. In order to transport heavy materials such as gravel, the utility access way upgrades will require the use of motorized "walk behind" equipment. By following the same alignment as the existing dirt access way, no additional environmental zone disturbance will be created, and no tree removal is proposed.

PWB's analysis in Exhibit A.2 included a detailed description of the historic grassland and savanna habitats believed to occupy the Willamette Valley in the 1800's. The description acknowledges that,

> "...large areas of [Kelly] butte had previously been cleared for orchards. No trace of historical vegetation is evident at the site. Historic maps derived from the 1851 General Land Office Survey and 1930s aerial photographs support the historical presence of a more open habitat which may have consisted of some Douglas-fir savanna on the south side of the Butte."

PWB's description of oak savanna/meadow habitat notes the importance of this uncommon plant community to migratory songbirds, in addition to restoration of oak savanna as a key component of the Oregon Conservation Strategy. PWB describes several alternatives that were considered as a mitigation strategy, and determined that removing invasive cherry and hawthorn trees, and replacing them with Oregon white oak will be the most effective strategy for maintaining the ecological function of the site.

Construction Management Plan ("CMP"): PWB provided a six-page construction management plan (Exhibit A.3) describing the construction schedule, erosion control plans, methods to protect surrounding vegetation, plans for a pre-construction meeting, staging and stockpiling strategies, how construction waste and hazardous materials will be handled, and how human waste and litter will be managed during construction.

The CMP for Kelly Butte identifies measures that will be taken during construction to protect resources and functional values at and near the construction site. It also describes how undisturbed areas of the site will be protected. The CMP includes a construction schedule, general management practices and provisions for erosion control, tree protection, and site management. PWB's construction drawings for the reservoir project show areas of construction disturbance, vehicle circulation routes, and other construction management measures (Exhibits C.46 through C.67). Erosion control fencing and six foot high construction fencing are proposed at the edge of the disturbance area, and will be installed prior to construction of the proposed access drive. Following construction of the access drive and stormwater facility, demolition of the existing tank will occur. Construction of the new reservoir, including backfilling and final grading will take place until 2013, followed by site restoration and landscaping. Construction details for these project phases are described in Exhibit A.3.

Trees to be protected will be fenced at the City-defined root protection zone, or as required by the City Forester in the Alternative Tree Protection Plan (Exhibit A.5). Construction staging and stockpiling will occur within the construction disturbance area, and on adjacent Church property.

Unavoidable Impacts: As part of the PWB's Alternatives Analysis and Mitigation Plan narratives (Exhibits A.2 and A.4), the potential impacts associated with each element of the proposal are described. Grading and construction activities for the new buried reservoir, the access drive from SE Powell Boulevard, its associated retaining wall, and the stormwater reservoir will remove 158 native trees and disturb approximately 4.5 acres of resource areas. Construction staging areas to the

south and to the west of the reservoir will disturb another 1.5 acres of environmental resource area. Proposed improvements to the maintenance access north of the reservoir will add another 0.5 acre of impact to the resource area. The total impact area will cover approximately 6.5 acres of resource area in Environmental Protection and Environmental Conservation overlay zones, and will result in the removal of 205 native trees.

Proposed Mitigation: The Kelly Butte reservoir replacement impacts several types of resources including wildlife habitat; slope stabilization; sediment and erosion control; groundwater recharge; and microclimate amelioration. The mitigation plan, described in detail in Exhibits A.4 and A.14, compensates for unavoidable significant detrimental impacts that result from the chosen development alternative.

Compensation for temporary impacts generally consists of rectifying the effects of construction activity and restoring the area to a condition equal to or better than prior conditions. This includes uncompacting soil, replanting disturbed areas with appropriate native vegetation, and restoring site drainage. Compensation for permanent impacts, such as those related to tree removal and grading for new construction, is provided through other measures. These include native tree plantings to replace lost canopy cover, native prairie plantings over the buried reservoir, and invasive species removal and conifer planting to enhance and diversify the existing forest. Site restoration and mitigation is summarized in Table 1 in Exhibit A.4.

The proposed tree replacement strategy follows the tree replacement standards of Section 33.430.140.K and Table 430-3. Under Option A of this table, a total of 670 replacement trees are anticipated. The PWB intends to plant 20 percent more trees (a total of 804 trees) to improve planting success rates and in anticipation of some planting dieback. The plan will use trees of ½ inch diameter to promote better establishment of planted trees (Exhibit A.14).

The mitigation measures proposed by the applicant are highlighted below:

- Removal of invasive species, including Himalayan blackberry (*Rubus armeniacus*), English hawthorn (*Crataegus monogyna*), English holly (*Ilex aquifolium*), sweet cherry (*Prunus avium*), clematis (*Clematis vitalba*), and English ivy (*Hedera helix*), will enhance the quality of the resources to remain on site.
- Establishment of a native prairie plant community over the buried reservoir will offset 3.5 acres of reservoir impacts (however this is proposed outside of the environmental resource area).
- An oak savanna plant community will be restored in some areas of the Subject Property. This community will increase the diversity of habitats on Kelly Butte.
- Existing forested areas on the subject property will be underplanted with coniferous trees to enhance stand diversity and provide additional year-round cover.
- Overall, a total of 804 native trees and a dense cover of native shrubs and groundcover will be planted.

The detailed description of the applicant's mitigation proposal is provided in Exhibits A.4 and A.14 in the application case file.

Ms. Bauer, in a written open-record submission, questions the PWB proposal to plant 1/2 inch diameter trees (Exhibit H.15). Ms. Bauer states:

> "How may birds can nest in a ½" tree or find food or cover or shelter? 33.430.250 A.c. requires that ALL significant detrimental impacts on resources and functional values WILL be compensated for. The applicant does not tell us how the Primary natural resource values that exist on this site, WILDLIFE HABITAT is mitigated be this proposal" (Exhibit H.15).

In response to Ms. Bauer's comments PWB stated, based upon "many years of experience" show that "smaller trees establish more vigorous root systems, grow more quickly than larger trees, and compete better with weeds and self-seeded invasive tree species. This experience has shown that native tree plantings are more successful if the trees are planted small" (Exhibit H.19 quoting from Exhibit A.14). PWB also notes that it "proposes to exceed the replacement standards of Table 430-3 by planting 20 percent more native trees than identified under Option A, and by planting thousands of native shrubs as well." PWB concludes that its proposed mitigation will improve habitat (Exhibit H.19).

The Hearings Officer finds that PWB has provided adequate support for planting ½" trees. The Hearings Officer finds that PWB has provided adequate evidence that all significant detrimental impacts on resources and functional values are compensated through PWB's mitigation plan. (Additional discussion of the adequacy of mitigation is found in the findings for PCC 33.430.250 A.1.c.)

Monitoring Plan for Mitigation: The PWB proposes a three-year establishment and monitoring period for the plantings. The proposed monitoring plan includes work to facilitate the survival and growth of the mitigation plantings. The operations and monitoring program for the Subject Property will be defined in collaboration with the contractor. This program is likely to include:

- Site visits weekly for the first two months following planting and monthly thereafter to observe site conditions.
- Monitoring tasks, such as watering, resetting trees and shrubs, reseeding, and weed control will occur on an as-needed basis during the two-year establishment period.

These measures are anticipated to support the establishment of planted trees and shrubs and seeded areas. If new conditions arise that could be detrimental to the development of the plant communities, action items to address or compensate for them will be generated by the PWB or the landscape contractor, consistent with the native planting requirements in the environmental zone.

Land Use History: City records indicate that prior land use reviews have been conducted for this site. Exhibit G.2 in the application case file provides a complete summary of all these land use reviews.

Prior to the site being annexed into the City of Portland, the site was under the jurisdiction of Multnomah County. City records of land use reviews transferred from the county upon annexation

include: MCF 5-67 [Multnomah County File 5-1967] approved landscaping and site plan as submitted and approved the design of the control house and the proposed color scheme for the structures [including water tank] on the site. The existing facility was constructed circa 1969. This prior land use approval has no bearing on the current proposal, because the zoning code, at 33.815.030, notes situations in which a site has Automatic Conditional Use Status. In this specific instance, the site has Automatic Conditional Use Status. However, any prior conditions of approval imposed by the county during a conditional use review for the existing facility are no longer in effect, per 33.700.110.A, which automatically sunsets prior conditions of approval for certain land use reviews approved prior to 1981.

LUR 95-00863 ZC (LU 95-012756) Approved zone change to correct a mapping error by removing the environmental conservation and protection zones over all, rather than part, of a water reservoir and ancillary facilities.

LUR 96-00085 EN (LU 96-012972) Approved environmental review for the construction of a buried water line connection from Kelly Butte reservoir to the existing Northeast supply main at SE 101st Avenue and Division Street. All mitigation plantings for this work continue to be required.

Agency and Neighborhood Review: A Request for Response was mailed to review agencies on July 15, 2011. Notice of Proposal in your Neighborhood was mailed on September 6, 2011.

1. Agency Review: Several Bureaus and agencies have responded to this proposal. The "E" Exhibits contains additional details. The agency comments are addressed under the appropriate criteria for review of the proposal. There are no concerns or objections noted by any of the responding agencies; however there will be certain requirements that the applicant must meet during building permit review to ensure the project meets all applicable fire and building codes.

2. Neighborhood Review: E-mailed responses were received from members of the surrounding neighborhoods in response to the proposal, primarily requesting copies of information in the record. Their comments are addressed in findings for the approval criteria listed below, if applicable. Please review the "F" Exhibits in the application case file for details.

Zoning Code Approval Criteria

Conditional Use Review

33.815.010 Purpose

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

33.815.100 Uses in the Open Space Zone
These approval criteria apply to all conditional uses in the OS zone except those specifically listed in other sections below. The approval criteria allow for a range of uses and development that are not contrary to the purpose of the Open Space zone. The approval criteria are:

A. Character and impacts.

1. The proposed use is consistent with the intended character of the specific OS zoned area and with the purpose of the OS zone;

Findings: The portion of Kelly Butte that is subject to this Conditional Use review was purchased by PWB in 1954 for the specific purpose to use the property "for the Kelly Butte Reservoir" and develop the property with up to three water reservoirs. The decision by City Council to purchase the land was authorized by Ordinance No. 100743, a copy of this ordinance can be found at Exhibit A.21. When PWB purchased the Kelly Butte property, it was located in Multnomah County, outside the 1954 city boundary. The property and the area surrounding Kelly Butte were not annexed into the City until the early 1970's, after the existing reservoir was constructed.

Following the purchase decision, the City Council passed several additional ordinances to authorize a request for bids on constructing the first of three envisioned water tanks that were planned to comprise the Kelly Butte Reservoir Complex. A site plan of the Reservoir Complex, dated January 30, 1967 is attached to Ordinance No. 128647, in which the City Council accepts the completed Tank 1 project, constructed under Contract No. 12109.

Exhibit A.21 contains the 1967 master site plan for the Reservoir Complex, as it represents the existing conditions of surrounding development at that time, as well as intended excavation areas for all three tanks. The footprints of future Tanks 2 and 3 are depicted within a broad flat open area east and southeast of the existing 10 million gallon Tank 1 reservoir, which is now proposed to be demolished and replaced with a buried 25 million gallon rectangular concrete reservoir.

Because the Portland Water system is supplied by water from Bull Run and routed to Portland via a gravity-feed system, 'high ground' is an essential asset in water delivery. Similar to Powell Butte, the 590-foot high Kelly Butte was identified more than half a century ago as a desirable location for the storage and delivery of water at the circa 410 foot elevation. The proposal to replace the existing above grade 10 MG reservoir with a 25 MG below grade reservoir is a significant upgrade to the facility and essential water storage and delivery infrastructure. The proposal, therefore, remains consistent with the intended character for the property as a significant water bureau facility, as evidenced by the series of Ordinances passed by City Council for the purchase and development of the property as a water bureau facility

The purpose of the OS zone is found at 33.100.010, which states:

33.100.010 Purpose. The Open Space zone is intended to preserve and enhance public and private open, natural, and improved park and recreational 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; and
- Preserving the capacity and water quality of the stormwater drainage system.

Opportunities for outdoor recreation: As noted in the first sentence of the purpose statement, the Open Space zone serves a number of purposes, including 'improved park and recreational areas'. A portion of Kelly Butte, east of the property, is owned by the Portland Parks Bureau and is a designated Natural Park. However, the Subject Property is not contiguous with the Park's Bureau ownership and in fact is separated by an isthmus of R10 zoning separating the two city owned properties. The Subject Property is not a designated or improved park, nor does the intended character of the Subject Property include any improvements to the site as a park. Therefore, the specific function to provide opportunities for outdoor recreation is not directly relevant to the proposed development of a new reservoir. The PWB property on Kelly Butte is not a public park and has been reserved for Basic Utility uses since the purchase of the property in 1954 for three future reservoirs. The recreational opportunities at Kelly Butte are located on the east side of the Butte, which is owned and operated by Portland Parks and Recreation. These recreational opportunities will be unchanged as a result of the new facility.

The storage and delivery of water services is a critical infrastructure that is not an inherent characteristic of an improved park. In addition, since the events of September 11, critical infrastructure sites have increased security concerns that include locked gates, limited access, security fencing and additional measures to monitor activity on the property. For these reasons the site is not an appropriate location on the Butte to provide outdoor recreational opportunities.

Contrasts to the built environment: PWB notes that the open space on the Butte provides marked contrast to the built environment in the local area. These qualities are recognized in the Powellhurst-Gilbert neighborhood plan. The proposed facility will preserve the essential natural character of the Butte and its ability to provide visual relief to viewers in urban areas around it. This will be achieved by implementing an extensive planting and mitigation plan that will preserve this area as an oasis of natural resources in a densely developed urban landscape. This planting plan has been developed in consultation with the Portland Bureau of Environmental Services (BES) and the Portland Parks & Recreation's City Forester.

BDS staff indicated that they had conducted multiple site visits and that the existing reservoir is somewhat visible from areas west and west southwest of the Butte, as a green and obviously man made object sequestered amongst mature tree canopy. Views of the tank from the other cardinal directions are not possible from the foot of the Butte. However, the proposed replacement reservoir will be located below grade [buried] and covered with a soil cap which would be planted with native prairie grasses and flowering plants. Once the construction is

completed and the plantings established, the views to this area will appear to be open and natural without the visual impact of the existing above grade reservoir.

Scenic qualities: The City's Scenic Resource Inventory identifies a designated Scenic View Point [VP 33-02] as the 'Kelly Butte Panorama" view. This viewpoint is mapped to the eastern summit of Kelly Butte and within the Portland Parks and Recreation property, which is not subject to this review. The Scenic Resource Inventory notes that "the primary views are to the east and south with a striking view of Mt Hood framed through the trees." The Subject Property is approximately 1,400 feet to the west of this scenic viewpoint and roughly 180 feet lower in elevation. Due to the topography, distance and intervening forest, there are no direct views of the Subject Property from the Scenic Viewpoint.

PWB notes in their application narrative that the scenic qualities of Kelly Butte will be preserved by the proposal on several levels. The proposed water reservoir will be buried, reducing the overall visual profile of the new structure, as compared with the existing above-ground tank and valve structure building. Some ancillary structures such as the north and south valve structures will be partially exposed; however, these will generally be screened from off-site views by vegetation and topography. The impression of the Subject Property as a predominantly open space resource will remain, once the proposed plantings are established. This planting plan, designed in cooperation with BES and the City Forester, will rehabilitate the degraded areas of the site and improve the overall natural resource values.

Protecting sensitive or fragile environmental areas: The proposal protects sensitive environmental areas by locating the utility facilities on the least environmentally valuable areas of the Subject Property. The reservoir and associated infrastructure is sited, as much as possible, in areas that were already disturbed or have the lowest natural resource value. Unavoidable impacts to natural resources are mitigated through an extensive mitigation and planting plan. New habitat will be created on the southern slope below the reservoir; the top of the reservoir structure will be planted with native grasses, invasive species will be removed throughout the site, and new trees and understory plantings will be installed in the northern forest.

The concurrent Environmental review evaluates and analyzes the proposal and mitigation to ensure that the overall project results in protecting and enhancing the existing resources on the property and minimizing impacts.

Capacity and water quality of the stormwater drainage system: The proposal manages the impacts of stormwater runoff through an on-site detention and water quality facility. The facility will be constructed to the City of Portland Stormwater Management Manual standards and to the satisfaction of BES Engineering staff. This stormwater management system eventually discharges to Oregon Department of Transportation's (ODOT) stormwater system in Powell Boulevard.

Based on the analysis and facts as discussed above, the proposal is consistent with the intended character of the specific OS zoned area. The proposal is also consistent with the purpose of the Open Space zone. This criterion is met.

2. Adequate open space is being maintained so that the purpose of the OS zone in that area and the open or natural character of the area is retained; and

Findings: The Subject Property is approximately 27 acres in size. The total disturbance area for the proposed project is approximately 17 acres. However, the result of the project will be an underground water reservoir with a soil cap and plantings on top which will create an open meadow like area within the property, with extensive mitigation plantings. PWB notes in their application the following:

> "Much of the Kelly Butte site is being maintained as open space. The area of the site being re-developed for the Basic Utility use is a small proportion of the PWB-owned property. Most of the permanent disturbance for the proposed reservoir is within areas previously disturbed by the existing above ground tank. The "open or natural character" of the area will be retained by the predominance of natural features and landscape on the site.
>
> Unlike the existing reservoir which is located above ground, the proposed reservoir will be buried underground. This will open up more open space and restoration of native vegetation will enhance the natural character of the area.
>
> A range of enhancements is included as part of the mitigation plan, and consists of the reestablishment of native plant communities and the removal of invasive species. These landscape treatments, especially on the south slope of the Butte, will help to ensure that the open or natural character of the site is retained." (Exhibit A.1)

The Hearings Officer concurs with this analysis by PWB. The Hearings Officer finds that the net result of the project will be the appearance of an open meadow area in the general location that the existing, above ground water tank occupies. The current development is visually prominent in this portion of Kelly Butte, the security fencing and associated accessory structures also provide small visual impacts to the Butte. However, the Hearings Officer finds that with the replacement reservoir proposed to be built below grade and covered with a soil cap and planted with appropriate vegetation, a much enhanced meadow-like open space will be enlarged and enhanced while remaining consistent with the original purpose of this particular property, i.e. to provide a significant node of water storage for the City's water system. For these reasons, this criterion is met.

3. City-designated environmental resources, such as views, landmarks, or habitat areas, are protected or enhanced.

Findings: The applicant notes in their application narrative that:

The primary City-designated environmental resources applicable to the Subject Property on the west side of Kelly Butte are habitat areas.

Views: The City's *Scenic Resource Inventory* identifies "Kelly Butte Panorama" (VP 33-02). The description includes the statement, "The primary views are to the east and south, with a striking view of Mt. Hood framed through the trees." However, the map and photograph in the inventory shows that the viewpoint is from the eastern summit of the Butte on Portland Parks and Recreation property, which is open to public use, and not from the PWB property on the west side of the Butte. The Subject Property is located approximately 1400 feet west from the scenic viewpoint (VP33-02) and will have no impact on the view identified and discussed in the inventory. Between the Subject Property and the viewpoint are densely forested private lands which block any view.

Views of Kelly Butte from below—that is, toward the Butte—are not listed as a city-designated resource. Some elements of the new development on the property will be visible from properties south and southwest of the Butte. These visible changes in the short term include the new reservoir, access road, and possibly the storm and reservoir drainage /overflow basins. A larger buried reservoir will occupy the top of the Butte where the freestanding existing tank is now located and visible from the south and southwest. The access road to the proposed reservoir requires a retaining wall along part of its alignment, most notably below the turnaround circle. The Hearings Officer finds that, in time, proposed new plantings will soften the appearance of the new reservoir and its associated facilities. Also, the Hearings Officer finds that PWB's plan for replanting areas disturbed during construction will eventually restore the appearance of the open space character of this area of the property.

Landmarks: There are no identified landmarks on the project site (*i.e.,* the west side of Kelly Butte).

PWB states, in the project narrative [Exhibit A.1, page 25], the following:

> "Habitat Areas: Wildlife habitat is the primary natural resource value that exists on the site and is the predominant basis for the E-zone designation. Site-specific wildlife habitat values and mitigation measures are presented in the environmental review findings section. In short, the site's vegetation provides the primary source of wildlife habitat components, including food, cover, and nesting/denning sites for wildlife. The plan for protecting and enhancing natural resources on the site is summarized below:

- The north slope of the Butte has the highest natural resource values on the site, but there are some areas that could be upgraded and diversified to provide better wildlife habitat. Enhancement will include planting shade-tolerant native conifers in the forest understory.
- Several small disturbed areas north and east of the existing tank will be converted to native prairie landscape.
- The invasive-dominated south slope will be restored to a Willamette Valley oak savanna habitat, a rare habitat once widespread in Oregon. The restoration/mitigation plan for this area of the site includes intensive invasive species management coupled with planting of oaks and dense seeding of native prairie forbs and grasses.

Appendix A [of the applicant's project narrative] provides documentation supporting the establishment of oak savanna habitat. Additionally, Kelly Butte is designated as a Special Habitat Area in the City's Natural Resource Inventory (NRI). It was prioritized for its natural resource value to wildlife as being an open habitat and butte top. The proposal for revegetation and mitigation of environmental areas on the Butte supports retaining the site as an open habitat. Although the NRI is non-regulatory, the Bureau of Planning and Sustainability (BPS) regards the inventory as information that can inform a variety of activities including: a) updating existing inventories, plans and programs, b) setting site or area-specific restoration priorities, c) aiding in site-specific project design.

Removal of the existing above ground tank and burial of the proposed reservoir allows re-creation of habitat area where today there is little habitat value.

In summary, this proposal maintains the open space character of the site by continuing the existing reservoir use of the site and improving the condition of the natural resources over the long run. New native plantings will replace invasive species-dominated slopes, and will help to soften any visual impacts from areas south of the Butte from construction. This proposal avoids and minimizes impacts to natural resources to the extent practicable and effectively mitigates for unavoidable impacts."

To the extent that this application meets the concurrent Environmental review, discussed in detail below, the Hearings Officer finds this criterion is met.

B. Public services.

1. The proposed use is in conformance with the street designations of the Transportation Element of the Comprehensive Plan;

Findings: The Portland Bureau of Transportation/Development Review ("PBOT") staff reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services. PBOT Development Review staff offers the following analysis:

"At this location, the subject Portland Water Bureau (PWB) site has frontage along two unnamed and largely unimproved public rights-of-ways that are accessed from SE Powell Blvd, as well as site frontage along SE 101st Ave. Each of these rights-of-ways is classified as Local Service streets for all transportation modes in the City's Transportation System Plan (TSP).

The proposed new water reservoir is supportive of the street classifications in that the TSP states that, "Local Service Traffic Streets are intended to distribute local traffic and provide access to local residences or commercial uses." Pedestrian activities and access to nearby transit lines are supported by existing sidewalks in proximity to the site along SE Powell [and secondarily, along SE 101st Avenue].

Although the site does not have frontage along SE Powell, access to the Water Bureau's site will be taken directly from this State Highway. Typically, PBOT only addresses the above referenced approval criterion in relation to streets that a development has frontage along. However, recognizing that all in-coming project-related vehicle trips generated by the new water reservoir will initially need to utilize SE Powell, this street will also be addressed here.

The TSP states that "Major City Traffic streets should provide motor vehicle connections among the Central City, regional centers, town centers, industrial areas and intermodal facilities. Along Transit Access streets, safe and convenient pedestrian and bicycle access to transfer points and stops should be provided. Auto-oriented land uses should be discouraged from locating on City Bikeways that are not also classified as Major City Traffic streets. City Walkways should serve areas with dense zoning, commercial areas and major destinations. Major Truck streets should provide truck mobility within a Transportation District and access to commercial and employment uses along the corridor. Major Emergency Response streets are intended to serve primarily the longer, most direct legs of emergency response trips. Regional Corridors are designed to include special amenities to balance motor vehicle traffic with public transportation, bicycle and pedestrian travel."

Based on the above analysis prepared by PBOT staff, the Hearings Officer finds that proposed new water reservoir on the Subject Property will be supportive of the above referenced street classifications. Therefore, the Hearings Officer finds that this criterion is met.

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

Findings: PBOT staff has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services. PBOT Development Review staff offers the following analysis (quoted material below is from Exhibit E.2):

"**Street Capacity/Level of service/other performance measures**
Findings: Per Portland Policy Document TRN-10.27 - Traffic Capacity Analysis for Land Use Review Cases: For traffic impact studies required in the course of land use review or development, the following standards apply:

1. For signalized intersections, adequate level of service is LOS D, based on a weighted average of vehicle delay for the intersection.
2. For stop-controlled intersections, adequate level of service is LOS E, based on individual vehicle movement.

