



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

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Date: April 21, 2020
To: Interested Person
From: Stacey Castleberry, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has denied 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 16-224793 EV (CITY FILE # 08-159646 CC)

GENERAL INFORMATION

Owner/Applicant: Viktor Georgiyev
2845 SE 131st Avenue
Portland, OR 97236
e-mail: georgiyev.vik@gmail.com
Tel: 503-830-5230

Site Address: 7848 SE 109TH AVE

Legal Description: LOT 7 INC UND INT TRACT A, BLUEBERRY RIDGE
Tax Account No.: R082840140
State ID No.: 1S2E22CA 08914
Quarter Section: 3841

Neighborhood: Lents, contact Jennifer Breedlove at jennifer.marie.b@outlook.com.
Business District: Lents Grown, contact at lentsgrown@gmail.com
District Coalition: East Portland Community Office, contact at 503-823-4550.

Plan District: Johnson Creek Basin - South
Zoning: R7p,c
Case Type: EV, Environmental Violation
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant has requested environmental review to remediate an environmental violation cited by City staff on their property (see City File # 08-159646 CC). The Notice of Violation describes three violations of City code (two Title 33 violations and one violation of the Oregon Residential Specialty Code) as follows:

1. Parking and/or maneuvering motor vehicles on the unpaved yard that is not the recognized parking area (Portland Zoning Code Section 33.266.120).

2. Disturbance, new development (fences, retaining walls, buildings, paving, and graveled areas) and tree topping in the resource area of the Environmental Protection Zone without an approved Environmental Review (Portland Zoning Code Section 33.430.070, 33.430.405).
3. Construction of retaining wall over 4 feet in height and building exceeding 200 square feet in area without required permit(s) and inspection approvals (Sections R105 and R109 of the Oregon Residential Specialty Code).

The applicant seeks approval of remediation for Environmental Violation review for: un-permitted shed and paved parking area, un-permitted tree topping of at least 5 trees greater than 6 inches in diameter, unpermitted graveled driveway/vehicle area, all within Environmental Protection overlay zone, and outside previously approved disturbance areas.

The entire site is within the City's Environmental Protection overlay zone. The site is also subject to the approval of Land Use Review 96-00277 EN which approved development of 3 lots, Lots 6, 7, and 8 of phase 2 of the Trails at Mount Scott PUD, and 1 lot, Lot 19 of phase 1. This Land Use Decision required conditions of approval that limited the permanent disturbance on this site (lot 7) to 3,500 square feet, including driveway access. All ground disturbing activities including structures, utilities, gardens, and parking areas were required by LUR 96-00277 EN to be limited to the 3,500 square feet of permanent disturbance area. The LUR 96-00277 EN decision includes additional conditions that require specific mitigation plantings. All conditions of approval required by this land use review still apply to the property.

In order to receive approval for correction of a violation of the City's environmental overlay zone code, this application must receive approval of an Environmental Violation review.

Relevant Approval Criteria:

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

- Section **33.430.250 A**. Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments.
- Section **33.430.250 F**. Other development in the Environmental Protection zone.
- Section **33.430.250 G**. Corrections to Violations.

ANALYSIS

Site and Vicinity: The site is situated approximately $\frac{3}{4}$ mile east of I-205 and on the north slope of Mt Scott, just north of the southern city-limits of Portland. It is within a developed residential neighborhood, and near open spaces such as the Willamette National Cemetery. The lot is an irregularly shaped parcel of approximately 1.3 acres. The highest elevation is in the southeast corner and it slopes downward to the north at a moderate slope until it flattens out at the location of the residence to the north. A tributary stream to Johnson Creek enters the property near the southeast corner, traversing the lot in a northwesterly direction and exiting at the west boundary, joining Johnson Creek approximately 0.6 miles northwest of the site.

Site vegetation is varied. The northern portion of the site appears to have been cleared for construction of the residence, driveway and unpermitted shed and parking area. The panhandle section with the Southern portions of the site have a mixture of trees including Douglas fir, western red cedar, bigleaf maple, Oregon ash, red alder, cottonwood, hawthorn and birch, with riparian shrubs along the tributary to Johnson Creek.

Zoning: The zoning designation on the site is the Residential 7,000 base zones, with Environmental Protection ("p") overlay zone (see zoning on Exhibit B).

