



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

Charlie Hales, Mayor  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** April 16, 2013  
**To:** Interested Person  
**From:** Kathleen Stokes, Land Use Services  
503-823-7843 / [Kathleen.Stokes@portlandoregon.gov](mailto:Kathleen.Stokes@portlandoregon.gov)

## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 13-128250 AD**

#### **GENERAL INFORMATION**

**Applicant:** Greg Shepherd / Xera Plants Inc.  
PO Box 633 / Tualatin OR 97062

**Owner:** Norman A Creitz  
8799 SW Becker Drive / Portland, OR 97223

**Site Address:** 1114 SE CLAY ST

**Legal Description:** BLOCK 122 N 45' OF LOT 1, STEPHENS ADD  
**Tax Account No.:** R794015050  
**State ID No.:** 1S1E02CA 15000  
**Quarter Section:** 3231  
**Neighborhood:** Hosford-Abernethy, contact Joanne Stainbrook at 503-231-9245.  
**Business District:** Central Eastside Industrial Council, Peter Fry at 503-274-1415.  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Plan District:** Central City - Central Eastside  
**Zoning:** EXd (Central Employment, with a Design Overlay)  
**Case Type:** Adjustment Review  
**Procedure:** Type II, administrative decision with appeal to Adjustment Committee.

**Proposal:** The applicant is proposing to locate a retail/wholesale nursery operation on this site in an EX zone in the Central Eastside Industrial Area. The property is developed with a small building, with an area on the west side of the structure that is covered by an awning, enclosed on two sides and open to the air on the other two sides. The site also contains a completely open paved area, which is proposed to be used for plant display. The EX zone does not allow outdoor storage or display. Exceptions to this regulation are approved through Adjustment Reviews, when all of the applicable approval criteria are met, or if the criteria can be met through Conditions of Approval. Therefore, the applicant is requesting approval of an Adjustment to Code Section 33.140.245, to allow the paved area to be used for the display (and possibly storage and maintenance) of plants.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

## ANALYSIS

**Site and Vicinity:** The site is a 4,500 square-foot lot that is located on the southeast corner of the intersection of SE 11<sup>th</sup> Avenue and SE Clay Street. It is developed with a small commercial building that is located on the east side of the property, facing SE Clay Street. A small covered area extends out from the rear of the building and the remainder of the property is paved with asphalt. A chain link fence currently encloses all of the property that is not covered by the building. The area around the site includes a wide variety of uses and development. Due east of the site, is an R1-zoned property that is occupied by an architecture, planning and design business. Immediately to the south, on SE 11<sup>th</sup> Avenue, there are two single-dwelling residences, and then a structure that is occupied by a financial services business. Across the street on the northeast corner of the intersection there is a vintage building that appears to house office uses. On the west side of 11<sup>th</sup> Avenue there is a mix of commercial properties that include both industrial and retail uses (machine shop and chiropractic clinic).

**Zoning:** The zoning for the site is EXd, Central Employment with a design overlay. This designation implements the Central Employment map designation of the Comprehensive Plan. The zone allows mixed-uses and is intended for areas in the center of the City that have predominantly industrial type development. The intent of the zone is to allow industrial and commercial uses which need a central location. Residential uses are allowed, but are not intended to predominate or set development standards for other uses. The EX development standards are intended to allow new development which is similar in character to existing development.

The “d” or Design Overlay Zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. Design review is not triggered by this proposal because no structures or alterations are being proposed.

The site is also located within the Eastside Industrial Subdistrict of the Central City Plan District. The Central City Plan District implements the Central City Plan and other plans applicable to the Central City area. These other plans include the Downtown Plan, the River District Plan, the University District Plan and the Downtown Parking And Circulation Policy. The Central City Plan District implements portions of these plans by adding Code provisions which address special circumstances existing in the Central City area.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **March 22, 2013**. The following Bureaus have responded electronically to indicate that there are no issues or concerns related to approval of this proposal. Agencies that provided written comments regarding future permit requirements are noted with exhibit numbers:

- Environmental Services
- Transportation Engineering stated that there are no issues related to approval of the requested Adjustment, but noted that, as a condition of approval for any permit that may be required for occupancy of the site, PBOT will require closure of the existing curb cuts on SE 11<sup>th</sup> Avenue and SE Clay Street (Exhibit E-1).
- Water Bureau described the existing water service for this property (Exhibit E-2).
- Fire Bureau sent a reminder that building permits are required (Exhibit E-3).
- Site Development Section of BDS
- Parks-Forestry Division

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on March 22, 2013. Three written responses to the notice were received from notified property owners and organizations. The first letter stated that the property owner was opposed to the location of a retail business on the site because it would bring people into the area and make existing parking problems worse. This neighboring property owner stated that he thinks the area is already too congested and that this business would make matters worse for his tenants. He

further stated that he understood that “large trucks will be involved and 11<sup>th</sup> is a narrow street.” (Exhibit F-1).

*Staff note: The response did not discuss the exception to outdoor display that is the request being considered in this review. Retail uses are allowed by right in the EX zone and the applicant has assured staff that the use of large trucks is not a regular part of the proposed business.*

The other two responses were from local organizations, including the Eastside Industrial Council and the Hosford Abernathy Neighborhood Development Association. Both expressed support for approval of the Adjustment request, if it is restricted to display by plant nurseries (Exhibits F-2 and F-3).

## ZONING CODE APPROVAL CRITERIA

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

### 33.805.040 Adjustment Approval Criteria

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

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

**Findings:** The exterior development standards of Code Section 33.140.245 are intended to assure that exterior display, storage, and work activities:

- Will be consistent with the desired character of the zone;
- Will not be a detriment to the overall appearance of an employment or industrial area;
- Will not have adverse impacts on adjacent properties, especially those zoned residential; and
- Will not have an adverse impact on the environment.

The EX zone is the only one of the Employment Zones that does not allow exterior display and storage. Exterior work activities are not allowed in any of the employment zones. The Zoning Code states that, “the EX or Central Employment Zone allows mixed-uses and is intended for areas in the center of the City that have predominantly industrial type development. The intent of the zone is to allow industrial and commercial uses which need a central location. Residential uses are allowed, but are not intended to predominate or set development standards for other uses in the area. The development standards are intended to allow new development which is similar in character to existing development.”

Since the EX zone is intended to allow a mix of retail and industrial uses, it is logical to look at the regulations for exterior display for the commercial zones. In those zones, exterior display is also not allowed, but an exception is made for the display of plants and produce. It would be reasonable, therefore, in this older inner City industrial area, to make an exception for this type of display, which the EX regulations do not account for. The proposed display of plants in the existing paved area would be attractive to pedestrians and workable for small scale retail/wholesale operation, such as this proposed nursery.

The display would be in an area that is paved and has been used, informally, for some on-site parking. However, as the entire Central City Plan District does not require on-site

parking and the site is surrounded by public transit, on SE 11<sup>th</sup> and 12<sup>th</sup> Avenues and one of the most frequent service lines in the City is one block to the North on SE Hawthorne Street, policy dictates that the use of this informal parking area for a different use is not considered to create an adverse impact. The plants that will be displayed will have a positive environmental effect because they help to reduce pollution and improve air quality.

Therefore the purposes of the regulation can be found to be equally fulfilled because the proposal is consistent with the desired character of the zone; will not be detrimental to the appearance of the area, and will not have an adverse impact on adjacent properties or the environment. Therefore, 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 desired character of the EX zoned area is described in the purpose of the zoning designation above. In its essence, it is a zone that is intended to create mixed-use pockets in the established commercial areas of the city, especially in the Central City. The streets that surround this site have been classified in the City's Transit System Plan. These classifications are as follows:

- SE 11<sup>th</sup> and SE 12<sup>th</sup> Avenues are a couplet, with one-way streets that travel south and north, respectively. They are classified as Major City Traffic Streets, Transit Access Streets, City Bikeways and City Walkways.
- Southeast Clay is classified as a City Bikeway, but as a Local Service Street for all other transportation modes.
- Southeast Hawthorne Boulevard, which is one block to the north is classified as a District Collector, a Major Transit Priority Street and a City Bikeway and City Walkway.

