



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

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**Date:** February 17, 2010  
**To:** Interested Person  
**From:** Sean Williams, 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 09-147225 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Concordia University  
14817 NE Newport Street  
Portland, OR 97230-4673  
  
Mark Gibson  
Us Bank  
111 SW 5<sup>th</sup> Avenue, Suite #600  
Portland OR, 97204

**Representative:** Peter Fry  
2153 SW Main Street, #105  
Portland, OR 97205

**Site Address:** 5411 NE Ainsworth Street

**Legal Description:** LOT 8 BLOCK 14, KILLINGSWORTH GARDENS  
**Tax Account No.:** R450005650  
**State ID No.:** 1N2E18DB 04100  
**Quarter Section:** 2436  
**Neighborhood:** Cully, contact Steve Yett at 503-282-3251.  
**Business District:** None  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.  
**Plan District:** None  
**Zoning:** Residential 5,000 (R5) w/ Airport Height Overlay (h)  
**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 is proposing to partition the subject property into three lots ranging from 5,707 to 6,205 square feet in size. A private street and associated stormwater management facility is proposed to access the new parcels.

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. 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 subject property is located approximately 100 feet west of the intersection of NE Ainsworth Street and NE 55<sup>th</sup> Avenue. Existing development consists of a single family dwelling located on the southern half of the land division site that will be retained within proposed Lot 3 and a detached accessory structure that will be removed. A large row of Douglas fir trees are located on the common property boundary of the adjacent lot to the west. Development within the vicinity of this site is predominantly comprised of single family dwellings with associated zoning designations. Industrial zoning and development is located approximately 450 feet from this site north of NE Lombard Street.

**Zoning:** The R5 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.

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The allowed height limit for buildings and vegetation on the site per the "h" overlay is 180 feet above the lowest base point at Portland International Airport. The airport low base point is at an elevation of 18.3 feet. Therefore, the topographical elevation of the site PLUS the proposed building cannot exceed 198.3 feet. The highest ground elevation on the site is approximately 100 feet. Therefore, buildings and vegetation on the site cannot exceed 98.3 feet in height. On this site, however, the base zone (R5) height limit of 30 feet is more restrictive than the 'h' overlay allows and cannot be exceeded without a future adjustment review.

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

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on December 3, 2009.

**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:** Two written responses have been received from notified property owners regarding the land division proposal. The main concerns expressed in the written correspondence revolve around the row of Douglas fir trees located on the western property line of the subject property. Although exempt from tree preservation standards, the applicant is proposing to preserve these trees as demonstrated in the submitted arborist report (Exhibit A-2) and Grading, Erosion Control, Tree Preservation & Street Plan (Exhibit C-3). See findings associated with Criterion B, Trees for further information.

## 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.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.610	Lots	<b>Applicable - See findings below.</b>
B	33.630	Trees	<b>Applicable - See findings below.</b>
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	<b>Applicable - See findings below.</b>
G	33.635 .200	Land Suitability	<b>Applicable - See findings below.</b>
H	33.636	Tracts and Easements	Applicable - See findings below.
I	33.639	Solar Access	Not Applicable - All of the proposed parcels available for development 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 outside of environmental zones.
K	33.641	Transportation Impacts	<b>Applicable - See findings below.</b>
L	33.651 - 33.654	Services and Utilities	<b>Applicable - See findings below.</b>

#### 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 dimension requirements applicable in the RF through R5 zones. These density and lot dimension requirements 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 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 = 23,052 square feet \* .68 ÷ 5,000 square feet = 3.13 (which rounds down to a minimum of 3 lots, per 33.930.020.A)

Maximum = 23,052 square feet \* .85 ÷ 5,000 square feet = 3.91 (which rounds up to a maximum of 4 lots, per 33.930.020.B)

The applicant is proposing 3 lots. The density standards are therefore met.

#### Lot Dimensions

The lot dimension requirements 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 so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future; (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 requirements are shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	<b>R5 Zone Requirement</b>	<b>Proposed Lot 1</b>	<b>Proposed Lot 2</b>	<b>Proposed Lot 3</b>
Minimum Lot Area	3,000 sq. ft.	6,205 sq. ft.	6,156 sq. ft.	5,707 sq. ft.
Maximum Lot Area	8,500 sq. ft.			
Minimum Lot Width*	36 ft.	41 ft.	85 ft.	72 ft.
Minimum Lot Depth	50 ft.	70 ft.	72 ft.	83.58 ft.
Minimum Front Lot Line	30 ft.	30 ft.	85 ft.	72 ft.

\* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

The findings above describe how the applicable lot standards are met. This criterion is therefore 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). The arborist report identifies a total of 31 trees of which one tree was determined to be viable in terms of preservation. Of significant note are 20 moderately sized conifer trees located on the common property boundary with the adjacent property to the west. These trees are exempt from preservation standards based on the primary trunks being partially located on the adjoining site not a part of this land division. However, the applicant has expressed a desire to preserve these trees as demonstrated through an increased setback of the private street improvements from the western property line, tree protection fencing and recommended construction methods that include technical supervision of a certified arborist for all work within the drip line of these trees. The remaining species identified on the site are primarily comprised of various fruit trees which have been exempted due to unhealthy conditions. Additionally, tree protection fencing is proposed on Lot 1 for a significant ponderosa pine tree which is located on the adjacent property to the north and therefore not subject to preservation standards.

The sole non-exempt tree located fully within the land division site is an 18 inch Cypress located in the front yard of proposed Lot 3. The applicant is proposing to preserve this tree for compliance 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 Grading, Erosion Control, Tree Preservation & Street Plan showing the preserved trees and the required root protection zones (Exhibit C-3).

This criterion is met, subject to the condition that development of the individual lots and private street tract be carried out in conformance with the arborist report (Exhibit A-2) and Grading, Erosion Control, Tree Preservation & Street Plan (Exhibit C-3). A condition at the time of development shall be implemented requiring documentation from a certified arborist prior to final approval of the site development permit for the private street that substantiates the construction recommendations of the arborist report have been implemented.

**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 relatively flat, and is not located within the Potential Landslide Hazard Area. However a new street and associated stormwater system is proposed as part of the land division, which will require grading on the site. The applicant has submitted a Preliminary Grading, Erosion Control, Tree Preservation and Street Plan (Exhibit C-3) that depicts the proposed work, including existing and proposed elevation contours, soil stockpile areas, undisturbed areas consistent with the root protection zones of trees to be preserved and the overall limits of disturbed area.

The proposed clearing and grading shown on Exhibit C-3 represents a minimal amount of change to the existing contours and drainage patterns of the site to provide for a level street surface. The contour changes proposed should not increase runoff or erosion because all of the erosion control measures shown on the grading plan must be installed prior to starting the grading work. Stormwater runoff from the new street and lots will be appropriately managed by an infiltration swale to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report).

The clearing and grading proposed is sufficient for the construction of the new street and the preparation of the lots, without being excessive. The limits of disturbance shown on the applicant's plan does not extend more than 5 feet outside of the area proposed for the street, which will allow for a reasonable maneuvering area for earth-moving equipment needed to level the street and an adequate area to stockpile excess material. The limits of disturbance will also allow for the existing accessory structure on the site to be demolished and any debris associated with these buildings to be removed. In addition, no clearing and grading is proposed within the root protection zones of the trees on the site that are required to be preserved.

The clearing and grading plan indicates areas of topsoil storage and general stockpiling that are located directly adjacent to the new street tract, and outside of the root protection zones of the trees on the site to be preserved.

As shown above, the Preliminary Grading, Erosion Control, Tree Preservation and Street Plan meets the approval criteria. As discussed later in this report, the Site Development Section of the Bureau of Development Services requires that the applicant apply for a Site Development Permit for the construction of the proposed private street. The permit application must include a final clearing and grading plan, that must be consistent with the preliminary clearing and grading plan approved with the land division. With a condition of approval that the applicant's final clearing and grading plan is consistent with the Grading, Erosion Control, Tree Preservation and Street Plan, 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, there is an old cesspool on the site. The City has no record that this facility 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:** A private street and stormwater management tract is proposed with this land division. With a condition that the proposed tract be owned in common by the owners of lots 1 through 3, this criterion can be met.

**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:** As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the tract described above and facilities within this area. This criterion can be met with the condition that a maintenance agreement is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement with a recording block, substantially similar to the following example:

*"A Declaration of Maintenance agreement for private street and stormwater management tract 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 102 feet of frontage on NE Ainsworth Street. At this location, NE Ainsworth Street is classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 1,200 feet from the site on NE Columbia Boulevard via bus number 75. Parking is currently allowed on both sides of NE Ainsworth Street. There is one driveway entering the site that provides access to off-street parking for the existing house.

At this location, NE Ainsworth Street is improved with a 16 foot paved roadway surface within an 80 foot wide right-of-way. There are no curbs, planter strips, or 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. Because none of the other frontages have been improved on this street, Portland Transportation has determined that an isolated improvement at this location would not be meaningful. If the street is to be improved, it would be more appropriate to complete the improvements as one LID project. Therefore, the applicant will be required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) prior to final plat approval.

This criterion is met, with the condition that the required waivers are signed prior to final plat approval.

**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 NE Ainsworth Street. Lot 3 has an existing 5/8 inch metered water service from this main that may continue to be used. Water is available to serve the proposed development from the water main in NE Ainsworth Street. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 24 inch concrete public sanitary-only sewer located in NE Ainsworth Street that can serve the sanitary needs of the proposed lots. Lot 3 has an existing sewer service from that main that may continue to be used. See Exhibit E-1 for more details.
- 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-4), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Private Street:** Stormwater will be directed to an approximately 9-foot wide infiltration basin located within the street tract adjacent to Lot 3. The applicant has submitted stormwater calculations and soil test results that indicate the size of the proposed swale can accommodate the volume of stormwater runoff from the impervious areas of the street. The Site Development Section has indicated conceptual approval of the proposed swale location and size.
- **Lots 1 & 2:** Stormwater from these lots will be directed to individual soakage trenches or drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. Site Development has indicated conceptual approval of stormwater management facilities for these lots.
- **Lot 3 (the lot with the existing house):** The existing house has downspouts that drain into underground rain drains. Site Development has noted that there are no City records indicating where the rain drains discharge. Therefore, prior to final plat approval, the applicant shall obtain final approval of Site Development permit 10-103214-SD for evaluation of the stormwater system for the existing house on Lot 3 and to confirm completion of any required stormwater system retrofits if necessary. If a separate plumbing permit is required, then the permit shall be finalized prior to approval of the Site Development permit.

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	<b>Applicable - See findings below.</b>
33.654.110.B.2	Dead end streets	<b>Applicable - See findings below.</b>
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	<b>Applicable - See findings below.</b>
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.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	<b>Applicable - See findings below.</b>
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.
33.654.130.E	Ownership of Alleys	Not applicable- No alleys 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 52<sup>nd</sup> Avenue and NE 55<sup>th</sup> Avenue, which have a distance between them of approximately 615 feet. There is no other north/south through

streets between these two streets at this location. Additionally, the site is located approximately 100 feet west of the intersection of NE Ainsworth Street and NE 55<sup>th</sup> Avenue. If the distance between these existing streets is evaluated against the optimum spacing requirement of 200-530 feet, one can conclude that there should be a north/south through street provided in the vicinity of the site. However, based on the existing development pattern within the block and the site's close proximity to NE 55<sup>th</sup> Avenue, there is no practicable opportunity to provide a through street or pedestrian connection with this land division. In addition, the site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply.

For the reasons described above, this criterion is met.

**33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones. In OS, R, C, and E zones, dead-end streets may be provided where through streets are not required. Dead-end streets should generally not exceed 200 feet in length, and should generally not serve more than 18 dwelling units. Public dead-end streets should generally be at least 200 feet apart.**

**Findings:** The proposal includes a private dead-end street and pedestrian connection, which will be located in the new street tract. As discussed under the findings for through streets above, a new public north-south through street is not required for this proposal. The private dead-end street will serve only 3 dwelling units and it is approximately 170 feet in length from the frontage along NE Ainsworth Street. This criterion is met.

**33.654.120.C.1 Approval criterion for width of the right-of-way. The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.**

**Findings:** The private street will serve 3 lots. The applicant has proposed that a 30-36 foot wide tract is sufficient to accommodate the expected users. The *Administrative Rules for Private Rights of Way* are the standards that govern the construction of private streets. These rules recommend a width of 22 feet for dead-end streets less than 300 feet long, serving less than 4 lots. This width will provide room for the construction of an 18 foot wide paved roadway that allows two travel lanes, two 1 foot mountable curbs, an approximately 9 foot wide infiltration basin adjacent to Lot 3, a 4 foot setback adjacent to the new lots and a 6 foot setback to the adjacent property to the west. In this proposal, the applicant will be disposing of stormwater from the private street within an infiltration basin adjacent to Lot 3. As previously discussed in this report, the proposed swale is 9-feet wide-5 feet wider than the recommended 4-foot planter strip. These elements, including the swale can be accommodated in the 30-36-foot wide tract.

The proposed tract width is sufficient to accommodate the elements of a street that is presumed to be adequate for 3 lots by the *Administrative Rules* governing private streets. 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 30-foot width of the private street tract can be provided on the final plat. At this time no specific utility easements adjacent to the street tract 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.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Lot 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 R5 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

In this case, there are several Zoning Code standards that relate to existing development on the site:

- **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 9 feet from the new west property line 20 feet from the new north 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.
- **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, the shed located on Lot 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.

- **Street-Facing Facades in R10 through R2.5 Zones** -- In this zone, street-facing facades of residential structures are required to have windows that comprise at least 15 percent of the façade area. As a result of the land division, the existing house on Lot 3 will have new street frontage from the private street tract adjacent to the western building elevation. Therefore, prior to final plat approval, the applicant must provide documentation to demonstrate this standard is met on the western building elevation or finalize a building permit to make modifications to the house that will remain on Lot 3 to demonstrate continued compliance with 33.110.232.C after the land division is recorded.

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 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2008 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>
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.

- The applicant is required to make improvements to the proposed private street. Several conditions are required, including provision of plans and financial assurances, initiating a building permit, and providing a maintenance agreement. In addition to the approval criteria of Title 33, these requirements are also based on the technical standards of Title 17 and Title 24.
- The applicant must meet the requirements of the Fire Bureau in regards to fire apparatus access roads, posting of "No Parking" signs in the private street, turning

radius, driving surfaces, providing an Emergency Vehicle Access Easement over the private street tract and aerial fire department access roads. These requirements are based on the technical standards of Title 31 and Oregon Fire Code. See exhibit E-4 for more details.

- The applicant must meet the requirements of Urban Forestry for street tree planting in the NE Ainsworth Street right-of-way adjacent to Lot 3 prior to final plat approval. This requirement is based on the standards of Title 20. See exhibit E-6 for more details.

## CONCLUSIONS

The applicant has proposed a 3 parcel partition, as shown on the attached preliminary plat (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: tree preservation.

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

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 3 parcel partition, that will result in 3 standard lots 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 for Land Use 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 as-built location of any required new subsurface stormwater system retrofit facilities for the existing house on Lot 3 after any required permits are finalized. If no new subsurface system is required, then this condition will not apply.
- The turning radius from NE Ainsworth Street to the new private street as required by the Fire Bureau.
- Any other information specifically noted in the conditions listed below.

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

1. The private street tract shall be named, with approval from the City Engineer, and noted on the plat as "Tract A: Private Street *name of street*".
2. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the entirety of the private street to the satisfaction of the Fire Bureau.
3. A recording block for maintenance agreement associated with the private street tract as required by Condition C-10 below. The recording block shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (Private Street) 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 sign street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms will be provided to the applicant during the final plat review process.
2. The applicant shall submit an application for a Site Development Permit for construction of the private street and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer.
3. The applicant shall furnish a financial guarantee of performance, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the private street and all required site development improvements. The applicant shall provide an engineer's estimate of the costs of performance including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with the Bureau of Development Services to complete the required improvements.
4. The applicant shall provide a clearing and grading plan with the Site Development permit required for the private street described in Condition C-2. The clearing and grading plan must substantially conform to the Preliminary Grading, Erosion Control, Tree Preservation & Street Plan approved with this decision (Exhibit C-3).

