



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

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**Date:** May 30, 2017  
**To:** Interested Person  
**From:** Kate Green, Land Use Services  
503-823-5868 / [Kate.Green@portlandoregon.gov](mailto:Kate.Green@portlandoregon.gov)

**NOTICE OF A TYPE Ix DECISION ON A REVISED  
PROPOSAL IN YOUR NEIGHBORHOOD**

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

**CASE FILE NUMBER: LU 17-105503 AP**

**GENERAL INFORMATION**

**Applicant:** Victor Locke  
6734 SW 35th Avenue  
Portland OR 97219-1727

**Representative:** Christopher Koback / Hathaway Koback Connors LLP  
520 SW Yamhill Street, Suite 235  
Portland OR 97204

**Site Address:** vacant lot, between 12504 and 12536 SE Madison Street

**Legal Description:** LOT 29, SPECHT AC  
**Tax Account No.:** R784000840  
**State ID No.:** 1S2E02BC 04101  
**Quarter Section:** 3143

**Neighborhood:** Mill Park / Doug Reed / [dougrhomes@aol.com](mailto:dougrhomes@aol.com).  
**Business District:** Gateway Area Business Association / Paul Wild / [paul.wild@mhcc.edu](mailto:paul.wild@mhcc.edu)  
**District Coalition:** East Portland Neighborhood Office / Richard Bixby / 503-823-4550

**Zoning:** Single Dwelling Residential 2,500 (R2.5)  
Alternative Design Density (a) overlay

**Case Type:** Land Division Amendment (AP)  
**Procedure:** Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

**Revised Proposal:** The applicant requests a **Land Division Amendment** (AP) in order to modify a condition (Condition C.1) from a Land Division-Partition (LU 14-173928 LDP) approved to divide this site into 2 parcels.

Condition C.1 calls for the applicant to construct new right-of-way improvements along the site frontage on SE Madison Street and for a new pedestrian connection along the east boundary of the subject site.

Through the requested amendment, the applicant proposes to make use of a new city program that collects funds through a Local Transportation Infrastructure Charge (LTIC) for certain land use cases. The LTIC funds are administered by the Bureau of Transportation and will be used to construct improvements on the City's network of unimproved or under-improved local streets and adjacent or related transportation facilities.

Once the applicant was informed that the LTIC program cannot be used for the required pedestrian connection, the applicant revised his proposal to request that the walkway improvements for the pedestrian connection be waived.

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are: **33.660.320 Approval Criteria, Review of Changes to an Approved Preliminary Plan.**

## FACTS

**Site and Vicinity:** The site is an approximately 10,538 square foot property. It is relatively flat and there are no structures on the site. There are trees located across the property.

The surrounding development is varied. Along the section of SE Madison, where the site is situated, between SE 122<sup>nd</sup> Avenue (west) and SE 127<sup>th</sup> Avenue (east), most of the nearby lots to the east and west are developed with single story houses on lots that range in size from 5,000 to more than 10,000 square feet. The lots near SE 122<sup>nd</sup> Avenue, as well as those to the south and north are in multi-dwelling zones (R2 and R3) and are developed with larger multi-dwelling units. There is a mixed commercial and higher density residential corridor along SE 122<sup>nd</sup> Avenue.

Within a three to four block area, the surrounding street grid consists of longer east-west streets and shorter more fragmented north-south connections.

### **Infrastructure:**

**Streets** – The site has approximately 75 feet of frontage on SE Madison Street. At this location, SE Madison Street is classified as a Local Service Street for all modes in the Transportation System Plan (TSP), and is improved with 28-feet of center-strip paving within a 50-foot right-of-way. There is no curb or sidewalk along the site frontage.

The nearest Tri-Met transit service is approximately 820 feet west of the site at SE 122<sup>nd</sup> Avenue via Bus Line 71.

**Water Service** – There is an existing 4-inch CI water main in SE Madison Street. The estimated static water pressure range is 36 psi to 45 psi at the street frontage elevation of 307 feet.

**Sanitary Service** - There is an existing 8-inch PVC sanitary sewer line in SE Madison Street.

**Stormwater Disposal** – There are no public storm-only sewer in the vicinity, and public right-of-way drainage flows to a public infiltration sump (IUC) located near the northeast corner of the site.

**Zoning:** The site is located in a **Single Dwelling Residential 2,500 (R2.5)** zone. *Single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.*

The site also has an **Alternative Design Density (a)** overlay designation. *The purpose of the Alternative Design Density Overlay Zone is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.* The applicant has not elected to use the provisions of the a-overlay.

**Land Use History:** City records indicate the one prior land use review for this site is LU 14-173928 LDP, which is the subject of this pending amendment review.

In addition, the subject site was part of a 2011 Lot Confirmation (11-146248 PR), which confirmed the subject site as a distinct property from the adjoining parcel (12504 SW Madison Street).

**Agency Review:** The following bureau noted no concerns to the proposal: Water Bureau, Fire Bureau, and Site Development. Other bureaus including Portland Transportation, Bureau of Environmental Services (BES), Urban Forestry, and Life Safety have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits "E" contain those responses.

**Neighborhood Review:** An initial *Notice of Proposal in Your Neighborhood* was mailed on **January 27, 2017** and a revised *Notice of Proposal in Your Neighborhood* was mailed on **March 20, 2017**. Three written response have been received, which support the applicant's proposal and cite concerns about safety on a partial pedestrian corridor.

*Staff response:* In general, the city is being built incrementally with new streets, services, and lots being established as new proposals are evaluated through the land division and development regulations. Based on the street and lot pattern in the area around the subject site, new public right-of-way facilities are warranted and will help to increase transportation options for residents traveling to the subject site and through the neighborhood. Ultimately, new transportation facilities are expected to foster improved, rather than diminished, safety for the community, by creating sufficient routes of travel for all users.

## ZONING CODE APPROVAL CRITERIA

### 33.660.320 Approval Criteria

Changes to an approved Preliminary Plan will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met:

**A. Approval criteria for changes listed in Subsection 33.660.310.B.** Changes to the Preliminary Plan that are listed in Subsection 33.660.310.B must meet the approval criteria of Section 33.660.120, Approval Criteria.

**Findings:** The proposal triggers this Land Division-Partition Amendment Review, due to changes in the following provisions of Section 33.662.310.B:

6. *Deleting or changing a condition of the Preliminary Plan approval;*

As noted in the proposal description, the applicant wishes to modify Condition C.1 of land division case LU 14-173928 LDP, which currently reads:

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

1. *The applicant shall meet the requirements of the City Engineer for right-of-way improvements along the site's street frontage and for the new public pedestrian*

*connection. The applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation and the Bureau of Environmental Services for required street frontage improvements.*

The approval criterion of Section 33.660.120, which are related to Condition C.1 include the following:

33.660.120.A, Lots  
33.660.120.K, Transportation Impacts  
33.660.120.L, Services and utilities

These criteria are considered in the evaluation of this amendment proposal below:

Through the requested amendment, the applicant proposes to modify Condition C.1 as it relates to the requirement for improvements on the site's SE Madison Street frontage by making a payment via the Local Transportation Infrastructure Charge (LTIC) program. The LTIC program is administered by Bureau of Transportation and was created to provide an alternative to constructing street improvements for qualifying sites and did not exist at the time the original land division review was evaluated.

As outlined in the agency responses to this Land Division Amendment, Portland Transportation and BES have confirmed that the project is eligible to use the LTIC option and have noted no objections to the requested change for the SE Madison right-of-way requirements provided conditions requiring the LTIC payment and waivers of remonstrance are applied.

Portland Transportation also identified that an additional condition should be added to clarify that a single shared access point will be required to serve the proposed parcels from SE Madison, at the time of building permits, which is related to the access easement requirements noted in Conditions A.2 and C.6 of the original land use decision.

The single shared access would have been addressed through the Public Works permit for the SE Madison frontage improvements, and now that there will not be a Public Works permit due to the acceptance of the LTIC, Portland Transportation indicated the single shared access requirement must be applied through this review.

Based on these factors and with the noted conditions, the changes for the SE Madison Street frontage requirements will continue to satisfy the relevant Land Division criteria in 33.660.120, which include: 33.660.120.K, Transportation Impacts; 33.660.120.L, Services and Utilities (specifically, 33.654.120.C, Local street approval criteria and standards, and 33.653, Stormwater Management).

The applicant also requests that Condition C.1 be changed to waive the improvements for the new public pedestrian connection along the east boundary of the site.

The condition to construct the pedestrian pathway was required in the City's initial decision on the land division (LU 14-173938 LDP). In the original land use decision, the pedestrian facility was found to be necessary for the lot configuration proposed by the applicant. Specifically, Parcel 2, which is configured as a "through lot" with frontages on both the public pedestrian connection and SE Madison Street, was found to satisfy the minimum front lot line standard along the right-of-way for the new public pedestrian connection, but not along the SE Madison frontage. If the public pedestrian connection were not provided, the land division proposal would not have met the following approval criteria in 33.660.120.A, Lots, specifically 33.611.200.C, Lot Width and 33.611.200.D, Minimum Front Lot Line.

Similarly, without the provision of a public pedestrian connection, the proposal would not have satisfied the approval criteria in 33.660.120.L, Services and Utilities, including 33.654.110, Connectivity and Location of Rights-of-Way; 33.654.120.E, Pedestrian

Connections; and 33.654.130.C, Future extension of proposed dead-end streets and pedestrian connections. These regulations outline the spacing and design provisions for pedestrian connections.

Further, the applicant's conceptual plan for future development on the proposed parcels (Exhibit C.1, which was evaluated in the initial land use case) shows the entryways for a duplex unit on Parcel 1 and a residence on Parcel 2 are oriented toward the frontage on the public pedestrian connection (the duplex standards in 33.110.240.E and the main entrance standard in 33.110.230 require building entrances to be oriented toward a street, which in the case is a pedestrian-only street).

Based on these factors, conditions for a 7.5-foot wide right-of-way dedication for the public pedestrian connection and related improvements were applied as part of the original land division approval. A 7.5-foot dedication is one-half of the 15-foot width that Portland Transportation typically requires for a new pedestrian connection.

The applicant did not file an appeal of the original land use decision and associated conditions. The condition to construct the pedestrian pathway cannot be amended here without changing the originally approved lot configuration. The applicant has not proposed any changes to the configuration of the approved parcels, so the requirement for the pedestrian connection is an existing regulatory requirement that remains in effect.

The applicant appears to recognize the right-of-way dedication is necessary for the approval of the land division, since he acknowledges the right-of-way for the public pedestrian connection must be provided to accommodate the lot dimension requirements for Parcel 2. As detailed in the letter from the applicant's representative (Exhibit A.1), the applicant intends to provide the required 7.5-foot dedication for the public pedestrian connection, but the applicant challenges the construction of the pedestrian pathway, asserting that there is no public benefit, nexus, or rough proportionality. The applicant also cites concerns that a tree along the east lot line and existing development on the abutting properties preclude construction of a through pedestrian connection.

Though the applicant and neighbors assert that the pedestrian connection will provide no benefit to them or to the community, as discussed above, the applicant's land division proposal would not have satisfied the noted approval criteria without the new pedestrian connection. So, at a minimum, the applicant is an immediate beneficiary of the public pedestrian connection.

Likewise, while the abutting neighbors may have no intention of further dividing or re-developing their properties at this time, and while the walkway may only provide access to the subject site for the foreseeable future, the new pedestrian connection will allow for a future "through connection", as anticipated by the previously noted city regulations. A through right-of-way would provide additional frontage and development options to those neighboring properties that might otherwise be foregone without a new public north-south connection between SE Madison and SE Market.

