

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

**DATE:** January 11, 2023

**FILE NO.:** 22-050 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. December 21, 2022, email from Tracy Brown

**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policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.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 two (2) trees from the subject property due to the close proximity to the approved stormwater facility. Both trees are located in the Flood and Slope Hazard (FSH) overlay. Neither tree qualified as a retention tree. The trees proposed for removal are:
  - Tree #156: a 7-inch diameter at breast height (DBH) red alder in good condition
  - Tree #167: an 8-inch DBH red alder in good condition

4. The applicant previously received approval to remove five trees, 6-inches or greater within the Flood and Slope Hazard (FSH) overlay on the subject property on three (3) 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
  - December 28, 2021 (File No. 21-063 FSH/TREE): Tree #103
5. As a condition of approval from the three previous land use decisions, the applicant was required to plant mitigation trees. **All conditions of approval for Files No. 18-052 FSH/TREE, 19-038 DR/FSH/VAR/TREE, and 21-063 FSH/TREE shall still apply.**
6. With this application, the applicant is requesting to remove two (2) additional trees from the restricted development area of the FSH overlay, for a cumulative total of seven (7) trees removed from the restricted development area of the FSH overlay since 2018 through land use review. In addition, the applicant removed five (5) additional trees from within the restricted development area of the FSH overlay area through the Grading and Erosion Control permit process, for a cumulative total of 12 trees removed from the FSH overlay since 2018. These additional five (5) trees were shown as a 'grouping of trees to be removed' on Sheet 3 of the original plan set from 2019. The cumulative total is greater than initially anticipated when tree removal was first proposed in 2018. Future tree removal may be denied due to the cumulative impact of tree removal since 2018.
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 is allowed, 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 two (2) trees 6-inches or greater DBH within the restricted development area of the FSH overlay.
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 two trees 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. Future tree removal may be denied due to the cumulative impact of tree removal since 2018. 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 the two trees, a total of 12 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. **Heavy machinery, equipment, and vehicles shall not be permitted within the restricted development area of the FSH overlay.** With this condition 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.** Removal of 7 trees requires planting 14 mitigation trees. **The applicant shall update the mitigation plan to detail 14 mitigation trees, or shall pay a fee-in-lieu of mitigation tree of \$500 per tree, or a combination thereof. 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 17.102.50 (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 two trees proposed for removal are not trees that were previously identified as retention trees for the purposes of meeting the requirements of Section 17.102.50.
14. 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. The applicant proposes western red cedars as mitigation trees; however, western red cedars are not performing well in Oregon due to drought and an increase in hot

weather. **The applicant shall plant four (4) native conifers (at least 6 feet in height) within the restricted development area of the FSH overlay by December 31, 2023, to mitigate for removal of Trees #156 and #167.**

15. An email submitted by Tracy Brown (Exhibit C) indicates that the two trees will be directionally felled away from preserved trees and that the stumps for Trees #156 and #167 will be left in place.
16. The applicant did not indicate if there are nests in Trees #156 and #167. **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.**
17. As a condition of previous land use approvals, the applicant was required to record a covenant. With this application, **the applicant shall update the tree covenant to reflect four additional mitigation trees in the restricted development area of the FSH overlay, for a total of 14 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 an ISA-certified arborist with the Tree Risk Assessment Qualification 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 #156 and #167.
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. The applicant shall plant four (4) native conifers (at least 6 feet in height) within the restricted development area of the FSH overlay district by December 31, 2023. The remaining 10 mitigation trees shall be planted prior to issuance of a certificate of occupancy.
5. The applicant shall update the tree covenant to reflect four additional mitigation trees in the restricted development area of the FSH overlay, for a total of 14 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 an ISA-certified arborist with the Tree Risk Assessment Qualification 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. 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.
7. All conditions of approval for Files Nos. 18-052 FSH/TREE, 19-038 DR/FSH/VAR/TREE, and 21-063 FSH/TREE shall still apply.
8. 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. Future tree removal may be denied due to the cumulative impact of tree removal since 2018. 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.



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Kelly O'Neill Jr.  
Development Services Director

## **RIGHT OF APPEAL**

A decision on a land use proposal or permit may be appealed to the City Council by an affected party by filing an appeal with the Director within twelve (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 Section 17.28.50;
5. Payment of required filing fees. Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision), 500 feet of the subject property for appeal of a Type II, III, or IV decision, or 1,000 feet for appeal of an annexation request. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal.