



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: October 24, 2008
To: Interested Person
From: Paul Cathcart, Land Use Services
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NOTICE OF A TYPE I 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 this notice. If you disagree with the decision, you can appeal it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-125124 LDP

GENERAL INFORMATION

Applicant: Timothy Ray,
Sundance Restoration & Development
3933 NE Milk Blvd. #120
Portland, OR 97212-1117

Representative: Darryl Abe,
W B Wells Associates Inc.
4230 NE Fremont
Portland, OR 97213

Site Address: 328 NE FAILING ST
Legal Description: S 1/2 OF LOT 3 BLOCK 4, ALBINA HMSTD; N 1/2 OF LOT 3 BLOCK 4, ALBINA HMSTD; LOT 16 BLOCK 4, ALBINA HMSTD

Tax Account No.: R010501370, R010501380, R010501520, R010501360
State ID No.: 1N1E22DD 14100, 1N1E22DD 14200, 1N1E22DD 12800, 1N1E22DD 14300

Quarter Section: 2630
Neighborhood: King, contact Erik Emerick at 503-504-0401.
Business District: North-Northeast Business Assoc, contact Joyce Taylor at 503-445-1321.
District Coalition: Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.
Plan District: Albina Community
Zoning: Central Employment (EX) with a Design Overlay "d" Zone
Case Type: Land Division Partition (LDP)
Procedure: Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

Proposal:

The applicant proposes to relocate the property lines for the properties described above into the configuration shown on the attached preliminary plat. Proposed Parcel 1 would be 2,451 square feet and proposed Parcel 2 would be 3,601 square and would contain a 20-foot

access easement to proposed Parcel 3. Parcel 3 would be 10,129 square feet and would contain an existing commercial building and gravel parking lot. The existing cherry tree on Parcel 3 would be retained to meet the City's tree preservation requirements.

This partition is reviewed through a Type I land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33.662.120, Approval Criteria for Land Divisions in Commercial, Employment, and Industrial Zones.

ANALYSIS

Site and Vicinity: Parcel 3 (Tax Lots 14100, 14200, and 14300) contains an existing commercial building and gravel parking lot that fronts NE MLK Blvd. At the time of this decision, the existing building was undergoing renovations. Tax Lot 14300 also has 20-feet of frontage on NE Failing Street. This frontage area is currently developed with a "lean-to" structure used for storage. Tax Lot 12800 (proposed parcels 1 and 2) is vacant and fronts NE Failing Street and NE Garfield Street. Adjacent lots on NE MLK Blvd. are developed with commercial storefront buildings. Adjacent development on NE Garfield Ave is developed with single-family residences.

Zoning: The EX 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 "d" overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development must meet the Community Design Standards (Chapter 33.218) or are subject to design review.

Land Use History: City records indicate a variance request to waive landscaping and screening requirements was denied in 1984 for the existing commercial building on proposed Parcel 3:

Agency Review: A Notice of Proposal in your Neighborhood was mailed on **June 4, 2008**.

1. Agency Review: Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.

2. Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

APPROVAL CRITERIA-

APPROVAL CRITERIA FOR LAND DIVISIONS IN A COMMERCIAL, EMPLOYMENT, OR INDUSTRIAL ZONE

33.662.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.

The relevant criteria are found in Section **33.662.120 [A-K], Approval Criteria for Land Divisions in Commercial, Employment and Industrial Zones**. Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.614	Lots	Applicable - See findings below
B	33.630	Trees	Applicable - See findings below.
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.635 .100	Clearing and Grading	Not applicable - This approval criteria is not relevant because the site is primarily flat, is not located in the Potential Landslide Hazard Area, and the applicant has not proposed any grading on the site to occur prior to obtaining building permits for development on the individual lots.
F	33.635 .200	Land Suitability	Not applicable - There is no record of any previous land uses or conditions that would create a hazard.
G	33.636	Tracts and Easements	Applicable - See findings below.
H	33.639	Solar Access	Not applicable - Single Dwelling Detached development is not proposed for the site.
I	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
J	33.641	Transportation Impacts	Applicable - See findings below
K	33.651 - 33.654	Services and Utilities	Applicable - See findings below

A. Lots. The standards and approval criteria of Chapters 33.613 through 33.615 must be met;

Findings: Chapter 33.614 contains the lot standards applicable in the commercial zones. Chapter 33.614 works in conjunction with other chapters of the Zoning Code to ensure that land divisions create lots that can support appropriate uses and development. The standards are as follows:

33.614.100.C Minimum Lot Dimension Standards

Each lot must have a front lot line that is at least 10 feet long. There are no other required minimum lot dimensions for lots in the EX Zone.

Each proposed lot has a front lot line that is at least 10 feet long. The proposed parcels have the following front lot line dimensions:

Parcel 1: 49 feet
 Parcel 2: 72.2 feet
 Parcel 3: 100.1 feet

This standard is met.

B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.

Findings: The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A.2). None of the trees have been exempted by the arborist. The inventory identifies the following trees on the site:

Tree #	Species	Diameter (inches)	Significant? (On Table 630-1)	Exempt? (per 33.630.030)	To be retained?	RPZ (Root Protection Zone)
1	Kwanzan cherry	7	No	No	Yes	7 feet
2	Empress trees	6	No	No	No	

The total non-exempt tree diameter on the site is 13 inches. The applicant proposes (Exhibit C.4) to preserve Tree 1, which comprises 7 inches of diameter, or 54 percent of the total non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved. The applicant has provided a Tree Preservation Plan (Exhibit C.4) that incorrectly notes that all trees will be removed, however it does identify Tree 1 as being preserved with the required root protection zones

This criterion is met, subject to the condition that development on Parcel 3 be carried out in conformance with the Tree Preservation Plan (Exhibit C.4) and the applicant's arborist report (Exhibit A.2).

G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.

The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.

33.635.100 – Clearing and Grading

- A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;**
- B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**
- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

Findings: The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements,

and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case the site is primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. In addition, there are no trees required to be preserved in the areas where new development on the site is anticipated. This criteria is met.

33.635.200 – Land Suitability

Where geologic conditions or historic uses of the site indicate a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements in order to make the lots suitable for their intended uses and the provision of services and utilities.

The site is currently in commercial use, and there is no record of any other use in the past. As indicated above, the site is relatively flat and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion is met.

H. Tracts and easements. The standards of Chapter 33.636, Tracts and Easements must be met;

33.636.100 Requirements for Tracts and Easements

A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:

- 1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;**
- 2. The Homeowners' Association for the area served by the tract;**
- 3. A public or private non-profit organization; or**
- 4. The City or other jurisdiction.**

Findings: No tracts are proposed or required for this land division, so criterion A does not apply.

B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by BDS and the City Attorney in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. For a Planned Development not done in conjunction with a land division, the maintenance agreement must be submitted to the County Recorder to be recorded prior to issuance of the first building permit related to the development.

Findings: The following easements are proposed and/or required for this land division:

- An Access Easement is proposed to allow use of the eastern 20 feet of Parcel 2 for access to Parcel 3;
- A Private Storm Sewer Easement is required across the relevant portions of Parcel 2 for stormwater disposal from Parcel 1. This easement has received approval of a plumbing code appeal (Exhibit A.5) allowing future roof drainage from Parcel 1 to cross Parcel 2 for disposal in the shared drywell on Parcel 2.

As stated in Section 33.636.100 of the Zoning Code, maintenance agreements will be required describing maintenance responsibilities for the easements described above and facilities within those areas. This criterion can be met with the condition that maintenance agreement are prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement(s) with a recording block for each agreement, substantially similar to the following example:

“A Declaration of Maintenance agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

With the conditions of approval discussed above, this criterion is met.

K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,

The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.

33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.

33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.

Findings: The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site has approximately 50 feet of frontage on NE Garfield Ave, 121 feet of frontage on NE Failing St., and 50 feet of frontage on NE Martin Luther King (MLK) Blvd. NE Garfield St. and NE Failing St. are classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. NE MLK Blvd. is classified as a Major City Traffic Street, a Major Transit Priority Street, a City Bikeway, City Walkway, Major Truck Access Street, Emergency Response Street, and a Regional Main. Tri-Met provides frequent transit service on NE MLK Ave. via bus 6. Parking is currently allowed on NE Garfield and NE Failing Streets and NE MLK Blvd., on both sides. There is a driveway entering the shed structure on Parcel 2 and a driveway entering the graveled parking are on Parcel 3 that provides access to off-street parking for the commercial development to the north of Parcel 3.

NE Garfield St., NE Failing St., and NE MLK Blvd. are fully improved with a paved roadway, curbs, planting strips, and sidewalks. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. Portland Transportation has not identified or been made aware of any factors related to this proposal that lead to a conclusion other than that additional development allowed on two lots within the EX Zone can be safely served by the existing street without having any significant impact on the level of service provided.

This criterion is met.

L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.

Findings: Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way.

- The water standards of 33.651 have been verified. An existing 6-inch water main is available in NE Failing St. and a 12-inch main in NE MLK Blvd.. Water is available to serve the proposed development from the water main in NE MLK Blvd. and NE Failing St. Parcel 3 has an existing water service from the main NE MLK Blvd. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 24.5 inch brick public combination sewer located in MLK Blvd. that currently serves the sanitary sewer needs of the existing development on proposed Parcel 3. The existing sanitary sewer lateral for Parcel 3 must be shown on a supplemental plan prior to final plat approval. See Exhibit E-1 for more details.

There is no public sanitary sewer available in NE Failing Street to serve Parcels 1 and 2. The nearest available sewer is located in NE MLK Blvd. The applicant must obtain a public works permit to extend the public sewer in NE Failing Street to this site prior to final plat approval.

- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

33.653.020 Stormwater Management Approval Criteria

- A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

Findings: No stormwater tract is proposed or required. Therefore, criterion A is not applicable.

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The Stormwater Management Manual contains a hierarchy of acceptable methods of stormwater treatment and disposal. The hierarchy requires that applicants first explore the use of methods that have a lower potential impact on groundwater, such as on-site surface infiltration swales and infiltration planters. If these methods are not feasible on a site, applicants may move lower on the hierarchy, to methods that inject water deeper into the ground through mechanical devices such as drywells or sumps, or carry it off of the site into storm sewers, drainageways, or other approved disposal points.

In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the Stormwater Management Manual, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater. In some cases, sizing a stormwater facility necessitates testing the infiltration rate of the soil at the site.

The applicant has proposed the following stormwater management methods (Exhibit C.3), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- Parcels 1 and 2:** Stormwater from these lots will be directed to a shared drywell located on Parcel 2 in the 20-foot wide access easement to Parcel 3. The drywell will treat the water and slowly infiltrate it into the ground. Parcel 2 has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from reasonably-sized development on each parcel. Site Development has indicated conceptual approval of the drywell. However, the applicant is proposing 100 percent building coverage on Parcel 1. This will require that the rain drain serving the building on Parcel 1 to be built under or through the future building on Parcel 2 to dispose of the stormwater in the shared drywell. Approval of a plumbing code appeal (Exhibit A.5) has been granted to allow the proposed rain drain to be built through the building to be built on Parcel 2 through a private stormwater easement.
- Parcel 3 (the parcel with existing commercial development):** The existing building has downspouts that drain into the public sewer in NE MLK Blvd. Site Development has noted that the downspout for the existing building is in disrepair and not connected to the existing rain drain system, and therefore must be repaired to meet City standards prior to final plat approval to ensure that the stormwater from the existing building can get to the disposal point. The applicant is required to finalize plumbing permits prior to final plat approval for modifications to the stormwater disposal system on the existing house that will result in properly functioning gutters, downspouts, and disposal points.

With the conditions of approval described above, the stormwater management criteria are met. As shown by the findings above, the Services and Utilities criteria are met.

Right of Way Approval Criteria

Chapter 33.654 contains standards and approval criteria for rights of way. Due to the location of this site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Code Section	Topic	Applicability Findings
33.654.110.B.1	Through streets and pedestrian connections	Applicable - See findings below
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable - No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	Not applicable - The proposal includes a common green/shared court/pedestrian connection instead of a traditional street.
33.654.120.C.3.c	Turnarounds	Not applicable - No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable - No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Not applicable - There are no pedestrian connections proposed or required.

Code Section	Topic	Applicability Findings
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable – No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.

Applicable Approval Criteria are:

33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones. In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:

- a. **Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**
- b. **Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
- c. **Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;**
- d. **Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
- e. **Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

Findings: The site is located between NE Garfield St. and NE MLK Blvd, which have a distance between them of approximately 200 feet. Proposed parcels 1 and 2 also front NE Failing St. There are no other north/south through streets between these two streets. If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that a north-south through street is not required in the vicinity of the site

In addition, the site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply.

All streets fronting the proposed parcels have existing sidewalks along the frontage. These sidewalks are straight-line connection on which users can see the ending of the pedestrian route from the entrance.

For the reasons described above, this criterion is met.

Utility Location, Extension of Streets, Partial Rights of Way

33.654.130 Additional Approval Criteria for Rights-of-Way

A. Utilities. Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.

Findings: Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the existing right-of-way of NE Garfield St., NE Failing St., or NE MLK Blvd. can be provided on the final plat. At this time no specific utility easements adjacent the existing right-of-way have been identified as being necessary. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

General Information about Development Standards and Approval Criteria. The Zoning Code contains two types of regulations: Development standards and Approval criteria.

Approval criteria, such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

Development Standards: Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

Among the various development standards that will be applicable to this lot, the applicant should take note of:

Existing development that will remain after the land division. The existing development on the site will remain and be located on Parcel 3. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the EX zone (Please see section on Other Technical Standards for Building Code standards.)

Community Design Standards. This property is within the design “d” overlay. At the time of development, the proposed development for Parcel 1 and 2 must meet the applicable Community Design Standards of Chapter 33.218 or receive approval of a design review.

With the conditions noted above, this land division proposal can meet the requirements of 33.700.015

OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 http://www.water.ci.portland.or.us/
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 http://www.bes.ci.portland.or.us/
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 http://www.fire.ci.portland.or.us/
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 http://www.trans.ci.portland.or.us/
Development Services	Titles 24 -27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 http://www.bds.ci.portland.or.us.

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The applicant must meet the requirements of Urban Forestry for street tree planting in the existing planter strip adjacent to Parcel 1 and 2 prior to final plat approval. This requirement is based on the standards of Title 20.

CONCLUSIONS

The applicant has proposed a 3-lot partition, as shown on the attached preliminary plan (Exhibit C.2). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are:

- Private stormwater easement and maintenance agreement approved in Plumbing Code Appeal 5661
- Sanitary sewer main extension in NE Failing Street

With conditions of approval that address these requirements this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 3-lot partition, that will result in 3 lots in the EX zone as illustrated with Exhibit C.2, subject to the following conditions:

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey for BDS Land Use Review, BES, and Site Development

review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The location of the existing sanitary sewer lateral for Parcel 3
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. A 20-foot wide Access Easement shall be shown and labeled on the final plat over the relevant portion of Parcel 2. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.
2. A recording block for each of the legal documents such as maintenance agreements as required by Conditions C.4 and C.5 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

C. The following must occur prior to Final Plat approval:

Utilities

1. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending a public sewer main in the NE Failing Street. The public sewer extension requires a Public Works Permit, which must be initiated prior to final plat approval. In addition, the applicant must provide engineered designs, and performance guarantees for the sewer extension to BES prior to final plat approval.

Existing Development

2. The applicant must meet the requirements of Site Development to reconnect the downspout on the west side of the existing building at 3827 NE MLK Blvd.
3. The applicant must plant street trees in the planter strip on NE Failing Street and NE Garfield Street adjacent to Parcels 1 and 2. Street trees will be chosen from the City's approved street tree list for the five and four foot planting strip respectively. The applicant must contact Urban Forestry at 503-823-4018 prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit. Urban Forestry must inspect and approve the newly planted trees prior to final plat approval.

Required Legal Documents

4. The Covenant for Future Storm Sewer Easement and Maintenance Agreement Effective Upon Date Sale (Exhibit A.6) approved as part of Plumbing Code Appeal 5661 shall be recorded with Multnomah County for the Private Stormwater Management Easement area described in Condition B.1 above.
5. A Maintenance Agreement shall be executed for the Access Easement area described in Condition B.2 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

D. The following conditions are applicable to site preparation and the development of individual lots:

1. Development on Parcel 3 shall be in conformance with the Tree Preservation Plan (Exhibit c.4) and the applicant's arborist report (Exhibit A.2). Specifically, tree numbered 1 is required to be preserved, with the root protection zones indicated on Exhibit C.4. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.

Decision rendered by: Paul Cathcart **on October 22, 2008)**
By authority of the Director of the Bureau of Development Services

Decision mailed October 24, 2008

Staff Planner: Paul Cathcart

Procedural Information. The application for this land use review was submitted on April 28, 2008, and was determined to be complete on May 29, 2008.

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 April 28, 2008.

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 waive the 120-day review period.

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.

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during

the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

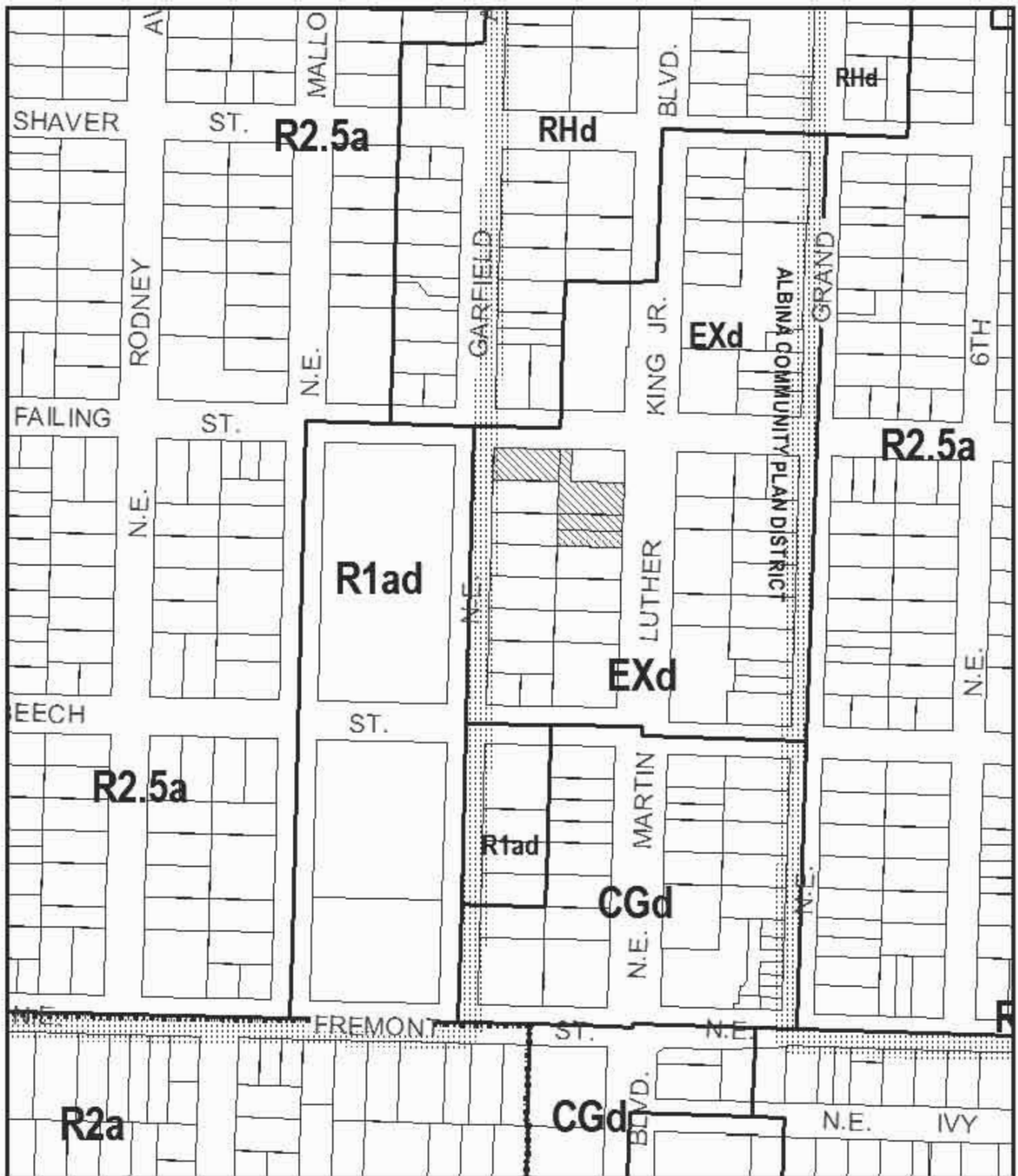
The file and all evidence on this case is available for your review by appointment. Please contact the receptionist at 503-823-7967 to schedule an appointment. Copies of all information in the file can be obtained for a fee equal to the cost for such services. You may also find additional information about the City of Portland and City Bureaus, as well as a digital copy of the Portland Zoning Code, by visiting the City's homepage on the Internet at www.portlandonline.com.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittals
 - 1. Responses to Land Division Approval Criteria
 - 2. Arborist Report dated April 23, 2008
 - 3. Plumbing record for 3817-3827 NE Martin Luther King Blvd.
 - 4. Letter from Darryl Abe to Paul Cathcart, dated May 30, 2008 regarding Incomplete Letter
 - 5. Plumbing Code Appeal 5661
 - 6. Covenant for Future Storm Easement and Maintenance Agreement Effective on Date of Sale
 - 7. 120-day waiver
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Existing Conditions Plan
 - 2. Preliminary Plat (attached)
 - 3. Preliminary Utility Plan (attached)
 - 4. Preliminary Grading and Tree Preservation Plan (attached)
 - 5. Second Floor Plan
 - 6. Elevations
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety Section of Bureau of Development Services
- F. Correspondence: None received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING



This site lies within the:
ALBINA COMMUNITY PLAN DISTRICT

File No.	LU 08-125124 LDP
1/4 Section	2630
Scale	1 inch = 200 feet
State Id	1N1E22DD 14200
Exhibit	B (Apr 30, 2008)



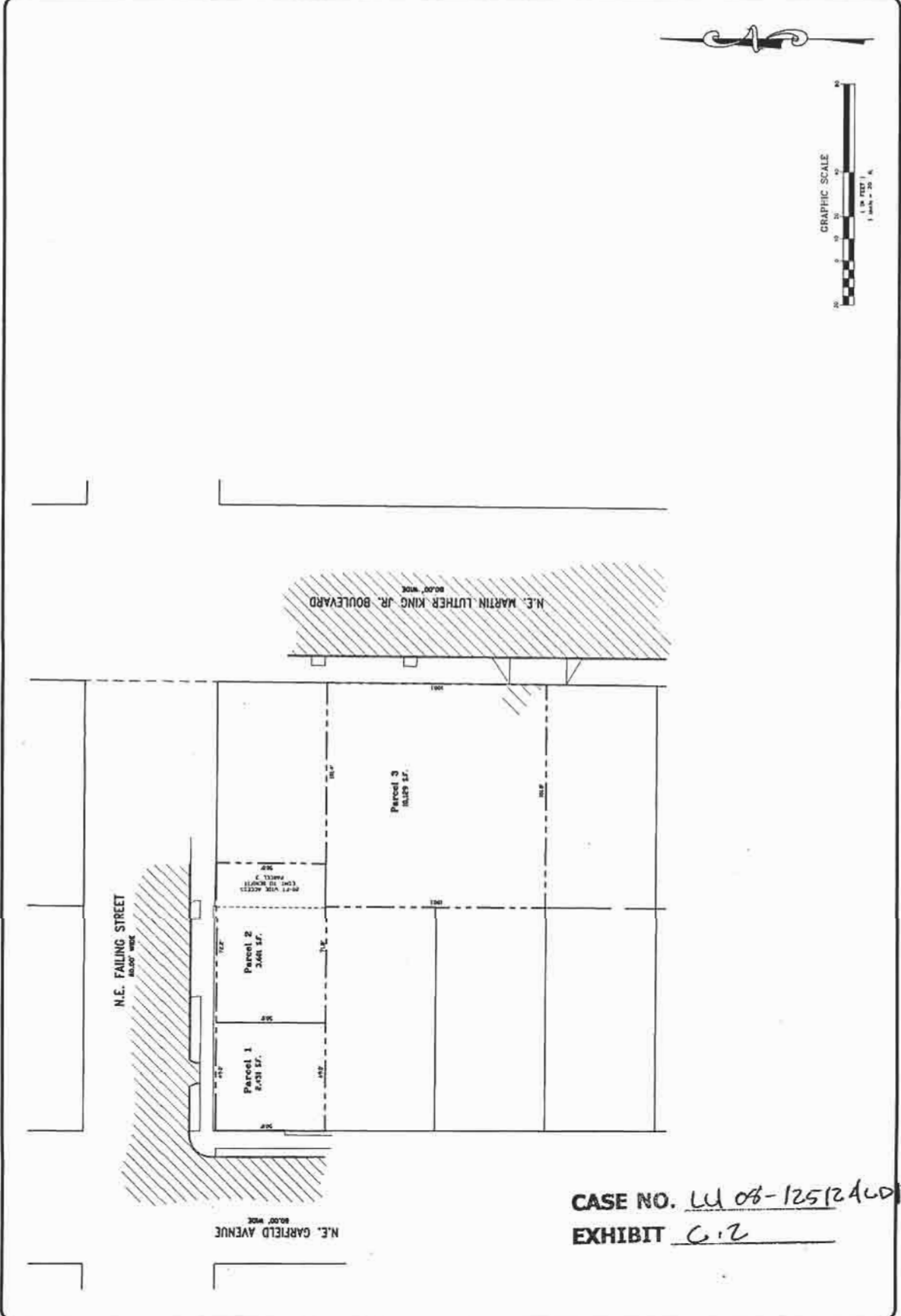
PRELIMINARY PLAT
3 LOT PARTITION
FOR
3817-3827 NE MLK Blvd.
PORTLAND, OREGON

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OFFICE
BRANLEY & COLLINGS
1000 NE 10TH AVE
PORTLAND, OR 97232
CONTACT 503-251-0100

TIM RAY
SUBSTANCE ABSTENTION

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OFFICE
BRANLEY & COLLINGS
1000 NE 10TH AVE
PORTLAND, OR 97232
CONTACT 503-251-0100