Per 33.654.120.E.2, Portland Transportation must approve the configuration of elements in the right-of-way. Portland Transportation has identified the required improvements for the public pedestrian connection must include: a 4-foot wide walkway and 3.5-foot wide landscape buffer to be provided within a 7.5-foot wide dedication. BES has identified that a 3.5-foot wide landscape buffer may serve as the stormwater management facility for the walkway.

In the original land use decision, Condition C.1 calls for a public works permit for the right-of-way improvements, prior to final plat approval. Now, as outlined in the response to this amendment proposal, Portland Transportation has indicated it would be acceptable to align the timing of the sidewalk improvements with the building permits for future development on the individual parcels instead. This change would link the installation of the sidewalk improvements with the development of the new residences on the subject parcels and would

not conflict with the approval criteria for the original land division or this amendment proposal.

Further, once the right-of-way dedication is made, any tree within the public right-of-way, including the one of concern to the applicant, will be designated as a street tree and will be evaluated by Urban Forestry for compliance with the city's tree protection and removal standards (Title 11) at the time of development.

Overall, based on the findings herein and in the responses from Portland Transportation and BES, it would be allowable to modify Condition C.1 and to apply new conditions about the timing for the public pedestrian connection sidewalk improvements and a single shared point of vehicular access to the parcels, as follows:

Amended Condition C.1:

The following must occur prior to Final Plat approval:

The applicant shall meet the requirements of the City Engineer for right-of-way improvements along the site's SE Madison street frontage, as follows:

- The applicant must pay the Local Transportation Infrastructure Charge (LTIC) for the site's SE Madison frontage.
- The applicant must sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) to the satisfaction of Portland Transportation and BES.

New Conditions (formatted to follow existing conditions in LU 14-173928 LDP):

D.6: The applicant shall meet the requirements of the City Engineer for right-of-way improvements along the new public pedestrian connection, as follows:

- At the time of building permits for the parcels, the applicant must construct pedestrian connection improvements to comply with current ADA standards and to include a 4-foot wide hard surfaced walkway and a 3.5-foot landscape buffer to the satisfaction of Portland Transportation, BES, and Urban Forestry.

D.7: At the time of building permits for the parcels, a single shared access point will be required for vehicular access from SE Madison to the proposed parcels to the satisfaction of Portland Transportation.

Additionally, the right-of-way dedication requirements for SE Madison and the new public pedestrian connection have been clarified in the updated responses from Portland Transportation and BES (Exhibits E.1 and E.2); however, Condition A.1, which requires that those dedications must be provided and shown on the plat remains unchanged.

Based on the foregoing, the relevant approval criteria in Section 33.662.120, which are related to the requested amendment have been evaluated and will be satisfied with the noted conditions. The other approval criteria in Section 33.662.120 are not applicable or the prior findings still apply, as outlined in the original land division case, LU 14-173928 LDP. Accordingly, Criterion A is met.

**B. Approval criteria for other changes.** All other changes to the Preliminary Plan must meet the following approval criteria:

1. The proposed changes are not substantial enough, singly or in combination, to warrant a new review of the entire Preliminary Plan;
2. The approval criteria addressed by the approval of the Preliminary Plan can still be met, with appropriate conditions of approval.

Findings: The applicant requested changes to Condition C.1, which has been addressed in Criterion A, above. No other changes have been proposed to the Preliminary Plan, so Criterion B is not applicable.

## DEVELOPMENT STANDARDS

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:** The site is currently vacant, so the division of the property will not cause the structures to move out of conformance or further out of conformance with any development standard applicable in the R2.5 zone. Therefore, this land division proposal can meet the requirements of 33.700.015.

## CONCLUSIONS

The applicant has proposed a Land Division Amendment (AP) to change condition C.1 of LU 14-173928 LDP, which required street improvements along the SE Madison frontage of the site and a new public pedestrian connection along the east boundary of the site.

