

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

**DATE:** November 3, 2020

**FILE NO.:** 20-036 TREE

**PROJECT NAME:** 38432 Maple Street (Lot 2 of Marshall Ridge) Tree Removal

**APPLICANT/OWNER:** Donovan and Stephanie Clark

**ADDRESS:** 38432 Maple Street

**PROPOSAL:** Remove two trees in compliance with requirements of Chapter 17.102, Urban Forestry and restrictive covenant relating to tree protection for the Marshall Ridge subdivision.

**EXHIBITS:**

**Applicant's Submittals**

- A. Land Use Application
- B. Narrative
- C. Site Plan
- D. Site Plan with Existing Trees
- E. Arborist Letter (Luke Wever, Wever's Tree Service, CCB 205889)
- F. Third Party Arborist Report (Damien Carre, Oregon Tree Care, Certified Arborist, ISA # PN-6405A, Certified Tree Risk Assessor 1717)

**Submitted by the City of Sandy**

- G. Restrictive Covenant for Tree Protection for Marshall Ridge Subdivision (Clackamas County Document # 2019-075523)
- H. Marshall Ridge Tree Plan and Analysis
- I. Tree Update Summary and Graphic

**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policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.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, at least one tree proposed for removal is a required retention tree per a restrictive covenant relating to tree protection (Exhibit G). The requirement for retention of the tree occurred during the platting of the Marshall Ridge subdivision in 2019 (File No. 17-066 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 recorded tree protection covenant (Exhibit G) identifies three protected retention trees on Lot 2 of Marshall Ridge: Trees # 2649, 2651, and 2682. The tree plan submitted with the development application for the Marshall Ride subdivision (Exhibit H) identified Tree # 2649 as a 17-inch DBH Douglas fir in fair condition, Tree # 2651 as a 9-inch DBH western redcedar in good condition, and Tree #2682 as a 37-inch DBH Douglas fir in good condition. In addition to the three retention trees, the developer of the Marshall Ridge subdivision chose to retain Tree #2650 (a 12-inch DBH Douglas fir in poor condition) on Lot 2 with the following note (Exhibit I): “Retaining for now as it does not appear to be a hazard if left. Will monitor.” The developer also proposed retaining multiple smaller trees (<6-inch DBH) on the Marshall Ridge subdivision property to partially satisfy the mitigation tree planting requirement for the subdivision as a whole. Two of these protected mitigation trees are located on the subject property: T2 is a 4-inch DBH cedar in good condition to be used as a mitigation tree for Tree #2638 (which was removed during construction of the subdivision), and T3 is a 3-inch DBH cedar in fair condition to be used as a mitigation tree for Tree #2641 (which was also removed during construction of the subdivision). The arborist report (Exhibit F) states that Tree #2651 was previously removed for construction and that there are no smaller mitigation trees on the subject property anymore. The narrative (Exhibit B) indicates T2 and T3 are on the adjacent lot; however, the mitigation trees on the adjacent lot (Lot 1) are Trees T4, T5, and T6 as shown on the Tree Update Summary and Graphic (Exhibit I).
6. The applicant proposes to remove two trees from the subject property: Trees #2649 and 2650. Tree #2682 is proposed to be retained and Trees #2651, T2, and T3 are reported to have been removed. Tree #2649 is a required retention tree and, as such, can only be removed “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” as outlined in the tree protection covenant (Exhibit G). Tree #2651 was also a required retention tree but was removed sometime between approval of the subdivision and the current property owners purchasing the property, as were mitigation trees T2 and T3. Staff does not believe the current property owners removed Tree #2651, T2, or T3 as they have submitted this tree removal permit in compliance with the code; therefore, removal of these trees will not be processed as part of this application. Instead, the City will collect on the performance bond for the subdivision to cover replacement of Trees #2651, T2, and T3. Tree #2650 is not a required retention tree.

7. The applicant submitted an arborist letter by Luke Wever of Wever's Tree Service, LLC (Exhibit E) and a third-party arborist report by Damien Carre of Oregon Tree Care (Exhibit F). The arborist letter (Exhibit E) recommends removal of the Trees #2649 and 2650 stating that the trees have excessive damage to the cambium layer of the trunks and are in poor health. The arborist report (Exhibit F) concurs, stating that Trees #2649 and 2650 have a vertical column of decay and poor vigor on the vertical axis of the stems, and visible signs of boring at the base. **The applicant shall be allowed to remove Trees #2649 and 2650 in compliance with the tree covenant and the conditions of approval outlined in this final order.**
  