The industry standard is to measure street capacity and level-of-service (LOS) only at intersections during the critical time period, such as AM or PM peak hour. Although capacity is a part of the LOS, the City of Portland's performance standards are defined only by LOS, which is defined by average vehicle delay. The City does not have performance standards for any of the other evaluation factors.

The proposal therefore, is not for a new use, with new or additional vehicular trips associated with it. Instead, it is for the same use to remain on the same site and to be improved with a new water reservoir (and supporting infrastructure). The current number of PWB vehicular trips to the site is 17 trips per week: once a week for operations, once a week for water quality, two times a day for security, plus one other trip per week. The estimated PWB trips per week for the new reservoir are also 17: once a week for operations, once a week for water quality, two times a day for security, plus one other trip per week.

Accordingly, PBOT staff did not require the applicant to obtain a professional assessment of the nearby intersections in order to address the capacity of said intersections. The area's nearby intersections will not be impacted during the peak hour of operation (either in the morning or afternoon) in relation to the subject Conditional Use since there will be no increase in vehicle trips resulting from the new PWB reservoir.

[Note: During the course of the review of this proposed Conditional Use request, comments, questions, concerns may be raised about the impacts of the anticipated construction activity related to the construction of the new reservoir and accompanying infrastructure, on the transportation system, immediate and adjacent neighborhoods, etc. It is important to distinguish the impacts associated with the (Conditional Use) transportation-related approval criteria and those of construction activities surrounding a new project. The Zoning Code establishes the approval criteria expected to be addressed in association with a new project, such as the proposed PWB reservoir. Pursuant to Code Section 33.800.050.A, "The approval criteria that are listed with a specific review reflect the findings that must be made to approve a request. The criteria set the bounds for the issues that must be addressed by the applicant and which may be raised by the City or affected parties." A review of the Conditional Use transportation-related approval criteria does not reveal anything related to construction or construction activity.

Further, under the general purpose for Conditional Uses, Code Section 33.815.010 states that "Certain **uses** are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They (**uses**) are subject to the conditional use regulations because they (**uses**) may, but do not necessarily, have significant adverse effects on the environment, overburden public services, changed the desired character of an area, or create major nuisances. A review of these **uses** is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood."

Finally, under the approval criteria section specifically under consideration for the proposed Conditional Use, Code Section 33.815.100 states that "the approval criteria allow for a range of **uses** and development that are not contrary to the purpose of the Open Space zone."

Therefore, under consideration is the proposed use (which in this case, is not changing from the existing use of the site) on the subject site and not the construction activity expected to occur that is associated with the proposed use. Transportation-related impacts resulting from a project's construction activity are generally addressed outside of the land use process and in direct association with the specific regulatory agency, in this case, both PBOT and ODOT. Especially in this case, given the expected 2.5 year construction schedule, the applicant will (and has already) need to develop a construction management plan, construction access plan, traffic control plan, etc.

Given the State's authority over the Powell Blvd right-of-way (as well as the nearby Interstate 205), ODOT will also need to approve the above referenced plans to ensure that impacts related to the construction activity are minimal to the function and operations of the State Highway. As a general practice, the applicant will be expected to submit these plans for review and approval prior to any construction activity.]

Access to arterials

Findings: The site has frontage along classified Local Service streets. The unnamed Local Service streets on the south side of the site have direct (and close) access to SE Powell Blvd, an arterial street (and State Highway). It should be noted that the site can physically be accessed from the north-east corner, via SE 101st Ave. SE 101st Ave is another Local Service street which has direct access nearby to the north, to SE Division St, another arterial street. However, PWB indicates that the only time the gravel maintenance access (from SE 101st) is used is for pipe inspections or pipe maintenance, which occurs 3-4 times per year.

Connectivity

Findings: The existing street grid pattern in the area does not meet City connectivity spacing guidelines for public streets and pedestrian connections. Public streets are recommended to be no further than 530-ft apart, while pedestrian connections should be no further than 330-ft apart. However, for contextual purposes, and to provide explanations as to why the aforementioned connectivity goals may not be feasible across the subject site, a description of the site is provided.

As discussed throughout this report, the site has numerous challenges in extending/expanding public street and pedestrian connections through it, due to the topography, slopes approaching 18-22 per cent grades, and mature forests. As primarily a utility use, the site is not conducive creating public rights-of-ways through it. The PWB property on Kelly Butte is not a public park and has been reserved for Basic Utility uses since the purchase of the property in 1960's for three future reservoirs. The recreational opportunities at Kelly Butte are located on the east side of the Butte, which is owned and operated by Portland Parks and Recreation. These recreational opportunities will be unchanged as a result of the new facility.

As part of the reservoir replacement project, the existing gravel access maintenance path along the north slope of the Butte will be improved. This path follows the Parkrose Supply Main, which was installed in 1998 and serves as the utility access route for PWB's pipeline. Residents, primarily north and east of the site, use the path to unofficially access the Butte. The new surface will be compacted gravel, approximately four feet in width, along the same alignment. The improved path may enhance the surface for users of the site, but is not intended to promote the pedestrian usage of the PWB property. Because this is primarily a natural area and a relatively secure utility site, the project does not propose to expand recreational opportunities.

With the various topographical, vegetation, habitat and environmental overlay constraints forming a web of physical, ecological and regulatory hindrances, providing even one or more formal pedestrian connections (that satisfy City construction standards, including federal ADA requirements), is not feasible through the subject site.

Transit availability
Findings: The site is directly served by Tri-Met bus route number 9 (Powell) near the site's southern end, along Powell Blvd. However, it is not expected, nor is it reasonable to require PWB staff to use public transit to service the new reservoir.

On-street parking/neighborhood impacts
Findings: On-street parking is generally only allowed around the site along the SE 101st Ave frontage. This is not where PWB staff accessing the proposed reservoir will park, however. The project includes a new access driveway to be constructed along the south slope of the Butte from the unnamed public right-of-way (accessed off of SE Powell). The driveway will be paved and include a turn-around bulb near the new reservoir structure and additional pervious paving towards the vaults and reservoir hatches. There will be sufficient areas on site for the minimal service/ maintenance vehicles expected to serve the facility to be parked. There is no minimum or maximum Zoning Code parking requirement for the proposed use. Impacts to on-street parking are not expected.

As mentioned previously, PWB staff does not regularly utilize the access onto the subject site located off of SE 101st Ave (3-4 times per year). This insignificant amount of usage will not result in impacts to the neighborhood located north of the subject site.

Access restrictions
PBOT has no access restriction concerns related to the proposed project. Though the site is currently accessed through the abutting church parking lot, the project includes the construction of a new access driveway that will be located entirely on the subject PWB site. It is PBOT's understanding that ODOT has no concerns/issues with PWB to continue the use of SE Powell Blvd as access onto the subject site.

It is PBOT's understanding that there is an agreement between the abutting church and PWB for the use of portions of the church's site for temporary construction areas for the placement of construction trailers, storage of materials and access for smaller vehicles.

Impact on pedestrian, bicycle, and transit circulation
With the infrequent and insignificant number of vehicular trips expected to be generated by the proposed use, (service/maintenance vehicles associated with the Basic Utility), there is no reason to believe that there will be impacts to either pedestrian, bicycle or transit circulation.

The required construction management plan, construction access plan, traffic control plan, etc. will also be developed to minimize impacts on the above referenced modes of travel/circulation.

Safety for all modes
No significant negative safety impacts are expected with the proposed use on any mode of the transportation system given the minimal number of vehicle trips that will be generated by the proposed Basic Utility use.

III. Adequate Transportation Demand Management (TDM) strategies
The applicant has not suggested any Transportation Demand Management strategies since PBOT has not identified any transportation-related impacts associated with the proposed Basic Utility use, which is typically why a Traffic Demand Management Plan (TDMP) is proposed. There is no need for a TDMP in this case."

The Hearings Officer finds, based upon the PBOT analysis provided above, the proposal satisfies all of the elements of the criterion, and therefore this criterion is met.

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

Findings: The affected public services agencies have reviewed the proposal and have made the following comments:

Portland Water Bureau noted no concerns regarding the proposal, and stated that adequate water services would be available to serve two new proposed fire hydrants that are to be installed as part of the overall project.

Portland Police Bureau noted that the Strategic Services Division, as well as the East Precinct Commander, has reviewed this proposal and determined that the Portland Police Bureau is capable of serving the proposed use at this time. However, the Bureau did note some concerns and made recommendations regarding public safety at the Subject Property. The response noted concerns regarding potential increase in access to the Subject Property that may necessitate an increase of site security and monitoring. The Police Bureau recommended the addition of day/night capable security cameras with recording capability and the application of directional lighting to increase monitoring and provide the means to identify at risk areas as they change over time. The bureau also recommended that the gated sections along the public access areas be well maintained as this can be a visual deterrent to criminal activity.

Fire Bureau noted that Fire Code requirements are generated from the 2007 Oregon Fire Code. All current Fire Code requirements apply and are required to be met. If, during

building permit review, a specific Fire Code requirement is not fully met, PWB would be required to apply for and receive a Fire Code Appeal approval.

Bureau of Environmental Services responded with no objection to the Conditional Use, Environmental, and Adjustment Review application. BES also noted that the proposed development will be subject to BES standards and requirements during the permit review process. BES noted the existing sanitary infrastructure available to the site and also noted that PWB indicated that no fixtures are proposed requiring a sanitary connection. BES also noted that stormwater management for the proposed project must comply with all applicable requirements of the City of Portland Stormwater Management Manual at time of building permit review. BES noted that discharge of stormwater to an ODOT system has been approved by ODOT, which is acceptable to BES.

Based on the responses from the relevant agencies, the Hearings Officer finds that the public services are adequate to serve the project. The Hearings Officer finds this criterion is met.

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

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

Findings: As discussed previously, the Subject Property consists of approximately 27 acres, located on the west side of Kelly Butte adjacent to Interstate 205. Between the Subject Property and the Interstate is an 11-acre property owned by the Church of Nazarene, on land zoned R1a, R1c, R1p and R5p. The Subject Property is bordered to the south by SE Powell Boulevard, an undeveloped right-of-way and several industrial lots and to the north by residential lots along SE Taggart Street at the base of the Butte. The northeast corner of the Subject Property fronts on SE 101st Avenue. To the west of the Subject Property is Interstate 205 (I-205). To the east of the Subject Property are private, mostly undeveloped residential lots zoned R10p, R10c and R10.

As demonstrated by Exhibits G.7 and G.8 in the application case file, the closet residence to the north of the Subject Property, and the footprint of the proposed new reservoir, is approximately 539 feet, with a 140 foot elevation drop below the Subject Property. The second closest residence is approximately 725 feet away from the proposed foot print and is approximately 100 feet below the reservoir site. Steep and densely forested slopes separate the reservoir site from these two homes, as well as the adjacent residential uses to the north of Kelly Butte. The closest residence to the southeast of the Subject Property is approximately 965 feet away, and roughly 80 feet below the reservoir site. Again, significant topographic slopes and dense forest separates this residence from the reservoir site.

Once the proposed reservoir is constructed, it will be a passive use in that water will be stored and distributed via gravity fed mains. There are no anticipated impacts from noise, glare from lights, late-night operations, odors, or litter. The operation of the proposed reservoir will have no significant noise associated with the water storage and distribution. Limited security lighting will be installed, but directed to key areas for security cameras to perform surveillance during nighttime. Given the distance, elevation differences and dense forested slopes, none of the homes near Kelly Butte will experience glare from lights. Although the facility will operate around the clock, the late-night operations will be the same as the primary day time operations: passive water storage and water distribution. No maintenance will occur at night unless there is a significant emergency. No aspect of the facility is anticipated to generate odors or litter.

PWB's project narrative also notes the separation distances, elevation changes and dense forest canopy buffering residential uses from the proposed reservoir site, as well as no significant impacts resulting from the operation of the below grade water reservoir that could impact livability. Although construction impacts are considered temporary and distinct from impacts this approval criterion evaluates, PWB does note that during the construction phase, there may be some temporary impacts which the Water Bureau, through their construction management plan, will be minimized to the greatest extent feasible.

