

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

DATE: October 5, 2022

FILE NO.: 22-035 TREE

PROJECT NAME: 38797 Creekside Loop Tree Removal

APPLICANT: Aryn Ferguson

OWNER: Bill Trimble

LEGAL DESCRIPTION: T2S R4E Section 13 Tax Lot 9008

PROPOSAL: Remove five trees

EXHIBITS:

Applicant's and Property Owner's Submittals

- A. Land Use Application
- B. Pictures from Aryn Ferguson from September 15, 2022
- C. Email from Aryn Ferguson from September 15, 2022

Additional Documents Included by Staff

- D. Final Order for File No. 18-042 DR
- E. Public Works Email from September 29, 2022

FINDINGS OF FACT:

1. 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). The contiguous parcels under the same ownership contain greater than one acre, therefore, the proposal must be processed to determine compliance with Chapter 17.102, Urban Forestry. The proposal is considered a Type I permit because fewer than 50 trees are proposed to be removed and the overall site meets the minimum retention requirements.
2. The application was submitted on August 15, 2022. Staff deemed the application incomplete on August 30, 2022. Aryn Ferguson, on behalf of the property owner, submitted additional materials on several different occasions. On September 29, 2022, staff declared the application complete via email correspondence.
3. 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." Furthermore, the land use decision for File No. 18-042 DR (Exhibit D), Condition B. 5.

stated: “No trees greater than eight inches in diameter shall be removed from the site without City staff review and approval.” The land use decision is binding.

4. The applicant proposes to remove five (5) trees from the subject site. The five trees proposed for removal are a 5.6-inch DBH tree, a 3.7-inch DBH tree, a 4.3-inch DBH tree, a 10.7-inch DBH tree, and a multi-stemmed tree that totals 44.6-inches DBH (Exhibit B). Per Section 17.102.20(A) the one tree at 44.6-inches DBH is the only tree that qualifies for assessment and potential retention; however, per the decision in File No. 18-042 DR, the 10.7-inch DBH tree also qualifies for assessment and potential retention.
5. Per Thomas Fisher with the Public Works Department (Exhibit E), the existing sewer lateral at 38797 Creekside Loop is marked by a white 2x4 which is located in the middle of the subject trees. In order to connect to the existing lateral a 2 foot by 4 foot pit needs to be dug at that white post. Boring would not be an option because there still needs to be a connection made to the existing pipe. The contractors that worked on the sanitary sewer system improvements only reinstated this lateral after bursting a new mainline down the road. PGE has also marked this location for a transformer for this property. Based on the input from the Public Works Department, the subject trees have to be removed to ready the subject property for development.
6. The applicant and property owner propose to retain all other trees in the Trimble PD, but the applicant did not submit an arborist report. Therefore, the applicant will need to install mitigation trees in-lieu of the two trees being removed that are greater than 8-inches DBH. These four mitigation trees are separate from the trees that were already proposed to be planted with File No. 18-042 DR for stormwater mitigation. **The applicant or property owner is required to plant four mitigation trees. The four mitigation trees shall be at least 6 to 8 feet in height at planting and shall be native evergreens. The location of the mitigation trees shall be reviewed and approved by staff prior to recording the tree protection covenant and prior to planting. The mitigation trees shall be planted between October 15 and November 15, 2022. Once the mitigation trees are planted the applicant shall call City staff for an inspection. The applicant or property owner 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 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 or property owner 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. To ensure protection of the four required mitigation trees the applicant shall record a City approved tree covenant. This document shall include a sketch identifying the four mitigation trees. If any of the four (4) mitigation trees die or are removed in the future, the property owner shall replace the trees. The applicant or property owner shall not anchor anything to the mitigation**

trees, compact the soil under the dripline, or otherwise harm or damage the mitigation trees.

7. Section 17.102.60 specifies that all areas with exposed soils resulting from tree removal be replanted. **Per Section 17.102.60(1), all areas of exposed soils resulting from tree removal shall be replanted with a groundcover of native species within 30 days of harvest.**
8. If the trees are removed during prime nesting season (February 1- July 31), **the applicant or property owner shall check for nests prior to tree removal. If nests are discovered, the applicant or property owner 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 applicant is **approved** to remove the five trees at 38797 Creekside Loop.

CONDITIONS OF APPROVAL:

A. Prior to receiving the final certificate of occupancy for the duplex at 38797 Creekside Loop the applicant shall complete the following:

1. The applicant or property owner shall check for nests prior to tree removal. If nests are discovered, the applicant or property owner 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. Plant four mitigation trees. These trees shall be at least 6 to 8 feet in height at planting and shall be native evergreens. The location of the mitigation trees shall be reviewed and approved by staff prior to recording the tree protection covenant and prior to planting. The applicant or property owner 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 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 or property owner 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.
3. Once the mitigation trees are planted, the applicant or property owner shall contact City staff to schedule an inspection.

4. Record a tree protection covenant specifying protection of the four required mitigation trees. This document shall include a sketch identifying the four mitigation trees.

B. General Conditions of Approval:

1. Per Section 17.102.60(1), all areas of exposed soils resulting from tree removal shall be replanted with a groundcover of native species within 30 days of harvest.
2. If any of the four mitigation trees die or are removed in the future, the property owner shall replace the trees.
3. The applicant or property owner shall not anchor anything to the mitigation trees, compact the soil under the dripline, or otherwise harm or damage the mitigation trees.
4. Future tree removal from the subject properties 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 or property owners shall also be required to pay a third-party arborist review fee for any trees proposed for removal from the subject properties in the future.
5. The applicant or property owner shall maintain the mitigation trees in good condition. Per Sections 17.92.10(L) and 17.92.60(B), maintenance shall include necessary watering, weeding, and pruning at intervals sufficient to assure survival and growth.
6. Successors-in-interest of the applicant or property owner shall comply with requirements of this final order. In the event the property owner 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 property owner's heirs, personal representatives, successors and assigns.
7. Activity within the right-of-way (e.g., staging, etc.) requires a separate right-of-way permit through the Public Works Department.
8. All other conditions in File No. 18-042 DR and the subsequent files associated with the adjustment and appeals, still apply.



Kelly O'Neill Jr.
Development Services Director

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.