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public.

The Environmental Protection overlay zone (“p”) provides the highest level of protection to the most important resources and functional values. These resources and functional values are identified and assigned value in the inventory and economic, social, environmental, and energy (ESEE) analysis for each specific study area. Development will be approved in the environmental protection zone only in rare and unusual circumstances.

The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

Environmental Resources: The application of the environmental overlay zones is based on detailed studies that have been carried out within separate areas throughout the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these respective study areas.

The project site is mapped within the Boring Lava Domes Supplement to the Johnson Creek Basin Protection Plan within Resource Site # 30c — Indian Rock Creek. This document is available at <http://www.portlandoregon.gov/bps/47529> “Environmental Plans”.

Indian Rock Creek Watershed is located to the west of SE 112th Ave. The resources in the watershed include Indian Rock Creek, habitat areas, heritage areas, and forested riparian and upland areas. The lower end of the creek contains steep forested slopes of “a” quality located on a vacant parcel. The remainder of the lower end of the watershed and the upper end are of “b” quality also located on a vacant parcel as well as the back portions of developed lots, and an open space tract. The center section of the creek is of “c” quality with resources located on developed lots. There are approximately 3.28 acres of “a” resources, 31.23 acres of “b” resources and 1.03 acres of “c” resources within the watershed.

A-quality resources are the highest rated within the study area, either through the number of decision and contributing factors met, the exceptional value of particular factors, or both. A-quality resources generally meet at least six decision factors. B-quality resources rated lower than a-quality resources but consistently meet three or more decision factors. C-quality resources are significant but may only satisfy one decision factor or two contributing factors.

BDS Land Use and permit History: For sites with previous land use reviews, conditions of approval that were included continue to apply to the land, and are the responsibility of current property owners. City records indicate that prior land use reviews/permits include the following:

- LUR 93-00183 EN approved an environmental review for 29 -lot subdivision “Phase 2 of case file CU 167-87 and S-25-87” (Phase 2 of the Trails at Mount Scott PUD approved in 1987). Note that the site of the current proposal is depicted on the 1993 “C 2 Exhibit”, as “Mitigation Area E”.
- LUR 96-00277 EN approved development of 3 lots, Lots 6, 7, and 8 of phase 2 of the Trails at Mount Scott PUD, and 1 lot, Lot 19 of phase 1. The administrative decision for this land use review noted in the Conclusion that there was no record of previously required mitigation plantings being installed. Further this decision required conditions of approval that limited the permanent disturbance on this lot (lot 7) to 3,500 square feet, including driveway access.

All ground disturbing activities including structures, utilities, gardens, and parking areas were required to be limited to the 3,500 square feet of permanent disturbance area allowed by this decision. The decision includes additional conditions that require specific mitigation plantings. All conditions of approval required by this land use review must be shown to be met by the new application.

- RS 05-162411 approved construction of a house on Lot 7 of Blueberry Ridge within the approved limits of disturbance approved by LUR 96-00277 EN.

- CC 08-159646 documents a Code Compliance file for a complaint of vegetation clearing dirt bike racing courses, expanded unpermitted parking area, planting of invasive species, and a gravel driveway extending into the forest, all without benefit of approval through Environmental Review, and all and within the Environmental Protection overlay zone, on this site. This land use review was submitted to resolve this Code Compliance case.

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on March 17, 2020.

1. Agency Review: Several Bureaus and agencies have responded to this proposal. Of note, BDS General Life Safety commented that, “A separate Building Permit is required to legalize work previously constructed without a permit and any new work proposed. All work must be shown to meet all applicable building codes and ordinances.”

Portland’s Bureau of Environmental Services (BES) does not recommend approval of the environmental review. Although there are no BES-specific approval criteria, the applicant should submit a plan that shows approvable stormwater management facilities and disturbance limits. Because required stormwater facilities can affect the design and layout of the site, the applicant must account for them in their application.

Please see the “E” Exhibits in the application case file for details.

2. Neighborhood Review: Three written responses were received via e-mail from notified property owners in response to the proposal. All were opposed (some “adamantly so”) to allowing the unpermitted development to remain in the Environmental Protection overlay zone. See “F” Exhibits in the application case file for details.