The applicant notes the following in their project narrative [Exhibit A.1, page 27] in responding this criterion:

> "There may potentially be temporary construction impacts. PWB's goal is to minimize them as much as feasible and practical, where possible. The construction management plan (CMP) that is included in appendix B addresses typical construction impacts and PWB approach to minimizing construction impacts. Some of the issues covered in the CMP include excavation and hauling, hours of work, erosion and sediment control, noise, traffic control, and construction site security and safety.
>
> Noise: The proposed reservoir will not generate any audible off-site noise. This facility already used as a water storage site with an aboveground valve vault structure that is a mechanical space. The proposed re-development is a large buried reservoir for storing water, and does not require any major mechanical operation that generates noise. A small, electrically-powered sump pump will be located within the enclosed buried south vault structure. The sound from this pump will be imperceptible from any adjacent residential property and no different than the existing pump in the aboveground vault structure. In addition, the ambient noise from I-205 far surpasses any sound that might be generated by the operations of the facility. The nearest residential house is located 700 feet horizontally and 100 feet vertically from the reservoir and is buffered by the topography and

vegetation. [Staff Note: Based on City GIS information, this is the second closest residence to the project site]. The nearest business is the church along Powell Blvd. The church owners are primarily concerned about noises during church activities which are typically Sundays and occasionally weekdays during the day.

Glare: The proposed facility will not be lit at night, in order to preserve the natural open space character and the scenic qualities of the Butte. The north and south valve structures will have security lights at their entry points that will face south, away from the residences. Consequently, no glare will be generated by the proposed development of the reservoir.

Late-night operations: The proposed facility will be functional around the clock (24 hrs a day, 7 days a week) to provide water service. Occasionally, routine maintenance and security activities occur on the property at night. Once the construction work is complete, the site will require very little change in maintenance activities. Water quality monitoring, security and operations checks will occur daily.

Odors and litter: The facility is being built to hold clean water. No odors are generated by the facility or by any of its operations. Litter patrol of the site will occur as an incidental part of daily security and operations checks. Because of the distance between the visited areas of the site and the nearest residences, any litter would not be likely to affect the livability of residentially zoned land.

There are existing homeless camps and trash dumping areas on the site. The proposed project and oak savanna restoration and security cameras at the reservoir and vault structures will help deter activities that create or contribute to odors and litter.

In short, the proposed development will not have an adverse impact on nearby residential zoned lands from any of the listed negative factors."

The Hearings Officer concurs with this above-quoted analysis and based on the above facts and evidence finds that this criterion is met.

2. Privacy and safety issues.

Findings: The significant separation distances of the proposed reservoir and residential uses in combination with the dense forest canopy buffering residences from the reservoir site precludes any potential impacts of privacy.

PWB, in their project narrative, states the following regarding safety [see Exhibit A.1, pages 29-30]:

"The reservoir itself will not be open to the public, but PWB has proposed to improve the existing north-south connection across the property by improving the footpath on the north slope of the Butte, and allowing pedestrians to use the access road being constructed on the south slope of the Butte. The reservoir structure will be fenced to prevent unauthorized access to the facility.

The PWB recognizes that the site has been a popular site for illegal camping. PWB Security staff regularly works with and will continue to work with Portland Police Bureau and Multnomah County Sheriff's office to patrol and monitor this activity, both to protect the facility and reduce impacts to surrounding properties. The PWB has an existing security plan that will continue to take necessary measures to protect the site and the water supply. The proposed oak savanna planting strategy described in the Mitigation Plan (Appendix C) will create a more transparent understory. This will make it easier to visually monitor the area for security purposes. In addition, pole mounted security cameras will be installed to assist the PWB Security, Multnomah County and Portland Police Bureau. Security cameras will be placed at each of the two valve structures and on the southwest corner of the reservoir, as shown on Figures 3.3, 3.5, and 3.7 of the Plan Set.

There is also no change in safety impacts to the site from the proposed development of the stormwater and reservoir drain/overflow basins. Stormwater during and after construction will be managed onsite with stormwater quantity and quality treatment so that no downstream surface waters are affected by the project. After onsite treatment, waters are proposed to be discharged to ODOT's stormwater system located in Powell Blvd.

The proposed project will have no change in impact on livability of nearby residential-zoned properties from the reservoir drain/overflow system. The existing tank drain and overflow system on site today is located on the north side of the Butte and will remain as a backup. With construction of the replacement reservoir, a new reservoir drain/overflow system will be built on the south side of the Butte. This system consists of a pipe coming from the top of the reservoir to a concrete basin located in the southeast corner of the PWB property in the IG2 zone. This basin will also be used to dechlorinate any reservoir waters before being discharged into the onsite stormwater management basin. Waters from the reservoirs drain/overflow basin will be held in the drain/overflow

basin until it is manually released via piping into the stormwater management basin where it eventually discharges to ODOT's stormwater system in Powell Blvd.

The reservoir drain/overflow system is sized for the maximum capacity of flow coming into the reservoir (which is not changing under this proposal; it is not based on amount of water stored onsite). A reservoir drain/ overflow system is a feature that allows excess water to be released from the reservoir when water in the reservoir reaches a predetermined elevation. An overflow of the reservoir would be a highly unusual event, because there are redundant systems for preventing one.[2] In the 42-year history of the existing Kelly Butte tank, an overflow has never once occurred.

Reservoir draining and cleaning will occur once every three to five years, over a four week period. This is similar to what occurs with the existing tank. This routine activity is typically done during fall and spring seasons and are coordinated with the local jurisdictions that regulate the discharge points."

Based on the above information and analysis, the Hearings Officer concludes that with conditions of approval requiring that the PWB install security cameras and security lighting, as recommended by the Portland Police Bureau, this criterion is met."

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

Findings: The site lies within the Johnson Creek Basin Plan District. The purpose for this Plan District is found at 33.537.010, *Purpose*, which states:

"The Johnson Creek Basin plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide groundwater recharge, reduce erosion, enhance

[2] If it ever were to happen, an overflow event would be most likely to occur during the hottest, driest part of the summer, because demand and the volume of water coming into town is highest. Water levels in surface waters are at their lowest elevation in the summer. In contrast, the demand is at its lowest in the winter and there is less water coming into town so there is less chance of an overflow occurring and any overflow would therefore be a smaller volume. An overflow builds gradually over time so there is never a wall of water released suddenly at any time. Numerous safety measures to prevent an overflow are integrated into the Water Bureau's standard operating procedures so one does not occur.

> water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions. This plan district is intended to be used in conjunction with environmental zoning placed on significant resources and functional values in the Johnson Creek basin, to protect resources and functional values in conformance with Goal 8 of the Comprehensive Plan and Statewide Planning Goal 5."

This application includes a concurrent Environmental review, triggered by the Environmental zoning applied to the Subject Property. To the extent that this application meets the concurrent Environmental review, discussed in detail below in this decision, this criterion is met for the adopted Johnson Creek Plan District.

The Subject Property also lies within the boundary of the adopted neighborhood plan, Powellhurst-Gilbert Neighborhood Plan (1996). PWB provides the following analysis of the proposal and the PGNP in the project narrative [see Exhibit A.1, pages 30-31] as follows:

The following policies and objectives from that plan most closely relate to Kelly Butte.

> ***"Policy 2: Trails, Parks, Open Space and Environment***
> *Ensure that the parks, green spaces, open spaces and other recreational and cultural opportunities of the Powellhurst-Gilbert neighborhood meet the needs of area residents and improve the neighborhood's appearance."*

The PWB-owned area of Kelly Butte on the west side of the Butte is not a park, and has been used for a public utility purpose since the late 1960s. Although it is publicly owned, the west side of the Butte does not have an established infrastructure to encourage public visitation. In that sense, the PWB area of the Subject Property is not purposed for "recreational and cultural opportunities." The proposed development plan maintains the area's ability to "improve the neighborhood's appearance" by providing a dramatic contrast to the built environment of this area of southeast Portland and a large area of dense greenery. The key values of this open space resource will be bolstered by an extensive planting and mitigation plan to compensate for the impacts created by the redevelopment of the site with a larger, modernized reservoir that is out of sight because it will be buried. Upgrading from dirt to gravel, the existing footpath into the site from the north may be considered an improvement to a "recreational opportunity" since it will allow public pedestrian access across the property in the north-south direction. The Hearings Officer finds that the proposed redevelopment helps meet the needs of the area.

> ***"Objective 4:*** *Provide pathways, viewpoints, and multiple use public facilities on Kelly Butte while preserving the area's natural character."*

This objective is more directly applicable to the eastern side of the site that is owned by the PP&R, since it has "pathways, viewpoints, and multiple use public facilities." However, the PP&R property on the east side of the Butte is not included in this review. The PWB-owned area on the west side of Kelly Butte is devoted to public utility use and has been since the 1960s and does not have any viewpoints or park facilities. The PWB will preserve and enhance the area's natural character through an extensive mitigation and re-planting plan described elsewhere in this application. In addition, the PWB will improve from dirt to gravel the current utility corridor access through the site that begins at the southern dead-end of SE 101st Avenue on the north side of the Butte to the proposed utility access road at the top of the Butte.

> *"**Objective 9:** Improve existing parks and natural or scenic areas in the neighborhood."*

As previously noted, the Subject Property is not an existing park; it is a property that has been devoted to public utility use since the 1960s and includes some natural areas. As part of the reservoir project, PWB proposes an extensive mitigation and replanting plan to improve the natural condition of the site. This will create a long-term improvement of the site for the neighborhood.

The Hearings Officer finds this approval criterion is met.

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.

Findings: The approval criteria which apply to the proposed new 25 million-gallon water reservoir, and associated improvements, are found in Section 33.430.250 A. PWB provided proposed findings for these approval criteria. BDS Land Use Services staff revised the PWB proposed findings or added conditions, where necessary to demonstrate that the proposal will meet the approval criteria, in the Staff Report and Recommendation to the Hearings Officer (Exhibit H.4). The Hearings Officer reviewed the evidentiary record, including Exhibit H.4, and makes the findings below.

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:

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

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;

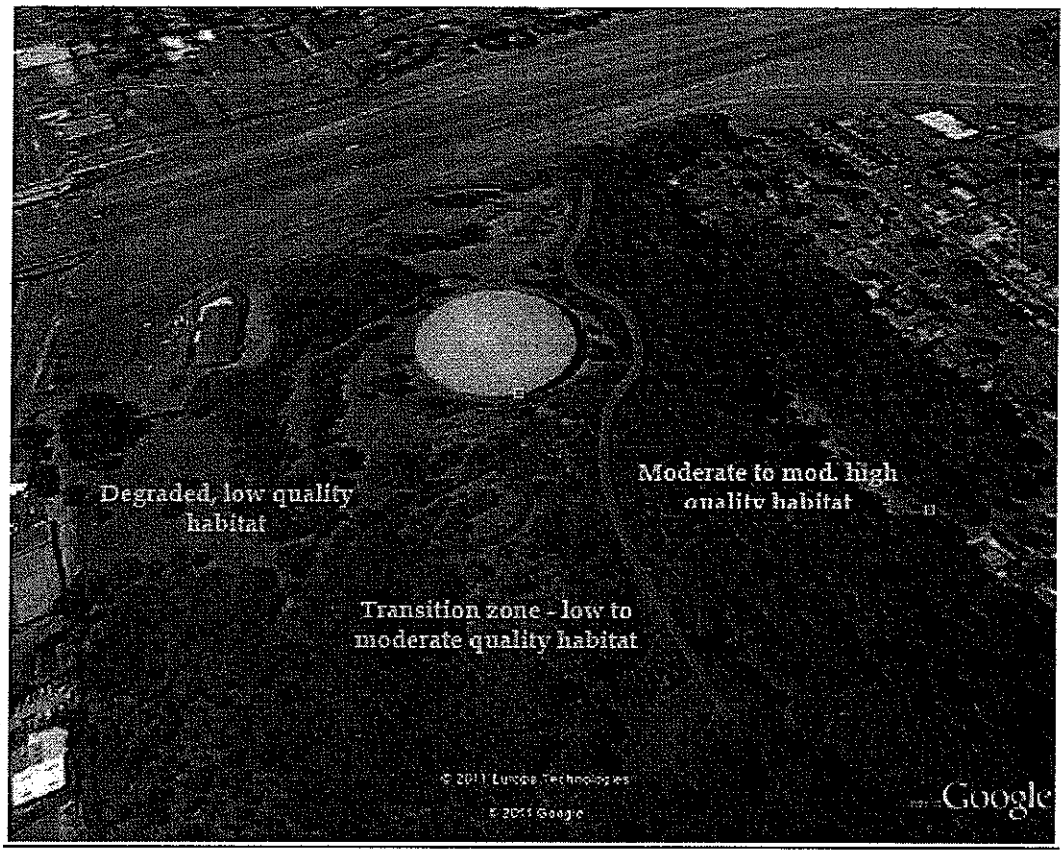
Findings: This criterion requires PWB to demonstrate that alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values.

PWB provided an extensive alternatives analysis that can be found in the application case file in Exhibit A.2, and is summarized earlier in this decision.