8. The applicant will be retaining one of the required retention trees: Tree #2682 as shown on the recorded tree covenant (Exhibit G). The arborist report (Exhibit F) states: "Tree 26[8]2 is the only tree above 12" DBH within the property boundary (reference picture #4 for property boundary) that will have construction activities near the trees to have a retaining wall installed on the boundary of the drip line of the trees along with minor soil grading to match the proposed retaining wall. Following the Performance Path methods the trees shall survive construction activities. It is recommended that the soil grading shall be done using platforms such as 1" thick plywood and or steel plated to provide enough surface area to protect the roots of tree 2[68]2. It is also recommended to only raise the soil grade up to the base of the root flare." *(Note: the arborist report refers to Tree #2682 as #2652 and #2562 staff corrected this in the above quote.)* Per the arborist's recommendation, **soil grading shall be completed using platforms such as 1-inch thick plywood and/or steel plates to provide enough surface area to protect the roots of Tree #2682. The soil grade shall only be raised up to the base of the root flare.**
  
9. The applicant did not provide specific information regarding how the trees proposed for removal with this application would be felled. **The applicant shall have the trees felled such that they do not negatively impact the adjacent tree that is to be preserved (Tree #2682). If the felled tree damages a healthy tree, the applicant may be subject to a fine.** The arborist report (Exhibit F) highly recommends that a Certified Arborist be on site when construction activities could cause root exposure or are within the root protection zone (RPZ) of the retained tree. **The applicant shall retain a Certified Arborist on site during construction activities that could cause root exposure or are within the root protection zone (RPZ; 1 foot per 1 inch DBH) of Tree #2682. As detailed in the diagram on page 9 of the arborist report, encroachments into the RPZ are allowed; however, the encroachments shall be no closer than one half of the required root protection zone radius and shall occupy no more than 25 percent of the total area in the root protection zone circle.** The arborist report also includes additional recommendations regarding tree protection during tree removal and grading. The arborist report includes recommendations regarding tree protection fencing; however, the current proposal is to grade within the RPZ under the supervision of a Certified Arborist, thus, the fencing is not required at this time. **The applicant shall follow all other recommendations contained in the arborist report (Exhibit F), including but not limited to the following:**
  - **Tree removal methods shall be done to minimize any impact and/or avoid compromising adjacent trees' structural integrity and/or vigor.**

- **No Heavy-Duty equipment or materials shall be permitted within the root protection zone (RPZ; 1 foot per 1 inch DBH) of Tree #2682.** (Note: Tree #2682 is 37 inches in diameter so the RPZ for Tree #2682 is a 37-foot radius around the tree.)
- **No excavation of soil shall be done in the RPZ of Tree #2682 without Arborist supervision.**
- **Demolition shall be done by hand to minimize compaction of soil and tree roots.**
- **Air Spading shall be done prior to any excavation.**
- **A Certified Arborist shall be on site to monitor and/or perform any root pruning that may be deemed necessary.**

10. 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. Removal of required retention Tree #2649 requires planting two mitigation trees. Tree #2649 is a large native evergreen species and thus needs to be mitigated by planting a large, native evergreen species. Rather than require the applicant to plant and maintain two mitigation trees that will grow to be large trees in their backyard, staff will allow a fee-in-lieu of mitigation trees to be paid at \$500 per tree. 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. **The applicant shall do one of the following:**

- **Plant two (2) mitigation trees on the property. If trees are planted on Lot 2, the cost of planting, watering, and maintaining the trees is the burden of the property owner, the tree species and size at planting shall be approved by Planning Division staff, and the property owner shall allow Planning Division staff to check on the health of the trees at one, two, and three years after planting.**
- **Or, pay a mitigation tree fee-in-lieu of \$500 per tree to relocate the two mitigation trees off-site (\$1,000 total).**

11. The recorded tree protection covenant (Exhibit G) details three required retention trees (Trees # 2649, 2651, and 2682) on Lot 2. **The applicant shall record an update to the tree protection covenant for Lot 2 detailing removal of Trees #2649 and 2651. If the applicant chooses to plant the two mitigation trees on the subject property, the applicant shall update the recorded tree protection covenant to detail the species and location of the two mitigation trees as well.**

12. 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 for at least 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.**

13. Section 17.102.60 specifies that all areas with exposed soils resulting from tree removal shall be replanted. The submitted narrative (Exhibit B) states the applicant intends to grade the backyard, build a building block retaining wall, and grind five existing stumps plus the two additional stumps from removal of Trees #2649 and 2650. The narrative indicates the applicant will plant additional grass and ground cover and install bark dust so that no exposed soils will remain.
14. The applicant did not indicate if there are nests in the two trees proposed for removal. **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.**
15. The applicant is proposing to grade the backyard and install a retaining wall. The narrative (Exhibit B) states: “The goal is to create a 1-foot drop across the west side of the backyard north to south ... This work includes using building block retaining walls on the south west (3’ high) and north east (2’ high).” Section 17.74.40(A) contains standards for residential fences and retaining walls. The rear yard of Lot 2 abuts Village Blvd. and the side yard abuts other lots. The maximum wall/fence height in a side yard abutting other lots is 8 feet and the maximum wall/fence height in a rear yard abutting a street is 6 feet. **The combined retaining wall and fence height along the rear (west) property line shall not exceed 6 feet and the combined retaining wall and fence height along the side (north and south) property lines shall not exceed 8 feet. Any fence installed along the west property line (i.e. Village Boulevard) shall adhere to the fence design requirements of Condition F.3 in the final order for the Marshall Ridge subdivision (File No. 17-066 SUB/VAR).**
16. **Prior to any grading on the site, the applicant shall apply for and receive approval for a City of Sandy grading and erosion control permit in conformance with City standards detailed in Chapter 15.44 of the Municipal Code. The grading and erosion control plan shall include a re-vegetation plan for all areas disturbed during construction.**

