

## FINDINGS OF FACT and FINAL ORDER TYPE I TREE DECISION

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<b>DATE:</b>	November 21, 2024
<b>FILE NO.:</b>	24-056 TREE
<b>PROPOSAL:</b>	Remove 4 trees on development site
<b>APPLICABLE CRITERIA:</b>	Chapter 17.102, Urban Forestry
<b>PROJECT NAME:</b>	Cascade Creek Tree Removal
<b>APPLICANT/OWNER:</b>	Sam Nisley on behalf of Zac Baker, DPS LLC
<b>ADDRESS:</b>	38330 Hwy 211
<b>ZONING:</b>	Village Commercial (C-3)/Medium Density Residential (R-2)/Bornstedt Village Overlay (BVO)
<b>STAFF:</b>	Patrick Depa, Senior Planner

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**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 office space in two of the buildings. 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 equaled fifty-three (53) trees. The applicant requested and received a variance to the tree retention requirements for the subject site. The applicant could only retain six (6) trees on site and mitigated the remaining forty-eight (48) trees. Mitigation trees are valued at a 2:1 ratio requiring a total of Ninety-six (96) 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 are in Exhibit B. The trees requested for removal and the reasons are summarized in Table 1.

One of the four trees the applicant is requesting to remove, #57, is part of the six (6) retentions trees mentioned above. Retention trees require a two to one (2:1) replacement or mitigation value. The two mitigation trees shall be installed on the developed site. The remaining three trees the applicant is requesting to remove, trees #56, C and D in Table 1, are located on the property line of the Cascade Creek property and the property to the east (38420 SE Hwy 211). These trees are not retention trees identified in the Cascade Creek Apartment design review. They were identified later as being in direct conflict with above and underground infrastructure.

**Table 1: Trees Requested for Removal and Clarification<sup>1</sup>**

Tree #	Common Name	Scientific Name	DBH	Condition	Retention Tree?	Issues
56	deodar cedar	<i>Cedrus deodara</i>	12	fair	no	tree location error, wall is within two feet of the face of trunk, tree requested for removal
57	Douglas-fir	<i>Pseudotsuga menziesii</i>	12	good	yes	tree location error, wall is within two feet of the face of trunk, tree requested for removal
C	flowering plum	<i>Prunus cerasifera</i>	12,10,8,4	fair	no	offsite tree, curblin adjusted in January 9, 2023 site plan to retain tree but not adjusted in March 7, 2024 plan resulting in tree removal, need clarification from City on approved curblin
D	flowering cherry	<i>Prunus serrulata</i>	6,8,8,6,6	poor	no	offsite tree, curblin adjusted in January 9, 2023 site plan to retain tree but not adjusted in March 7, 2024 plan resulting in tree removal, need clarification from City on approved curblin

**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)/Medium Density Residential (R-2)/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 are proposed for removal.
4. Chapter 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 8.83 acres; therefore, the proposal must be processed to determine compliance with Chapter 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.**

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<sup>1</sup> All tree information in Table 1 except for “Issues” are from the Tree Protection Plan by Washington Forestry Consultants dated December 22, 2022, and the Final Order for File Number 22-039 DR/VAR/MP/TREE dated July 11, 2023, by the City of Sandy. Note that the Final Order was partially based on a 3rd Party Review by Todd Prager & Associates dated May 11, 2023.

6. The tree removal shall be limited to the two (2) trees (#56 & 57) indicated on the submitted Civil Plan as one retention tree and one non-retention tree outlined in Table 1 and in the arborist report. **The applicant shall modify the landscape plan for File No. 22-039 DR/VAR/MP/TREE detailing the location of the four mitigation trees and submit it for staff review and approval. The mitigation trees shall be native evergreens and at least five feet in height above ground at time of planting.**
7. Note that trees C and D 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 not in good condition, not over 11-inch trunk diameter (DBH) and straddled the property line of the project site and a property outside the scope of the project.

Because these trees are located partially on adjacent property occupied by a single-family home (38420 SE Hwy 211), their approval was necessary for the removal of these trees. At the time of this report, no official written approval has been received for the mutual consent to remove these two trees. The request for removal was not presented to the Planning Commission at the time of their review and decision because consent wasn't given or deemed to be necessary at the time.

8. Trees C and D are considered hazardous trees because of their poor health and are included as part of the survey of record (Exhibit B). These two trees appear to be partially in the future roadway or directly on top of the adjacent curb where survival is unlikely when future construction commences. Per Section 17.102.60 tree replanting requirements; Removal of hazard trees as defined shall be replanted with two native trees listed in the City of Portland Plant List and meeting the standards in Section 17.92.50 for every tree removed.

**Because of the location of trees C & D, four (4) additional mitigation trees shall be required to be installed on the adjacent property (38420 SE Hwy 211) where the two trees partially reside.**

9. 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 stumps 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 1<sup>st</sup> of June of the following year.**
10. 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 (#56 & 57) and (C & D) from the subject property listed above are **approved** based on the following “Conditions of Approval”.

**CONDITIONS OF APPROVAL:**

1. The tree removal on the subject site shall be limited to the two (2) trees (#56 & 57) indicated on the submitted Civil Plan as previous retention trees outlined in Table 1 and in the arborist report.
2. The applicant shall modify the landscape plan for File No. 22-039 DR/VAR/MP/TREE detailing the location of the four mitigation trees and submit it for staff review and approval. The mitigation trees shall be native evergreens and at least five feet in height above ground at time of planting.
3. The proposal to remove the two (2) trees identified as (C & D) from the property lines of the subject property, 38420 SE Hwy 211, are approved if or when the City receives written approval from the property owners that share responsibility of the trees. If a consent letter is received from the homeowner, the four mitigation trees will be required to be planted on the 38420 SE Hwy 211 property.
4. 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.
5. Future tree removal on the Cascade Creek Apartments properties shall require additional permit approvals. Tree removal without permit authorization may result in a fine as specified in Section 17.06.80.
6. The applicant shall check for bird 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.
7. 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.
8. Activity within the right-of-way (e.g., staging, etc.) requires a separate right-of-way permit through the Public Works Department.



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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) or 500 feet of the subject property for appeal of a Type II or Type III decision. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal. Note that a Type IV decision may be appealed to the Land Use Board of Appeals (LUBA) or to other tribunals in accordance with Oregon law.