



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

FROM CONCEPT TO CONSTRUCTION

Chloe Eudaly, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300

Fax: (503) 823-6983 TTY: (503) 823-6868

www.portlandoregon.gov/bds

Date: March 24, 2017 To: Interested Person

From: Houston Harker, Land Use Services

503-823-6029 / Houston.Harker@portlandoregon.gov

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

The Bureau of Development Services has approved a proposal in your neighborhood. The 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 17-110646 TV

GENERAL INFORMATION

Applicant: Lyudmila Georgiyev,

> 7848 SE 109th Ave Portland, OR 97266

Viktor Georgiyev, 7848 SE 109th Ave Portland, OR 97266

Representative: Frank Lambert,

> Lawyers Title Insurance Corp 121 SW Morrison Street #500

Portland OR 97204

Site Address: 13140 SE LONG ST

Legal Description: BLOCK 2 W 98.5' OF LOT 13, SUNSET GARDENS

Tax Account No.: R812001450 State ID No.: 1S2E14BA 02000

3543 Quarter Section:

Neighborhood: Powellhurst-Gilbert, contact at pgnaboard@gmail.com

Business District: Midway, contact info@midwaybusiness.org.

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

4550.

Plan District: Johnson Creek Basin Zoning: Residential 10,000 (R10) Case Type: Tree Violation (TV)

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

A 3-lot subdivision was preliminarily approved on this site under land use review case file LU 07-161651 LDP AD. It was discovered that one of the trees required to be preserved under LU 07-161651 LDP AD (Tree #4, 11-inch Apple Tree) is no longer on the site. It is unknown when it was removed or the reason for the removal, therefore it is considered a violation of the land use conditions. A Tree Violation review is required to correct the violation. As mitigation, the applicant proposes to plant a total of five trees.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

■ 33.853.040.C Tree Review Approval Criteria – Corrections to Violations

ANALYSIS

Site and Vicinity: The site is a 35,034 square feet property that currently includes one tax lot. There is one single-family house on proposed Parcel 1. The site fronts on SE Long Street. a street that is predominately single family housing. The surrounding area is characterized single-family lots, which are common to this neighborhood.

Zoning: The site is in the R10 base zone, which is one of the city's single-dwelling zones intended to preserve land for housing and to promote opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

Plan District: The Johnson Creek Basin Plan District provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide groundwater recharge, reduce erosion, enhance water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions.

This plan district is intended to be used in conjunction with environmental zoning placed on significant resources and functional values in the Johnson Creek basin, to protect resources and functional values in conformance with Goal 8 of the Comprehensive Plan and Statewide Planning Goal 5.

Land Use History: City records indicate that prior land use reviews include the following:
 LU 07-161651 LDP AD – Plat to create 2 lots + Open Space Tract that the requirements to preserve the tree subject to this violation was a condition of this review.

Summary of Applicant's Statement: Applicant has proposed the planting of five trees to mitigate for the removal of this tree.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **February 17, 2017**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services responded with the following comment: The following information relates to specific site conditions or features that may impact the proposed project.

1. *Mature Trees*: The site contains mature trees which are beneficial because they intercept at least 30% of precipitation that falls on the canopy, filter stormwater, help prevent erosion, and provide shade which cools the air and stormwater runoff. Trees also increase property values and help support Portland's adaptation to climate change. It is difficult to mitigate for the removal of mature trees as it can take decades for new trees to provide equivalent benefits. BES recommends that future development at this site include measures to preserve as many of the site's existing trees as possible. Financial incentives for existing trees taller than 15 feet on private property may be available for ratepayers who register with <u>Clean River Rewards</u>, the City's stormwater discount program. Call 503-823-1371 for more information.

The applicant proposes the planting of two cherry trees and three hazelnut trees for a total of five mitigation trees, but the species of the proposed mitigation trees are not provided. BES recommends the applicant does not plant Sweet cherry (*Prunus avium*) a rank C nuisance plant per the Portland Plant List.

Please see Exhibit E1 for additional details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 17, 2017. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

Title 33.853.040.C: Corrections to Violations.

For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservation requirements of a land use review, the applicant must show the review body that all of the following approval criteria are met:

1. Mitigation Plan;

- a. The applicant's mitigation plan meets the purpose of the regulation that was violated. Where the violation is of a tree preservation requirement of a land use review, the mitigation plan meets the purpose of the regulation that required the preservation plan; and
- b. The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-1. If additional trees on the site are proposed for preservation and protection, the applicant must submit an arborist's assessment indicating the suitability of the trees for preservation, recommendations for protection methods, and any remedial treatment that may be necessary to ensure the long term viability of the trees. The total diameter of additional trees preserved must exceed the total diameter of trees cut.

Table 853-1 Tree Replacement for Violations	
Size of tree removed (inches in diameter)	Number of Trees to be Planted
Up to 12	3 trees
More than 12 up to 20	5 trees
More than 20 to up to 25	7 trees
More than 25 to up to 30	10 trees
More than 30	15 trees

2. Replacement trees must be planted as follows:

- a. On the site where the violation occurred;
- b. If it is not possible to plant the trees on the site where the violation occurred, then the trees may be planted on other property owned by the applicant within the City of Portland. This includes property owned by a Homeowners' Association to which the applicant belongs;
- c. If it is not possible to plant the trees as described in 2.a or b, then a payment in lieu of planting may be made to the Tree Planting and Preservation Fund.

3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials.

Findings: The violation is to the condition of approval of LU 07-161651, which preliminarily approved the creation of 2 lots and an Open Space Tract on the site. The tree preservation condition was required based on the regulations of Chapter 33.630 Tree Preservation which contains the tree preservation requirements for new land divisions. The purpose of these regulations are:

33.630.010 Purpose

The land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:

- Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;
- Buffering from noise, wind, and storms;
- Providing visual screening and summer cooling;
- Reducing energy demand and urban heat island impacts;
- *Filtering stormwater and reducing stormwater runoff;*
- Reducing erosion, siltation, and flooding;
- Stabilizing slopes;
- Enhancing property values;
- Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;
- Providing food for people and wildlife; and
- Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.

The above listed purpose statement is supported by the standards of the Tree Preservation chapter (33.630.100). These standards require preservation of a certain percentage of existing tree diameter of a land division site. The parcel comprising the site was approved to be created under land division case number LU 07-161651 LDP AD. As part of the preliminary plan land division approval, a tree preservation plan was approved to meet these standards (Exhibit C-2). The tree designated to be preserved was an 11-inch Diameter Breast Height (DBH) Apple Tree on proposed Parcel 1. The approved tree preservation plan from the approved land division was in compliance with Option 1 of the tree preservation standards. These standards require the preservation of at least 35% of existing tree diameter to meet Option 1 of Chapter 33.630.

In addition to the requirements of 33.630, the site is located within the Johnson Creek Basin Plan district. All trees in this district over 6 inches in diameter can only be removed under limited circumstances. These situations are listed in Section 33.537.150.D and include: when the tree is within 10 feet of an existing or proposed building, tree is determined by an arborist to be dead, dying or dangerous and needs to be removed, tree is a nuisance species, or the tree is within 5 feet of an existing or proposed paved surface.

The tree condition of approval in C.2 of the land use decision requires the following:

"The total non-exempt tree diameter on the site is 28 inches. The applicant proposes to preserve tree T-4, Apple tree, which is comprised of 11 inches of diameter, or 39 percent of the total non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved. The applicant has provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit C-1)."

The applicant has requested this Tree Violation Land Use Review to rectify the tree removal. The applicant proposes to plant replacement trees at the site as mitigation. Subparagraph 33.853.400.C *Corrections for Violations* details the requirements for corrections to tree violations, including the number and location of mitigation trees to be planted. Chapter 33.853 Tree Review, Table 853-1 (above) lists *minimum* tree replacement required for violations. Based on these standards, a minimum of three trees at 1.5-inch caliper would be required to be planted as mitigation.

The applicant has proposed to mitigate for the tree removal by planting five (5) 1.5-inch caliper trees on proposed Parcel 1 and Open Space Tract A. The proposed number of trees exceeds the number of mitigation trees specified by 33.853.400.C. The applicant has already planted two Cherry Trees (specific species not identified) and has proposed planting three Hazelnut trees (specific species not identified). In order to provide flexibility to the applicant at the time of planting and to meet the purposes statement for Chapter 33.630 *Tree Preservation*, a mix of native trees will be required to be planted. The *Portland Plant List* states that native plant communities provide habitat and food for native wildlife, enhance air and water quality, and reduce water and energy needs. A condition of approval will require that for the three remaining trees to be planted, a native tree species be chosen from the *Portland Plant List*.

At the time of development, the individual parcels/lots must also meet the Title 11-Tree Code provisions, which require a specific amount of site area for tree planting based on the size of the property and the scale of the development.