PWB assessed alternative locations, designs, and construction methods for each of the primary project components: the reservoir and related improvements, access drive, and stormwater/overflow facilities. Additional project components evaluated included site demolition, pedestrian path improvement, temporary staging areas, and oak savanna restoration.

Multiple alternatives were considered for each of these project components, and some were found not to be practicable. In the case of access drive options, for example, seven alternatives were studied but only two were deemed practicable after closer examination. For these practicable alternatives, PWB completed a detailed examination of environmental impacts to determine the least impact alternative, looking at each component of the project individually as well as collectively. In some cases, such as the reservoir siting and orientation, after weighing significantly different alternatives, an additional modification (rotating the reservoir) resulted in further reduction in impact; this was then selected as the preferred alternative.

After reviewing the alternatives, PWB selected an alternative that minimizes impacts to the more sensitive resources on the north slope of the Butte. The primary areas of impact are located in areas of the Subject Property with the fewest resources and lowest functional values. (See photo below) Importantly, the work is concentrated in areas of historic disturbance by the construction of the existing 10 MG steel tank in 1969. Today, signs of prior disturbance remain in and around the proposed construction area: large areas of fill, flattened to create a terrace around the existing reservoir; road scars on the south slope of the Butte; and dense infestations of invasive vegetation. Impact avoidance is accomplished by building within these disturbed areas and thereby minimizing the disturbance to higher quality resources on the north slope and eastern ridgeline at the site.



PWB proposes to plant trees that are ½ inch in diameter, rather than one inch. There are several reasons for this. The applicant's landscape professionals have found that smaller trees establish more vigorous root systems, grow more quickly than larger trees, and compete better with weeds and self-seeded invasive tree species. This experience has shown that native tree plantings are more successful if smaller/younger trees are planted.

This point is also reinforced in prior City of Portland land use cases, in which smaller tree sizes were approved. In the Powell Butte Master Plan, for example, a ½ inch minimum tree replacement standard was approved.

In conjunction with the use of smaller tree diameters than the tree size standard, the applicant proposes to overplant environmental zone replacement trees at the site. Specifically, the applicant proposes to exceed the replacement standards of Table 430-3 by planting 20 percent more native trees than identified under Option A, and by planting thousands of native shrubs as well. The goal of this approach is to create a vigorous and healthy native planting that provides improved habitat, slope stability and erosion control functions.

Ms. Bauer asked, in Exhibit H.15, "how many birds can nest in a ½" tree or find food or cover or shelter." Ms. Bauer couched her ½" tree question with her concern that PCC 33.430.250 A. c. (correct reference is believed to be PCC 33.430.250 A.1.c.) had not been satisfied. The Hearings

Officer will address Ms. Bauer's ½" tree question and her concern relating to PCC 33.430.250 A.1.c. at this time.

The Hearings Officer finds that tree planting, in the context of an environmental review, is not to be measured (for all time) by the size of the tree planted. The Hearings Officer finds that the primary goal of tree planting is to, in as short of time as possible, provide trees that are of the type and size and will address the natural resource needs. The ½" trees, per Figure 5.15, are Oregon Oak. The Hearings Officer is familiar with Oregon Oak and is aware that the height of these trees, at maturity, generally exceeds 30 feet; even if planted in groves or clusters.

The Hearings Officer finds the only credible evidence in the record regarding survivability and growth rates was provided by PWB (Exhibit A.14). The Hearings Officer finds that the City's tree planting and maintenance history indicates that ½" trees will establish more vigorous roots systems, grow more quickly than larger trees and will better compete with other vegetation (i.e. invasive self-seeded species).

The Hearings Officer also notes that PWB's mitigation plan proposes to overplant (by 20%) the number of trees.

The Hearings Officer finds, based upon the evidence in the record, that ½" trees will survive better and grow more quickly than larger trees (such as 1" trees). The Hearings Officer finds that birds and other wildlife will be benefitted by the PWB's mitigation plan; including the plan to plant ½" trees. The Hearings Officer finds Ms. Bauer's concerns about ½" trees to be without merit.
The Hearings Officer reviewed the PWB proposed alternatives and agree with the PWB analysis regarding the selected alternative locations, designs, and construction methods, for all project elements. The Hearings Officer finds that the selected alternative will result in the fewest impacts to environmental resources. The Hearings Officer finds that t*his 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, erosion of soils off the Subject Property, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the Subject Property. PWB provided a detailed description of the proposed stormwater management plan and the construction management plan in the application case file (Exhibits A.7 and A.3), in addition to graphic Construction Management site plans (Exhibits C.46 through C.67).

With regards to the stormwater plan, Portland's Bureau of Environmental Services ("BES") provided the following comments (for details of BES comments please refer to Exhibit E.12 in the application case file):

> "BES has reviewed the revised stormwater report dated June 30, 2011 (Exhibit A.7). The applicant proposes to discharge off-site to the Oregon Department of Transportation (ODOT) storm

system after most of the development is treated and detained in a stormwater detention basin. A small portion of the development (area D2-C) will be below the grade of the basin and will therefore be treated via a Stormfilter catch basin. The applicant submitted Technical Memorandum: Area D2-C Vegetated Facility Feasibility Analysis (Appendix C of the June 30, 2011 storm report), which is acceptable for the purposes of determining that a vegetated facility cannot be utilized to treat and detain that developed area."

"The applicant should note that BDS Site Development still requires a slope stability analysis to determine whether the proposed stormwater basin in the southwest corner of the site will affect slope stability (see Site Development's land use comments for more detail, Exhibit E.11). Despite the fact that the slope stability analysis has not yet been reviewed by Site Development, the stormwater management basin is adequately sized to treat and detain on-site runoff whether or not it will include an impervious liner; therefore BES requires no additional information to make a determination that the stormwater system is appropriately sized."

"Discharge to the ODOT system has been approved by ODOT via a letter dated June 27, 2011 (Exhibit E.8). BES finds this letter adequate for the purposes of land use review."

"The applicant should also note comments made in Portland Bureau of Transportation's (PBOT's) land use response memo dated August 12, 2011 regarding the proposal to place site improvements, including the stormwater management basin and associated infrastructure, within a portion of public right-of-way that the applicant wishes to vacate (see Exhibits E.2, E.5, and E.9). BES does not object to this, provided that PBOT's revocable encroachment permit is approved for the interim."

BDS Site Development staff noted that,

"A report has been submitted along with a site specific seismic hazard study. The report indicates that the proposed development, including grading and retaining walls, is feasible; however no slope stability analysis was included. Pending recent of this slope stability analysis, an impervious liner for the proposed stormwater pond may be required. If a liner is required, it is not expected to change the size of the stormwater pond or affect the disturbance limits,"

and requires the following,

"Prior to approval of a building permit for the reservoir, a final geotechnical report, including slope stability analysis shall be provided." See Exhibit E.11 for details.

As discussed earlier in this decision, construction management techniques have been proposed by PWB to minimize impacts to identified resources and functional values designated to be left undisturbed. PWB's Construction Management Plan (CMP) will prevent adverse impacts to areas

outside of the approved disturbance area. The plan includes a construction schedule, general management practices, and provisions for erosion control, tree protection, and site management. Prior to construction, the construction disturbance limits and tree protection zones will be fenced per City of Portland standards. Temporary erosion and sediment control best management measures will be installed around proposed work areas before commencing construction in compliance with City's Erosion Control Standards (Title 10) and the appropriate permits.

Along the utility maintenance access way on the north slope of the Butte from SE 101st Avenue, it will be necessary to use "walk-behind" motorized equipment to get gravel and materials into the construction corridor. As noted earlier in this decision, this area is within a previously disturbed utility pipe corridor and no trees or other significant native vegetation is planned for removal. Temporary access using the proposed equipment will therefore have no significant detrimental impacts.

Site restoration following construction will include seeding and planting of disturbed areas with native seed mixes. Trees, shrubs and groundcover will be planted on the Subject Property as shown in the Mitigation Plans (Exhibits C.68 through C.86).

The project's stormwater and construction plans will prevent adverse impacts to areas outside of the approved disturbance area. The Hearings Officer finds that with conditions for a Portland Bureau of Transportation revocable permit to allow stormwater facilities within a portion of public right of way, and for PWB to provide a final geotechnical report including slope stability analysis, *this criterion can be met.*

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

Findings: This criterion requires the applicant to assess unavoidable 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.

Approximately 6.5 acres of resource area within Environmental Protection and Environmental Conservation overlay zones are identified as disturbance areas for construction activities for the reservoir and associated piping, access drive, stormwater facilities, grading/retaining walls, and staging areas. 205 native trees will be removed from the resource area.

PWB's mitigation strategy is described in detail in Exhibits A.4 and A.14 in the application case file. PWB's mitigation plan proposes restoration and enhancement of approximately 7 acres of western hemlock-Douglas fir forest on the north facing slope of the site; approximately 0.5 acre of oak and shrub plantings, and approximately 7.5 acres of grass and forb seeding to create prairie habitat on the site's south-facing slope. PWB describes the project area as,

> "an area that was previously cleared of vegetation and graded and filled during construction of the existing tank. Today, the disturbed south slope of the site is overrun with invasive trees, shrubs and herbaceous plants. One of the goals of the

> applicant's landscape plan is to reverse this condition and restore a native landscape to this part of the site" (Exhibit A.4).

PWB's initial proposal (Exhibit A.4) was to selectively remove native big leaf maple trees from mitigation areas. After further review, the applicant now proposes to integrate the oak plantings around the existing trees in this area of the Subject Property. This decision saves an additional 52 native trees, and reduces by 132 the required number of replacement trees.
This proposal represents a modest shift in the PWB's oak savanna plan (Exhibit A.4). This plan included:

> "Preservation of large wooded patches on the top of the Butte to the north and along the east side of the property boundary. These areas allow for a more natural transition area from oak savanna to forest on the north side."

PWB now proposes to extend this area further south on the east side of the Subject Property, to encompass the entire area shown as outside the construction disturbance area. In this area, European hawthorn, sweet cherry (*Prunus avium*), Himalayan blackberry and other invasive plants will be removed and Oregon white oak, shrubs and prairie forbs and grasses will be integrated in and around the existing native trees.

The larger planting concept for the south slope will remain the same: PWB plans to replace an invasive-dominated thicket with a native-dominated savanna. However, the strategy to accomplish this is modified to preserve the existing tree canopy.

The preservation of the existing native trees will help maintain cover and forage habitat, slope stability, and other ecological functions throughout the project construction and oak establishment period. While savanna habitat establishment and management will be more challenging, the integrated approach will have fewer adverse environmental impacts to identified resources and functions and greater near- and long-term environmental benefits.

PWB proposes to use smaller tree diameters than the tree size standard. In order to offset the difference between the proposal and the standard, the applicant proposes to overplant environmental zone replacement trees at the site. See the findings for PCC 33.430.250 A.1.a above which are incorporated into the finding for this approval criterion.

Note that additional trees are to be removed from areas outside of the resource area of the environmental zones. These trees are regulated by Portland Parks and Recreation Urban Forestry staff and will be required to be compensated for at permit time, according to City Code 20.40 (see Exhibits E.1, E.7, E.15, and E.16 for further information).

PWB summarizes the mitigation proposal (see Exhibits A.4 and A.14, application case file) as follows: In sum, to replace the existing reservoir, trees and vegetation will need to be removed. After extensive efforts to minimize the disturbed area and holding field meetings with the City Forester to determine which additional trees could be saved, a total of 205 native trees are proposed for removal within environmental zones. The Mitigation Plan proposes to plant 804 native trees,

dense clusters of native shrubs, and acres of native prairie habitat. The plan also calls for removal of 295 invasive trees, and removal and management of Himalayan blackberry. The primary blackberry removal area is 2.2 acres of a large open area on the south side and a smaller area on the north side. Additionally, a secondary area of blackberry removal is proposed for 6 acres on the south slope, where blackberries are mixed in with existing shrubs and trees. These measures will substantially offset the temporary and permanent disturbance impacts of the project and will meet the tree replacement standards of the environmental zone.

Monitoring and Maintenance:
The Zoning Code states that required shrubs and trees must survive until maturity. PWB proposes monitoring and maintenance of the plantings for a period of three years to ensure survival during the most critical period of establishment of new plantings. One hundred percent of the trees required by Table 430-3 are required to survive the three-year monitoring period, or be replaced. To confirm maintenance of the required plantings for the initial establishment period, the applicant will be required to have the plantings inspected three years after plantings are installed.

The Hearings Officer finds that with conditions to ensure that previously required mitigation plantings, as well as plantings required for this Environmental Review, are maintained and inspected, *this criterion can be met.*

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: PWB states that mitigation for significant detrimental impacts will be conducted on the Subject Property (the same site) as the proposed project and disturbance. Further, PWB owns the proposed on-site mitigation area. Areas of the Church property that are disturbed during construction will be reseeded; however, this is considered by PWB to be site restoration work rather than mitigation. *These criteria are met.*

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 requires PWB review alternative locations, designs and construction methods for the proposal, as required in approval criterion 33.430.250.A.1.a, above. The primary distinction is that the focus of Approval Criterion A.3.a. is on the environmental protection zone.

Nonetheless, the findings provided in the response to A.1.a. do not exclude the protection zone, and are incorporated, by this reference, as additional findings for this criterion.

Note that some of the stormwater and reservoir drain/overflow alternatives evaluated by the PWB (Exhibit A.2, application case file) would have had impacts within the protection zone. The selected stormwater and reservoir drain/overflow alternative is located outside of the protection zone to the extent practical and therefore the impacts to this zone's resource area are minimized. As described in Exhibit A.2, both the reservoir and its access road require some impact to the protection zone. However, the Hearings Officer finds that the selected alternatives have the least significant detrimental impact to identified resources and functional values. Therefore, the Hearings Officer finds *this criterion is met.*

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

Findings: There are no water bodies within or near the development area. The Subject Property is an upland site that contains no fish-bearing water bodies. The nearest fish-bearing water bodies are Beggar's Tick Marsh and Johnson Creek, which are located 1.2 and 1.5 miles south of this site, respectively. Due to this distance, there will be no impact to these water bodies.

Stormwater is being managed on-site before discharging to ODOT's stormwater system in Powell Boulevard. The reservoir drain/overflow system is being managed onsite in the IG2 zone and is not expected to have any impact to surface water bodies. The Hearings Officer finds that this criterion is met. Furthermore, to the extent that approval criterion A.1.b. "There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed," is met, *this criterion is also 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. The Hearings Officer finds that *this criterion does not apply.*

Adjustment Review

33.805.040 Approval Criteria

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met. Adjustments to the ground floor window requirements of this Title must also meet the additional requirements stated in the ground floor window sections in the base zones.

Findings: One adjustment is requested for the project by PWB. Conditional uses in the Open Space zone are subject to the institutional development standards in the single dwelling zones (see Zoning Code section 33.100.200(3)). One of these development standards is for buffering from an

abutting residential zone, specifically 15 feet of L3 landscaping. The church property, adjacent to and west of the Subject Property, is zoned Residential 1,000. Although much of the Subject Property is vegetated, and proposed to be planted, the proposed reservoir is close to the west property line and contains a 12-foot wide access drive that is closer than 15 feet from the property line. The access driveway is a critical component of the overall design and cannot be eliminated or landscaped to meet this standard while still retaining its functionality. Under existing conditions, most of the area owned by the Church that would ostensibly benefit from the required buffering is undeveloped, steeply-sloped, and forested.

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

Findings: The purpose of the regulation is listed in Zoning Code section 33.110.245(A).

> "The general base zone development standards are designed for residential buildings. Different development standards are needed for institutional uses which may be allowed in single-dwelling zones. The intent is to maintain compatibility with and limit the negative impacts on surrounding residential areas."

The purpose statement focuses on maintaining compatibility with and limiting negative impacts on surrounding residential areas. Although it is residentially zoned, the area of the Church-owned property that might benefit from the buffering is not being used for residential purposes. Given its location, environmental zoning, limited access, existing use as church property, and steep slopes, there will be limited "negative impacts" from the proposed reservoir, and no potential negative impacts on surrounding residential areas.

As discussed in the conditional use findings, there are effectively no nuisance impacts (e.g., noise, glare, etc.) that are generated from the use. Allowing the buffering requirement to be waived along this stretch of the property line (see Exhibit C.89) has virtually no effect on any surrounding residential areas. The north valve structure is the only above-ground feature visible from the west Subject Property line. This feature will be screened by both existing and proposed vegetation. The reservoir itself is below-ground and there are no structures at this location that need visual screening.

Where there is space to fit landscaping between the driveway and the west property line, new plantings will be installed as part of the mitigation plan. In addition, shrubs and grasses will be planted on top of the reservoir and on the slope of the reservoir east of this driveway. Combined, the new plantings on either side of the driveway will soften visual impacts of the reservoir and equally or better meet the purpose of the regulation to maintain compatibility with surrounding areas and limit negative impacts on them. The Hearings Officer finds that *this criterion is met.*

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

character of the area; and

Findings: The proposal is in an OS zone. Adjusting the landscape standard will have no long-term effect on the transportation use of streets in the area. SE Powell Boulevard is a Major City Traffic Street, Transit Access Street, City Bikeway, and City Walkway in the Transportation Element of the Comprehensive Plan. The requested Adjustment is to alter the landscaping requirements at the top of the Butte, and will not result in any change to transportation use in the area. Therefore, the proposal is consistent with the classifications of the adjacent streets.

The desired character of the specific area is maintenance of the natural open space and continuation as a location for a water reservoir and related transmission and distribution facilities. Compatibility of the reservoir project overall was discussed extensively in the conditional use findings section of this document. Even with the reduction in requirements for buffering between the western edge of the reservoir and the abutting property line, the open space character of the area will be maintained and improved. The Hearings Officer finds that *this criterion is met.*

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

Findings: Only one adjustment is requested; the Hearings Officer finds that this criterion *does not apply.*

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

Findings: There are no City designated scenic or historic resources located on the Water Bureau property on the west side of Kelly Butte. The Hearings Officer finds that the proposed adjustment would have no impact on City-designated scenic resources and historic resources. The Hearings Officer finds that *this criterion is met.*

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

Findings: The Hearings Officer finds that the impacts from reducing the size of the landscape buffer between the reservoir and the Church property are minimal. A minor reduction in visual screening between the two properties will occur. As mentioned, this is currently offset naturally by the absence of residential development on the Church property, as well as existing forest on the Church property, and the proposed mitigation plantings on Water Bureau property. Proposed plantings on either side of the 12-foot wide access drive will soften the visual impact of the reservoir and the north valve vault. The proposed plantings will serve to mitigate impacts resulting from adjusting this landscaping requirement. The Hearings Officer finds that *this criterion is met.*

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

Findings: The requested adjustment area is partially within an environmental zone. The access driveway is a critical component of the overall design and cannot be eliminated or landscaped to meet this standard while still retaining its functionality. Findings above for approval criterion 33.430.250 A.1 demonstrate this and are incorporated as additional findings for this criterion. PWB considered moving the entire reservoir slightly east in order to meet this buffering standard, but doing so would intrude further into the Environmental Protection overly zone to the east of the proposed reservoir, creating greater detrimental effects to natural resources at the site. Since the area to the east of the reservoir is one of the more ecologically valuable areas of the site, this idea was rejected as having greater detrimental environmental impacts.

Plantings will occur on both sides of the access road where there is space between the property line to the west and the reservoir to the east. The reservoir slope will also be planted with shrubs and grasses. The Hearings Officer finds that these measures will offset any lack of plantings between the Church property and the reservoir. The Hearings Officer finds that *this criterion is met.*

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

III. CONCLUSIONS

PWB submitted an application for the approval of a conditional use, environmental review and adjustment that would permit the City to construct a new 25-million gallon water reservoir, with associated valve vaults, on Kelly Butte. Based upon input from PWB, City bureaus and public participants BDS staff prepared a Staff Report and Recommendation to the Hearings Officer (Exhibit H.4) recommending approval with conditions. One opponent, during the review process, submitted questions and expressed concerns regarding the BDS staff recommendation. The opponent's primary concerns related to environmental review approval criteria. (Exhibits H.15 and F.1). This opponent, during the open-record period, submitted a written statement raising two issues (Compliance with Metro Title 13 and satisfaction of mitigation for wildlife habitat values) (Exhibit H.15).

The Hearings Officer reviewed the PWB application and supporting materials to be exceptionally thorough and responsive to the relevant approval criteria. The Hearings Officer considered the opponent's concerns as expressed in Exhibit H.15 and found that (1) the Metro Title 13 argument was without merit and (2) that the application materials contained in the evidentiary record met the approval criteria related to mitigation for wildlife habitat values.

The Hearings Officer found, based upon the evidence in the record, that all relevant approval criteria were met, with conditions, for the condition use, environmental review and adjustment review requests.

IV. DECISION

Approval of a Conditional Use Review to replace an existing above grade water reservoir with a new below grade concrete water reservoir and associated accessory structures and development;

Approval of an Environmental Review for construction of the following in the Environmental Protection and Environmental Conservation overlay zones:

- a new 25-million gallon water reservoir;
- associated valve vault structures;
- a new access drive from SE Powell Boulevard to the new reservoir;
- basins for managing stormwater runoff and reservoir drain/overflow; and
- gravel improvements and stairs along the existing utility access route that follows the underground Parkrose Water Supply line from the existing tank to SE 101st Avenue.

Approval of an Adjustment Review for:

- waiving the requirement for 15 feet of L3 landscape screening between the new reservoir and the residentially zoned Church property, within the area shown on Exhibit C.89.

all in substantial conformance with Exhibits C.21 through C.89 excepting C.26, C.37 and C.84 which have been replaced by H.5a, H.5b, H.5c and H.5d.. Approval is subject to the following conditions:

A. This approval will run 8 calendar years from the date of final approval.

B. The addition of day/night capable security cameras with recording capability and the application of directional lighting will increase monitoring of facilities and provide the means to identify at risk areas as they change over time.

C. All permits: Copies of the approved Exhibits C.21, C.46, C.68, C.83, and C.89 from LU 11-141640 CU EN AD and Conditions of Approval listed below, shall be included within all plan sets submitted for BDS permits (building, grading, Site Development, erosion control, etc.). 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 Exhibits C.21 through C.89, excepting C.26, C.37 and C.84 which have been replaced by H.5a, H.5b, H.5c and H.5d, from LU 11-141640 CU EN AD."***

- Conditions of approval listed below shall be shown graphically on permit plans.
- Prior to issuance of any BDS permit, the applicant shall obtain a permit from Portland Parks and Recreation Urban Forestry, to allow removal of trees from City property, in accordance with City Code 20.40.
- Prior to issuance of any BDS permit, the applicant shall obtain a revocable permit from Portland Bureau of Transportation, to allow stormwater facilities within a portion of public right of way.
- As part of any application for BDS permits, the applicant shall provide a final Geotechnical

report including a slope stability analysis, for review and approval by BDS Site Development.

D. Temporary construction fencing shall be installed according to Section 33.248.068 (Tree Protection Requirements), except as noted below. Construction fencing shall be shown on permit plans graphically and shall be placed along the Limits of Construction Disturbance for the approved development, as depicted on Exhibits C.46 through C.67 Construction Management Plan, and as required in the Alternative Tree Protection Plan (Exhibit A.5), or as required by inspection staff during the plan review and/or inspection stages.

1. No mechanized construction vehicles are permitted 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. Trees shall be protected according to the applicant's Alternative Tree Protection Plan (Exhibit A.5): Tree protection fencing shall be installed as required under 33.248.068.B at least at the prescribed distance from tree stems to denote the Root Protection Zone (RPZ). Fencing shall be installed at the edge of the RPZ before any construction activities begin and must remain in place, in good condition, throughout the entire construction period. Unless otherwise noted below, no disturbance or soil compaction shall occur within the RPZ including new buildings, grade changes, new impervious surface, new utility or drainage fields, staging or storage of material and equipment and access by or maneuvering of vehicles.

E. Mitigation and landscape plantings shall be installed as follows:

1. A total of 804 trees, 6,504 shrubs, and 7.5 acres square feet of native grasses and forbs, selected from the *Portland Plant List*, shall be planted, in substantial conformance with Exhibits C.68 through C.86, excepting for Exhibit C.84 which has been replaced by Exhibits H.5c and H.5d, Landscape and Mitigation Plans .
2. Mitigation plantings that were required for LU 96-012972 EN shall be shown on permit planting plans as required.
3. Plantings shall be installed between October 1 and March 31 (the planting season).
4. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
5. Native vegetation shall not be removed from mitigation areas outside approved construction disturbance limits.
6. All mitigation and remediation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector/Landscape Professional. All tape shall be a contrasting color that is easily seen and identified.
7. After installing the required mitigation plantings, the applicant shall request inspection of Permanent Erosion Control Measures (IVR 210) by the Bureau of Development Services, who will confirm that all required mitigation plantings have been installed. A letter of certification from the landscape professional or designer of record may be requested by the Bureau of Development Services to document that the plantings have been installed according to the approved plans.