DESIGNED BY:	BIS
DRAWN BY:	CCA
CHECKED BY:	BIS
FILE NO.:	
PLAT DATE:	--/--
JOB NO.:	07-318
SHEET NO.:	2 OF 4



CASE NO. LU 08-125124-LDP
EXHIBIT C.2

LU08-125124 LDP



PRELIMINARY UTILITY PLAN
 3 LOT PARTITION
 3917-3927 NE MLK BLVD.
 PORTLAND, OREGON

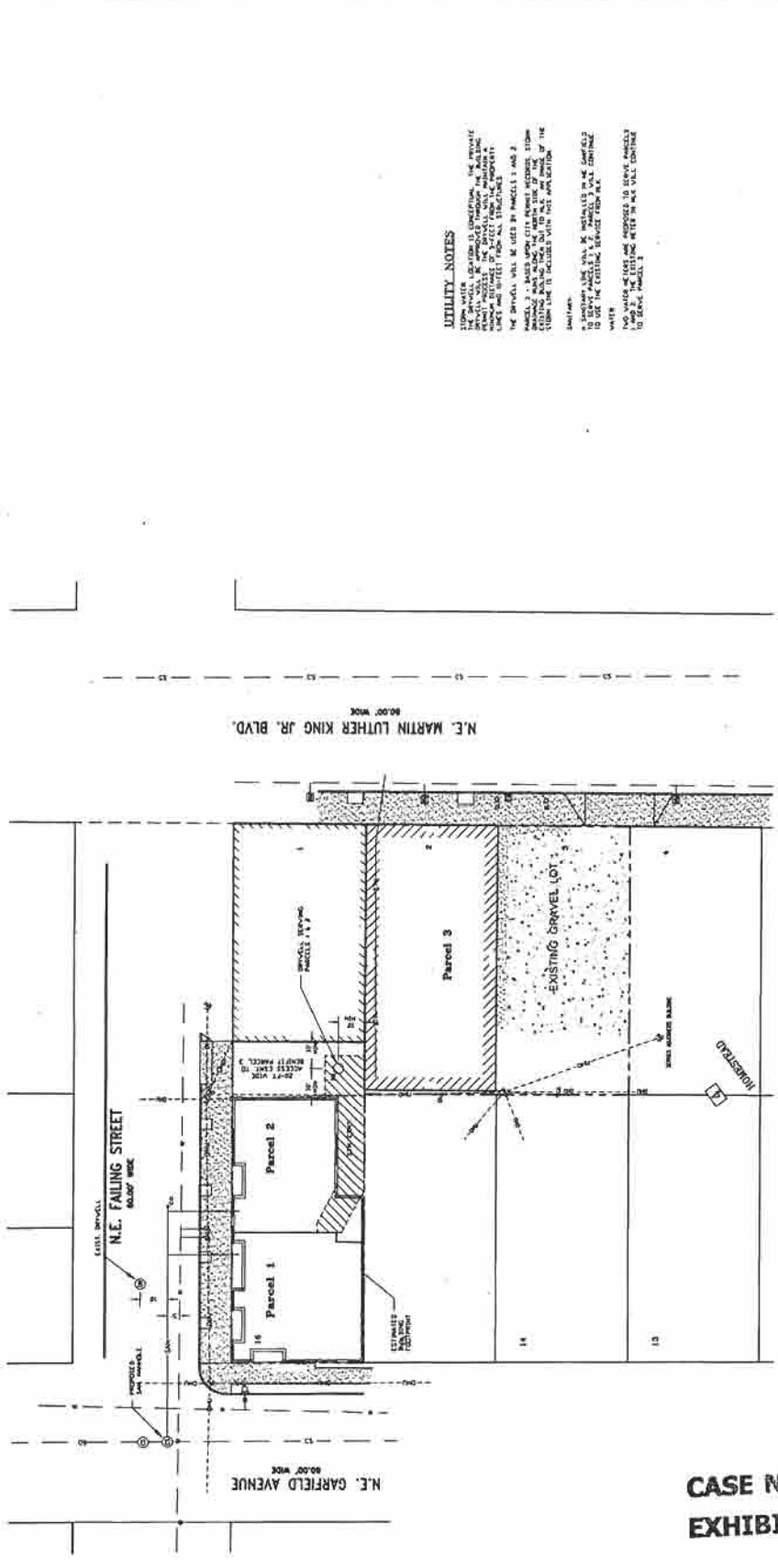
REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
 T. BAY
 3917-3927 NE MLK BLVD.
 PORTLAND, OREGON 97218
 EXPIRES 06-30-08

SPURANCE RESTORATION
 1815 NE 47TH AVENUE
 PORTLAND, OREGON
 97218
 PHONE: 503.281.2121
 FAX: 503.281.2121

REVISIONS:
 10/19/08

DESIGNED BY: BJS
 DRAWN BY: DCA
 CHECKED BY: BJS
 FILE NO.:
 PLOT DATE: **/**/**
 JOB NO.: 07-216
 S.W. WELLS BOOK

SHEET 3 OF 4



UTILITY NOTES

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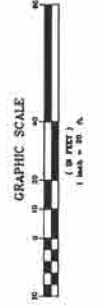
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CASE NO. LU 08-125124-00P
 EXHIBIT C.3