Title 11 Trees sets standards for development-related tree planting, including a minimum required planting area, based upon canopy sizes of large, medium and small trees as classified in the Portland Tree and Landscaping Manual (On-site tree density standards of Chapter 11.50.050). There are two parcels and one tract to consider in this review. For Parcel 1, based on the lot size of 12,542 square feet, 5,017 square feet of "tree area" will be required to be planted at the if it were to be redeveloped. Parcel 2, based on the lot size of 8,945 square feet, 3,578 square feet of "tree area" will be required to be planted at the site at the time of development. Title 11 standards will not apply Open Space Tract A because the requirements of 11.50.040.A exempt that portion of the site. Tree area is defined by Title 11 as the amount of area on a development site that is used to calculate the required number of trees to be planted to meet tree density standards. The Title 11 tree density standards will require that trees be planted on the lots at the time of building permit. To satisfy the tree area required by Title 11, any combination of large, medium and small trees may be planted. Based on the analysis of the site constraints, development-related tree planting and the required tree mitigation plan, a conclusion can be made that it is practicable to plant both tree density and mitigation trees on the site where the violation occurred.

Trees within 10 feet of a building per Tree Preservation code, Johnson Creek Basin Code, and Title 11 tree code would be allowed to be removed; therefore, proposing to plant mitigation trees within 10 feet of the building would negate the intent of preservation. A condition of approval will be that any planted mitigation trees be planted at least 10 feet away from any existing or proposed buildings and structures attached to buildings, such as decks, stairs, carports, proposed driveway, or right-of-way improvements. If Trees are between 6-12 inches are removed they must be replaced with 2 trees. This decision will result in the standard being met

In order to ensure the mitigation is provided, the applicant must plant the three proposed mitigation trees on the planting plan on Proposed Tract A in conformance with the conditions

stated above. This will be in addition to the two mitigation trees that the applicant has already planted. This mitigation will be consistent with the purpose of the tree preservation regulations as the proposed trees will contribute to the general beauty and natural heritage of the City, if not directly on the site, and

- -help to absorb air pollutants and contamination;
- -provide buffering from noise and wind;
- -provide visual screening from the adjacent properties;
- -reduce energy demand and urban heat island impacts;
- -filter stormwater runoff and the reduce the possibility for erosion;
- -help with slope stabilization;
- -the native trees will provide habitat to support wildlife;
- -the edible species will provide food for people and wildlife.

With the conditions described above, the approval criteria for correcting a tree violation will be met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant proposes to mitigate for the removal of Tree #4, a 11-inch DBH Apple Tree required to be preserved under LU 07-161651 LDP AD by planting five trees within the affected site. The proposed mitigation will replace the lost tree functions provided by the Apple Tree (Tree #4) and will be located on the site were the violation occurred. With conditions to ensure the trees will be planted and maintained, the mitigation plan meets the criteria to correct the violation and can be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Violation review to correct a violation resulting from the removal of Tree #4, a 11-inch Apple Tree required to be preserved in LU 07-161651 LDP AD, per the approved site plans, Exhibit C-1, signed and dated March 22, 2017, subject to the following conditions:

A. By April 28, 2017, the applicant must obtain a final zoning permit for the landscape planting and inspection of the five trees within Proposed Parcel 1 and Proposed Open Space Tract A in substantial conformance with Exhibit C.1. The species of the three trees planted on Open Space Tract A will be chosen from the *Portland Plant List.* The site plan must identify all the mitigation trees with common and scientific names and label them as "Required" per this condition. Trees must be planted at least 10 Feet from any building or paved surface.

Decision rendered by:

on March 22, 2017

By authority of the Director of the Bureau of Development Services

Decision mailed: March, 24 2017

Staff Planner: Houston Harker

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

Procedural Information. The application for this land use review was submitted on January 25, 2017, and was determined to be complete on February 10, 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 25, 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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: June 12, 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.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 7, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged**. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

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

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

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

- Unless appealed, The final decision may be recorded on or after April 10, 2017.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

For further information on recording, please call the County Recorder at 503-988-3034 For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