ZONING CODE APPROVAL CRITERIA

33.430.250.G Corrections to violations. For corrections to violations of this Chapter the application must meet all applicable approval criteria stated in subsections A through F above, and paragraphs 1, 2.b and 2.c, below. If these criteria cannot be met, then the applicant’s remediation plan must demonstrate that all of the following are met:

Findings: The approval criteria which would have been applied to environmental review of the unpermitted shed and paved parking area, tree topping of at least 5 trees, new graveled driveway/vehicle area, all within Environmental Protection overlay zone, are found in 33.430.250 A (Driveways) and 33.430.250 F Other development in the Environmental Protection overlay zone. If any of the criteria from Section 33.430.250 A or F cannot be met, with regards to the construction in the environmental zone, then all of the criteria under Section G must be met, including the criterion which requires removal of the unpermitted development.

Findings: The applicant did not provide any written findings in response to applicable approval criteria and did not specifically address any of the approval criteria in 33.430.250 A or 33.430.250 F. Since the criteria from Sections 33.430.250 A and F are not shown to be met, then all of the criteria under Section G must be met, including the criterion which requires removal of the unpermitted development.

33.430.250 G. Corrections to Violations (continued)

- 1. The remediation is done in the same area as the violation; and**
- 2. The remediation plan demonstrates that after its implementation there will be:**
 - a. No permanent loss of any type of resource or functional value;**
 - b. A significant improvement of a least one functional value; and**

c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.

Findings: The applicant did not provide any written findings in response the approval criteria in 33.430.250 G. Since the criteria from Sections 33.430.250 G are not shown to be met, this application for Environmental Violation Review cannot be approved.

CONCLUSIONS

Through this Environmental Violation Review, the applicant requested approval of remediation for a Zoning Code violation which occurred within the Environmental Protection overlay zone. The applicant did not propose to remove any portion of existing unpermitted development or to plant any native species in the environmental zone on the property. The applicant did not include proposed remediation plans or narrative in the application for Environmental Violation Review.

Environmental resources present prior to the cited development in violation of city code have not been identified by the applicant and no plan has been presented to replace those lost by impacts of the violation. No plan has been presented to improve environmental functions or values on the site; and significant environmental resources have been damaged or lost completely.

It has been over 2 years since information needed to even complete the application was last requested by City staff and City staff have seen no indication of activity toward resolving the problems with the application. The applicant has not provided narrative or graphic information to the record, that indicates unpermitted development impacts in the Environmental Protection overlay zone will be remedied.

The approval criteria for Environmental Violation Review have not been addressed by the applicant and are not met by the application. Therefore, this application must be denied.

ADMINISTRATIVE DECISION

Denial of Environmental Violation Review to remediate an environmental violation cited by City staff in City File # 08-159646 CC.

Staff Planner: Stacey Castleberry

Decision rendered by:  **on April 16, 2020.**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 21, 2020

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 August 16, 2016, and was determined to be complete on February 13, 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 August 16, 2016.

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 A.3.

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.

Appealing this decision. This decision may be appealed, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received by 4:30 PM on May 5, 2020. **Towards promoting social distancing during the COVID-19 pandemic, the completed appeal application form must be e-mailed to BDSLUSTeamTech@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations for the appeal of Type II and IIX decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

Appeal Hearing. If this decision is appealed, a hearing will be scheduled. The location is undetermined based on the COVID-19 outbreak. Additional notice will be sent out in advance of the hearing providing an in-person location or how to access an online hearing. If you have questions, please contact the Hearings Office at 503-823-7307 or hearingsofficeclerks@portlandoregon.gov.

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.

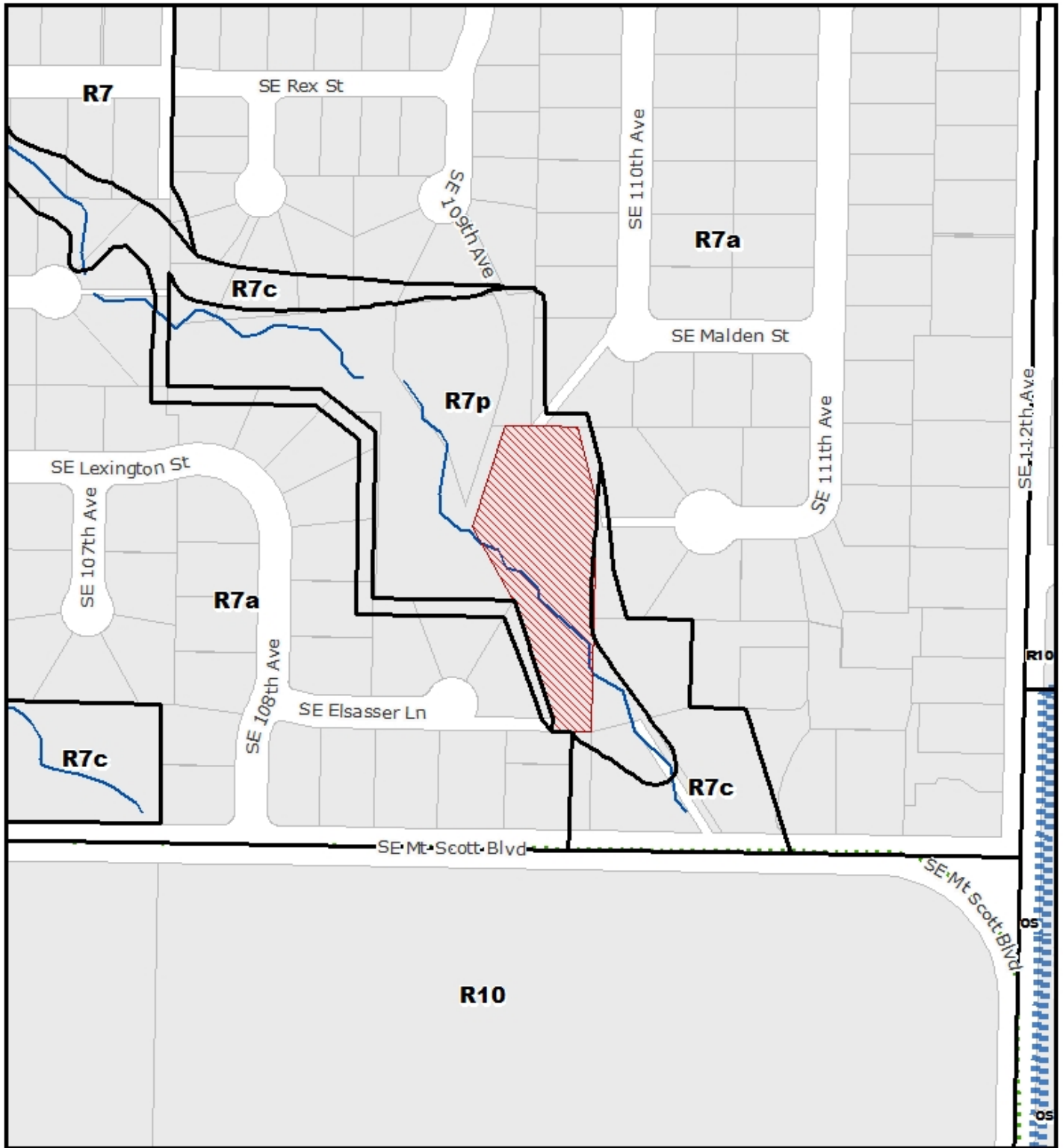
Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity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

EXHIBITS




NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittals
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Existing Site Conditions
 - 2. 2005 Permit Plan
 - 3. Elevation (north)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Review Section of BDS
 - 3. Bureau of Parks, Forestry Division
 - 4. Life Safety Review Section of BDS
- F. Correspondence:
 - 1. Jess Bronk / 10905 SE Mt Scott Blvd/ Portland, OR 97266
 - 2. Dean Orr / 7906 SE 108th Avenue/Portland, OR 97266
 - 3. Scott Rose / 10945 SE Mt Scott Blvd/ Portland, OR 97266.
- G. Other:
 - 1. Original LU Application
 - 2. Code Compliance Letter: CITY FILE # 08-159646 CC
 - 3. Incomplete Letter / BDS LUS correspondences

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 
 JOHNSON CREEK PLAN DISTRICT
 SOUTH SUB DISTRICT

-  Site
-  Stream
-  Recreational Trails

File No.	LU 16-224793 EV
1/4 Section	3841
Scale	1 inch = 200 feet
State ID	1S2E22CA 8914
Exhibit	B Mar 16, 2020