**Utilities**

5. 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**

6. The applicant must obtain a finalized demolition permit for removing the shed on Lot 2.
7. The applicant must provide documentation to demonstrate that the standards for Street-Facing Facades in the R10-R2.5 Zones (33.110.232.C) are met on the western building elevation of the existing house on Lot 3, adjacent to the new private street, or finalize a building permit to make modifications to the house to demonstrate continued compliance with this standard after the land division is recorded.
8. The applicant shall obtain final approval of Site Development permit 10-103214-SD for evaluation of the stormwater system for the existing house on Lot 3 and to confirm completion of any required stormwater system retrofits if necessary. If a separate plumbing permit is required, then the permit shall be finalized prior to approval of the Site Development permit.
9. The applicant must plant 1 street tree in the NE Ainsworth right-of-way adjacent to Lot 3. The street tree will be chosen from the City's approved street tree list for an 8 ½ foot planting strip without overhead power lines. Tree size requirements for residential sites are to be 2-inch caliper. 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.



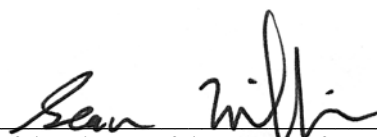
**Required Legal Documents**

10. The applicant shall execute a Maintenance Agreement for the private street tract. The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1-3 and include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The maintenance 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 Lot 3 shall be in conformance with the Grading, Erosion Control, Tree Preservation & Street Plan (Exhibit C-3) and the applicant's arborist report (Exhibit A-2). Specifically, tree number 5172, the 18" Cypress, is required to be preserved, with the root protection zone indicated on Exhibit C-3. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. 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.
2. Documentation from a certified arborist shall be submitted prior to final approval of the site development permit for the private street that substantiates the construction recommendations of the arborist report have been implemented.
3. The first lift of paving for the private street shall be installed prior to issuance of any permits for residential construction.
4. Prior to finalizing the Site Development permit for the private street, a plumbing permit must be obtained and finalized for the new utility lines that will be constructed beneath the paved surface of the new street.
5. The applicant must post the private street with "No Parking" signs to the satisfaction of the Fire Bureau.
6. The applicant must provide a fire accessway to the satisfaction of the Fire Bureau or the height of the new structures shall be limited to 30 feet, measured to the gutter line.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on February 11, 2010**

By authority of the Director of the Bureau of Development Services

**Decision mailed: February 17, 2010**

**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 July 29, 2009, and was determined to be complete on November 30, 2009.

*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 July 29, 2009.

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 waived the 120-day review period, as stated with Exhibit G-4.

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

**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. Arborist Report
  - 3. Geotechnical Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Plat (attached)
  - 2. Existing Conditions
  - 3. Grading, Erosion Control, Tree Preservation & Street Plan (attached)
  - 4. Utility Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services w/ addendum
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS w/ addendum
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Plans Examiner
- F. Correspondence:
  - 1. Erwin & Lea Bergman; 5330 NE Holman Street (12/31/09)
  - 2. Walt Quade & Marcia Tate; 6110 NE 53<sup>rd</sup> Place (1/2/10)
- G. Other:
  - 1. Site History Research
  - 2. Incomplete Letter
  - 3. Original LU Application
  - 4. Extension of 120 day review period

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



# ZONING



File No. LU 09-147225 LDP  
 1/4 Section 2436  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E18DB 4100  
 Exhibit B (Jul 30,2009)

CITY OF PORTLAND, OREGON  
TAX MAP: 1N2E 18 DB 04100

WATER  
SEWER  
STORM  
POWER  
GAS  
FIRE  
POLICE  
SCHOOL  
PARKS  
ROADS  
PUBLIC TRANSIT  
TELEPHONE

SITE AREA:	0.54 ACRES
ZONING:	R-5
TAX MAP:	IN2 MED
TAX LOT:	0000
NUMBER OF LOTS:	3
AVERAGE LOT SIZE:	612 SF



**LAND USE PLANNING:**  
PETER FINLEY FRY, AICP  
253 SW MAIN STREET  
PORTLAND, OR 97205  
PFF: (503) 274-2744 / FAX: (503) 274-4415  
CONTACT: PETER FRY

**ENGINEERING/SURVEYING:**  
SFA DESIGN GROUP LLC  
9020 SW WASHINGTON SQUARE DR., SUITE 300  
PORTLAND, OR 97223  
PH: (503) 641-5311 / FAX: (503) 643-7005  
CONTACT: BRENT FITCH/BRAD GABRIEL

