

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

DATE: December 28, 2021

FILE NO.: 21-063 FSH/TREE

PROJECT NAME: Tickle Creek Village Tree Removal

APPLICANT/OWNER: Dubarko Development Corp.

ADDRESS: 37101 Dubarko Road

LEGAL DESCRIPTION: T2S R4E Section 14 Tax Lot 3100

This request was processed as a Type I Tree Removal and Type I FSH review. The following exhibits, findings of fact, and conditions (bold text) explain the proposal and the conditions of approval.

EXHIBITS:

Applicant's Submittals

- A. Land Use Application Form
- B. Project Narrative
- C. Arborist Report (December 6, 2021)
- D. Photos

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policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.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 subject lots have a Plan Map designation of HDR, High Density Residential, and a Zoning Map designation of R-3, High Density Residential.
3. The applicant requests approval to remove three (3) trees from the subject property, including one tree located in the Flood and Slope Hazard (FSH) overlay. The trees proposed for removal are:
 - Tree #101: a 24-inch diameter at breast height (DBH) western hemlock in fair condition previously identified as a retention tree as part of File No. 19-038 DR/FSH/VAR/TREE
 - Tree #102: a 7-inch DBH Scouler's willow in fair condition

- Tree #103: an 8-inch DBH Scouler’s willow in fair condition located in the restricted development area of the FSH overlay
4. The applicant previously received approval to remove two trees, 6-inches or greater within the Flood and Slope Hazard (FSH) overlay on the subject property on two separate occasions:
 - December 4, 2018 (File No. 18-052 FSH/TREE): Trees #19 and #20
 - January 28, 2020 (File No. 19-038 DR/FSH/VAR/TREE): Trees #26 and #27
 5. As a condition of approval for File No. 18-052 FSH/TREE, the applicant was required to plant four (4) native mitigation trees in the FSH portion of the site with future development of the site. As a condition of approval for File No. 19-038 DR/FSH/VAR/TREE, the applicant was required to plant an additional four (4) native mitigation trees in the FSH portion of the site. **All conditions of approval for Files No. 18-052 FSH/TREE and 19-038 DR/FSH/VAR/TREE shall still apply.**
 6. With this application, the applicant is requesting to remove one (1) additional tree from the restricted development area of the FSH overlay (Tree #103), for a cumulative total of five (5) trees removed from the FSH overlay since 2018. The submitted arborist report (Exhibit C) notes that “Scouler’s willow are short lived species, prone to decay and failure, and generally not desirable when within striking distance of structures.” Both Trees #102 and #103 are Scouler’s willows; however, Tree #102 is not located within the FSH overlay.
 7. Section 17.60.20 contains permitted uses and activities within the restricted development area of the FSH overlay district. Section 17.60.20(B) specifies permitted uses in the FSH overlay district, all of which require a permit. Removal of up to two trees 6 inches or greater DBH in a calendar year, provided that each tree removed is replaced with two native trees, each of which must be 1.5 inches or greater caliper and placed within the restricted development area of the site. The current proposal includes removal of one (1) tree 6-inches or greater DBH within the FSH overlay (Tree # 103).
 8. Section 17.60.40 specifies that a request to remove up to two trees, six-inches DBH or greater within a calendar year within the FSH overlay is reviewed as a Type I FSH procedure. This application includes the removal of one tree in the FSH overlay. Future tree removal or vegetation removal on the subject property requires additional land use review. **The applicant shall apply for a separate FSH review permit for all additional/future vegetation removal or planting requests within the FSH overlay. The applicant shall not remove any native vegetation within the FSH overlay district, with the exception of removal of up to two trees 6 inches DBH or greater per calendar year when approved by permit. A violation of the provisions set forth in Chapter 17.60, FSH, (e.g., tree removal without permit authorization or native vegetation removal) may result in a fine as specified in Section 17.06.80.**
 9. Section 17.60.60(A) contains approval standards and conditions for development proposed within the restricted development areas of the FSH overlay district. Section 17.60.60(A.1)

pertains to cumulative impacts and requires that development within the FSH overlay district, including vegetation removal, will not measurably decrease water quantity or quality in streams or wetlands below existing conditions. With removal of Tree #103, a total of five (5) trees will have been removed from the FSH overlay; however, the removed trees will be replaced at a 2:1 ratio with mitigation trees planted in the restricted development area of the FSH overlay. In addition, any resulting bare patches of soil will be replanted with native vegetation. Criteria A.1 is met.

10. Sections 17.60.60(A.2-A.4) pertain to impervious surface area, construction materials and methods, and cuts and fills, respectively. This application is for tree removal and does not include any impervious surfaces, construction, or cuts/fills in the restricted development area of the FSH overlay district. The applicant did not indicate how Tree #103 would be removed. **Heavy machinery, equipment, and vehicles shall not be permitted within the restricted development area of the FSH overlay. The trees shall be felled such that they don't damage adjacent trees to be retained.** With these conditions of approval, Criteria A.2-A.4 can be met.
11. Section 17.60.60(A.5) pertains to minimizing wetland and stream impacts and requires that the site shall maintain the quantity and quality of surface and groundwater flows to locally significant wetlands or streams in the FSH overlay district. Section 17.60.60(A.6) requires that development shall minimize the loss of native vegetation. Where such vegetation is lost as a result of development within restricted development areas, it shall be replaced on-site on a 2:1 basis according to type and area. **Two native trees of at least one and one-half-inch caliper shall replace each tree removed. Disturbed understory and groundcover shall be replaced by native understory and groundcover species that effectively covers the disturbed area.** With these conditions of approval, Criteria A.5 and A.6 can be met.
12. 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 subject site is 10.4 acres; however, the applicant is only proposing development on the southern 4.23 acres. The site contains greater than one acre, therefore, the proposal is reviewed to determine compliance with Chapter 17.102.
13. 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. This section specifies that each violation of the code is considered a separate offense punishable by a fine up to \$1,000.00.
14. 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." The 4.23-acre development portion of the site must therefore retain a minimum of 13 healthy trees at 11 inches or greater DBH.

15. With approval of the proposed development (File No. 19-038), the following retention trees were identified:

- Tree #10: 19-inch DBH Douglas fir in good condition
- Tree #10.1: 15-inch DBH bigleaf maple in good condition
- Tree #13.1: 14-inch DBH red alder in good condition
- Tree #15: 28-inch DBH Douglas fir in good condition
- Tree #22: 26-inch DBH western redcedar in good condition
- Tree #23: 23-inch DBH western redcedar in good condition
- Tree #24: 23-inch DBH western redcedar in good condition
- Tree #25: multi-stemmed 10-, 9-, 8-, and 7-inch DBH red alder with a single DBH of 17-inches in good condition
- Tree #31: 28-inch DBH black cottonwood in good condition
- Tree #101: 24-inch DBH western hemlock in fair condition
- Tree #121: 10-inch DBH red alder in good condition
- Tree #181: 10-inch DBH black cottonwood
- Tree #184: 10-inch DBH red alder in good condition
- Tree #187: 10-inch DBH red alder in good condition
- Tree #194: multi-stemmed 7-, 6-, 6-, and 5-inch DBH western redcedar with a single DBH of 12-inches in good condition
- Tree #198: 13-inch DBH red alder in good condition

Trees #121, #181, #184, and #187 are all less than 11-inches DBH so were counted as retention trees at a 2:1 ratio. This resulted in 14 retention trees, including Tree #101, which is proposed for removal with this application. Removal of Tree #101 would result in 13 retention trees, which meets the minimum retention requirement, provided the remaining trees are all still healthy and in good condition.

16. Tree #101 is a 24-inch DBH western hemlock in fair condition (see photo of Tree #101 in Exhibit D). The submitted arborist report (Exhibit C) by Todd Prager of Teragan & Associates, Inc. states: “Western hemlock are sensitive species that are susceptible to damage and decline from environmental changes, even when well protected from construction. Recent weather events such as warm, dry springs and extreme heat have been particularly damaging to the species. Tree 101 appears to be in decline and therefore not a good candidate for continued retention.” The arborist report also states: “Tree 101 was the only retention tree I noted in decline during my July site visit. The trees identified for retention were protected in accordance with the approved tree protection plan at that time.” Therefore, the proposal remains in compliance with the minimum tree retention standards of Section 17.102.50.