It can be seen from these designations that this area is expected to carry a heavy load of traffic, but also to be very well-served by public transit and to be accommodating for other alternative forms of transportation, such as bicycling and walking.

The idea of having an attractive display for a retail/wholesale plant nursery at the sidewalk edge in this active neighborhood fits the mixed-use model anticipated by the EX zone and the street designations. Therefore, the requested Adjustment is consistent with the desired character of the area and the classifications of the adjacent streets and 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 being requested. Therefore, 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 on the site. Therefore, this criterion does not apply.

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

**Findings:** No impacts from the requested Adjustments have been identified by staff. Therefore, no mitigation is needed and 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 site is in an environmental zone. Therefore, this criterion does not apply.

## 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.

## CONCLUSIONS

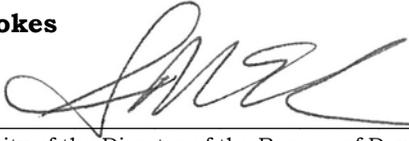
All of the relevant approval criteria have been met. The proposal to have exterior display of plants for this retail/wholesale nursery will still meet the purpose of the regulation for exterior display, storage and work activities in the EX zone. The display will be consistent with the character of the EX area and with the classifications of the street. Any associated storage of plants and related materials or maintenance of the displayed plants will be the minimum required to keep up the appearances of the product and the site. The site is in a zone and an area of the city that has excellent transit service and does not require on-site parking. The area is intended to promote a pedestrian-oriented environment with mixed uses, for which this proposal will be well-suited. The requested Adjustment can be approved for display of this type of product, in general compliance with proposed the plan and drawing.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.140.245 to allow exterior display of plants and produce, only (and any related exterior storage and maintenance of same) on this location, in general compliance with the approved site plans, Exhibits C-1 through C-2, signed and dated, April 15, 2013 subject to the following conditions:

- A. As part of the application submittal for building or occupancy permits, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-128250 AD."

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on April 15, 2013**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: April 16, 2013**

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on March 15, 2013, and was determined to be complete on March 20, 2013.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on March 15, 2013.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: July 19, 2013.**

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of

Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

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

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

**Appealing this decision.** This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 30, 2013** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

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

- *Unless appealed*, The final decision may be recorded on or after **May 1, 2013**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