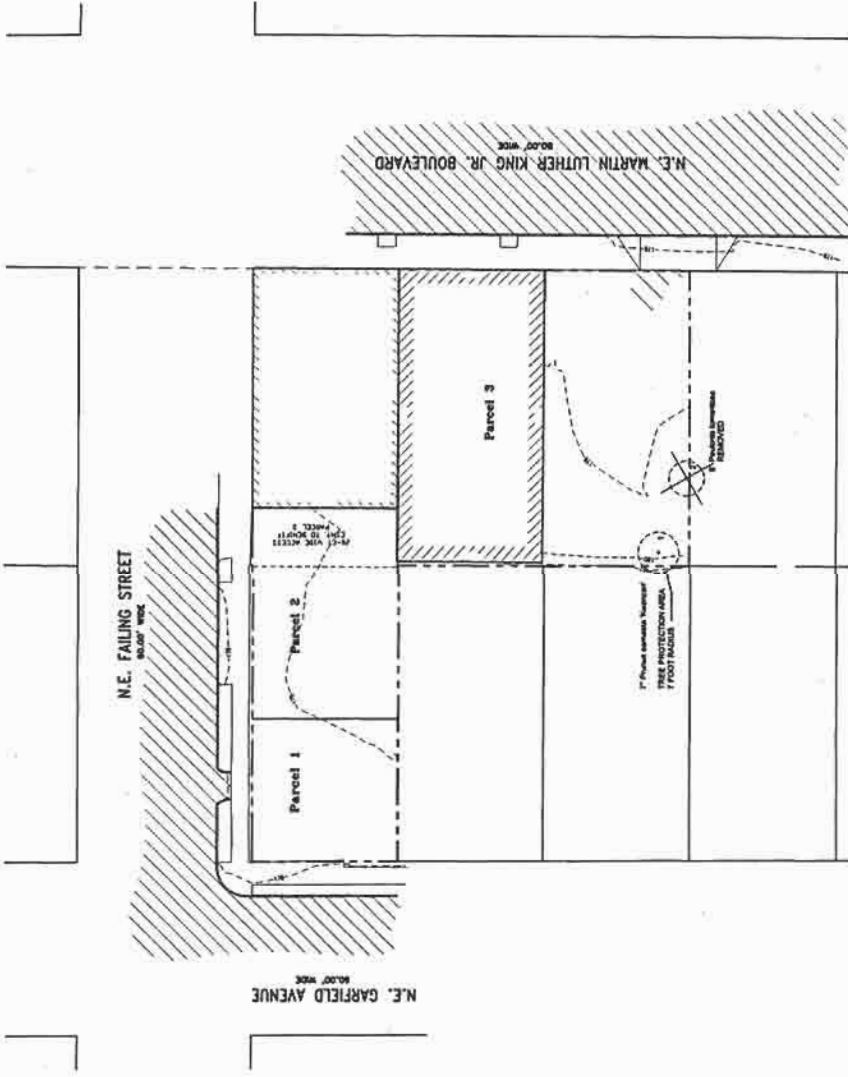
PRELIMINARY GRADING PLAN
 FOR
 3 LOT PARTITION
 3817-3827 NE MLK Blvd.
 PORTLAND, OREGON

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
 W.B. WELLS
 LICENSE NO. 10000
 EXPIRES 04-30-09

TIM BAY
 SURVEY RESTORATION
 1111 NE 15th Ave
 PORTLAND, OR 97232
 PHONE: 503-281-8818
 FAX: 503-281-8818
 CELL: 503-281-8818

DESIGNED BY: EJS
DRAWN BY: DCA
CHECKED BY: EJS
FILE NO.:
PROJECT DATE: 11/11/08
JOB NO.: 07-316
DATE PLOTTED: 11/11/08
SCALE: AS SHOWN
SHEET 4 OF 4

TREE PRESENTATION
 PLAN

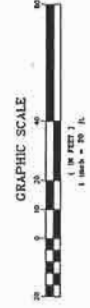


GRADING NOTES
 NO GRADING IS REQUIRED WITH THIS APPLICATION.
 THE GRADING PLAN SHALL BE SUBMITTED WITHIN 90 DAYS OF THE DATE OF THE PERMIT.

- LEGEND
- 1. 1" CAL. TREE
 - 2. 2" CAL. TREE
 - 3. 3" CAL. TREE
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 - 99. 99" CAL. TREE
 - 100. 100" CAL. TREE

COMMON NAME	CALIPER	NOTES
DOGWOOD	8" CAL	FAIR CONDITION
EMERALD PINE	8" CAL	FAIR CONDITION
PALEOPALM	8" CAL	FAIR CONDITION
CHERRY	7" CAL	FAIR CONDITION
TOTAL	17	REMOVAL RECOMMENDED

TREE NOTES
 BASED ON AIRBORNE PHOTOGRAPHY, THIS TREE LIST AND PLANTING AS NOTATION.



CASE NO. LU 08-125124 LOP
 EXHIBIT C-4