



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

1900 SW 4th Avenue, Suite 5000  
Portland, Oregon 97201  
503-823-7300  
Fax 503-823-5630  
TTY 503-823-6868  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** December 18, 2008  
**To:** Interested Person  
**From:** Mark Bello, Land Use Services  
503-823-7810 / [mark.bello@ci.portland.or.us](mailto:mark.bello@ci.portland.or.us)

## **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 08-122499 LDP**

#### **GENERAL INFORMATION**

**Owner**

Cristi Banut  
1437 SE 174th Ave  
Portland, OR 97233-4709

**Applicant**

Ken Hodges  
KHEngineering  
124 Harding Blvd  
Oregon City, OR 97045

**Site Address:** 1437 SE 174TH AVE

**Legal Description:** EXC PT IN ST N 90' OF S 185' OF E 180' OF LOT 8 BLOCK 2, ROCKWOOD PK

**Tax Account No.:** R716104910

**State ID No.:** 1S3E06AC 06700

**Quarter Section:** 3148

**Neighborhood:** Centennial, contact Louise Cody at 503-252-4302.

**Business District:** None

**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

**Zoning:** R7 Residential 7,000

**Case Type:** LDP Land Division/Partition

**Procedure:** Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

**Proposal:**

The applicant proposes to partition this 13,454 sq. ft. site into two parcels:

- Parcel 1, which contains the existing house, will be 7,476 sq. ft. in area, with a width of 50 feet and a depth of approximately 150 feet.
- Parcel 2, which contains a garage to be demolished, will be 5,978 sq. ft. in area, with a width of 40 feet and a depth of approximately 150 feet.

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).

The relevant criteria are found in Section **33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.**

## ANALYSIS

**Site and Vicinity:** The level site is currently developed with a one-story house. The house is located on north half of the site 3.7 feet from the north property line. The south 45 feet is undeveloped with the exception of a detached garage and driveway that will be removed.

This site is currently platted at approximately 90 feet by 150 feet. Five feet of lot depth has been dedicated to the public right-of-way, SE 174<sup>th</sup> Avenue. Several Doug firs are planted within the right-of-way as widened with this five-foot dedication. There are no trees on site.

Sites on the west side of SE 174<sup>th</sup> Avenue are large enough to partition. The lot to the north has been partitioned with a flag lot. The flag lot driveway borders its north property line.

**Zoning:** The R7 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

**Land Use History:** In 1997 the then owners enclosed a patio on the northwest corner of the existing house. An adjustment was granted to reduce the setback from the required 5 feet to 3.5 feet. (LUR 97-00679 AD).

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on **October 8, 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.

## ZONING CODE APPROVAL CRITERIA

### APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

**33.660.120 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 **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential 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.

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
A	33.610	Lots	Applicable - See findings below
B	33.630	Trees	Not applicable – All trees are within the right-of-way.
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	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	Applicable - See findings below.
G	33.635 .200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	Applicable – See findings below.
I	33.639	Solar Access	Not Applicable - All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	Applicable - See findings below
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below

**Applicable Approval Criteria are:**

**A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**

**Findings:** Chapter 33.610 contains the density and lot standards applicable in the RF through R5 zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

Density Standards

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, overlay zone, and plan district regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing.

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

In this case, a street is not proposed or required, and the site is not within the environmental zone, potential landslide hazard area, or flood hazard area. Therefore, the maximum and minimum density for this site is as follows:

Minimum = (13,454 square feet site area square feet \* .80) ÷ 7,000 square feet = 1.53 (which rounds up to a minimum of 2 lots, per 33.930.020.A)

Maximum = site area square feet ÷ 7,000 square feet = 1.92 (which rounds up to a maximum of 2 lots, per 33.930.020.B)

If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore in this case the minimum density is reduced to 1 parcel.

The applicant is proposing 2 lots. The density standards are therefore met.

#### Lot Dimensions

The lot dimension standards ensure that: (1) each lot has enough room for a reasonably-sized house and garage; (2) lots are of a size and shape that development on each lot can meet the development standards of the Zoning Code; (3) lots are not too large relative to the planned density; (4) each lot has room for at least a small, private outdoor area; (5) lots are compatible with existing lots; (6) lots are wide enough to allow development to orient toward the street; (7) lots don't narrow to an unbuildable width close to the street; (8) each lot has adequate access from the street; (9) each lot has access for utilities and services; and (10) lots are not landlocked.