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

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

**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:

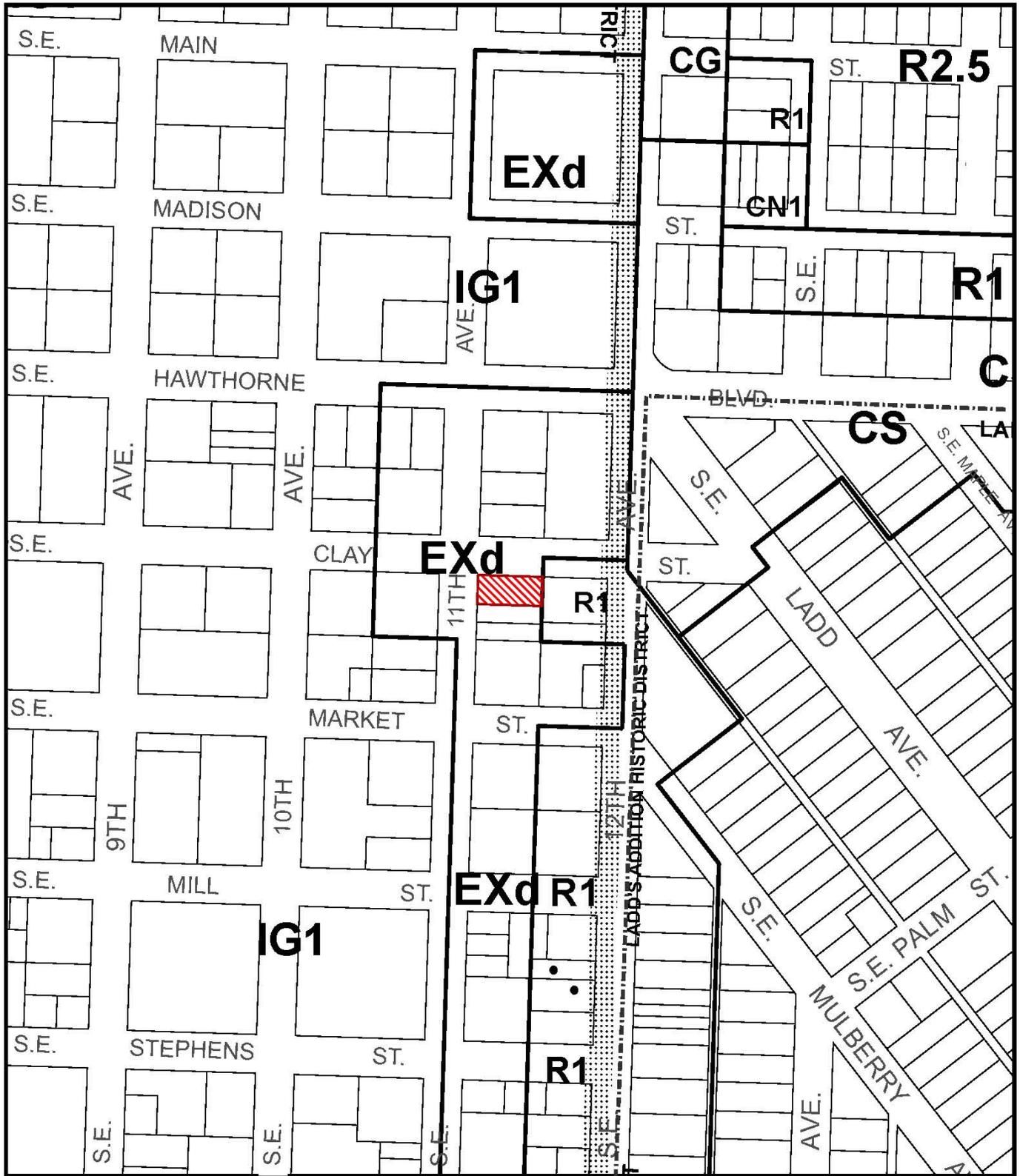
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Drawing (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Transportation Engineering and Development Review
  - 2. Water Bureau
  - 3. Fire Bureau
  - 4. Summary of electronic responses from City service agencies
- F. Correspondence:
  - 1. Dr. Richard L. Recknor
  - 2. Central Eastside Industrial Council
  - 3. Joanne Stainbrook, Hosford Abernathy Land Use Chair
- G. Other: (none)

