

**FINDINGS OF FACT and FINAL ORDER  
TYPE I REVIEW**

**DATE:** June 17, 2020

**FILE NO.:** 20-026 TREE

**PROJECT NAME:** 37020 Salmonberry Street (Lot 17 Sandy Woods) Tree Removal

**APPLICANT/OWNER:** Silver V Construction

**ADDRESS:** 37020 Salmonberry Street

**PROPOSAL:** Remove one western redcedar retention tree in compliance with requirements of Section 17.102, Urban Forestry and restrictive covenant relating to tree protection for the Sandy Woods subdivision.

**EXHIBITS:**

**Applicant's Submittals**

- A. Land Use Application
- B. Site Plan
- C. Arborist Letter (Mary Kay Giersch, ISA Certified Arborist PN-6732A)

**Submitted by the City of Sandy**

- D. Restrictive covenant relating to tree protection in the Sandy Woods Subdivision (Clackamas County Document No. 2019-28214)

**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policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.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 Low Density Residential, and a Zoning Map designation of SFR, Single Family Residential.
3. 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).
4. The subject property is less than one acre (approximately 0.17 acres); however, the tree proposed for removal is a required retention tree per a restrictive covenant relating to tree protection (Exhibit D). The requirement for retention of the tree occurred during the platting of the Sandy Woods subdivision in 2018 (File No. 18-002 SUB/VAR). Therefore, the

proposal must be processed as a land use application to determine compliance with provisions for removal of the required retention tree.

5. The applicant proposes to remove one (1) western redcedar tree. The arborist report (Exhibit C) states that the tree is located approximately 20 feet east of the west property line and 20 feet south of the north property line. The arborist report further states that the tree is located in the middle of the proposed driveway approximately 6 feet north of the proposed structure.
6. The western redcedar proposed for removal is identified as a required retention tree (Tree #339) in the recorded tree covenant for Sandy Woods (Exhibit D). The tree covenant identified Tree #339 as a viable 15-inch DBH western redcedar. The covenant states: “Removal of any of the Trees located within Lots 1 through 43 or Tracts A through D shall only be allowed upon a determination by a qualified professional that the Tree is diseased, dead, dying, or otherwise hazardous to persons or property in a way that can only be remediated by complete removal of the Tree. Trees #339, #443, #447 and #448, noted on ‘Exhibit A’ as TBD (to be determined), may only be removed following submittal of a tree permit together with an arborist report outlining the reasons for removal for consideration by the City of Sandy.” The applicant submitted a tree permit (this application, File No. 20-026 TREE) and an arborist’s letter by Mary Kay Giersch (Exhibit C) that identifies the tree as a 15.5-inch DBH western redcedar in poor condition. The arborist report states: “The subject tree is in POOR health and condition with a very thin live canopy and very low vigor.” Staff observed the tree and agree that it appears to be in poor condition. Staff believes that the removal of all the trees surrounding Tree #339 likely contributed to its decline. **The applicant shall be allowed to remove Tree #339 (a western redcedar retention tree) in compliance with the tree covenant and the conditions of approval outlined in this final order.**
7. Per Section 17.102.60, removal of protected trees requires replanting at a minimum 2 to 1 ratio. Thus, the removal of one (1) required retention tree requires planting a minimum of two (2) mitigation trees. The submitted land use application (Exhibit A) states that the applicant intends to plant three (3) mitigation trees and the site plan (Exhibit B) details three (3) 8 foot tall western redcedar mitigation trees in the rear yard of the subject property. **The applicant shall plant three (3) mitigation trees on the property. Alternatively, the applicant may choose to pay a mitigation tree fee-in-lieu of \$500 per tree to relocate the trees off-site. If the applicant chooses the fee-in-lieu option, the applicant shall pay the fee-in-lieu for the minimum two (2) mitigation trees required by code (i.e. \$1,000 total).** The fee-in-lieu of mitigation trees will be used by the City to plant two native trees on City-owned property, within a conservation easement, or on a similar tract of land within the same watershed that will remain as protected natural area. This fee also includes a three-year establishment period, including watering weekly during the summer months for the first three years and any needed structural pruning, disease control, or replacement of the trees.
8. The recorded tree protection covenant (Exhibit D) details the one required retention tree (Tree # 339) on Lot 17. **The applicant shall record an update to the tree protection covenant for Lot 17 detailing removal of Tree #339.** Prior to obtaining City approval in the

future, **the applicant shall also be required to pay a third-party arborist review fee for any trees proposed for removal from the subject property (Lot 17) in the future.**

