

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

<http://www.multco.us/landuse>

NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-2012-2307

Permit: Verification and Alteration of a Nonconforming Use (NC), Significant Environmental Concern for Wildlife Habitat (SEC-h), Significant Environmental Concern for Scenic Views (SEC-v)

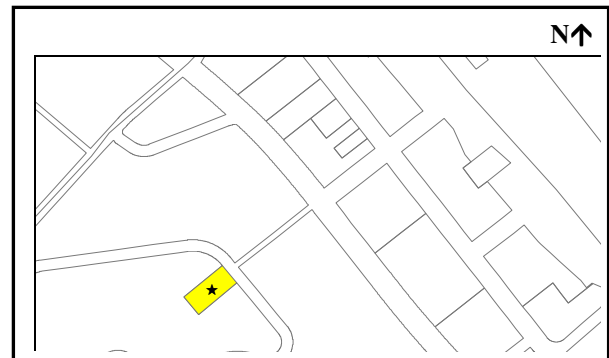
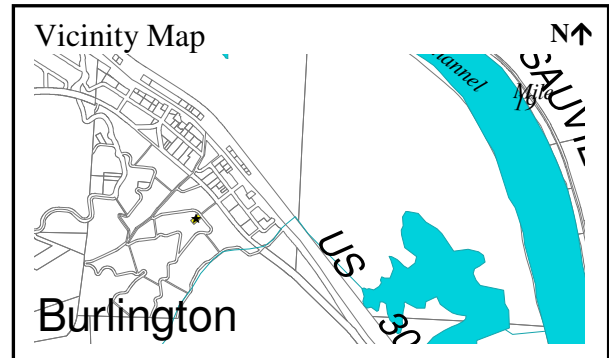
Location: Adjacent to NW Inspiration Drive, Lot 16, Block 40, Burlington Subdivision Tax Lot 3800, Section 20BD Township 2 North, Range 1 West, W.M. Tax Account #R119906260

Applicants: Burlington Water District

Owners: Burlington Water District

Base Zone: Commercial Forest Use – 1 (CFU-1)

Overlays: SEC-h, SEC-v



Summary: Proposal to replace an existing 80-year old failing, partially buried water reservoir with a new, taller, dark-green steel reservoir in the same location.

Decision: Approved with Conditions

Unless appealed, this decision is effective October 19, 2012, at 4:00 PM.

Issued by:

By: _____
Kevin C. Cook, Planner

For: Karen Schilling- Planning Director

Date: Friday, October 5, 2012

Instrument Number for Recording Purposes: #BP11450184

Exhibit B.70

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Kevin Cook, Staff Planner at 503-988-3043, ext. 26782.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is October 19, 2012 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 33.7200 – 33.7214, Nonconforming Uses; 33.4500 – 33.4565, Significant Environmental Concern; 33.2000 – 33.2110, Commercial Forest Use – 1 Zone; Chapter 37 Administration and Procedures.
Multnomah County Road Rules (MCRR): 1.000 – 22.000

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse> or <http://web.multco.us/transportation-planning>.

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit expires pursuant to MCC 37.0690(B) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, Kevin Cook, at (503) 988-3043 ext. 26782, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the

building permits before the applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 may be required.

1. Prior to building plan sign-off, the property owner shall record the Notice of Decision cover sheet through the conditions of approval (pages 1-3) with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to building plan signoff the issuance of any permits and a copy filed with Land Use Planning. Recording shall be at the applicant's expense. [MCC 37.0670]
2. Prior to building plan signoff, the applicant or owner shall obtain all necessary County erosion control approvals (i.e. Grading and Erosion Control Permit or Minimal Impact Project approval, as appropriate). [MCC 29.336]
3. Prior to building plan signoff, the applicant or owner shall obtain an Address Assignment from Multnomah County. [MCC 37.1505]
4. Prior to building plan signoff, the applicant or owner shall obtain a right of way access permit from the Multnomah County Right of Way Specialist.
5. The entire exterior of the reservoir shall be dark green as proposed. [MCC 33.4565(C)(2)]
6. No nuisance plants as listed in MCC 33.4570(B)(7) shall be planted on the subject property. The property owner shall routinely monitor the site for the presence of nuisance plants and shall immediately remove them upon discovery. [MCC 33.4570(B)(7)]