F. An inspection of Permanent Erosion Control Measures shall be required to document installation of the required mitigation plantings.

1. The **Permanent Erosion Control Measures** inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described in Condition E above);

--OR--

2. If the **Permanent Erosion Control Measures** inspection (IVR 210) occurs outside the planting season (as described in Condition E above), then the Permanent Erosion Control Measures inspection may be approved prior to installation of the required mitigation plantings – if the applicant obtains a separate **Zoning Permit** for the purpose of ensuring an inspection of the required mitigation plantings by March 31 of the following year.

G. The land owner shall maintain the required plantings for three years to ensure survival and replacement. The land owner is responsible for ongoing survival of required plantings during and beyond the designated three-year monitoring period. The landowner shall:

1. Obtain a Zoning Permit for a final inspection at the end of the 3 year maintenance and monitoring period. The permit must be finaled no later than 3 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.

H. 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 Zoning regulations. Activities which the City regulates through Title 33 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.

Gregory J. Frank, Hearings Officer

11/10/11
Date

Determined Complete: July 8, 2011
Report to Hearings Officer: September 16, 2011
Decision Mailed: November 10, 2011

Last Date to Appeal: November 28, 2011
Effective Date (if no appeal): November 29, 2011

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (503-823-7526). Until 3:00 p.m., Tuesday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., and on Mondays, the appeal must be submitted at the Reception Desk on the 5th Floor. **An appeal fee of $5,000 will be charged (one-half of the application fee for this case, up to a maximum of $5,000).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

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

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws. Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

The applicant, builder, or a representative may record the final Hearings Officer decision (unless appealed) as follows:

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

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

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

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

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

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

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

EXHIBITS
NOT ATTACHED UNLESS INDICATED

A. Applicant's Statements
   1. Application for Conditional Use, Environmental, and Adjustment Reviews
   2. Alternatives Analysis
   3. Construction Management Plan
   4. Mitigation Plan
   5. Alternative Tree Protection Plan
   6. Geotechnical Report
   7. Stormwater Management Report
   8. Letter from Church of the Nazarene
   9. Applicant's Response to incompleteness letter
   10. Clarification about superseding application materials
   11. Amendment to improve maintenance access instead of public trail north of reservoir
   12. Request to extend 120 day clock and reschedule hearing to September 14, 2011
   13. Request to extend 120 day clock and reschedule hearing to September 28, 2011
   14. Memo explaining revisions to tree removal and replacement plan
   15. E-mail message to neighborhood representative clarifying mitigation proposal
   16. Request to extend expiration period
   17. CD Completeness Response
   18. CD Revised Submittal
   19. CD Tree Modification
   20. Informal Kelly Butte notes by Teresa Elliot
   21. Copies of multiple Ordinances to purchase and develop Kelly Butte, including master development plan map
   22. Copy of The Greater Portland Plan, October 1912
B. Zoning Map **(attached)**
C. Plans and Drawings
   1. List of Drawings
   2. Vicinity/Zoning Map
   3. Existing Conditions Plan
   4. Existing Conditions Plan - Area I
   5. Existing Conditions Plan - Area II
   6. Existing Conditions Plan - Area III
   7. Existing Conditions Plan - Area IV
   8. Existing Conditions Plan - Area V
   9. Existing Conditions Plan - Area VI
   10. Existing Conditions Plan - Area VII
   11. Existing Conditions Plan - Area VIII
   12. Existing Conditions Plan - Area IX
   13. Existing Conditions Plan - Area X
   14. Existing Conditions Plan - Area XI
   15. Existing Conditions Plan - Area XII

16. Existing Conditions Plan - Area XIII
17. Existing Conditions Plan - Area XIV
18. Existing Conditions Plan - Tree Schedule - I
19. Existing Conditions Plan - Tree Schedule - II
20. Existing Conditions Plan - Tree Schedule - III
21. Proposed Development Plan **(attached)**
22. Proposed Development Plan - Area I
23. Proposed Development Plan - Area II
24. Proposed Development Plan - Area III
25. Proposed Development Plan - Area IV
26. Proposed Development Plan - Area V
27. Proposed Development Plan - Area VI
28. Proposed Development Plan - Area VII
29. Proposed Development Plan - Area VIII
30. Proposed Development Plan - Area IX
31. Proposed Development Plan - Area X
32. Proposed Development Plan - Area XI
33. Proposed Development Plan - Area XII
34. Proposed Development Plan - Area XIII
35. Proposed Development Plan - Area XIV
36. Proposed Development Plan - Details - I
37. Proposed Development Plan - Details - II
38. Proposed Development Plan - Details - III
39. Proposed Development Plan - Details - IV
40. Proposed Development Plan - Details - V
41. Proposed Development Plan - Elevations - I
42. Proposed Development Plan - Elevations - II
43. Proposed Development Plan - Elevations - III
44. Proposed Development Plan - Elevations - IV
45. Proposed Development Plan - Elevations - V
46. Construction Management Plan
47. Construction Management Plan - Area I
48. Construction Management Plan - Area II
49. Construction Management Plan - Area III
50. Construction Management Plan - Area IV
51. Construction Management Plan - Area V
52. Construction Management Plan - Area VI
53. Construction Management Plan - Area VII
54. Construction Management Plan - Area VIII
55. Construction Management Plan - Area IX
56. Construction Management Plan - Area XII
57. Construction Management Plan - Area XIII
58. Construction Management Plan - Area XIV
59. Construction Management Plan - Tree Removal Schedule - I

60. Construction Management Plan - Tree Removal Schedule - II
61. Construction Management Plan - Tree Removal Schedule - III
62. Construction Management Plan - Tree Removal Schedule - IV
63. Construction Management Plan - Tree Removal Schedule - V
64. Construction Management Plan - Details - I
65. Construction Management Plan - Details - II
66. Construction Management Plan - Details - III
67. Construction Management Plan - Details - IV
68. Landscape and Mitigation Plan
69. Landscape and Mitigation Plan - Area I
70. Landscape and Mitigation Plan - Area II
71. Landscape and Mitigation Plan - Area III
72. Landscape and Mitigation Plan - Area IV
73. Landscape and Mitigation Plan - Area V
74. Landscape and Mitigation Plan - Area VI
75. Landscape and Mitigation Plan - Area VII
76. Landscape and Mitigation Plan - Area VIII
77. Landscape and Mitigation Plan - Area IX
78. Landscape and Mitigation Plan - Area X
79. Landscape and Mitigation Plan - Area XI
80. Landscape and Mitigation Plan - Area XII
81. Landscape and Mitigation Plan - Area XIII
82. Landscape and Mitigation Plan - Area XIV
83. Landscape and Mitigation Plan - Planting Details – I
84. Landscape and Mitigation Plan - Planting Details - II
85. Landscape and Mitigation Plan - Planting Details - III
86. Landscape and Mitigation Plan - Planting Details - IV
87. Traffic Control Plan - Overall
88. Traffic Control Plan
89. Area of Adjustment **(attached)**

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 Parks, Urban Forestry Division
   2. Bureau of Transportation Engineering and Development Review
   3. Water Bureau
   4. Bureau of Police, Strategic Services Division
   5. Bureau of Transportation Engineering and Development Review
   6. Portland Parks and Recreation, Planning Division

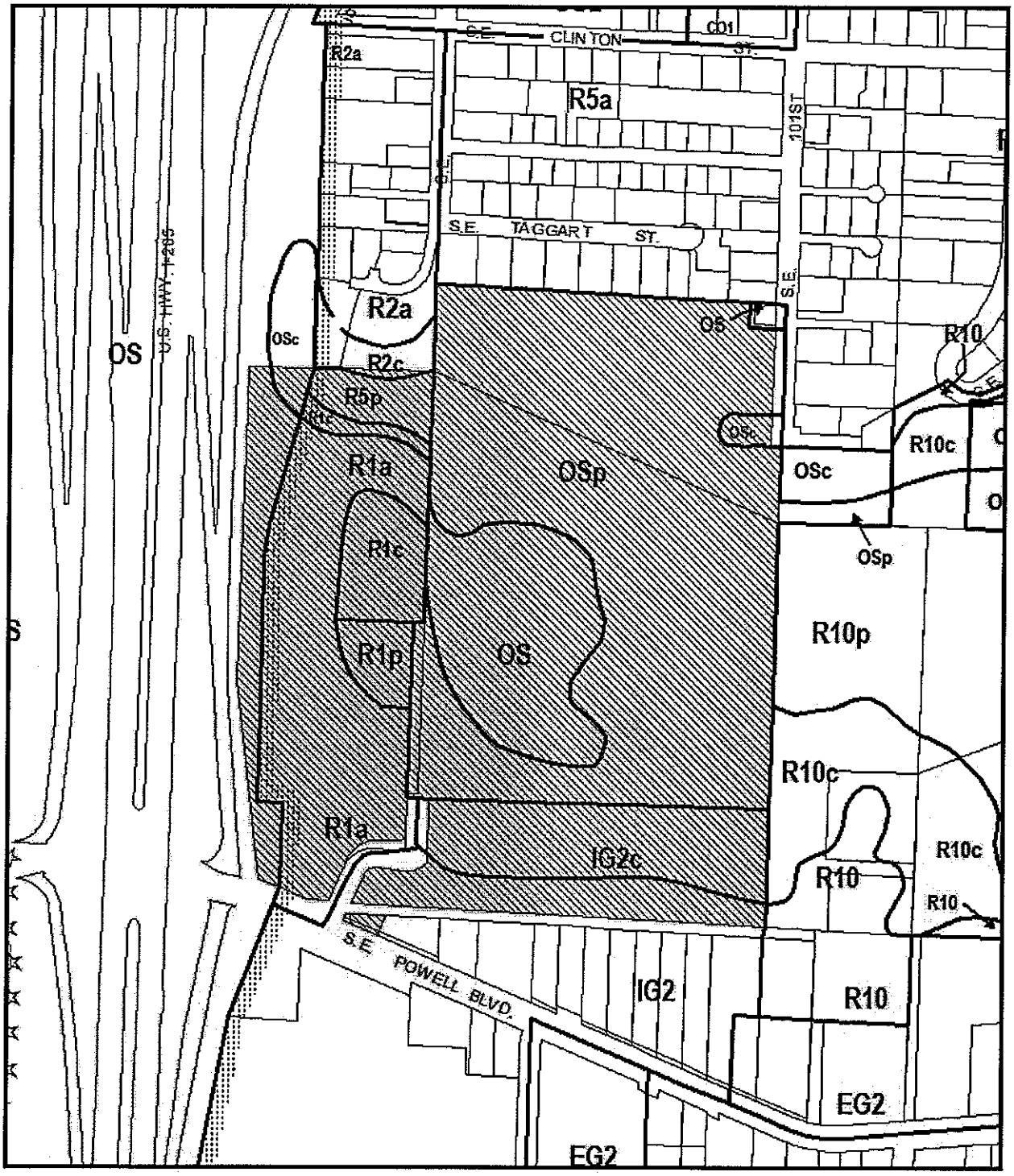
7. Bureau of Parks, Urban Forestry Division
8. Oregon Department of Transportation, Region 1 Planning
9. Bureau of Transportation Engineering and Development Review
10. Fire Bureau
11. Site Development Review Section of Bureau of Development Services
12. Bureau of Environmental Services
13. Life Safety Section of Bureau of Development Services
14. Land Use Review Section of Bureau of Development Services
15. Bureau of Parks, Urban Forestry Division
16. Bureau of Parks, Urban Forestry Division

F. Letters
1. Collection of e-mail messages from Linda Bauer, July 22, 2011 – August 9, 2011

G. Other
1. Original LUR Application
2. Site History Research
3. Letter of Incompleteness
4. Early Assistance Appointment Summary Notes
5. Pre-Application Conference Summary Notes
6. Selected Excerpts from *East Buttes, Terraces and Wetlands Conservation Plan*
7. Diagram showing distance from reservoir to residences north
8. Diagram showing distance from reservoir to residences south

H. Received in the Hearings Office
1. Request to Reschedule – Stacey Castleberry – 8/11/11
2. Request to Reschedule – Stacey Castleberry – 8/18/11
3. Hearing Notice – Sylvia Cate – 9/7/11
4. Staff Report – Sylvia Cate – 9/16/11
5. 9/27/11 E-mail from Teresa Elliott to Castleberry & Cate – Stacey Castleberry – 9/28/11
5a. Proposed Development Plan - Area V – Stacey Castleberry – 9/28/11
5b. Proposed Development Plan Details – II -- Stacey Castleberry – 9/28/11
5c. Landscape and Mitigation Plan Planting Details – II -- Stacey Castleberry – 9/28/11
5d. Landscape and Mitigation Plan Planting Details - II (Figure 5.16a) -- Stacey Castleberry – 9/28/11
6. 9/27/11 -- Memo from Wen H. Jou to Elliott – Stacey Castleberry – 9/28/11
7. PowerPoint presentation printout – Stacey Castleberry – 9/28/11
8. 9/27/11 E-mails – Water Bureau – 9/28/11
8a. Proposed Development Plan Details – II – Water Bureau – 9/28/11
8b. Landscape and Mitigation Plan Planting Details – II – Water Bureau – 9/28/11
8c. Landscape and Mitigation Plan Planting Details - II (Figure 5.16a) – Water Bureau – 9/28/11
9. 9/27/11 E-mail, Elliott to Castleberry and Cate – Water Bureau – 9/28/11
9a. Proposed Development Plan - Area V – Water Bureau – 9/28/11
10. E-mail string with attachment – Water Bureau – 9/28/11
10a. 9/27/11 Memo, Jou to Elliott – Water Bureau – 9/28/11
11. Kelly Butte Reservoir after Construction – Water Bureau – 9/28/11

12. Property Owner Map – Water Bureau – 9/28/11
13. Questions and Answers before Public Comment Period – Water Bureau – 9/28/11
14. 10/5/11 Memo – Sylvia Cate – 10/05/11
14a. Report and Decision of the Hearings Officer – Sylvia Cate – 10/05/11
14b. Notice of a Decision on a Revised Proposal in Your Neighborhood – Sylvia Cate – 10/05/11
15. Letter – Linda Bauer – 10/05/2011
16. 10/6/11 Letter – Tom Carter – 10/06/11
17. Additional Evidence for Record – Tom Carter – 10/11/11
18. Memo – Stacey Castleberry – 10/11/11
18a. Map printout – Stacey Castleberry – 10/11/11
19. 10/19/11 Final Argument – Tim Brooks – 10/19/11



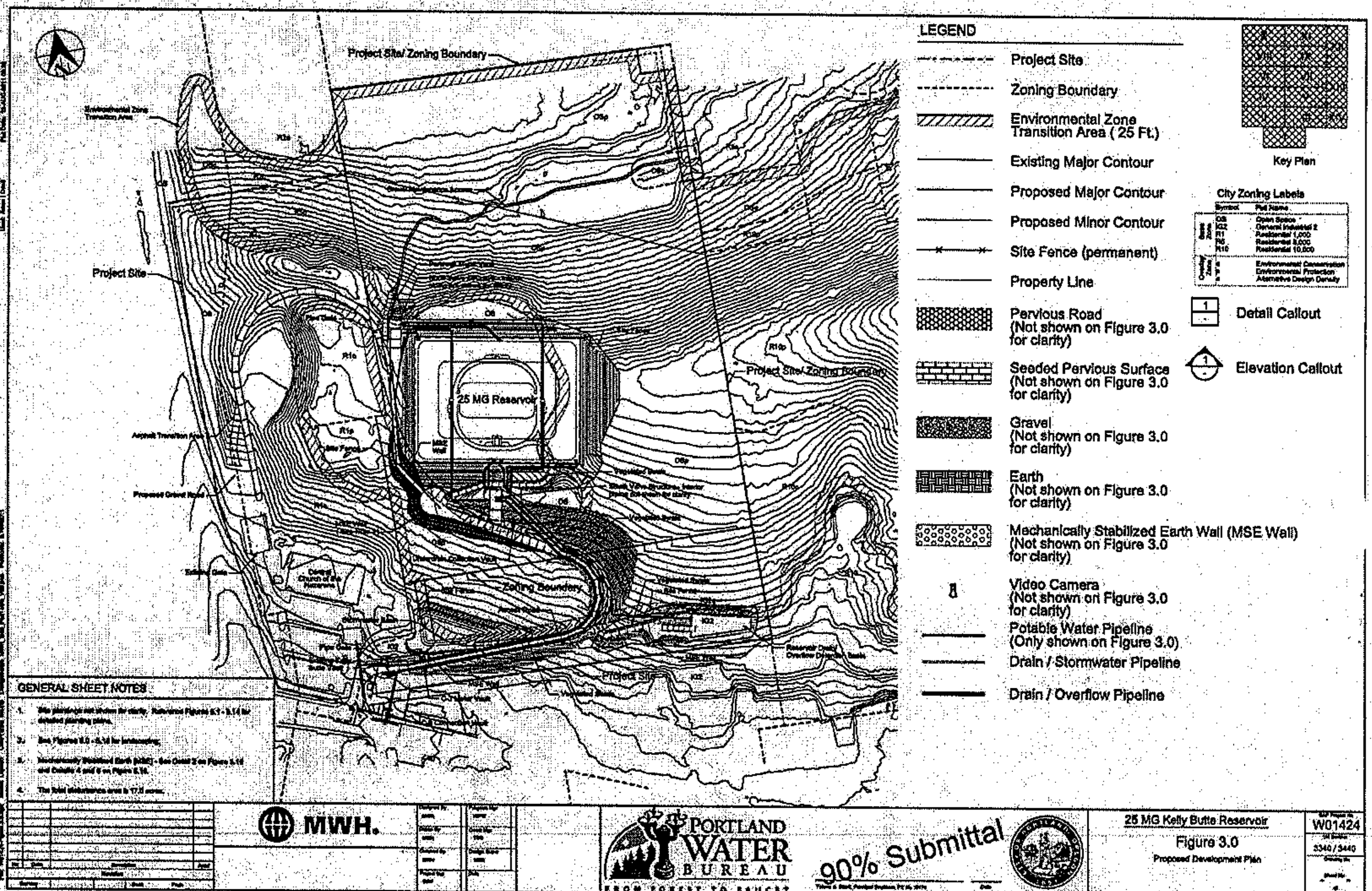
ZONING

Site

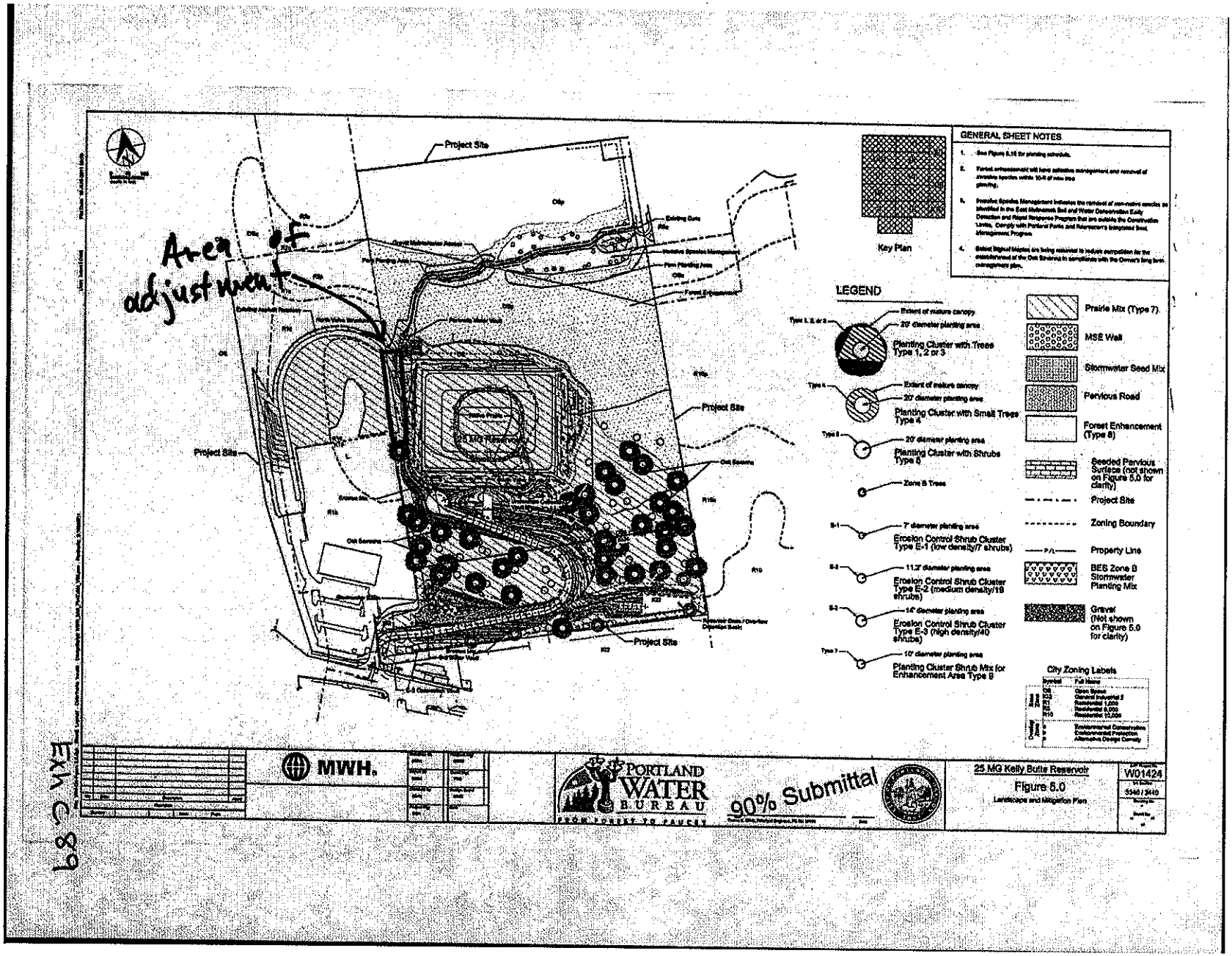
This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

NORTH

File No. LU 11-141640 CU,EN,AD
1/4 Section 3340,3440
Scale 1 inch = 300 feet
State_Id 1S2E09AD 800
Exhibit B (Jun 14,2011)


Project Site/ Zoning Boundary
Project Site
25 MG Reservoir
Zoning Boundary
Project Site/ Zoning Boundary
Project Site
LEGEND
Project Site
Zoning Boundary
Environmental Zone Transition Area (25 Ft.)
Existing Major Contour
Proposed Major Contour
Proposed Minor Contour
Site Fence (permanent)
Property Line
Pervious Road (Not shown on Figure 3.0 for clarity)
Seeded Pervious Surface (Not shown on Figure 3.0 for clarity)
Gravel (Not shown on Figure 3.0 for clarity)
Earth (Not shown on Figure 3.0 for clarity)
Mechanically Stabilized Earth Wall (MSE Wall) (Not shown on Figure 3.0 for clarity)
Video Camera (Not shown on Figure 3.0 for clarity)
Potable Water Pipeline (Only shown on Figure 3.0)
Drain / Stormwater Pipeline
Drain / Overflow Pipeline
Key Plan
City Zoning Labels
Detail Callout
Elevation Callout
GENERAL SHEET NOTES
MWH.
PORTLAND WATER BUREAU
FROM FOREST TO FAUCET
90% Submittal
25 MG Kelly Butte Reservoir
Figure 3.0
Proposed Development Plan
W01424
3340 / 3440

ExhC.21


Area of adjustment
Project Site
Project Site
Project Site
Project Site
Key Plan
GENERAL SHEET NOTES
LEGEND
Planting Cluster with Trees Type 1, 2 or 3
Planting Cluster with Small Trees Type 4
Planting Cluster with Shrubs Type 5
Zone B Trees
Erosion Control Shrub Cluster Type E-1 (low density/7 shrubs)
Erosion Control Shrub Cluster Type E-2 (medium density/19 shrubs)
Erosion Control Shrub Cluster Type E-3 (high density/40 shrubs)
Planting Cluster Shrub Mix for Enhancement Area Type 8
Prairie Mix (Type 7)
MSE Wall
Stormwater Seed Mix
Pervious Road
Forest Enhancement (Type 8)
Seeded Pervious Surface (not shown on Figure 5.0 for clarity)
Project Site
Zoning Boundary
Property Line
BES Zone B Stormwater Planting Mix
Gravel (Not shown on Figure 5.0 for clarity)
City Zoning Labels
MWH.
PORTLAND WATER BUREAU
FROM FOREST TO FAUCET
90% Submittal
25 MG Kelly Butte Reservoir
Figure 5.0
Landscape and Mitigation Plan
W01424

Exh. C
68