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

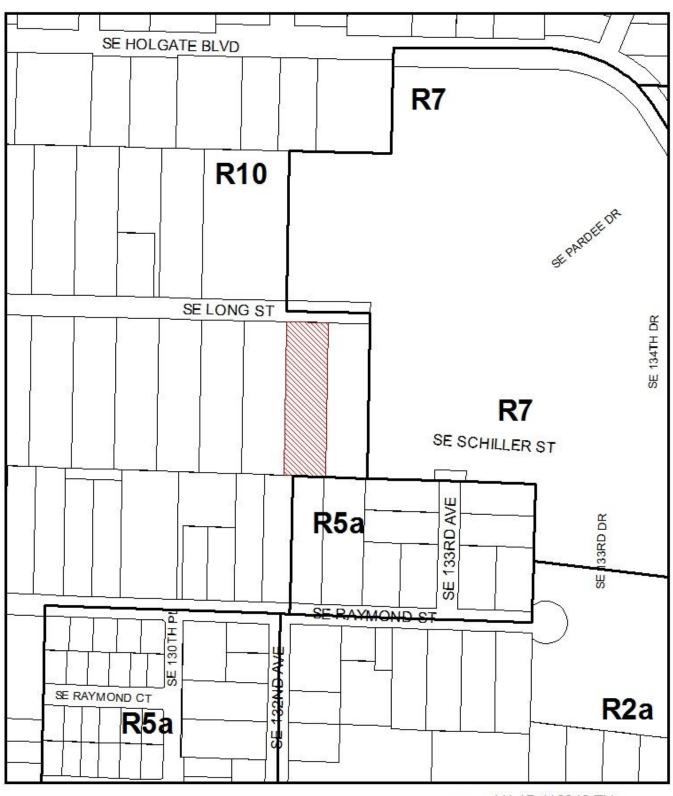
Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the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

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

- A. Applicant's Statement
 - 1. Original Application
 - 2. Arborist Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Original Site Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. No Concern Response List
 - Bureau of Transportation Engineering
 - Water Bureau
 - Fire Bureau
 - Site Development Section of BDS
 - Bureau of Parks-Forestry Division
- F. Correspondence:
 - 1. Frank Lambert, October 26, 2016
 - 2. Incomplete Letter Viktor Georgiyev, February 1, 2017

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

LU 17-110646 TV File No. _ 3543 1/4 Section_ 1 inch = 200 feet Scale_ 1S2E14BA 2000 State_Id . (Jan 25, 2017) Exhibit_



This site lies within the: JOHN SON CREEK BASIN PLAN DISTRICT

S.E. LONG STREET ALC: WALL 100'01 (HETD &1) TAX LOT 4500 TAX LOT 2100 Sibrushed 2/10/17 SUNSET GARDENS BLOCK 2 LOT LOT 12 12 PROPERTY LAC BLOCK 1 S MAL S OF 2 ACBODS (14) N 0'29'00" W 156.16 N OZBOO N, OZB SUNSET GARDENS TAX LOT 4700 140" W LOT 13 197.02 (R1) S. O. S. E. J.S. OF S OZSTO'E, OLD TAX LOT 4800 JB664 Bod xx DOCUMENT NO. 2004-138769, M.C.D.R. nat Date 3/22 Bureau of Development reviews requ * This appr N Mag (E) (E) 2 cond *Approves when see and 363.25 (P1) oval appliate on 413.25 (R1) ions of a sted and is su くいせん DI = DO TO THE NELLS

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COUNTY SURVEY RECORDS. 52 PPC MARKED "CENTERLINE PPC MARKED "N.B. WELLS EXISTING CONDITIONS, TREE SURVEY, PROPOSED IMPROVEMENTS PLAN TAX LOT 2000, MAP 1S 2E 14BA, A REPLAT OF THE WEST 98.5 FEET OF LOT 13, BLOCK 2, SUNSET GARDENS SITUATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTIVOMAN COUNTY, OREGON WILL SEMEN SINE EXHIBIT C-CASE NO 6 17 - 110646 TV NCE BLOW OFF W MER SERVICE BATE: SEPTEMBER 7, 2007 VIKTOR GEDRENEY 7828 SE 109TH AVE PORTLAND, OR 97266 PHONE: (503) 830—5230 LYUDMILA GEORGITEY 13140 SE LONG STREET PORTLAND, OR 97236 PRELIMINARY PLAN FOR: VIKTOR GEORGIYEY R. THE OPEN SPACE AND PRESERVATION TRACT SHALL BE OWNED AND MUITAINED BY THE OWNERS OF PARCELS 1 AND 2. PROFESSIONAL

LAND SUPPEYOR

OREGON

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STREN P. BLOCKS SHAME S MAST EX VERTED PROPE TO CONSTRUCTION.

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DELIMIT FILE: GO7023.DWG COMMENTS 3