The dimensions of the proposed lots as compared to the required lot dimension standards is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	<b>R7 Zone Requirement</b>	<b>Proposed Parcel 1</b>	<b>Proposed Parcel 2</b>
Minimum Lot Area	4,200 sq. ft.	7,476 sq. ft.	5,978 sq. ft.
Maximum Lot Area	12,000 sq. ft.		
Minimum Lot Width*	40 ft.	50 ft.	40 ft.
Minimum Lot Depth	55 ft.	Approx. 149 ft.	Approx. 149 ft.
Minimum Front Lot Line	30 ft.	50 ft.	40 ft.

\* Width is measured at the minimum front building setback line

#### **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.

The applicant has submitted a preliminary grading/utility plan (Exhibit C-). 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 criterion 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 residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, the City has no record that the septic system was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With this condition, the new lots can be considered suitable for new development, and 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:** According to plumbing permit PLM98-71597 the sewer line serving the existing house is located south of the house. However, the permit record does not provide sufficient information for City staff to determine whether the sewer line will cross or not cross the proposed new property line. The applicant's surveyor states that the sewer is not located within the boundaries of Parcel 2. However, this should be verified prior to final plat approval.

In order to verify the situation prior to Final Plat approval, the location of the sewer line should be accurately shown on a supplemental plan. If a private sewer easement is needed, then it must be at least 10 feet wide.

**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 may be required for this land division:

- An Access Easement for the sanitary sewer that serves the house on Parcel 1 on Parcel 2

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) may be required describing maintenance responsibilities for the tracts and easements described above and facilities within those areas. This criterion can be met with the condition that a maintenance agreement(s) is 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).

According to City database sources, which are not confirmed by a survey, SE 174th Avenue is currently improved with an approximate 20-ft wide center strip paving within a 55-ft wide right-of-way. No curbs or sidewalks exist along this property's frontage. SE 174th Avenue is classified as a City Bikeway and a City Walkway in the City's Transportation System Plan. The Pedestrian Design Guide recommends a 12-ft pedestrian corridor on a City Walkway designated street in the R7 zone. This recommended corridor is comprised of a 0.5-ft curb, 4-ft planter, 6-ft sidewalk and a 1.5-ft setback to the property line. The 4-foot planting strip noted in the Pedestrian Design Guide is typically replaced with an 8-foot stormwater facility,

as required by the City of Portland Stormwater Management Manual. This equates to a 16-foot wide pedestrian corridor.

However, in this case, there are a number of mature fir trees along the site's frontage that PDOT is sensitive to trying to retain. If the above referenced typical frontage improvements were required, the numerous mature trees would need to be removed. In order to save these trees and still provide an improvement to the pedestrian system along this segment of SE 174th Avenue, PDOT will instead allow a modified pedestrian corridor. The applicant will be required to construct a 6-ft curb-tight sidewalk along the site's frontage. This will involve constructing the new curb 16-ft from the r-o-w. centerline and providing additional street paving to the new curb. Street lighting and street trees may also be required, as needed. This revised frontage improvement was suggested and reviewed by City staff, including BES staff, throughout the City's Early Assistance process. BES staff have indicated support for the feasibility of this approach. No dedication of property will be required to accommodate these improvements.

This criterion is met subject to conditions described above.

**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 8-inch water main is available in SE 174<sup>th</sup> Avenue. Rockwood Water District will provide service. In order to meet the standards of 33.651, appropriate plans and assurances must be provided to the Rockwood Water District prior to final plat approval. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8 inch PVC public sanitary sewer located in SE 174<sup>th</sup> Avenue that can serve the sanitary needs of the proposed parcel 2. Parcel 1 has an existing sewer service from that main. See Exhibit E-1 for more details.

As a result of the proposed land division, the existing sewer connection that serves the house on Parcel 1 may cross over Parcel 2 to reach the sewer main in the street. The applicant must either obtain a plumbing permit to cap the existing sewer connection and establish a new service for the house located entirely Parcel 1 (provide an easement for the sewer line across Parcel 2 on the Final Plat as discussed above) *or* document that the existing service line lies within the frontage of Parcel 1.

- 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 A), and the Bureaus have responded as follows (Exhibits E-1 and E-5).