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.00 Project Description:

The applicants are seeking to replace the 80-year old drinking water reservoir that is part of the Burlington Water District supply infrastructure. The applicant indicates the existing concrete reservoir is failing and seeks to replace in the same location with a larger capacity steel tank. The steel tank exterior of the tank is a dark-green ceramic material. The existing 48 foot diameter, concrete reservoir is approximately 5 feet above grade. The new water reservoir would also be 48 feet in diameter and located in the same footprint as the concrete reservoir. The new reservoir would extend to 34.25 feet above grade as measured from the average grade to the average peak of the dome. The application for a replacement reservoir was received on May 17, 2012 and deemed complete on August 2, 2012. A 14-day opportunity to comment notice was mailed on August, 6, 2012; no comments were received.

2.00 Property Description & History:

The 0.19 acre property is zoned CFU-1 and is located in the West Hills west of Highway 30 (St. Helens Highway). The adjacent properties are also zoned CFU-1 and are owned by Metro. The property has been the site of a water reservoir for the past 80 years. Other than the access drive and belowground pipes, there is no other development on the property.

3.00 Base Zone Criteria (CFU-1):

3.01 MCC 33.2030 **CONDITIONAL USES**

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

(A) The following Community Service Uses pursuant to all applicable approval criteria, including but not limited to the provisions of MCC 33.2045, 33.2050, 33.2056, 33.2061, 33.6000 through 33.6010, and 33.6100 through 33.6230:

(5) Water intake facility, related treatment facility, pumping station, and distribution line.

(6) Reservoir and water impoundment.

Staff: The water reservoir is potentially allowed on the subject property as a Conditional Use. Because the reservoir has existed on the property since before zoning rules were first applied, the owner can choose to qualify the use as either a Conditional Use, subject to the approval standards, or as an existing nonconforming use that may then be altered subject to the criteria for alteration of a nonconforming use. The applicant has applied for a Verification and Alteration of a Nonconforming use in which case the Conditional Use criteria and CFU-1 siting standards do not apply.

3.02 MCC 33.2050 BUILDING HEIGHT REQUIREMENTS

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: The reservoir would extend to 34.25 feet above grade as measured from the average grade to the average peak of the dome.

3.03 MCC 33.2056 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Table 1

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Replaced or restored dwelling in same location &/or less than 400 sq. ft. additional ground coverage; Alteration and maintenance of dwelling	May maintain current nonconforming setback(s) if less than 30 ft. to property line	30	30	Property owner is encouraged to establish Primary to the extent possible

Staff: The tank will be place in the same footprint as the existing and therefore will not increase the degree of nonconformity in terms of setbacks. The tank, being a primary use on the property the fire safety zone standards are not required. However, the property owner is encouraged to maintain a fire safety zone on the property to the extent possible.

3.04 § 33.2075 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

- (a) Which were held under the same ownership on February 20, 1990; and**
- (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.**

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot Size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, F-2 zone applied;

(2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

(3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;

(4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;

(5) February 20, 1990, lot of record definition amended, Ord. 643;

(6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;

(7) August 8, 1998, CFU-1 zone applied, Ord. 916 (reenacted by Ord. 997);

(8) May 15, 2002, Lot of Record section amended, Ord. 982 & reenacted by Ord. 997;

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 33.2073, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(D) The following shall not be deemed a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;
- (2) An area of land created by the foreclosure of a security interest;
- (3) A Mortgage Lot;
- (4) An area of land created by court decree.

Staff: The property was created as part of the Burlington Subdivision in 1909 (Exhibit B.3), which was prior to county wide zoning. The property is a Lot of Record.

4.00 Nonconforming Use:

4.01 MCC 33.7200- NONCONFORMING USES

(A) The purpose of this section is to establish standards and procedures regulating the continuation, alteration, expansion, and replacement of nonconforming uses. The intent is to allow procedures for considering changes to nonconforming uses that do not increase the level of adverse impacts on the neighborhood, or changes required for the use to comply with State or County health or safety requirements.

(B) The Planning Director must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of the nonconforming use will have a greater adverse impact on the neighborhood under MCC 33.7214(C).

