

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

**DATE:** July 15, 2021

**FILE NO.:** 21-028 TREE

**PROJECT NAME:** 38487 Maple Street (Lot 16 of Marshall Ridge) Tree Removal

**APPLICANT/OWNER:** Lennar Northwest

**ADDRESS:** 38487 Maple Street

**PROPOSAL:** Remove one required retention tree 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. Tree Plan for Marshall Ridge
- C. Arborist Email re: Tree# 2534 dated February 2, 2021 (Todd Prager, Teragan & Associates, ASCA, ISA, TRAQ, AICP)
- D. Arborist Photos
- E. Supplemental Arborist Email dated June 9, 2021
- F. Supplemental Arborist Photo of Tree #2534

**Submitted by the City of Sandy**

- G. Restrictive Covenant for Tree Protection for Marshall Ridge Subdivision (Clackamas County Document # 2019-075523)
- H. Third Party Arborist Report (Damien Carré, Oregon Tree Care, Certified Arborist, ISA # PN-6405A, Certified Tree Risk Assessor 1717)

**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policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.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; however, the 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 one protected retention tree on Lot 16 of Marshall Ridge: Tree #2534. The tree plan submitted with the development application for the Marshall Ridge subdivision (Exhibit B) identified Tree #2534 as a 26-inch DBH Douglas fir in good condition and good structure.
6. The applicant proposes to remove Tree #2534, which 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).
7. The applicant submitted an email from project arborist Todd Prager of Teragan & Associates dated February 2, 2021 (Exhibit C). With regards to Tree #2534, the email states: “This tree is declining and recommended for removal. It has a progressively thinning crown and I expect it will be completely dead in the next few years. The tree protection zone was generally consistent with the typical root protection zone required by the City of Sandy. I did not see evidence that the tree’s decline was a result of tree protection plan violations. If this tree is approved for removal, fill may be tapered from the existing fill to the west down to the west side of its trunk. If it is not approved for removal, fill shall not exceed 4-inches in depth in the tree protection zone and no heavy equipment is permitted in the tree protection zone during the placement of fill.” A request for removal of a protected retention tree is processed as a Type I hazard tree removal permit, which requires "a report from a certified arborist or professional forester indicating that the condition or location of the tree presents a hazard or danger to persons or property and that such hazard or danger cannot reasonably be alleviated by treatment or pruning." Therefore, staff reached out to the project arborist for further clarification on whether the decline of the tree is making it a hazard or is likely to make it a hazard in the near future, and whether such hazard can be remediated by treatment or pruning, or whether it can only be remediated by complete removal of the tree. The project arborist sent a supplemental email (Exhibit E) and photo (Exhibit F) stating the following: “I recommend removal of tree 2534 because it is in advanced decline and beyond the point where treatment or pruning would alleviate the hazard. I anticipate that it will not survive beyond this summer and it should be removed before the next storm season in the fall when high wind events are likely and the risk of failure increases significantly. Dead and declining trees have decreased wood strength and therefore increased failure potential. As shown in the attached photo, the tree is within striking distance of the newly constructed home to the

south, the existing home to the north, and Oak Avenue to the east. Removal is the best option for risk reduction. Alternatively, a snag could be created to a height that is less than the distance to the closest house, but this is not ideal in a developed backyard in a residential neighborhood.”