- **Parcel 1 (the parcel with the existing house):** The downspouts of the existing house are connected to underground pipes and to the ground. Prior to final plat approval, final approval of a stormwater retrofit permit (i.e. to install rain drains and a drywell) will be required for the existing house. All gutters and downspouts must be connected to an approved system that is acceptable to Site Development.
- **Parcel 2:** Site Development notes that on-site stormwater treatment and disposal is acceptable for the new parcel. The proposed soakage trench is acceptable; a drywell would also be suitable at this location according to Site Development (See Exhibit E-1).

**Findings:** Subject to the conditions described above, these criteria are met.

### **Right of Way Approval Criteria**

**Applicable Approval Criteria are:**

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.

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
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 – No right-of-way is proposed or required.
33.654.120.C.3.c	Turnarounds	Not applicable – No turnarounds are proposed or required.



<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
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.
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 only new through pedestrian connections included in the proposal are new sidewalks along the frontage of the site. This is a straight-line connection on which users will be able to see the ending of the pedestrian route from the entrance.

Existing north-south streets to the west (SE 172nd Avenue) and east (SE 174th Place) are spaced less than 240-ft. apart. The site is situated 445-ft. south of SE Main and 410-ft. north of SE Mill.

The site contains sufficient width to allow the creation of a public east-west through street. However, the properties adjacent to the portion of the site where the street would terminate are already developed, and not configured in a manner that would easily allow the further extension of a street from the site. So, although the optimum spacing criteria would indicate the need for an east-west through street or pedestrian connection at this site, there is no practicable opportunity to provide them in this land division.

In addition, the site is within the Portland Master Street Plan for the Far Southeast District and no additional connections are specified by the Master Street Plan. Therefore, the proposal is consistent with the master street plan.

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 proposed 55-foot width public right-of-way can be provided on the final plat. At this time no specific utility easements adjacent to the public 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 is 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.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 1. 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 R7 zone (Please see section on Other Technical Standards for Building Code standards.)

In this case, Zoning Code standards must be met:

- **Minimum Setbacks** – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 5 feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.
- **Front Yard Paving**: The standard is that no more than 40 percent of the land area between the front lot line and the front building line may be paved or used for vehicle areas.
- **Required Off-Street Parking** – In this zone, one parking space per dwelling unit is required. A paved parking pad/garage provides this required parking for the existing house on Parcel 2. As a result of this land division, the required parking space for the existing house will be located on a different lot. In order to ensure that parking requirements continue to be met, a new parking space for the existing house must be constructed on Parcel 1 prior to final plat approval. Permits must be obtained to construct a new parking space. Documentation of final inspection of this new parking space will be required prior to final plat approval.
- **Accessory Structures** – In this zone, accessory structures are not allowed on a lot without a primary structure. Therefore, in order for the proposed new lots to meet this standard, all accessory structures on Parcel 2 must be removed prior to final plat. Demolition permits are required. The applicant must provide documentation prior to final plat approval that all required demolition permits have received final inspection. To ensure that this standard is met, a condition of approval is necessary.

With the conditions noted above, this land division proposal can meet the requirements of Section 33.700.015, Review of Land Divisions.

## **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.

<b>Bureau</b>	<b>Code Authority</b>	<b>Topic</b>	<b>Contact Information</b>
Water Works	Title 21	Water availability	503-823-7404 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>

<b>Bureau</b>	<b>Code Authority</b>	<b>Topic</b>	<b>Contact Information</b>
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 <a href="http://www.bds.ci.portland.or.us">http://www.bds.ci.portland.or.us</a> .

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.

## **CONCLUSIONS**

The applicant has proposed a 2 lot partition, as shown on the attached preliminary plan (Exhibit C-1). 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:

- Location of the existing sewer line;
- Street improvements that will preserve trees in right-of-way;
- Removal of the existing garage and potentially part of the driveways and providing required parking

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

## **ADMINISTRATIVE DECISION**

**Approval** of a Preliminary Plan for a 2-lot partition, that will result in 2 parcels as illustrated with Exhibit C-1, subject to the following conditions:

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey. 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 sewer line using metal tracer wire detection, video sewer scoping or by an equivalent method to be approved by Site Development;
- Existing septic systems
- Any other information specifically noted in the conditions listed below.

**B. The final plat must show the following:**

1. An easement for the sewer line at least ten feet in width, if required
2. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as may be required by Condition 7 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:**

**Streets**

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of SE 174<sup>th</sup> Avenue. The applicant shall provide plans

and financial assurances to the satisfaction of the Bureau of Transportation Engineering and Development Review and the Bureau of Environmental Services for required street frontage improvements.