(C) Nonconforming uses shall be allowed to continue without additional permission, except that such uses may be replaced, altered or expanded only as provided in MCC 33.7209 and 33.7214 after verification under MCC 33.7204.

Staff: See findings below.

4.02 (D) If a nonconforming use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms with the requirements of this Zoning Code at the time of the proposed resumption.

Staff: The reservoir has been in continuous use since it began operation in 1920.

4.03 (E) Notwithstanding any other provisions of this Code, a surface mining use shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:

- (1) The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a State of Oregon exemption from surface mining regulation; and

(2) The surface mining use was not inactive for a period of 12 consecutive years or more.

(3) For purposes of this subsection, *inactive* means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

Staff: No mining exists on the property. No mining is proposed.

4.04 (F) A nonconforming use may be maintained with ordinary care.

(G) A change in ownership or occupancy of a nonconforming use is permitted.

Staff: The reservoir has been in service since 1920 and the replacement is will serve the same purpose into the foreseeable future.

4.05 (H) No application under this section is required for the alteration, expansion, or replacement of a lawfully established habitable dwelling when a governing zoning district regulates such alteration, expansion, or replacement and the proposed alteration, expansion, or replacement satisfies the dimensional requirements of the district.

Staff: No dwellings exist on the site. Not applicable.

MCC 33.7204 VERIFICATION OF NONCONFORMING USE STATUS

4.06 (A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:

(1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and

Staff: According to the Burlington Water District, the reservoir was established circa 1920 shortly after the Burlington Subdivision Plat of 1909 (Exhibit A.20). Multnomah County first applied countywide zoning in 1953. The reservoir was not regulated by zoning rules in 1920 and was legally established at the time.

4.07 (2) Has not been abandoned or interrupted for a continuous two year period.

Staff: The reservoir has been in continuous use since its establishment in 1920.

4.08 (B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:

(1) Description of the use;

(2) The types and quantities of goods or services provided and activities conducted;

- (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**
- (4) The number, location and size of physical improvements associated with the use;**
- (5) The amount of land devoted to the use; and**
- (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.**

Staff: The concrete reservoir has not changed since it was established in 1920. The reservoir is a 48 foot diameter concrete structure approximately 5 feet tall (15 feet deep – considering 10 feet is buried below grade). The existing reservoir stores 200,000 gallons of drinking water, is supplied by the Portland Water Bureau and distributes water to the Linnton community. There is, and will continue to be, one tank on the property with a footprint of approximately 1,810 square feet.

- 4.09 (7) A reduction of scope or intensity of any part of the use as determined under this subsection (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.**

Staff: The reservoir has been in continuous service since it was established in 1920. There is no evidence to suggest a reduced level of use beyond normal seasonal and maintenance related fluctuations.

- 4.10 (C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.**

Staff: According to the Burlington Water District, the reservoir was established circa 1920 shortly after the Burlington Subdivision Plat of 1909 (Exhibit A.20). Multnomah County first applied countywide zoning in 1953. The reservoir was not regulated by zoning rules in 1920 and was legally established at the time.

- 4.11 (D) Except for nonconforming uses considered under MCC 33.7214 (B), the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification.**

Staff: Conditions imposed are related to grading erosion, property addressing, and ongoing conditions regarding colors and vegetation management as required by other sections of this code.

- 4.12 (E) An applicant may prove the continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, existed at the time the**

applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.

Staff: The reservoir has been in continuous use since its establishment in 1920 (Exhibit A.20).

- 4.13 (F) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the continuity, nature and extent of the use for a period exceeding 20 years immediately proceeding the date of application. Evidence proving the continuity, nature and extent of the use for the 20-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.**

Staff: The reservoir has been in continuous use since its establishment in 1920.

4.14 MCC 33.7214 ALTERATION, EXPANSION OR REPLACEMENT OF NONCONFORMING USES

(A) Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements.

Staff: The applicant proposes to expand the capacity over the existing reservoir by placing a taller structure within the same footprint as the existing structure. The reservoir is a comparatively passive land-use (as compared to dwellings, commercial uses, etc.). The surrounding property is a natural area owned by Metro. The new reservoir is not expected to generate any additional neighborhood impact as currently exists. According to the applicant, the new reservoir is required based upon findings by the Oregon Health Authority recommending replacement of the existing reservoir (Exhibit A.20).