As discussed in this report, changes to the requirements for the SE Madison Street frontage will satisfy the amendment approval criteria, provided the noted conditions regarding payment of the LTIC and street and storm sewer waivers of remonstrance are applied.

The requested change to waive the improvements for the public pedestrian connection would not satisfy the amendment approval criteria, because the pedestrian connection is required for the approval of the lot configuration proposed by the applicant. However, as noted in the response from Portland Transportation, a change that allows for the timing of those improvements to align with the development on the proposed parcels would continue to fulfill the relevant approval criteria and will be allowed.

Accordingly, with the implementation of the amended and additional conditions discussed in this report, this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval of Land Division Amendment** to LU 14-173928 LDP (a 2-parcel partition) to modify Condition C.1 subject to the following:

Amended Condition C.1:

The following must occur prior to Final Plat approval:

The applicant shall meet the requirements of the City Engineer for right-of-way improvements along the site's SE Madison street frontage, as follows:

- The applicant must pay the Local Transportation Infrastructure Charge (LTIC) for the site's SE Madison frontage.
- The applicant must sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) to the satisfaction of Portland Transportation and BES.

New Conditions (formatted to follow existing conditions in LU 14-173928 LDP):

D.6: The applicant shall meet the requirements of the City Engineer for right-of-way improvements along the new public pedestrian connection, as follows:

- At the time of building permits for the parcels, the applicant must construct pedestrian connection improvements to comply with current ADA standards and to include a 4-foot wide hard surfaced walkway and a 3.5-foot landscape buffer to the satisfaction of Portland Transportation, BES, and Urban Forestry.

D.7: At the time of building permits for the parcels, a single shared access point will be required for vehicular access from SE Madison to the proposed parcels to the satisfaction of Portland Transportation.

All other conditions of the original land division remain in effect.

**Staff Planner: Kate Green**

**Decision rendered by:**  **on May 25, 2017**  
By authority of the Director of the Bureau of Development Services

**Decision mailed May 30, 2017**

**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 January 13, 2017, and was determined to be complete on January 25, 2017.

*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 January 13, 2017.

*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 requested that the 120-day review period be extended by 120-days (Exhibit A.2). Unless further extended by the applicant, **the 120 days will expire on: September 22, 2017.**

**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. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further information.

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

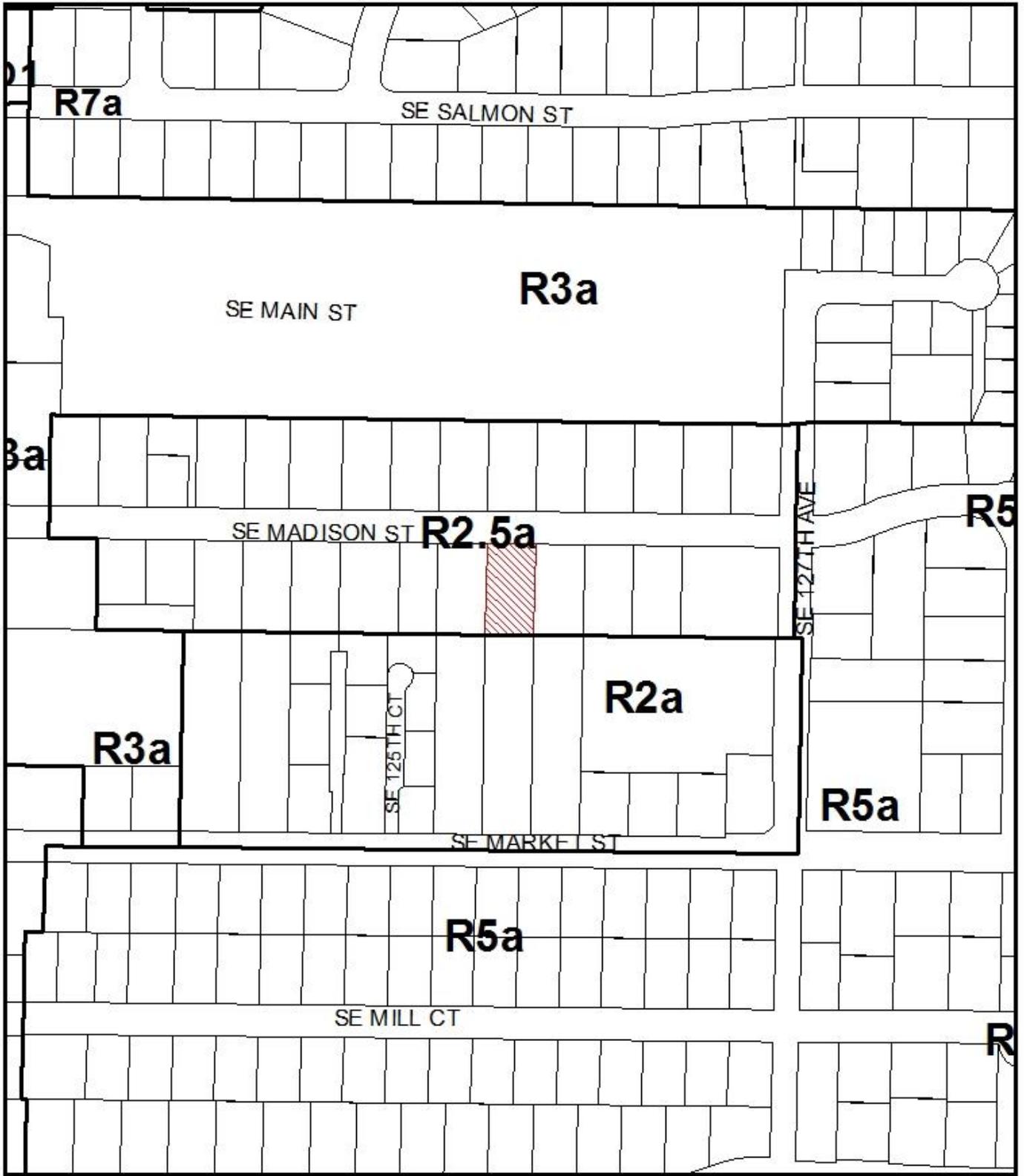
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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. Letter from applicant's representative, Christopher Koback
  - 2. Timeline extension (120-days)
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached from original LU 14-173928 LDP)
- D. Notification information:
  - 1. Mailing List Initial Notice
  - 2. Mailed Initial Notice
  - 3. Mailing List Revised Notice
  - 4. Mailed Revised Notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Portland Transportation
  - 3. Urban Forestry
  - 4. Life Safety
- F. Correspondence:
  - 1. Brianna McDonald; March 27, 2017; supportive of applicant's proposal.
  - 2. Kathy McIntosh; March 27, 2017 and April 27, 2017; supportive of applicant's proposal.
- G. Other:
  - 1. Original LU Application
  - 2. Emails to/from applicant
  - 3. Original Land Use Decision 14-173928 LDP