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING



Site



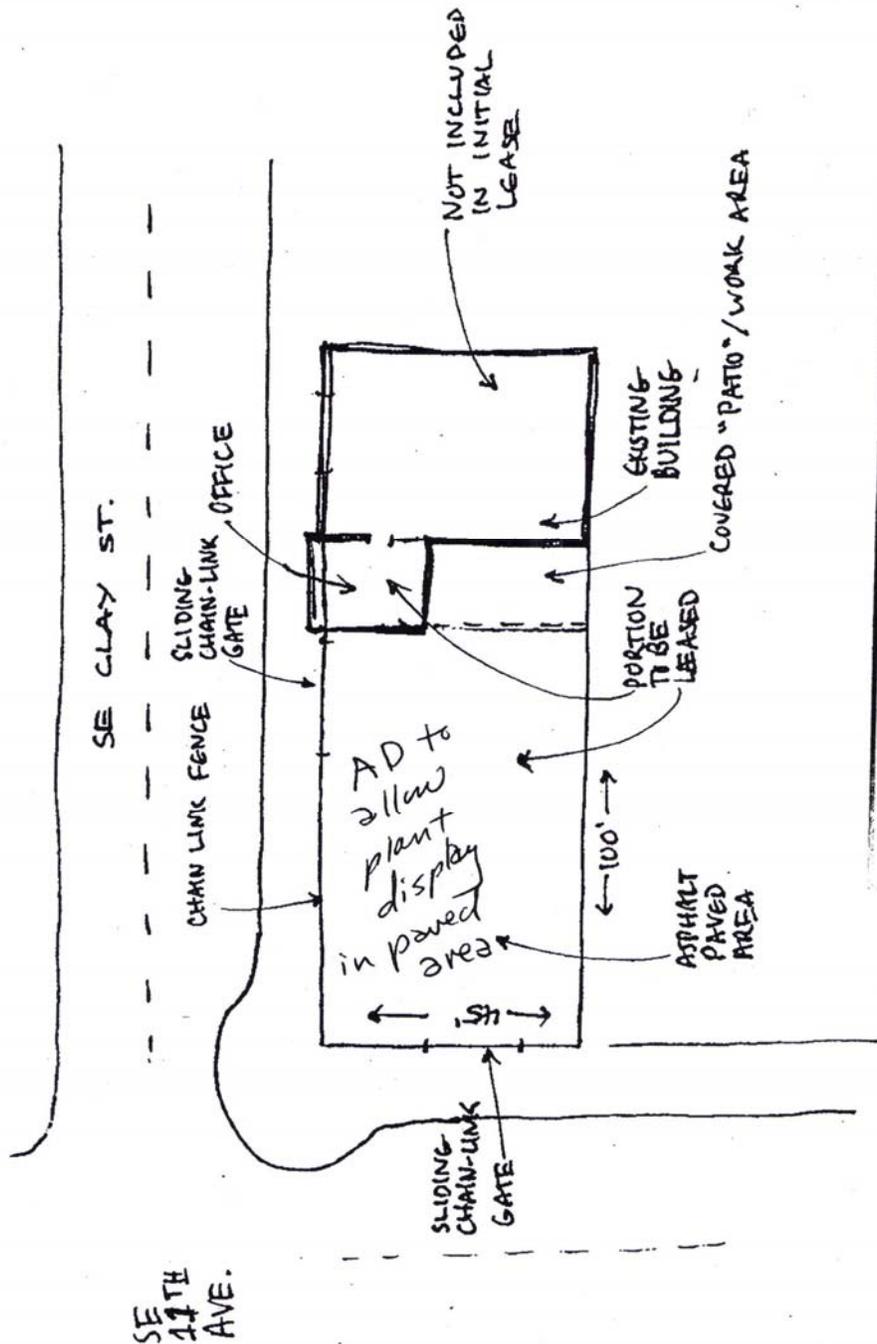
NORTH

This site lies within the:  
CENTRAL CITY PLAN DISTRICT

File No.	<u>LU 13-128250 AD</u>
1/4 Section	<u>3231</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E02CA 15000</u>
Exhibit	<u>B (Mar 18, 2013)</u>

1114 SE CLAY ST. PORTLAND, OR 97214

XERA PLANTS, INC.



\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner Rathleen A. Stokes Date April 15, 2013  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