- 4.15 (B) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 33.7204, the Planning Director shall authorize alteration of a nonconforming use when it is demonstrated that:**

(1) The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements, or

Staff: According to the applicant, the new reservoir is required based upon findings by the Oregon Health Authority recommending replacement of the existing reservoir (Exhibit A.20).

- 4.16 (2) The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity.**

Staff: The project qualifies under (B)(1) above.

- 4.17 (C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 33.7204, the Planning Director may authorize alteration, expansion**

or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

(1) The character and history of the use and of development in the surrounding area;

Staff: The site has been used as a reservoir for over 80 years. No complaints are on record with this office. No comments were received during the comment period. The applicant proposes to expand the capacity over the existing reservoir by placing a taller structure within the same footprint as the existing structure. The reservoir is a comparatively passive land-use (as compared to dwellings, commercial uses, etc.). The surrounding property is a natural area owned by Metro. The new reservoir is not expected to generate any additional neighborhood impact as currently exists. According to the applicant, the new reservoir is required based upon findings by the Oregon Health Authority recommending replacement of the existing reservoir (Exhibit A.20).

4.18 (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;

Staff: The reservoir generally does not generate these types of nuisances. See findings in Section 5 below regarding glare within the SEC-v overlay.

4.19 (3) The comparative numbers and kinds of vehicular trips to the site;

Staff: Once construction is complete, there will be no change to the existing number of service trips to the site over existing.

4.20 (4) The comparative amount and nature of outside storage, loading and parking;

Staff: No outside storage is proposed. Existing parking for occasional service vehicles will remain unchanged.

4.21 (5) The comparative visual appearance;

Staff: The visual appearance will change, but not in a way that will create greater impact to the vicinity – see findings under Section 5, SEC-v findings.

4.22 (6) The comparative hours of operation;

Staff: The reservoir is in continuous use 24 hours per day.

4.23 (7) The comparative effect on existing flora;

Staff: No effect on existing flora above existing – routine maintenance of vegetation is required.

4.24 (8) The comparative effect on water drainage or quality; and

Staff: The applicant has submitted a completed Storm Water Certificate indicating that runoff will continue to be handled onsite.

4.25 (9) Other factors which impact the character or needs of the neighborhood.

Staff: No impact over existing to the surrounding natural area. No other factors have surfaced, which need to be considered. In conclusion, the applicant has demonstrated the project will not have a greater impact.

4.26 (D) Any decision on alteration, expansion or replacement of a nonconforming use shall be processed as a Type II permit as described in MCC Chapter 37.

Staff: This application is processed as a Type II application in accordance with MCC Chapter 37.

5.00 Significant Environmental Concern:

5.01 MCC 33.4505 AREA AFFECTED

Except as otherwise provided in MCC 33.4510 or MCC 33.4515, this subsection shall apply to those lands designated SEC on the Multnomah County Zoning Map.

Staff: The subject property is within the SEC-h and SEC-v overlay districts.

5.02 MCC 33.4510 USES; SEC PERMIT REQUIRED

(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alteration of a use, except as provided in MCC 33.4515, shall be subject to an SEC permit.

(B) Any excavation or any removal of materials of archaeological, historical, prehistorical or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.

(C) Activities proposed for lands designated as scenic waterways under the Oregon Scenic Waterways System shall be subject to an SEC permit in addition to approval from the Oregon Parks and Recreation Department.

Staff: The use is permitted as an alteration to a nonconforming use in the CFU-1 zone; see findings in Section 4 above. The project does not include archaeological excavations. The site is not within area with a Scenic waterways designation.

5.03 MCC 33.4515 EXCEPTIONS

(A) Except as specified in (B) below, a SEC permit shall not be required for the following:

(1) Farm use, as defined in ORS 215.203 (2) (a), including buildings and structures accessory thereto on "converted wetlands" as defined by ORS 541.695 (9) or on upland areas;

- (2) The propagation of timber or the cutting of timber for public safety or personal use or the cutting of timber in accordance with the State Forest Practices Act;**
- (3) Customary dredging and channel maintenance and the removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, levees, groins, riprap, drainage ditch, irrigation ditches and tile drain systems as allowed by ORS 196.905 (6);**
- (4) The placing, by a public agency, of signs, markers, aids, etc., to serve the public;**
- (5) Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses on public lands;**
- (6) The expansion of capacity, or the replacement, of existing communication or energy distribution and transmission systems, except substations;**
- (7) The maintenance and repair of existing flood control facilities;**
- (8) Uses legally existing on January 7, 2010; provided, however, that any change, expansion, or alteration of such use (except for changes to a structure that: [1] for the SEC, SEC-w, and SEC-v overlays, do not require any modification to the exterior of the structure, and [2] for the SEC-h and SEC-s overlays, require the addition of less than 400 square feet of ground coverage to the structure) shall require an SEC permit as provided herein;**
- (9) All type A Home Occupations;**
- (10) Type B Home Occupations that require the addition of less than 400 square feet of ground coverage to the structure;**
- (11) Alteration, repair, or replacement of septic system drainfields due to system failure;**
- (12) Single utility poles necessary to provide service to the local area;**
- (13) Right-of-way widening for existing rights-of-way when additional right-of-way is necessary to ensure continuous width; and**
- (14) Stream enhancement or restoration projects limited to removal by hand of invasive vegetation and planting of any native vegetation on the Metro Native Plant List;**
- (15) Enhancement or restoration of the riparian corridor for water quality or quantity benefits, or for improvement of fish and wildlife habitat, pursuant to a plan that does not include placement of buildings or structures and does not entail grading in an amount greater than 10 cubic yards. This exemption is applicable to plans that are approved by Soil and Water Conservation District, the Natural Resources Conservation District, or the Oregon Department of Fish and Wildlife under the provisions for a Wildlife and Habitat Conservation Plan, and submitted to the County.**

(B) Within Metro’s 2009 jurisdictional boundary, an SEC-s permit is required for agricultural buildings, structures and development associated with farm practices and agricultural uses, except that agricultural fences shall not require an SEC-s permit.

Staff: The project does not meet the exemptions above. The project does not meet is a new structure and not an addition to an existing structure, so it does not meet the exemption under 8 above. The SEC-h and SEC-v reviews are required for the project.

5.04 MCC 33.4525 APPLICABLE APPROVAL CRITERIA

(A) The approval criteria that apply to uses in areas designated SEC-w, SEC-v, SEC-h and SEC-s on Multnomah County zoning maps shall be based on the type of protected resources on the property, as indicated by the subscript letter in the zoning designation, as follows:

Zoning Designation	Approval Criteria (MCC#)
SEC-w (wetlands)	33.4560
SEC-v (scenic views)	33.4565
SEC-h (wildlife habitat)	33.4570
SEC-s (streams)	33.4575

(B) The zoning maps used to designate the Stream Conservation Areas (SEC-s zoning subdistricts) were created digitally by interpreting various data sources including the hand drawn maps contained in the Goal 5 ESEE report and Metro’s riparian and wildlife habitat inventories. Care was taken in the creation of the maps, but in some instances mapping inaccuracies have occurred during the process. In the event of a mapping inconsistency, the SEC-s zoning subdistrict shall be interpreted to be the defined Stream Conservation Area.

(C) An application for a use on a property containing more than one protected resource shall address the approval criteria for all of the designated resources on the property. In the case of conflicting criteria, approval shall be based on the ability of the proposed development to comply as nearly as possible with the criteria for all designated resources that would be affected.

(D) For protected stream resources, the approval criteria shall be used to determine the most appropriate location, size and scope of the proposed development, in order to make the development compatible with the purposes of this section, but shall not be used to prohibit a use or be used to require removal or relocation of existing physical improvements to the property.

MCC 33.4530 SEC PERMIT - REQUIRED FINDINGS

A decision on an application for an SEC permit shall be based upon findings of consistency with the purposes of the SEC district and with the applicable criteria for approval specified in MCC 33.4560 through 33.4575.

MCC 33.4550 SCOPE OF CONDITIONS

(A) Conditions of approval of an SEC permit, if any, shall be designed to bring the application into conformance with the applicable criteria of MCC 33.4560 through 33.4575 and any other requirements specified in the Goal 5 protection program for the affected resource. Said conditions may relate to the locations, design, and maintenance of existing and proposed improvements, including but not limited to buildings, structures and use areas, parking, pedestrian and vehicular circulation and access, natural vegetation and landscaped areas, fencing, screening and buffering, excavations, cuts and fills, signs, graphics, and lighting, timing of construction and related activities.

(B) Approval of an SEC permit shall be deemed to authorize associated public utilities, including energy and communication facilities.

Staff: Conditions imposed are related to grading erosion, addressing, and ongoing conditions regarding colors and vegetation management as required by other sections of this code.

5.05 MCC 33.4565 CRITERIA FOR APPROVAL OF SEC-V PERMIT -SIGNIFICANT SCENIC VIEWS

(A) Definitions:

(1) *Significant scenic resources* consist of those areas designated SEC-v on Multnomah County sectional zoning maps.

(2) *Identified Viewing Areas* are public areas that provide important views of a significant scenic resource, and include both sites and linear corridors. Identified Viewing Areas are:

Bybee-Howell House
Virginia Lakes
Sauvie Island Wildlife Refuge
Kelley Point Park
Smith and Bybee Lakes
Highway 30
The Multnomah Channel
The Willamette River
Public roads on Sauvie Island

(3) *Visually subordinate* means development does not noticeably contrast with the surrounding landscape, as viewed from an identified viewing area. Development that is visually subordinate may be visible, but is not visually dominant in relation to its surroundings.

Staff: The entire property is located within the SEC-v overlay and is listed as visible from all of the above Identified Viewing Areas. The reservoir will be visually subordinate as verified in the following findings.

5.06 (C) Any portion of a proposed development (including access roads, cleared areas and structures) that will be visible from an identified viewing area shall be *visually*

subordinate. Guidelines which may be used to attain visual subordination, and which shall be considered in making the determination of visual subordination include:

(1) Siting on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.

Staff: The entire site is topographically visible as seen from Identified Viewing Areas. The foreground and background are heavily wooded. Additionally, the site is so small, compared to typically Forest zoned properties, that the tank cannot be moved more than a few feet in any direction on the property, placing the tank elsewhere on the property would not provide any benefit in terms of adding to the degree of visual subordination.

5.07 (2) Use of nonreflective or low reflective building materials and dark natural or earthtone colors.

Staff: The steel tank will be coated with a dark-green color, ceramic material that has a reflectivity between 5.2% and 6.2% (+/- 2%) (Exhibit A.29). Reflectivity will be further reduced given the fact that the structure is curvilinear and would typically be shaded throughout much of the day given the surrounding higher terrain (to the south and west) and vegetation that would block much the southern solar exposure. Though the tank is metal, reflectivity will be minimal due to the above factors.

5.08 (3) No exterior lighting, or lighting that is directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas. Shielding and hooding materials should be composed of nonreflective, opaque materials.

Staff: No exterior lighting is proposed.

5.09 (4) Use of screening vegetation or earth berms to block and/or disrupt views of the development. Priority should be given to retaining existing vegetation over other screening methods. Trees planted for screening purposes should be coniferous to provide winter screening. The applicant is responsible for the proper maintenance and survival of any vegetation used for screening.

Staff: On site vegetation consists of low shrubs and will provide little in the way of screening. The site is too small to plant any substantial screening vegetation.

5.10 (5) Proposed developments or land use shall be aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.

Staff: The existing tank will be situated so that the existing topography will provide a backdrop to the dark green tank. No significant modifications to existing grade are proposed.

5.11 (6) Limiting structure height to remain below the surrounding forest canopy level.

Staff: The proposed structure will likely protrude above the canopy height on the down slope side but will be surrounded by vegetation on all other sides.

5.12 (7) Siting and/or design so that the silhouette of buildings and other structures remains below the skyline of bluffs or ridges as seen from identified viewing areas. This may require modifying the building or structure height and design as well as location on the property, except:

(a) New communications facilities (transmission lines, antennae, dishes, etc.), may protrude above a skyline visible from an identified viewing area upon demonstration that:

1. The new facility could not be located in an existing transmission corridor or built upon an existing facility;

2. The facility is necessary for public service; and

3. The break in the skyline is the minimum necessary to provide the service.

Staff: The reservoir will not exceed the height of any ridges or bluffs in the background.