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



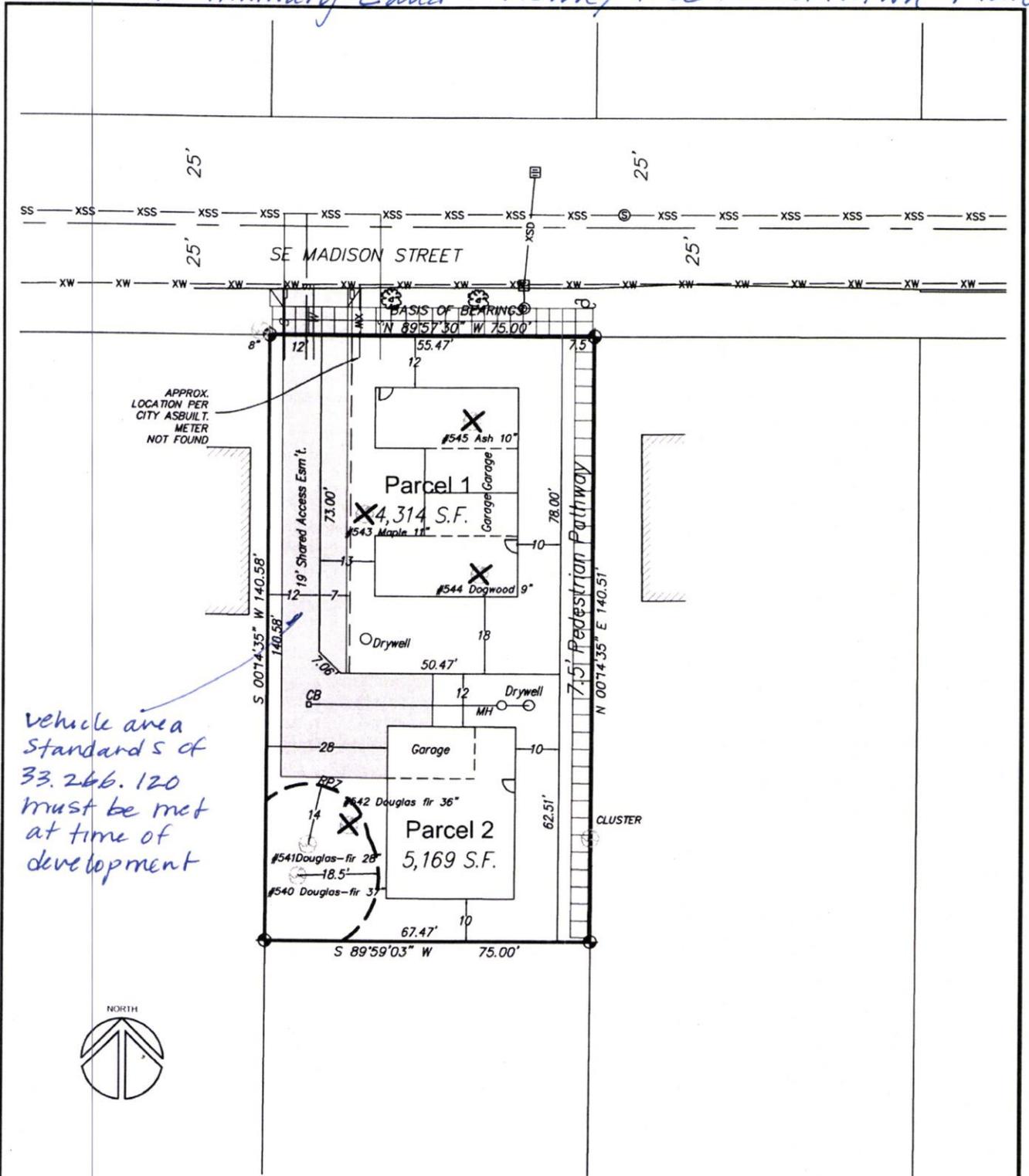
# ZONING

 Site



File No. LU 17-105503 AP  
 1/4 Section 3143  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E02BC 4101  
 Exhibit B (Jan 19, 2017)

Preliminary Land Division/Tree Preservation Plan



APPROX. LOCATION PER CITY ASBUILT. METER NOT FOUND

Vehicle area standards of 33.266.120 must be met at time of development



m 11.13.2015

DEVELOPMENT PLAN

Richard E. Givens, Planning Consultant  
 18680 Sunblaze Dr.  
 Oregon City, OR 97045  
 PH: (503) 479-0097

SCALE 1" = 30'  
 DATE: Jan. 2015  
 PROJECT 14-LOC-100

Land Division  
 LU 14-173928  
 Between 12504 & 12536 SE Madisn St.  
 Owner/Applicant: Victor Locke

14.173920 Exhibit C.1