**GEOTECHNICAL ENGINEER:**  
ADAM REESE, R.G.  
965 SOUTHWEST ALLEN BLVD, SUITE 106  
PORTLAND, OR 9706  
PH: (503) 924-4704 / FAX: (503) 924-4707

**ARBORIST:**  
WALTER H. KNAPP AND ASSOCIATES, LLC  
705 SW DUNSMUIR LANE  
BEAVERTON, OR 97007  
PH: (503) 646-4349 / FAX: (503) 646-4349  
CONTACT: WALT KNAPP

GRAPHIC SCALE

( IN FEET )  
1 inch = 20 feet

## SHEET INDEX

- 1 PRELIMINARY FLAT
- 2 EXISTING CONDITIONS
- 3 GRADING, EROSION CONTROL, TREE PRESERVATION  
AND STREET PLAN
- 4 UTILITY PLAN

SHEET	1	OF	4
TYPE	PLANNING		
NO.	241-008		
PROJECT	AMSBORTH		

\_\_\_\_\_  
\_\_\_\_\_  
SCALE \_\_\_\_\_  
PROJECT NO. 240-003 REF. \_\_\_\_\_  
REVIEWED BY BGF DATE \_\_\_\_\_  
DRAWN BY BGF DATE \_\_\_\_\_  
DESIGNED BY BGF DATE \_\_\_\_\_

