

FINDINGS OF FACT and FINAL ORDER TYPE I REVIEW

DATE:	September 19, 2024
FILE NO.:	24-051 TREE
PROPOSAL:	Remove 4 trees on development site
APPLICABLE CRITERIA:	Section 17.102, Urban Forestry
PROJECT NAME:	Cascade Creek Tree Removal
APPLICANT/OWNER:	Sam Nisley on behalf of Zac Baker, DPS LLC
ADDRESS:	38330 Hwy 211
ZONING:	Village Commercial (C-3)/Bornstedt Village Overlay (BVO)
STAFF:	Patrick Depa, Senior Planner

BACKGROUND:

In June of 2023, the City of Sandy approved File No. 22-039 DR/VAR/MP/TREE, a mixed-use development that includes a total of 78 multi-family residential units and 10 office spaces. The proposal consists of four (4) multi-family residential buildings to the south of Cascadia Village Drive and two (2) mixed-use office/residential buildings to the north of Cascadia Village Drive, as well as associated parking, landscaping, common open space, and roadway improvements.

The project site is 8.83 acres and because it is in the Bornstedt Village Overlay (BVO) district the tree retention requirements are doubled. The amount of tree retention required equaled fifty-three (53) trees. The applicant requested and received a variance to the tree retention requirement for mitigation to the landscape plan because the tree retention requirements could not be met on site. The applicant could only retain nine (9) trees on site and mitigated the remaining forty-four (44) trees. Mitigation trees are valued at a 2:1 ratio requiring a total of eighty-eight (88) trees to be mitigated. The mitigated trees are incorporated into the approved landscape plan under File No. 22-039 DR/VAR/MP/TREE.

After construction began, several trees have become stressed or have completely died. On the behalf of the owners, BDS LLC, Vaughn Bay Construction is requesting the removal of four trees at the Cascade Creek Apartments site. The report and civil plan sheet with the four trees requested for removal is in Attachment B. The trees requested for removal and the reasons are summarized in Table 1.

Table 1: Four Trees Requested for Removal¹

Tree #	Common Name	Scientific Name	DBH	Condition	Retention Tree?	Reason for Removal
10	blue atlas cedar	<i>Cedrus atlantica</i>	21	good	yes	tree location error, wall is one foot south of the face of trunk
42	ponderosa pine	<i>Pinus ponderosa</i>	12	fair	no	increased risk of windthrow after removal of surrounding trees
43	ponderosa pine	<i>Pinus ponderosa</i>	10	fair	no	increased risk of windthrow after removal of surrounding trees
74	Douglas-fir	<i>Pseudotsuga menziesii</i>	9	fair	no	tree location error, sidewalk is directly adjacent to north side of trunk

EXHIBITS:

Applicant's Submittals

- A. Land Use Application
- B. Arborist Report and Civil Plans

FINDINGS OF FACT:

1. The goals and policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.
2. The site has a Plan Map designation of Village and a Zoning Map designation of Village Commercial (C-3)/Bornstedt Village Overlay (BVO).
3. Section 17.102.30(A) details the procedures and application requirements for Type I tree removal permits. The proposal is considered a Type I permit because fewer than 50 trees will be removed.
4. Section 17.102, Urban Forestry, applies to properties within the Sandy Urban Growth Boundary that are greater than one acre in area (including contiguous parcels under the same ownership). The site contains greater than one acre, therefore, the proposal must be processed to determine compliance with Section 17.102, Urban Forestry.
5. Section 17.102.20(A) states: "No person shall cut, harvest or remove trees 11 inches DBH or greater without first obtaining a permit and demonstrating compliance with this chapter." Section 17.102.80 specifies that violations of this section are subject to enforcement procedures contained in Chapter 17.06, specifically Section 17.06.80. **Tree removal or native vegetation removal without permit authorization may result in a fine as specified in Section 17.06.80.**
6. Three of the four trees requested for removal are not retention trees. Tree #10 requested for removal is a retention tree. The specific location of tree #10 was not surveyed and appears to be in conflict with a proposed retaining wall based on markings at the site.
7. Section 17.102.50(A) details tree retention and protection requirements. Section 17.102.50(A.1.) states: "at least three trees 11 inches DBH or greater are to be retained for every one-acre of contiguous ownership."
8. Note that trees #42, #43, and #74 were not considered retention trees in the final order for File No. 22-039 DR/VAR/MP/TREE by the City of Sandy because they were either not in good condition and/or not over 11- inch trunk diameter (DBH). Tree #10 was considered a retention tree in the final order for File No. 22-039 DR/VAR/MP/TREE.
9. Finding #165 from the final order required a final arborist report to determine whether tree #10 could be retained. If tree #10 could not be retained, finding #165 allowed for the

replacement of tree #10 with two additional native mitigation trees. These two trees will be incorporated into the final approved landscape plan for File No. 22-039 DR/VAR/MP/TREE.

10. Section 17.102.60 specifies that all areas with exposed soils resulting from tree removal be replanted. The land use application did not indicate if the stump will be removed or left in place. **Per Section 17.102.60(1), all areas of exposed soils resulting from tree removal shall be replanted with a groundcover of native species within 30 days of harvest during the active growing season, or by the 1st of June of the following year.**
11. If the trees are removed during prime nesting season (February 1- July 31), **the applicant shall check for nests prior to tree removal. If nests are discovered, the applicant shall delay tree removal until after the nesting season or shall hire a professional to relocate the nests to an appropriate nearby location, provided the species using the nest is not invasive.**

DECISION:

The proposal to remove four (4) trees from the subject property listed above is **approved** with the following conditions.

CONDITIONS OF APPROVAL:

1. The tree removals shall be limited to the four (4) trees indicated on the submitted Civil Plan and outlined in Table 1 in the arborist report.
2. The two mitigation trees in-lieu of the tagged retention tree shall be incorporated into the final approved landscape plan for File No. 22-039 DR/VAR/MP/TREE.
3. Per Section 17.102.60(1), all areas of exposed soils resulting from tree removal shall be replanted with a groundcover of native species within 30 days of harvest during the active growing season, or by the 1st of June of the following year.
4. Future tree removal in Cascade Creek Apartments shall require additional permit approvals. Tree removal without permit authorization may result in a fine as specified in Section 17.06.80.
5. The applicant shall check for nests prior to tree removal. If nests are discovered, the applicant shall delay tree removal until after the nesting season or shall hire a professional to relocate the nests to an appropriate nearby location, provided the species using the nest is not invasive.
6. Successors-in-interest of the applicant shall comply with the requirements of this final order. In the event the applicant should sell or lease the property upon which the conditions contained in this document apply, the sale or lease will be subject to the restrictions and

conditions described herein. The conditions shall run with the land and are binding on the applicant's heirs, personal representatives, successors, and assigns.

7. Activity within the right-of-way (e.g., staging, etc.) requires a separate right-of-way permit through the Public Works Department.



Patrick Depa
Senior Planner

RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the Planning Commission by a party with appeal standings by filing an appeal with the Director within twelve (12) calendar days of notice of the decision. Any person interested in filing an appeal should contact the City to obtain the form, "Notice of Appeal", and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.28.50;
5. Payment of required filing fees. Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision), 500 feet of the subject property for appeal of a Type II, III, or IV decision, or 1,000 feet for appeal of an annexation request. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal.