

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

DATE: March 29, 2023

FILE NO.: 23-006 FSH/TREE

PROJECT NAME: Meinig Park Hazard Tree Removal

APPLICANT: City of Sandy Parks and Recreation Department

OWNER: City of Sandy

ADDRESS: 39250 Pioneer Blvd.

PROPOSAL: Remove one (1) failed tree and two (2) hazard trees within the Flood and Slope Hazard Overlay in compliance with the requirements of Chapter 17.60, Flood and Slope Hazard (FSH) Overlay District, and Chapter 17.102, Urban Forestry.

EXHIBITS:

Applicant's Submittals

- A. Land Use Application
- B. Arborist Report dated December 30, 2022 (Jeremy (Beau) Saucedo, Northwest Turf and Tree, ISA-Certified Arborist PN-6893-A)

Additional Exhibits Submitted by Staff

- C. Photos from Site Visit (January 3, 2023)

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policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.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 Parks and Open Space, and a Zoning Map designation of POS, Parks and Open Space, with the Flood and Slope Hazard (FSH) Overlay.
3. Chapter 17.60, Flood and Slope Hazard (FSH) Overlay District, applies to development within the mapped FSH Overlay and 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 tree removal occurred within the mapped FSH overlay adjacent to No Name Creek. The contiguously owned properties total approximately 12.35 acres. Therefore, Chapters 17.60 and 17.102 apply.

4. In December 2022, one (1) Grand fir in Meinig Park failed and fell onto the adjacent apartment building causing damage to the roof. In conjunction with removal of the one (1) failed fir, the Parks Department had to remove two (2) additional hazard trees to prevent a future threat to the apartment buildings. All three (3) trees were located within the FSH overlay adjacent to No Name Creek. The applicant applied for a retroactive Type I tree removal permit and a Type I FSH review to remove the one (1) failed tree and the two (2) hazard trees from within the FSH overlay area in Meinig Park.
5. The applicant previously submitted an application to remove one hazard tree from Meinig Park (File No. 22-013 TREE). **All conditions of approval of File No. 22-013 TREE shall be met, including planting two mitigation trees.**

17.60 – Flood and Slope Hazard (FSH) Overlay District

6. The one (1) failed fir tree and the two (2) hazard trees proposed for 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. In addition, removal of dead vegetation that is hazardous to the public can also be reviewed under the Type I FSH procedure.
7. 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).
8. 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 up to two (2) trees and removal of dead vegetation from the FSH overlay area are both processed under a Type I FSH procedure. **Future vegetation removal shall require separate permit review and compliance with Chapter 17.60.**
9. Section 17.60.50 contains requirements for special reports, including a hydrology and soils report, a grading plan, and a native vegetation report. The Director determined that no special reports were needed to review this application.
10. 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 applicant removed one failed tree and two hazard trees. No grading or other construction activity is planned. However, the vegetation and soils within the vicinity of the tree removal and adjacent to No Name Creek were significantly impacted during the tree removal process

as documented by staff on January 3, 2023 (Exhibit C). The tree removal crew left the site with exposed mud, compacted soils, and erosion adjacent to the existing No Name Creek. It appears that heavy machinery was driven directly adjacent to the creek and pushed soil into the creek. **The applicant shall submit a restoration plan detailing the proposed restoration of the streambank within the disturbed FSH overlay area (i.e., 50 feet from top of bank) and revegetation of all exposed soils where the trees were removed. Per Section 17.60.20(B.10.a), the restoration plan shall be prepared by a team of specialists in the fields of stream morphology, water quality, and riparian vegetation or as otherwise approved by the Director.** With the recommended condition of approval, staff finds the proposal can meet Criterion A.1.

11. 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 applicant is not proposing any impervious surfaces with this application. During removal of the trees, heavy machinery was driven within the tree removal vicinity and adjacent to the creek, which results in compacted soils. As a condition of approval, the applicant will be required to restore the streambank and revegetate the areas with exposed soils. **The applicant shall aerate any soils that have been compacted prior to revegetation.** With the recommended condition of approval, staff finds the proposal can meet Criterion A.2.
12. 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 applicant did not submit any special reports or third-party reviews. The tree removal crew significantly impacted the area surrounding the removed trees adjacent to the creek through the use of heavy machinery, and a significant amount of mud was tracked onto the adjacent pathways. As a condition of approval, the applicant will be required to restore the streambank and revegetate any areas of exposed soils. Much of the tracked mud has since washed away; however, **the applicant shall remove any remaining mud from the adjacent pathways.** With the recommended condition of approval, staff finds the proposal can meet Criterion A.3.
13. 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.” The applicant is not proposing any cuts or fills. However, as stated previously, the use of heavy machinery adjacent to the creek caused erosion and left exposed soils adjacent the creek. **The applicant shall submit a restoration plan detailing the proposed restoration of the streambank within the disturbed FSH overlay area (i.e., 50 feet from top of bank) and revegetation of all exposed soils where the trees were removed.** With the recommended condition of approval, staff finds the proposal can meet Criterion A.4.
14. 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.” As previously discussed, the vegetation and soils within the vicinity of the tree removal and

adjacent to No Name Creek were significantly impacted during the tree removal process as documented by staff on January 3, 2023 (Exhibit C). The tree removal crew left the site with exposed mud, compacted soils, and erosion adjacent to the existing No Name Creek. **The applicant shall submit a restoration plan detailing the proposed restoration of the streambank within the disturbed FSH overlay area (i.e., 50 feet from top of bank) and revegetation of all exposed soils where the trees were removed.** With the recommended condition of approval, staff finds the proposal can meet Criterion A.5.

15. 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.” This application includes removal of one (1) failed tree and two (2) hazardous trees (Trees #1 and #3) from within the FSH overlay. As identified in the arborist report (Exhibit B), the failed tree was a Grand fir, Tree #1 was a 42-inch DBH Grand fir, and Tree #3 was a 14-inch DBH sweet cherry. These three (3) trees will need to be mitigated at a 2:1 ratio. The applicant did not submit a mitigation plan with this application detailing where the six (6) mitigation trees would be planted. **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 the failed tree and Trees #1 and #3 were removed, or as otherwise reviewed and approved by the Director. Staff will not approve mitigation trees planted within 20 feet of a paved path due to anticipated future conflict.** Mitigation trees are typically planted “like for like.” Two of the removed trees were large, native, evergreen trees and one was a deciduous tree; therefore, **four (4) of the mitigation trees shall be large, native, evergreen trees such as ponderosa pine, Alaska yellow cedar, incense cedar, Douglas fir, or western hemlock, and two (2) of the mitigation trees shall be native deciduous riparian species such as red alder or bigleaf maple. 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). Mitigation trees shall be continually maintained, including necessary watering, weeding, pruning, and replacing.** In addition to removal of the three (3) trees, a significant amount of groundcover was disturbed. **The applicant shall submit a restoration plan detailing the proposed restoration of the streambank within the disturbed FSH overlay area (i.e., 50 feet from top of bank) and revegetation of all exposed soils where the trees were removed. The applicant shall replace any disturbed understory or groundcover with native understory or groundcover species that effectively cover the disturbed area.** With the recommended condition of approval, staff finds the proposal can meet Criterion A.6.

17.102 – Urban Forestry

16. Section 17.102.20 contains information on the applicability of Urban Forestry regulations Per Section 17.102.20(A), “No person shall cut, harvest, or remove trees 11 inches DBH or greater without first obtaining a permit and demonstrating compliance with this chapter”; however, “Tree removal to prevent an imminent threat to public health or safety, or prevent imminent threat to public or private property, or prevent an imminent threat of serious environmental degradation” is exempt provided a Type I tree removal permit is be applied for within seven days following the date of tree removal. The Land Use Application (Exhibit A) states that the trees were removed on January 3, 2023. The applicant submitted a retroactive hazard tree removal permit on February 1, 2023. Although this is not in compliance with the seven-day timeline as specified in the Sandy Development Code, staff has moved forward with the needed hazard tree removal review. In the future, the application shall be submitted within seven days of tree removal in compliance with the Sandy Development Code. A hazard tree can only be removed upon a determination 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. **Future tree removal from the subject property shall require additional permit approvals.**

17. The applicant submitted an Arborist Report prepared by Jeremy (Beau) Saucedo of Northwest Turf and Tree and dated December 30, 2022 (Exhibit B). The report included a site map showing the location of the trees as well as photos of the two hazard trees prior to their removal. The report identifies the two trees as a 110-foot tall, 42-inch DBH Grand fir (Tree #1) and a 50-foot tall, 14-inch DBH sweet cherry (Tree #3). The report states that during the December 2022 storm, one tree uprooted and fell onto the adjacent apartment complex. When this tree uprooted, it also compromised the root systems of adjacent trees. As shown in the pictures in the arborist report, the failed tree fell onto Tree #3, which then uprooted and lodged into an adjacent tree. The pictures also show standing water within the root plate of the failed tree that uprooted, which was within 2 to 3 feet of Tree #1. As a result, water was flowing into the root system of Tree #1, which could cause it to fail.