2. A Certified Arborist should be on site during sidewalk construction to monitor any possible root damage that may be caused by construction of the sidewalk.

#### Utilities

3. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing sanitary sewer system on the site.

#### Existing Development

4. The applicant must obtain a finalized zoning or building permit for modifications to the existing house and front yard paving that will remain on proposed Parcel 1 that demonstrate compliance with the following standards in relation to the proposed new lot lines:
  - 33.266.120 (Parking and Loading, Development Standards for Houses and Duplexes allows a maximum 40% paving);
 Alternately, the applicant must obtain an approved Adjustment to these standards prior to final plat approval.
5. The applicant must meet the requirements of Site Development for the stormwater systems on the existing house to remain on Parcel 1. Specifically, the gutters and downspouts must function properly, and they must direct water to an approved disposal system that meets setback requirements from the new lot lines. The applicant must obtain finalized plumbing permits for this work prior to final plat approval.
6. The applicant must obtain a finalized demolition permit for removing the garage on Parcel 2. Alternately, the applicant can execute a covenant with the City stating that the structures will be removed if a primary structure has not received final inspection on the lot(s) with the accessory structure(s) within two years of final plat approval. The covenant must be recorded with Multnomah County prior to final plat approval.

#### Required Legal Documents

7. If a Maintenance Agreement is required, then it 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.

Decision rendered by:  on December 16, 2008.  
By authority of the Director of the Bureau of Development Services

**Decision mailed on December 18, 2008**

**Staff Planner: Mark Bello**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 April 16, 2008, and was determined to be complete on September 24, 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 16, 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. This application was deemed complete on September 24, 2008. 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.

**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 are 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](http://www.portlandonline.com).

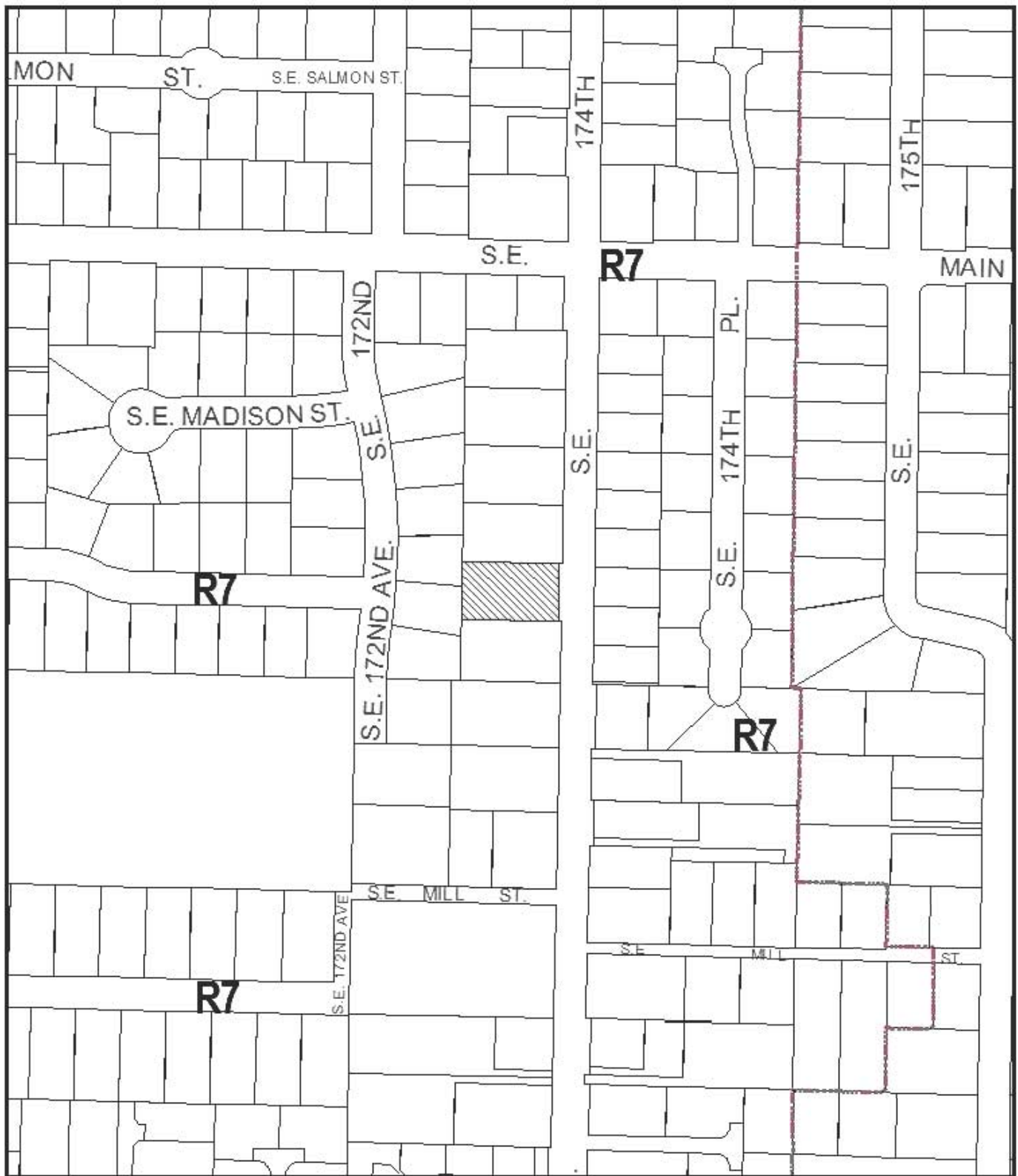
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City’s final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City’s approval of the preliminary plan.**