9. A retention tree (Tree #5004) was previously removed from another lot (Lot 9) in the Sandy Woods Subdivision that was owned by the applicant (Silver V Construction) at the time of removal. The applicant was issued a penalty for removal of the tree and was required to plant two (2) mitigation trees and record an amendment to the tree covenant.
10. To help maximize the health and survival of the mitigation trees in the future, **the applicant shall aerate and amend the soil prior to planting the mitigation trees. The applicant shall not anchor anything to the mitigation trees, compact the soil under the dripline, or otherwise harm or damage the mitigation trees. The mitigation trees shall be planted per the City of Sandy standard planting detail. All ties and burlap shall be removed from the root ball prior to planting. If the burlap cannot be completely removed from the root ball without compromising the integrity of the root ball, the burlap shall be removed from at least the top one third of the side of the root ball. If the mitigation trees are staked, the applicant shall use loosely tied twine to tie the trees to the stake and the twine shall be removed after the first growing season but no later than one year from being planted. The mitigation trees shall be adequately watered during the first three dry seasons (summers). To help ensure proper watering, the applicant shall install an irrigation system, such as drip-line irrigation, to water the trees.**
11. Section 17.102.60 also specifies that all areas with exposed soils resulting from tree removal be replanted. The subject property is currently vacant but has approval to build a single family dwelling. Revegetation of the entire site will be evaluated as part of the Planning Division final inspection.
12. The arborist's letter (Exhibit C) did not indicate if there are nests in the western redcedar tree proposed for removal. If the tree is 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 application for removal of one (1) required western redcedar retention tree (Tree #339) from Lot 17 is hereby **approved** as modified by the conditions listed below.

### **CONDITIONS OF APPROVAL:**

- A. There are two options for Lot 17 with approval of this tree permit application. The options are as follows:**
  - 1. The applicant shall plant three (3) mitigation trees on the property, or**

2. The applicant shall pay a mitigation tree fee-in-lieu of \$500 per tree to relocate the trees off-site. If the applicant chooses the fee-in-lieu option, the applicant shall pay the fee-in-lieu for the minimum two (2) mitigation trees required by code (i.e. \$1,000 total).

**B. If the applicant chooses to plant mitigation trees (Condition A.1), the applicant shall adhere to the following conditions:**

1. The applicant shall aerate and amend the soil prior to planting the mitigation trees.
2. The applicant shall not anchor anything to the mitigation trees, compact the soil under the dripline, or otherwise harm or damage the mitigation trees.
3. The mitigation trees shall be planted per the City of Sandy standard planting detail. All ties and burlap shall be removed from the root ball prior to planting. If the burlap cannot be completely removed from the root ball without compromising the integrity of the root ball, the burlap shall be removed from at least the top one third of the side of the root ball.
4. If the mitigation trees are staked, the applicant shall use loosely tied twine to tie the trees to the stake and the twine shall be removed after the first growing season but no later than one year from being planted.
5. The mitigation trees shall be adequately watered during the first three dry seasons (summers). To help ensure proper watering, the applicant shall install an irrigation system, such as drip-line irrigation, to water the trees.

**C. The applicant shall complete the following prior to obtaining a certificate of occupancy for Lot 17:**

1. Plant the three (3) mitigation trees identified on the site plan in compliance with Condition B, above, or pay a fee-in-lieu of \$1,000 to have the City plant two (2) trees off-site.
2. Record an update to the tree protection covenant for Lot 17 detailing removal of Tree #339 and locations of the three (3) mitigation trees, or just removal of Tree #339 if the applicant chooses the fee-in-lieu option.

**D. The applicant shall plant the two (2) required mitigation trees on Lot 9 and shall record an amendment to the tree covenant that details removal of the retention tree (Tree #5004) and locations of the two (2) mitigation trees.**

**E. General Conditions of Approval**

1. If the tree is 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.

2. Future tree removal from the Sandy Woods subdivision shall require additional permit approvals and if a permit is not obtained prior to removal of a tree, this violation may be subject to a fine per occurrence as specified in Section 17.06.80. Prior to obtaining City approval in the future, the applicant shall also be required to pay a third-party arborist review fee for any trees proposed for removal from the subject property (Lot 17) in the future.
3. Successors-in-interest of the applicant shall comply with requirements of this final order. In the event the applicant should sell or lease the property upon which the condition 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 applicant's heirs, personal representatives, successors and assigns.
4. 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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Emily Meharg  
Senior Planner

06/17/2020

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Date

### **RIGHT OF APPEAL**

A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within twelve (12) days of notice of the decision. The notice of 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 Chapter 17.28.50; and
5. Payment of required filing fees.