18. Per Section 17.102.60, removal of a hazard tree requires replanting at a minimum 2 to 1 ratio. Thus, the removal of the one (1) failed tree and two (2) hazard trees requires planting a minimum of six (6) mitigation trees. This is in addition to the two (2) mitigation trees required as part of File No. 22-013 TREE. The applicant did not submit a proposal for where they intend to plant the mitigation trees; however, as discussed in Section 17.60.60(A.6) of this document, the mitigation trees are required to be planted within the FSH overlay. **The applicant shall submit a mitigation tree plan detailing the proposed location of the six (6) required mitigation trees for staff review and approval.**

19. 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 but stated in the Land Use Application (Exhibit A) that they will finish grading the area and planting new native species once the weather improves. As documented in the pictures from staff’s site visit (Exhibit C), the site was negatively impacted during removal of the trees. The pictures show significant damage to the area surrounding the trees with exposed mud, compacted soils, and erosion adjacent to the existing No Name Creek, as well as soil disturbance upland from the creek. It

appears that heavy machinery was driven throughout the area and within critical root zones of existing trees that will remain. The machinery was also driven adjacent to the creek and appears to have pushed soil into the creek. **The applicant shall submit a restoration plan detailing revegetation of all exposed soils, including within the FSH overlay area where the trees were removed as well as any areas of disturbance upland from the creek.**

DECISION:

The retroactive tree removal permit application for removal of one (1) failed tree and two (2) hazard trees from Meinig Park is hereby **approved** as modified by the conditions listed below.

CONDITIONS OF APPROVAL:

- A. Tree removal is limited to the one (1) failed tree and two (2) hazardous trees that were removed on January 3, 2023.**
- B. The applicant shall submit a restoration plan detailing the proposed restoration of the streambank within the disturbed FSH overlay area (i.e., 50 feet from top of bank) and revegetation of all exposed soils, including within the FSH overlay area where the trees were removed as well as any areas of disturbance upland from the creek, for staff review and approval. Per Section 17.60.20(B.10.a), the restoration plan shall be prepared by a team of specialists in the fields of stream morphology, water quality, and riparian vegetation or as otherwise approved by the Director.**
- C. The applicant shall restore the streambank and revegetate the site per the approved streambank restoration plan within one (1) year of the date of this final order and shall adhere to the following.**
 1. The applicant shall aerate any soils that have been compacted prior to revegetation.
 2. The applicant shall replace any disturbed understory or groundcover with native understory or groundcover species that effectively cover the disturbed area.
- D. The applicant shall plant six (6) mitigation trees in the FSH Overlay area adjacent to No Name Creek within one (1) year of the date of this final order and shall adhere to the following.**
 1. 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.
 2. The applicant shall aerate any soils that have been compacted prior to revegetation.
 3. The mitigation trees shall be planted within the FSH overlay area near where the failed tree and Trees #1 and #3 were removed, or as otherwise reviewed and approved by the Director.

4. Staff will not approve mitigation trees planted within 20 feet of a paved path due to anticipated future conflict.
5. Four of the mitigation trees shall be large, native, evergreen trees such as ponderosa pine, Alaska yellow cedar, incense cedar, Douglas fir, or western hemlock, and two (2) shall be native deciduous riparian species such as red alder or bigleaf maple. The mitigation trees shall be a minimum of 5 feet in height at time of planting and planted per the City of Sandy standard planting detail. 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.

E. General Conditions of Approval

1. All conditions of approval of File No. 22-013 TREE shall be met, including planting two mitigation trees.
2. The applicant shall remove any remaining mud from the adjacent pathways.
3. Future tree removal from the subject property and/or vegetation removal or other development activity within the FSH overlay shall require additional permit approvals.



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 at least the following:

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.