5.13 (D) Mining of a protected aggregate and mineral resource within a PAM subdistrict shall be done in accordance with any standards for mining identified in the protection program approved during the Goal 5 process. The SEC Application for Significant Scenic Views must comply only with measures to protect scenic views identified in the Goal 5 protection program that has been designated for the site.

Staff: The proposal does not include mining.

5.14 (E) The approval authority may impose conditions of approval on an SEC-v permit in accordance with MCC 33.4550, in order to make the development visually subordinate. The extent and type of conditions shall be proportionate to the potential adverse visual impact of the development as seen from identified viewing areas, taking into consideration the size of the development area that will be visible, the distance from the development to identified viewing areas, the number of identified viewing areas that could see the development, and the linear distance the development could be seen along identified viewing corridors.

Staff: Conditions imposed are related to grading erosion, addressing, and ongoing conditions regarding colors and vegetation management as required by other sections of this code.

5.15 MCC 33.4570 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT

(B) Development standards:

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Staff: The location of the reservoir is an existing non-forested cleared area. The new reservoir is proposed in the same location in the same footprint as the existing reservoir.

- 5.16** (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Staff: The reservoir will be located approximately 30 feet from the public right of way.

- 5.17** (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

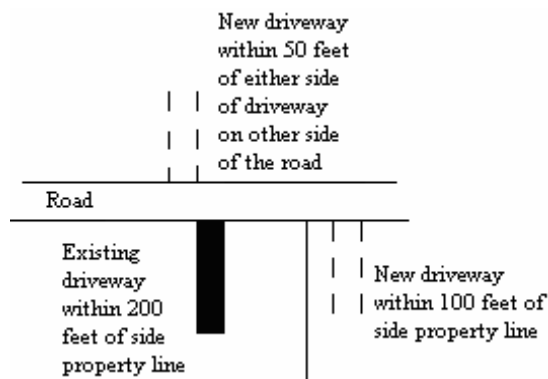
Staff: The driveway is approximately 30 feet in length.

- 5.18** (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

(a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or

(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

(c) Diagram showing the standards in (a) and (b) above.



For illustrative purposes only.

(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County “Design and Construction Manual,” adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).

1. The modification shall be the minimum necessary to allow safe access onto the public road.

2. The County Road Official shall provide written findings supporting the modification.

Staff: The driveway is existing and the standard is not applicable.

- 5.19 (5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

Staff: There are no structures on adjacent property within 200 feet of the common property lines.

- 5.20 (6) Fencing within a required setback from a public road shall meet the following criteria:

(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.

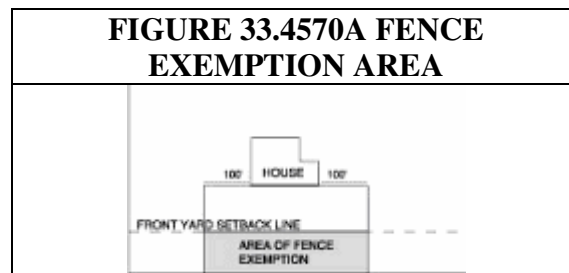
(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.

(c) Cyclone, woven wire, and chain link fences are prohibited.

(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.

(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.

(f) Fencing standards do not apply where needed for security of utility facilities.



Staff: Fencing is needed for security reasons to protect the water supply so is exempt under (f) above.

- 5.21 (7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:

Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine
<i>Cirsium arvense</i>	Canada Thistle
<i>Cirsium vulgare</i>	Common Thistle
<i>Clematis ligusticifolia</i>	Western Clematis
<i>Clematis vitalba</i>	Traveler's Joy
<i>Conium maculatum</i>	Poison hemlock