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Land Division Approval Criteria
  - 2. Ground Water Depth Investigation Report
  - 3. Arborist Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Plan (attached)
  - 2. Preliminary Grading/Utility Plan
- 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. Rockwood Water
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Plans Review Section of BDS
- F. Correspondence: (none)
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Land Division Appointment Summary
  - 4. 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

 Site



File No.	<u>LU 08-122499 LDP</u>
1/4 Section	<u>3148,3248</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S3E06AC 6700</u>
Exhibit	<u>B (Apr 18,2008)</u>



**1437 SE 174TH AVE**  
PORTLAND OREGON



Project No.	07-185629 EA
Client	CHRIS BANIT
Address	1437 SE 174TH AVE PORTLAND, OREGON 97233
Project Manager	J. HOSSELS
Designer	
Checker	
Date	2/28/08
Sheet Contents	

**R/E Engineering**  
CIVIL DESIGN  
1437 SE 174TH AVE  
PORTLAND, OREGON 97233

**1437 SE 174TH AVE  
DEVELOPMENT  
07-185629 EA**

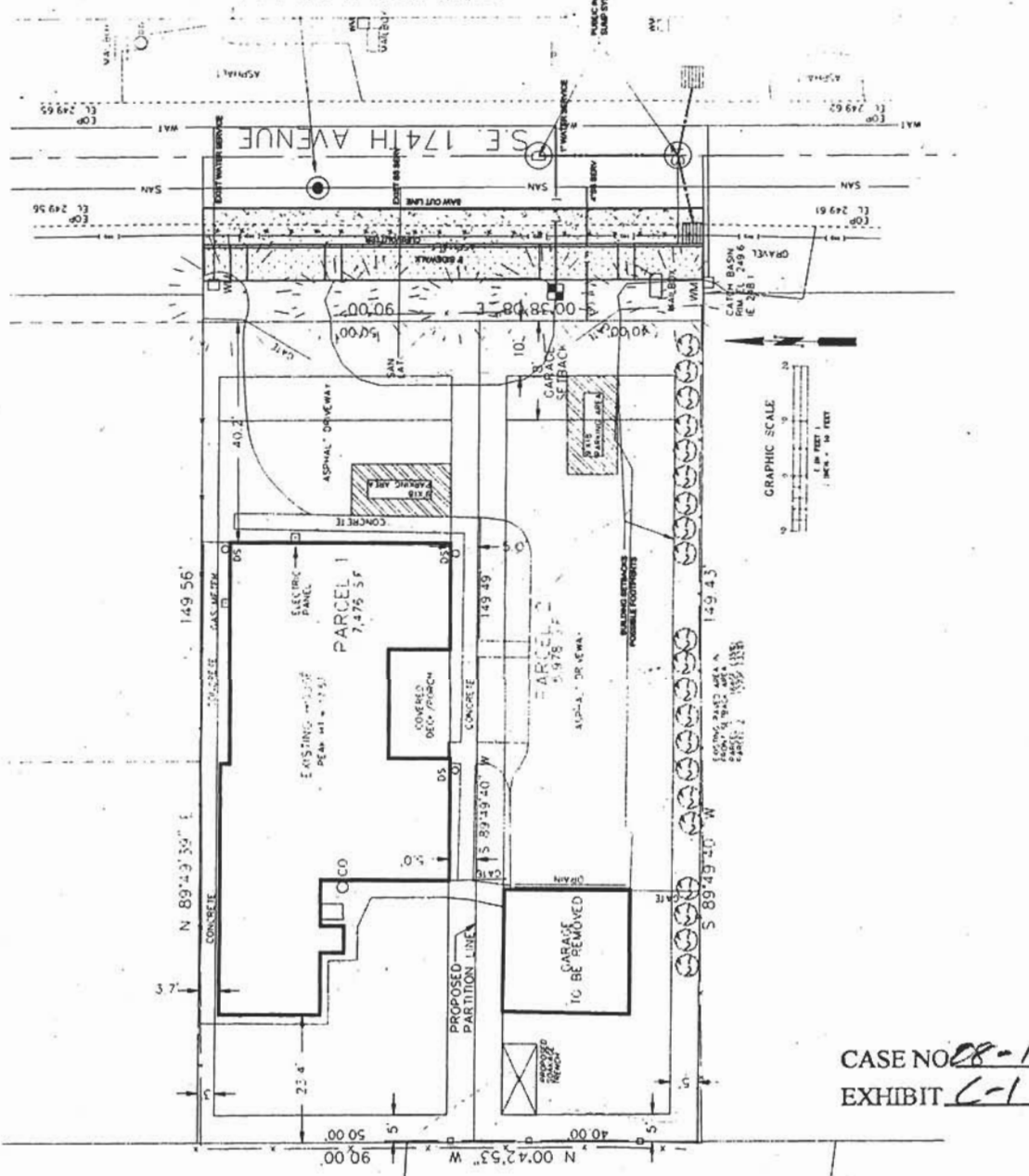
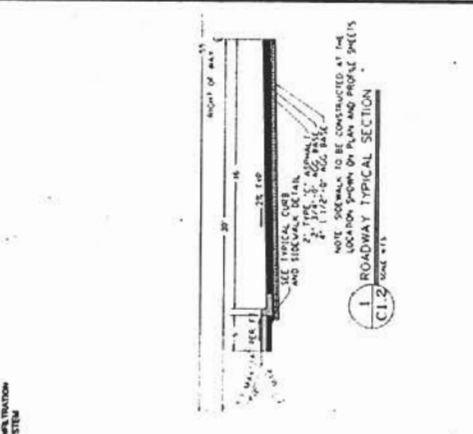
**PRELIMINARY  
GRADING  
UTILITY  
PLAN**

Sheet No. **C1.0**

DATE: 2/28/08  
PROJECT: 1437 SE 174TH AVE DEVELOPMENT  
CLIENT: CHRIS BANIT  
ADDRESS: 1437 SE 174TH AVE, PORTLAND, OREGON 97233  
PROJECT MANAGER: J. HOSSELS  
DESIGNER: [Blank]  
CHECKER: [Blank]  
DATE: 2/28/08

**GENERAL CONSTRUCTION NOTES:**  
1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF PORTLAND'S STANDARD SPECIFICATIONS FOR PUBLIC WORKS, LATEST EDITION.  
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF PORTLAND.  
3. ALL UTILITIES SHALL BE PROTECTED AND DEEPENED AS NECESSARY TO ACCOMMODATE THE PROPOSED CONSTRUCTION.  
4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND PUBLIC UTILITIES AT ALL TIMES.  
5. ALL EXCAVATIONS SHALL BE PROTECTED AND BACKFILLED WITH COMPACTED MATERIAL TO ORIGINAL GRADE OR BETTER.  
6. ALL ROADWAYS SHALL BE CONSTRUCTED TO ORIGINAL GRADE OR BETTER.  
7. ALL UTILITIES SHALL BE PROTECTED AND DEEPENED AS NECESSARY TO ACCOMMODATE THE PROPOSED CONSTRUCTION.  
8. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND PUBLIC UTILITIES AT ALL TIMES.  
9. ALL EXCAVATIONS SHALL BE PROTECTED AND BACKFILLED WITH COMPACTED MATERIAL TO ORIGINAL GRADE OR BETTER.  
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**GENERAL UTILITY NOTES:**  
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CASE NO. 08-128499  
EXHIBIT C-1