8. The third-party arborist evaluation (Exhibit H) was conducted on July 7, 2021 by Damien Carré of Oregon Tree Care and states: “At the time of the site visit, the Douglas Fir tree appeared to have sparse foliage ... This could be due to compacted roots during construction, change of soil grade, loss of density from previous tree canopies, and/or in correlation with very high heat, dry conditions from last season and/or the existing heat waves. The tree is not an imminent risk at the time of the site visit. The vigor of the tree is less than favorable, though it could improve within the next season.” Thus, staff see two options: **the applicant shall retain the required Douglas fir retention tree (Tree #2534) and follow the recommendations outlined in the third-party arborist report (Exhibit H), or the applicant shall be allowed to remove the one (1) required Douglas fir retention tree in compliance with the conditions of approval outlined in this final order.**
9. The third-party arborist report (Exhibit H) states that if Tree #2534 is retained, it should be monitored annually for up to five years for changes and/or signs of stress. **If the applicant decides to retain Tree #2534, the applicant shall monitor Tree #2534 annually for five (5) years for changes and/or signs of stress. If it is determined in the future that the tree is a hazard and needs to be removed, the applicant shall apply for a Type I Tree Removal Permit.**
10. If the applicant decides to remove Tree #2534, mitigation will be required. 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 #2534 requires planting two mitigation trees. Tree #2534 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 would prefer 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 16, 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 City 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 one required retention trees (Tree #2534) on Lot 16. If the applicant decides to remove Tree #2534, **the applicant shall record an update to the tree protection covenant for Lot 16 detailing removal of Tree #2534. If the applicant chooses to plant the two mitigation trees on the subject property, the applicant shall also update the recorded tree protection covenant to detail the species and location of the two mitigation trees.**
  12. If the applicant chooses to remove Tree #2534 and plant mitigation trees, the trees will need to be kept alive and healthy. 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 and shall submit documentation from the project landscaper stating that the soil has been amended and aerated 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 and shall submit documentation from the project landscaper detailing the type of irrigation system that was installed.**
  13. Section 17.102.60 specifies that all areas with exposed soils resulting from tree removal shall be replanted. The applicant did not submit a replanting plan or information regarding whether the stump will be left in place or ground. **The applicant shall submit additional information clarifying if the stump will be left in place or ground. If the stump will be ground, the applicant shall submit a replanting plan for the area of exposed soil resulting from removal of Tree #2534.**
  14. The applicant did not provide specific information regarding how the tree proposed for removal with this application would be felled. **The applicant shall have the tree felled such that it does not negatively impact the adjacent retention trees on Lot 15 (Trees #2535, 2536, and 2537), any adjacent property, or the right-of-way. If removal of Tree #2534 damages a healthy tree, the applicant shall be subject to a fine and if the damaged tree becomes a hazard and needs to be removed in the future, the mitigation ratio shall be four to one (4:1).**
  15. The applicant did not indicate if there are nests in the 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) protected retention tree from Lot 16 (Tree #2534) is hereby **approved** as modified by the conditions listed below.

**CONDITIONS OF APPROVAL:**

**A. There are two options with approval of this tree permit application. The options are as follows:**

1. The applicant shall retain the required Douglas fir retention tree (Tree #2534) and follow the recommendations outlined in the third-party arborist report (Exhibit H),

-OR-

2. The applicant shall remove the one (1) required Douglas fir retention tree in compliance with the conditions of approval outlined in this final order. Approved tree removal shall be limited to one tree identified as Tree #2534.

**B. If the applicant decides to retain Tree #2534, the applicant shall monitor Tree #2534 annually for five (5) years for changes and/or signs of stress. If it is determined in the future that the tree is a hazard and needs to be removed, the applicant shall apply for a Type I Tree Removal Permit.**

**C. If the applicant decides to remove Tree #2534, the following conditions shall apply:**

1. The tree shall be felled such that it does not negatively impact the adjacent retention trees on Lot 15 (Trees #2535, 2536, and 2537), any adjacent property, or the right-of-way. If the felled tree damages a healthy tree, the applicant shall be subject to a fine and if the damaged tree becomes a hazard and needs to be removed in the future, the mitigation ratio shall be four to one (4:1).
2. 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.
3. There are two mitigation options for Lot 16 if Tree #2534 is removed. The applicant shall complete one of the two options below:
  - a. Plant two (2) mitigation trees on the property. If trees are planted on Lot 16, 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 City staff to check on the health of the trees at one, two, and three years after planting.

-OR-

- b. Pay a mitigation tree fee-in-lieu of \$500 per tree to relocate the two mitigation trees off-site (\$1,000 total).
4. If the applicant chooses to plant mitigation trees (Condition C.3.a), the applicant shall adhere to the following conditions:
    - a. Update the recorded tree protection covenant to detail the species and location of the two mitigation trees.
    - b. Aerate and amend the soil prior to planting the mitigation trees and submit documentation from the project landscaper stating that the soil has been amended and aerated prior to planting the mitigation trees.
    - c. Do not anchor anything to the mitigation trees, compact the soil under the dripline, or otherwise harm or damage the mitigation trees.
    - d. 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.
    - e. 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.
    - f. 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 and shall submit documentation from the project landscaper detailing the type of irrigation system that was installed.
  5. The applicant shall complete the following within 90 days from the date of this final order:
    - a. Plant the two (2) mitigation trees in compliance with Condition C.5, above – OR – pay a fee-in-lieu of \$1,000 to have the City plant and maintain two (2) trees off-site.
    - b. Record an update to the tree protection covenant for Lot 16 detailing removal of Tree #2534. As stated in Condition C.4.a., above, 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.

- c. Submit additional information clarifying if the stump will be left in place or ground. If the stump will be ground, the applicant shall submit a replanting plan for the area of exposed soil resulting from removal of Tree #2534.

**D. General Conditions of Approval**

1. 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 16) in the future.
2. 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.
3. 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

07/15/2021

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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.