Scientific Name	Common Name
<i>Convolvulus arvensis</i>	Field Morning-glory
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory
<i>Convolvulus seppium</i>	Lady's nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann's Lace
<i>Elodea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail
<i>Equisetum telemateia</i>	Giant Horsetail
<i>Erodium cicutarium</i>	Crane's Bill
<i>Geranium roberianum</i>	Robert Geranium
<i>Hedera helix</i>	English Ivy
<i>Hypericum perforatum</i>	St. John's Wort
<i>Ilex aquafolium</i>	English Holly
<i>Laburnum watereri</i>	Golden Chain Tree
<i>Lemna minor</i>	Duckweed, Water Lentil
<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Rhus diversiloba</i>	Poison Oak
<i>Rubus discolor</i>	Himalayan Blackberry
<i>Rubus laciniatus</i>	Evergreen Blackberry

Scientific Name	Common Name
<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Solanum dulcamara</i>	Blue Bindweed
<i>Solanum nigrum</i>	Garden Nightshade
<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Urtica dioica</i>	Stinging Nettle
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinosum</i>	Spiny Cocklebur
various genera	Bamboo sp.

Staff: Applicant indicates that Blackberry, Canada Thistle, Dandelion, and Queen Anne's Lace exists on the site and further indicates that the offending vegetation will be removed and the site shall henceforth be kept clear of new infestations of said prohibited vegetation (Exhibit A.3).

6.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Verification and Alteration of a Nonconforming Use, and Significant Environmental Concern Permits to replace the existing water reservoir with a new water reservoir in the CFU-1 zone. This approval is subject to the conditions of approval established in this report.

7.00 Exhibits

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Procedural Exhibits

Exhibits are available for review in Case File T2-2012-2307 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	05/17/2012
A.2	1	Applicant's Coversheet	05/17/2012
A.3	11	SEC-h Worksheet	05/17/2012
A.4	10	SEC-v Worksheet	05/17/2012
A.5	1	Storm Water Certificate	05/17/2012
A.6	1	Burlington Subdivision Plat	05/17/2012
A.7	3	PortlandMaps.com property information sheets	05/17/2012

A.8	1	Applicant's Site Plan	05/17/2012
A.9	1	Reservoir Site Detail	05/17/2012
A.10	1	Reservoir Cross Section	05/17/2012
A.11	1	Site Photograph Looking North	05/17/2012
A.12	1	Site Photograph Looking West	05/17/2012
A.13	1	Site Photograph Looking Southwest	05/17/2012
A.14	1	Aerial Photo with Profile to the East	05/17/2012
A.15	1	Aerial Photo with Profile to the North	05/17/2012
A.16	1	Aerial Photo of Existing Reservoir	05/17/2012
A.17	1	Aerial Photo of Vicinity of Reservoir	05/17/2012
A.18	1	Fire Service Agency Review Form	05/18/2012
A.19	5	Photographs of a similar water reservoir	05/21/2012
A.20	9	Applicant's Narrative	05/23/2012
A.21	1	1995 Aerial Photograph	05/23/2012
A.22	1	Access Detail	05/23/2012
A.23	11	Email chain between applicant and staff	07/25/2012
A.24	1	Photograph of an existing blue color reservoir	07/25/2012
A.25	1	Photograph of an existing colbalt-blue color reservoir	07/25/2012
A.26	1	Photograph of an existing colbalt-blue color reservoir with additional description	07/27/2012
A.27	1	2 photographs towards the site taken from across the Multnomah Channel on Sauvie Island	07/30/2012
A.28	2	Email from applicant regarding reflectivity of proposed reservoir	08/02/2012
A.29	1	Reflectance Analysis submitted by Schmitt Measurement Systems, Inc.	
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	05/17/2012
B.2	1	A&T Tax Map with Property Highlighted	05/17/2012
B.3	1	Copy of Burlington Subdivision Plat – Platted 03/02/1909	06/05/2012
B.4	1	Email from Joanna Valencia, County Transportation Planner	06/05/2012
B.5	1	Email Correspondence Between Staff and Applicant 5/18/2012 through 06/22/2012.	06/05/2012
'C'	#	Administration & Procedures	Date
C.1	2	Incomplete Letter	06/12/2012

C.2	2	2 nd Incomplete Letter	07/05/2012
C.3	1	Applicant's Acceptance of 180 Day Clock	07/12/2012
C.4	1	3 rd Incomplete Letter	07/26/2012
C.5	1	Complete Letter (Complete as of 08/02/2012)	08/03/2012
C.6	3	Opportunity to Comment and Mailing List	08/07/2012