17. Section 17.102.60 states that each tree removed within the FSH overlay district shall be replanted with two native trees of quality nursery stock for every tree removed. Section 17.60.20(B.5) specifies that removed trees shall be replaced with two native trees, each of which shall be 1.5-inch or greater in caliper and placed within the restricted development area of the site. One of the trees removed as part of File No. 18-052 FSH/TREE (Tree #20, a 15-inch DBH bigleaf maple) was determined to be in very poor condition due to suspected

Verticillium wilt. Because Verticillium is a soil-borne pathogen, staff will not approve mitigation trees that are susceptible to Verticillium wilt. All conifers are resistant to Verticillium wilt and are therefore good choices for mitigation trees. **The applicant shall plant two native conifers (at least 6 feet in height) within the restricted development area of the FSH overlay to mitigate for removal of Tree #103. Alternatively, the applicant's arborist can suggest a deciduous native species that is not susceptible to Verticillium wilt for staff review and approval; if approved, the applicant shall plant two of the alternate deciduous species within the restricted development area of the FSH overlay of the development area to mitigate for removal of Tree #103.**

18. The submitted Arborist Report (Exhibit C) does not indicate if the stumps of Trees #101, #102, and #103 will be ground or left in place. **Per Section 17.102.60(A), 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 June 1st of the following year.**
19. The applicant did not indicate if there are nests in Trees #101, #102, or #103. **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.**
20. As a condition of approval for File No. 19-038 DR/FSH/VAR/TREE, the applicant was required to record a tree protection covenant that identifies the species and location of the retention trees (Trees #10, 10.1, 13.1, 14, 15, 21, 22, 23, 24, 25, 31, 101, 121, 181, 184, 187, 194, and 198) as well as the four (4) mitigation trees required by File 19-038 DR/FSH/VAR/TREE, plus the four (4) mitigation trees required by File No. 18-052 FSH/TREE. The covenant was also required to identify the FSH overlay area. With this application, **the applicant shall update the tree covenant to reflect the removal of retention Tree #101 and the addition of two (2) additional mitigation trees in the restricted development area of the FSH overlay, for a total of 10 mitigation trees planted in the restricted development area of the FSH overlay. The covenant shall also identify the restricted development area in the FSH overlay and the FSH overlay district. The covenant shall state that no tree shall be removed without first obtaining approval from the City of Sandy pursuant to Sandy Development Code Chapter 17.102 and/or Chapter 17.60, and 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. This document shall include a sketch identifying the species and location of the mitigation trees and retention trees as well as the critical root zone around the retention trees detailed at 1 foot per 1 inch DBH.**

DECISION:

This application is **approved** because the proposal complies with the standards of Chapters 17.60, Flood and Slope Hazard Overlay District, and 17.102, Urban Forestry, subject to conditions of approval.

CONDITIONS OF APPROVAL:

1. The applicant is only permitted to remove Trees #101, #102, and #103.
2. The trees shall be felled such that they don't damage adjacent trees to be retained.
3. Heavy machinery, equipment, and vehicles shall not be permitted within the restricted development area of the FSH overlay district.
4. Two native trees of at least one and one-half-inch caliper shall replace each tree removed. The applicant shall plant two native conifers (at least 6 feet in height) within the restricted development area of the FSH overlay district to mitigate for removal of Tree #103. Alternatively, the applicant's arborist can suggest a deciduous native species that is not susceptible to Verticillium wilt for staff review and approval; if approved, the applicant shall plant two of the alternate deciduous species within the restricted development area of the FSH overlay district to mitigate for removal of Tree #103.
5. The applicant shall update the tree covenant to reflect the removal of retention Tree #101 and the addition of two (2) additional mitigation trees in the FSH overlay, for a total of 10 mitigation trees planted in the restricted development area of the FSH overlay. The covenant shall also identify the restricted development area in the FSH overlay and the FSH overlay district. The covenant shall state that no tree shall be removed without first obtaining approval from the City of Sandy pursuant to Sandy Development Code Chapter 17.102 and/or Chapter 17.60, and 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. This document shall include a sketch identifying the species and location of the mitigation trees and retention trees as well as the critical root zone around the retention trees detailed at 1 foot per 1 inch DBH.
6. Per Section 17.60.60(A.6), disturbed understory and groundcover shall be replaced by native understory and groundcover species that effectively covers the disturbed area. Per Section 17.102.60(A), 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 June 1st of the following year.
7. 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.

8. All conditions of approval for Files No. 18-052 FSH/TREE and 19-038 FSH/TREE shall still apply.
9. The applicant shall apply for a separate FSH review permit for all additional/future vegetation removal or planting requests within the FSH overlay. The applicant shall not remove any native vegetation within the FSH overlay district, with the exception of removal of up to two trees 6 inches DBH or greater per calendar year when approved by permit. A violation of the provisions set forth in Chapter 17.60, FSH, (e.g., tree removal without permit authorization or native vegetation removal) may result in a fine as specified in Section 17.06.80.
10. 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

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.