Exhibit C-1 LU13-128250 AD

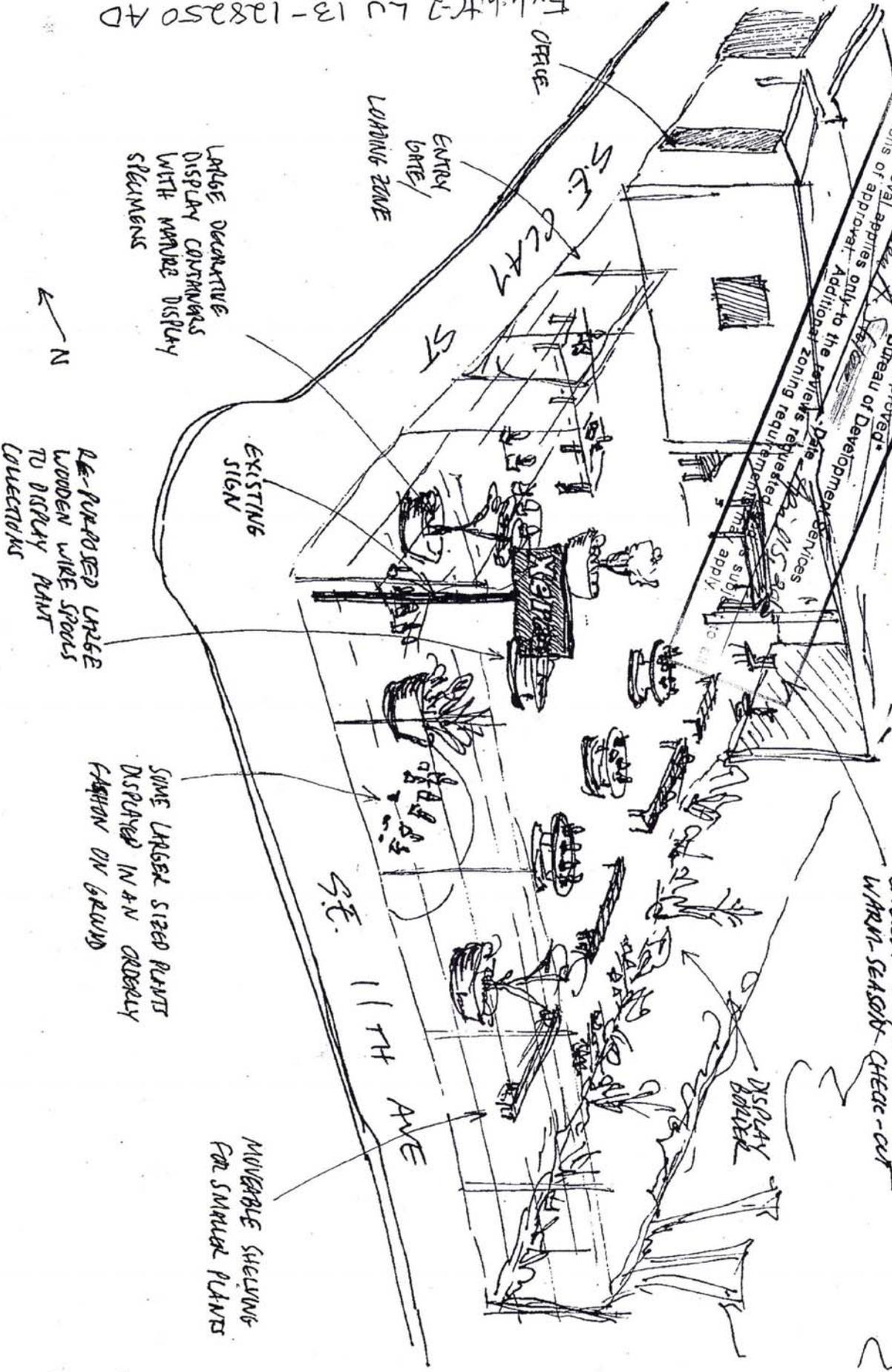
DESIGN / MERCHANDISING  
CONCEPT FOR 1114 SE CLAY  
XERA PLANTS INC.

COVERED WALKWAY AREA /  
WARM-SEASON CHECK-OUT

222

Planner: ~~XXXXXX~~  
\* This approval applies only to the review conditions of approval. Additional zoning requirements that apply.  
\* Approved\*  
City of Portland - Bureau of Development Services  
Date: 2/21/15  
- Date requested  
- Date that apply

Exhibit 2 LV 13-128250 AD



LARGE DECORATIVE  
DISPLAY CONTAINERS  
WITH WANDER DISPLAY  
SPECIMENS

N

DE-PURPOSED LARGE  
WOODEN WIRE SPOOLS  
TO DISPLAY PLANT  
COLLECTIONS

SOME LARGER SIZED PLANTS  
DISPLAYED IN AN ORDERLY  
FASHION ON GROUND

MOVABLE SHELVING  
FOR SMALLER PLANTS

ENTRY  
(WALKWAY)  
LOADING ZONE

EXISTING  
SIGN

OFFICE

SE CLAY  
11TH AVE

DISPLAY  
BOWER