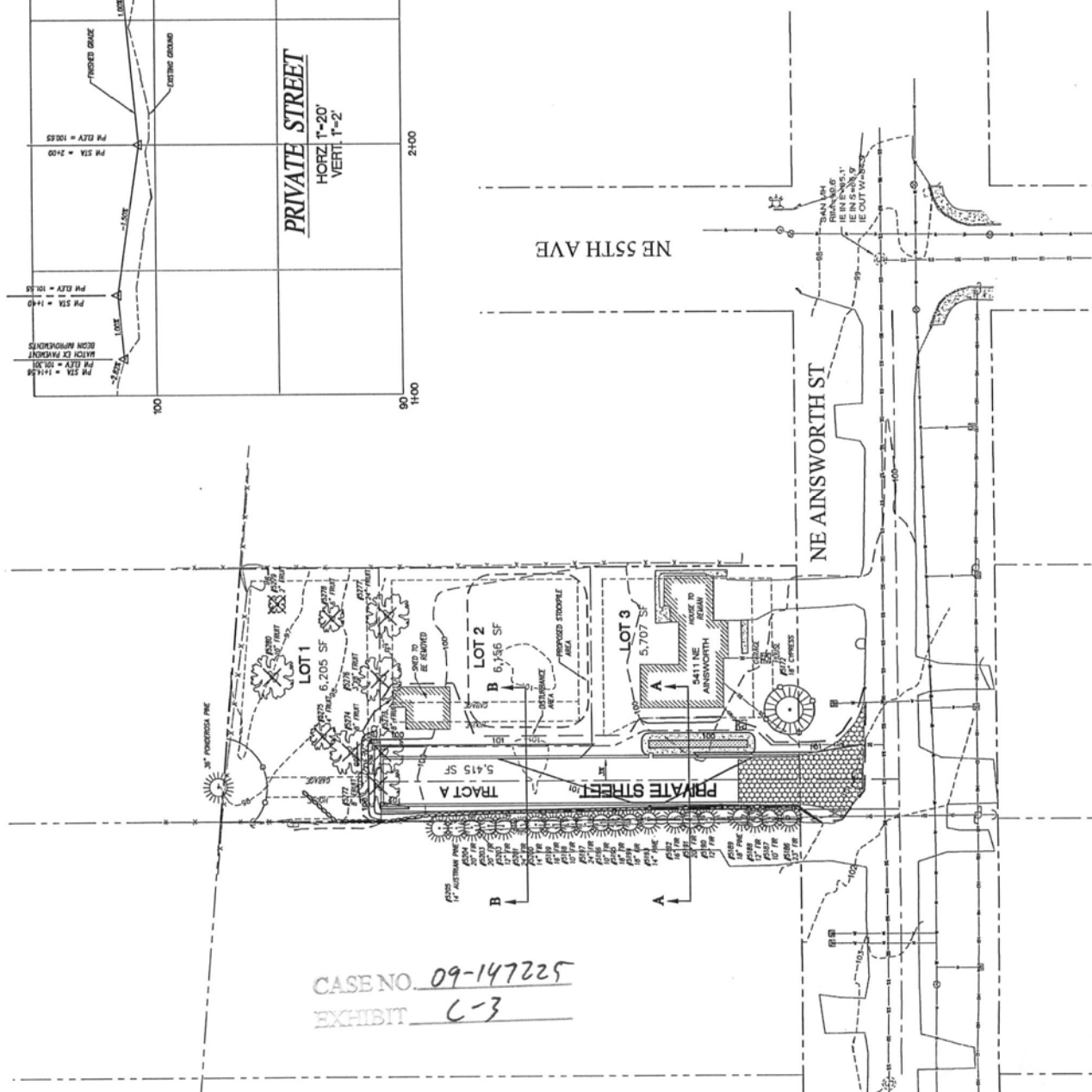
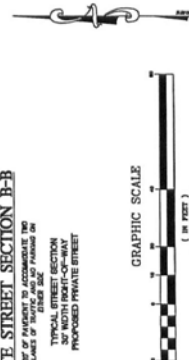
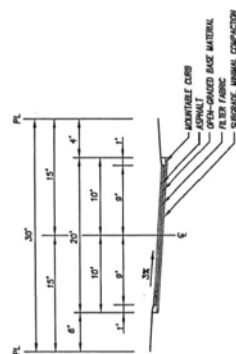
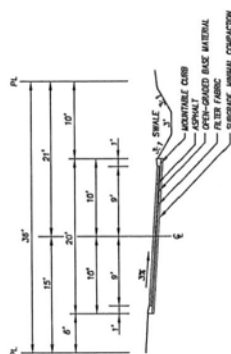
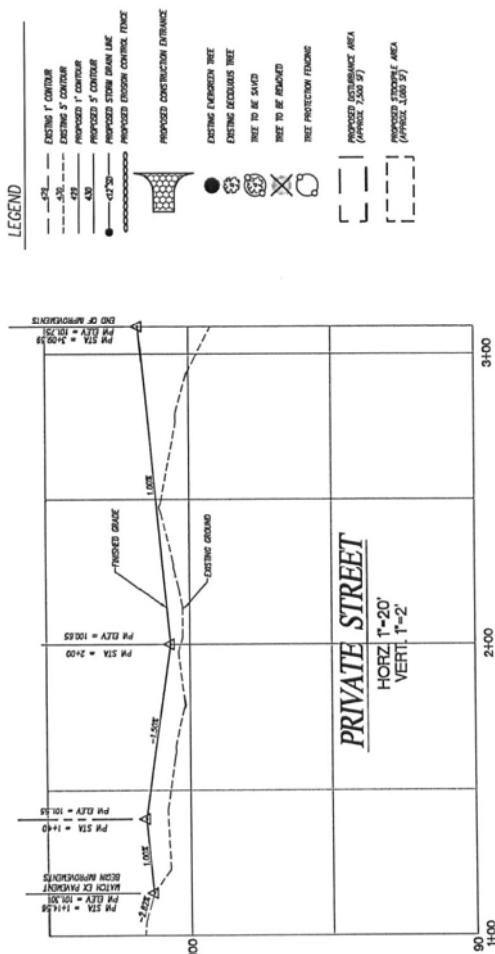
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PRELIMINARY PLAT  
AINSWORTH PARTITION



**A Design Group, LLC**  
STRUCTURAL | CIVIL | LAND USE PLANNING  
100 SW Washington Square Dr., Suite 350  
Portland, Oregon 97223  
P: (503) 661-8211 E: [info@adggroup.com](mailto:info@adggroup.com)  
[www.adggroup.com](http://www.adggroup.com)

PROJECT	APR 2000	NO.	241-003
SHEET	4	OF	3
DISIGNED BY	DATE	DRAWN BY	DATE
REVIEWED BY	DATE	PROJECT NO.	241-003
SCALE	1:100	DATE	10-10-00
APPROVED BY			



CASE NO. 09-147225  
EXHIBIT C-3

