

**FINDINGS OF FACT and FINAL ORDER
TYPE II LAND USE DECISION**

DATE: August 24, 2022

FILE NO.: 22-029 FSH/TREE

PROJECT NAME: Bell Street and 362nd Drive Tree Removal in Slope Easements

APPLICANT: Khara Hillis (on behalf of the City of Sandy)

OWNERS: City of Sandy

LEGAL DESCRIPTION: T2SR4E11, Tax Lots 3402 and 3500

The above-referenced proposal was reviewed concurrently as a Type II Flood and Slope Hazard (FSH) overlay review and a tree removal permit. 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
- B. Arborist Report (dated July 14, 2022)
- C. Permanent Slope Easement for Tax Lot 3402 (Clackamas County Document #2022-027966)
- D. Permanent Slope Easement for Tax Lot 3500 (Clackamas County Document #2022-029134)

Public Comments:

None

FINDINGS OF FACT

General Overview

1. These findings are based on the applicant's submittals received on July 11, 2022, and additional materials received in early August.
2. This report is based upon the exhibits listed in this document, as well as agency comments and public testimony.

3. The City previously submitted a land use application to extend and connect Bell Street and 362nd Drive (File No. 22-003 FSH/TREE). As part of that application, the applicant proposed to remove multiple trees from the future right-of-way alignment, including trees located in the FSH overlay. **The applicant shall adhere to all conditions of approval from File No. 22-003 FSH/TREE.** After receiving approval for the extension of Bell Street and 362nd Drive and associated tree removal, the applicant identified additional trees located in the acquired slope easement areas that will need to be removed. Khara Hillis submitted the current application request (File No. 22-029 FSH/TREE) to remove eight (8) additional trees from the slope easements acquired by the City for the purposes of the construction of Bell Street and 362nd Drive (Bell/362).
4. The subject site for the road extension project is approximately 10.1 acres with right-of-way at 7.2 acres, slope easements at 2.3 acres, and areas for utilities totaling 0.6 acres. The proposed road alignment is located north of Highway 26, south of Goldenrain Street, and west of the Sandy High School. The proposed tree removal associated with this application (File No. 22-029 FSH/TREE) is located within the slope easement area on Tax Lots 3402 and 3500.
5. The proposed tree removal is on Tax Lots 3402 and 3500, which have a Comprehensive Plan Map designation of Medium Density Residential and Commercial, and a Zoning Map designation of Medium Density Residential (R-2) and General Commercial (C-2), respectively.
6. Notice of the proposal was mailed to property owners within 300 feet of the slope easements that the trees will be removed from on August 5, 2022. No public comments were received.

17.60 – Flood and Slope Hazard (FSH) Overlay District

7. Three (3) of the trees proposed or removal as part of this application are located within the Flood and Slope Hazard (FSH) Overlay District; therefore, an FSH review is required. Removal of up to two (2) trees 6-inches or greater DBH in a calendar year can be reviewed under the Type I FSH procedure. The original Bell/362 application (File No. 22-003 FSH/TREE) included removal of 26 trees from the FSH overlay for the 2022 calendar year. As part of that application, staff determined that removal of more than two (2) trees per calendar year in association with a public improvement project identified in a master plan can be processed under a Type II FSH procedure. This application includes a request to remove three (3) additional trees from the FSH overlay in the 2022 calendar year.
8. Section 17.60.00 specifies the intent of the Flood and Slope Hazard (FSH) Overlay District, which is to promote the public health, safety, and general welfare by minimizing public and private adverse impacts from flooding, erosion, landslides, or degradation of water quality consistent with Statewide Planning Goal 6 (Air, Land and Water Resources Quality) and Goal 7 (Areas Subject to Natural Disasters and Hazards) and the Sandy Comprehensive Plan (SCP).
9. Section 17.60.20 contains permitted uses in the FSH overlay district and Section 17.60.40 contains the FSH review procedures. As previously discussed, removal of more than two (2) trees from the FSH overlay area in association with a public improvement project identified

in a master plan is processed under a Type II FSH procedure. Thus, the applicant is requesting the following Type II FSH review: Type II FSH review for removal of more than two (2) trees from the FSH overlay in association with a public improvement project identified in the 2011 City of Sandy Transportation System Plan, Project ID M14 and M15. **Future development of the adjacent lots shall require separate permit review and compliance with Chapter 17.60. A violation of the provisions set forth in Chapter 17.60, FSH, (e.g., tree removal without permit authorization or native vegetation removal) shall result in a fine as specified in Section 17.06.80.**

10. Section 17.60.30 and Figure 1 in Chapter 17.60 outline required setbacks and FSH overlay elements for development around FSH areas. Wetlands and waters, including required setbacks, in the vicinity of the proposed project were previously delineated as part of the Bell/362nd project (File No. 22-003 FSH/TREE).
11. Section 17.60.50 contains requirements for special reports, including a hydrology and soils report, a grading plan, and a native vegetation report. The original Bell/362nd application (File No. 22-003 FSH/TREE) included a Geotech Report, which contains information regarding soils and hydrology, a Grading Plan, and a Native Vegetation Report. No additional reports are needed with this application.
12. Section 17.60.60 contains approval standards and conditions for development in the restricted development areas of the FSH overlay district. Section 17.60.60(A.1) pertains to cumulative impacts and states “Limited development within the FSH overlay district, including planned vegetation removal, grading, construction, utilities, roads and the proposed use(s) of the site will not measurably decrease water quantity or quality in affected streams or wetlands below conditions existing at the time the development application was submitted.” The original application included construction of a road, grading, and removal of 26 trees within the FSH overlay, with the potential to remove a 27th tree if Tributary B is determined to be a perennial stream or if either Wetland B or Pond A are determined to be a locally significant wetland. This application request includes an arborist recommendation to remove an additional eight (8) trees from the acquired slope easements, three (3) trees of which are located within the FSH overlay. Removal of the trees was determined necessary by the project arborist (Exhibit B) to facilitate construction of the road, including a culvert and retaining wall where Bell Street crosses the stream (identified as Tributary A). The extension and connection of Bell Street and 362nd Drive is identified in the 2011 Transportation System Plan. All impacts to the FSH overlay area and all proposed tree removal are associated with construction of the roads. No trees will be removed, nor will there be any direct impacts to the FSH overlay area on property outside of the acquired right-of-way and slope easements. As a condition of approval for File No. 22-003 FSH/TREE, the applicant is required to install protective fencing at the outer edge of the FSH overlay district directly adjacent to the construction area and along the limits of the construction boundary where the proposed road crosses the FSH overlay and construction activity is not permitted within the protected riparian area. Staff finds the proposal meets Criterion A.1.
13. Section 17.60.60(A.2) pertains to impervious surface area and states, “Impervious surface area within restricted development areas shall be the minimum necessary to achieve development objectives consistent with the purposes of this chapter.” The impervious surface

associated with the road construction was addressed in the original application (File No. 22-003 FSH/TREE). The current application is solely for additional tree removal from the slope easements needed to facilitate road construction. No additional impervious surfaces are proposed with this application. Staff finds the proposal meets Criterion A.2.

14. Section 17.60.60(A.3) pertains to construction materials and methods and states, “Construction materials and methods shall be consistent with the recommendations of special reports, or third-party review of special reports.” The original application (File No. 22-003 FSH/TREE) submittal items included the relevant special reports and reviews, and the approval included a requirement that the applicant adhere to the recommendations of the Geotech Report and the Wetland and Stream Mitigation Technical Memo. Staff finds the proposal meets Criterion A.3.
15. Section 17.60.60(A.4) pertains to cuts and fills and states “Cuts and fills shall be the minimum necessary to ensure slope stability, consistent with the recommendations of special reports, or third-party review of special reports.” Proposed cuts and fills associated with the road construction were addressed in the original application (File No. 22-003 FSH/TREE). The current application is solely for additional tree removal from the slope easements needed to facilitate road construction. No additional cuts or fills are proposed with this application. Staff finds the proposal meets Criterion A.4.
16. Section 17.60.60(A.5) pertains to minimizing wetland and stream impacts and states “Development on the site shall maintain the quantity and quality of surface and groundwater flows to locally significant wetlands or streams regulated by the FSH Overlay District.” Stream and wetland impacts were evaluated as part of the original application for the road construction (File No. 22-003 FSH/TREE). The current application includes a request to remove an additional three (3) trees from the FSH overlay. Removal of these three (3) trees will require mitigation at a 2:1 ratio; thus, it is not anticipated that removal of three (3) additional trees from the FSH overlay will cause significant impacts to water quality or quantity. Staff finds the proposal meets Criterion A.5.
17. Section 17.60.60(A.6) pertains to minimizing loss of native vegetation and states “Development on the site 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 1.5-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.” The current application includes removal of three (3) trees from the slope easement areas within the FSH overlay (Trees #6, 8, and 9). *Note: Tree #7 is also marked for removal as part of this application; however, Tree #7 was already approved for removal as part of File No. 22-003 FSH/TREE, so the requested removal of Tree #7 does not need to be processed with this application.* Tree #6 is a 38-inch DBH Douglas fir in good condition, Tree #8 is a 12-inch DBH red alder in good condition, and Tree #9 is a 14-inch DBH red alder in very poor condition. These three (3) trees will need to be mitigated at a 2:1 ratio. The original application (File No. 22-003 FSH/TREE) included removal of 26 trees from the FSH overlay, which required planting 52 mitigation trees. The mitigation plan submitted with File No. 22-003 FSH/TREE included planting a limited number of mitigation trees in the right-of-