### **DECISION:**

The application for removal of two (2) trees from Lot 2 (Trees # 2649 and 2650) is hereby **approved** as modified by the conditions listed below.

**CONDITIONS OF APPROVAL:**

- A. Tree removal shall be limited to two trees identified as Trees #2649 and 2650.**
- B. The applicant shall retain a Certified Arborist on site during construction activities that could cause root exposure or are within the root protection zone (RPZ; 1 foot per 1 inch DBH) of Tree #2682. As detailed in the diagram on page 9 of the arborist report, encroachments into the RPZ are allowed; however, the encroachments shall be no closer than one half of the required root protection zone radius and shall occupy no more than 25 percent of the total area in the root protection zone circle. The applicant shall follow all recommendations contained in the Arborist Report (Exhibit F), including but not limited to:**
1. Soil grading shall be completed using platforms such as 1-inch thick plywood and/or steel plates to provide enough surface area to protect the roots of Tree #2682.
  2. The soil grade shall only be raised up to the base of the root flare.
  3. Tree removal methods shall be done to minimize any impact and/or avoid compromising adjacent trees structural integrity and/or vigor.
  4. No Heavy-Duty equipment or materials shall be permitted within the root protection zone (RPZ; 1 foot per 1 inch DBH) of Tree #2682. *(Note: Tree #2682 is 37 inches in diameter so the RPZ for Tree #2682 is a 37-foot radius around the tree.)*
  5. No excavation of soil shall be done within the RPZ of Tree #2682 without Arborist supervision.
  6. Demolition shall be done by hand to minimize compaction of soil and tree roots.
  7. Air Spading shall be done prior to any excavation.
  8. A Certified Arborist shall be on site to monitor and/or perform any root pruning that may be deemed necessary.
- C. There are two mitigation options for Lot 2 with approval of this tree permit application. The applicant shall complete one of the two options below:**
1. Plant two (2) mitigation trees on the property. If trees are planted on Lot 2, the cost of planting, watering, and maintaining the trees is the burden of the property owner, the tree species and size at planting shall be approved by Planning Division staff, and the property owner shall allow Planning Division staff to check on the health of the trees at one, two, and three years after planting.
  2. Or, pay a mitigation tree fee-in-lieu of \$500 per tree to relocate the two mitigation trees off-site (\$1,000 total).

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

1. Aerate and amend the soil prior to planting the mitigation trees.
2. 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 for at least 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.

**E. The applicant shall complete the following within 90 days from the date of this final order:**

1. Plant the two (2) mitigation trees in compliance with Condition D, 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 2 detailing removal of Trees #2649 and 2651. If the applicant chooses to plant the two mitigation trees on the subject property, the applicant shall update the recorded tree protection covenant to detail the species and location of the two mitigation trees as well.

**F. Prior to earthwork, grading, excavation, or installing the retaining wall, the applicant shall check with the Building Division to determine if a grading and erosion control permit is needed. If a grading and erosion control permit is needed, the applicant shall complete the following and receive necessary approvals as described.**

1. Apply for and receive approval for a City of Sandy grading and erosion control permit in conformance with City standards detailed in Section 15.44 of the Municipal Code. The grading and erosion control plan shall include a re-vegetation plan for all areas disturbed during construction.
2. Request an inspection and obtain approval for all erosion control measures per approved plans. (Request to the Building Division)

## G. General Conditions of Approval

1. The combined retaining wall and fence height along the rear (west) property line shall not exceed 6 feet and the combined retaining wall and fence height along the side (north and south) property lines shall not exceed 8 feet. Any fence installed along the west property line (i.e. Village Boulevard) shall adhere to the fence design requirements of Condition F.3 in the final order for the Marshall Ridge subdivision (File No. 17-066 SUB/VAR).
2. 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.
3. Future tree removal from the subject property 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 2) in the future.
4. 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 the applicant's heirs, personal representatives, successors and assigns.
5. Activity within the right-of-way (e.g. staging, etc.) requires a separate right-of-way permit through the Public Works Department.



---

Emily Meharg  
Senior Planner

11/03/2020

---

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.