way and slope easements within the FSH overlay next to the Bell Street extension, with the majority of the mitigation trees proposed to be planted upstream at the nearby Sandy Bluff Park. The current application includes removal of an additional three (3) trees from the FSH overlay, which requires planting six (6) mitigation trees. The applicant did not submit a mitigation plan with this application detailing where the six (6) mitigation trees would be planted. Based on the existing vegetation and mitigation plan submitted with File No. 22-003 FSH/TREE for the Sandy Bluff Park, staff does not believe there is sufficient room to plant more mitigation trees around the pond, particularly with the requirement that the tree canopies at full growth need to maintain 10 feet of clearance between the canopy and the edge of the asphalt path in the park, as required by File No. 22-003 FSH/TREE. **The applicant shall replace each tree that is removed from the FSH overlay district with two (2) native trees at a minimum size of 1.5-inch caliper (if deciduous) or 5-feet tall (if coniferous). The applicant shall submit a mitigation plan detailing the proposed species, size, and location of the six (6) mitigation trees for staff review and approval. The mitigation trees shall be planted within the FSH overlay area near where Trees #6, 8, and 9 are removed, or as otherwise reviewed and approved by Planning Division staff. The mitigation trees shall be planted per the City of Sandy standard planting detail. Tree ties, if used, shall be loosely tied twine or other soft material, and shall be removed after one growing season (or a maximum of 1 year). The applicant shall replace any disturbed understory or groundcover with native understory or groundcover species that effectively cover the disturbed area. Mitigation trees shall be continually maintained, including necessary watering, weeding, pruning, and replacing.** With the recommended condition of approval, staff finds the proposal can meet Criterion A.6.

17.102 – Urban Forestry

18. Section 17.102.20 contains information on the applicability of Urban Forestry regulations. The Bell/362 extension project area contains approximately 10.1 acres with right-of-way at 7.2 acres, slope easements at 2.3 acres, and areas for utilities totaling 0.6 acres. The original application (File No. 22-003 FSH/TREE) included tree removal deemed necessary for construction of the road project. However, after approval of the application and commencement of earthwork, the City identified additional trees that were not originally marked for removal but appeared likely to be impacted by the road construction. Therefore, the City hired a project arborist to evaluate trees that were originally marked for retention to determine if they would be negatively impacted by the road construction and should be removed. The Arborist Report prepared by Todd Prager of Todd Prager & Associates, LLC and dated July 14, 2022, evaluated nine (9) trees adjacent to the Bell/362 project and determined eight (8) of the trees will likely be negatively impacted by the road construction and are therefore recommended for removal. The trees recommended for removal by the project arborist are Trees #1-4, and 6-9 on Attachment 1 of the Arborist Report. Per Section 17.102.20(B.1) “Tree removal as required by the city or public utility for the installation or maintenance or repair of roads, utilities, or other structures” is exempt from the requirements of Chapter 17.102. All eight (8) trees proposed for removal with the current application are located in the slope easement areas. The slope easements (Exhibits C and D) were acquired by the City for the construction of Bell Street and 362nd Drive and allow the grantee (i.e., the City) to “remove any trees, shrubs, brush, paving or other materials necessary or convenient” to construct the road. Therefore, removal of these trees is exempt from the tree retention standards of Chapter 17.102. As conditioned in File No. 22-003 FSH/TREE, **future**

development of the adjacent lots shall require separate permit review and compliance with Chapter 17.102. All trees not approved for removal as part of File No. 22-003 FSH/TREE or as part of this application (File No. 22-029 FSH/TREE) shall be protected and retained. All trees located outside of the limits of construction shall be protected and retained. A violation of the provisions set forth in Chapter 17.102, Urban Forestry, (e.g., tree removal without permit authorization) shall result in a fine as specified in Section 17.06.80.

19. The Arborist Report (Exhibit B) determined that Tree #5, identified as a 28-inch DBH Douglas fir in good condition located on Tax Lot 3500, “may be retained if fill soil will be limited to less than 50 percent of its estimated critical root zone. The typical recommendation of my firm is to limit fill (and other root impacts) to 25 percent or less of a tree’s estimated critical root zone. However, there is published research that indicates in some circumstances anywhere from 33 to 50 percent of the roots of healthy trees can be removed without serious effects. In my opinion tree 5 is more likely than not to survive the impacts of the proposed fill so the city may decide to retain it. Note that this recommendation is not a guarantee the tree will survive, so retaining the tree is a calculated risk weighted against the benefits the tree provides.” Attachment 2 of the Arborist Report concludes that the treatment recommendation for Tree #5 is to retain it. **The applicant shall retain Tree #5; however, if Tree #5 is damaged during construction of the road and needs to be removed to alleviate a hazard, the applicant may remove Tree #5 and shall plant an additional two (2) mitigation trees or pay a fee-in-lieu for the two (2) mitigation trees at \$500 per tree.**
20. **The applicant shall adhere to the regulations of the Migratory Bird Act. If 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

For the reasons described above, the request by Khara Hillis on behalf of the City of Sandy to remove trees within the slope easements acquired for the extension of Bell Street and 362nd Drive is hereby **approved with the following conditions.**

CONDITIONS OF APPROVAL

- A. The applicant shall adhere to all conditions of approval from File No. 02-003 FSH/TREE.**
- B. Tree removal shall be limited to the eight (8) trees identified in the Arborist Report (Trees #1-4, and 6-9) detailed in Attachment 1 of the Arborist Report). The applicant shall retain Tree #5; however, if Tree #5 is damaged during construction of the road and needs to be removed to alleviate a hazard, the applicant may remove Tree #5 and**

shall plant an additional two (2) mitigation trees or pay a fee-in-lieu of the two (2) mitigation trees at \$500 per tree.

- C. The applicant shall replace each tree that is removed from the FSH overlay district with two (2) native trees at a minimum size of 1.5-inch caliper (if deciduous) or 5-feet tall (if coniferous). Removal of three (3) trees from the FSH overlay shall require planting six (6) mitigation trees. Removal of Tree #5 shall require planting two (2) additional mitigation trees or paying a fee-in-lieu for the 2 mitigation trees at \$500 per tree.**
- D. The applicant shall submit a mitigation plan detailing the proposed species, size, and location of the mitigation trees for staff review and approval. The mitigation trees shall be planted within the FSH overlay area near where Trees #6, 8, and 9 are removed, or as otherwise reviewed and approved by planning staff.**

E. General Conditions of Approval:

1. All trees not approved for removal as part of File No 22-003 FSH/TREE or as part of this application (File No. 22-029 FSH/TREE) shall be protected and retained. All trees located outside of the limits of construction shall be protected and retained.
2. The mitigation trees shall be planted per the City of Sandy standard planting detail. Tree ties, if used, shall be loosely tied twine or other soft material, and shall be removed after one growing season (or a maximum of 1 year). The applicant shall replace any disturbed understory or groundcover with native understory or groundcover species that effectively cover the disturbed area.
3. Mitigation trees shall be continually maintained, including necessary watering, weeding, pruning, and replacing.
4. Adhere to the regulations of the Migratory Bird Act. If 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.
5. Future development of the adjacent lots shall require separate permit review and compliance with Chapters 17.60 and 17.102. A violation of the provisions set forth in Chapter 17.60, FSH, (e.g., tree removal without permit authorization or native vegetation removal) or Chapter 17.102, Urban Forestry, (e.g., tree removal without permit authorization) shall result in a fine as specified in Section 17.06.80.
6. Successors-in-interest of the applicant shall comply with site development requirements prior to the issuance of building permits.
7. Comply with all other conditions or regulations imposed by the Sandy Fire District or state and federal agencies. Compliance is made a part of this approval and any violations

of these conditions and/or regulations may result in the review of this approval and/or revocation of approval.



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 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 Chapter 17.28.50; and,
5. Payment of required filing fees.