

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

---

<b>DATE:</b>	October 25, 2023
<b>FILE NO.:</b>	23-043 TREE
<b>PROJECT NAME:</b>	38447 Maple Street -Tree Removal
<b>APPLICANT/OWNER:</b>	Kelsey Fogle
<b>ADDRESS:</b>	38447 Maple Street
<b>LEGAL DESCRIPTION:</b>	Lot 6 of Mashall Ridge Subdivision (Plat 4603)
<b>PROPOSAL:</b>	Remove two Douglas firs in compliance with the requirements of Chapter 17.102, Urban Forestry
<b>ZONING:</b>	Single Family Residential (SFR)

---

### **EXHIBITS:**

#### **Applicant's Submittals**

- A. Land Use Application and Arborist Report
- B. Pictures of the Dead Trees from Kelsey Fogle
- C. Tree Protection Covenant Doc No. 2019-075523

#### **Staff Submittals**

- D. Notice of Violation from June 8, 2021

### **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policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.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 Comprehensive Plan Map designation of Village, and a Zoning Map designation of SFR, Single Family Residential.
3. 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).
4. The site is less than one-acre (approximately 0.17 acres); however, the two (2) trees proposed for removal are required retention trees per a restrictive covenant relating to tree protection (Exhibit C). The requirement for the retention trees occurred during the platting of the Marshall Ridge subdivision in 2018 (File No. 17-66 SUB/VAR). Therefore, the proposal must be processed as a land use application to determine compliance with provisions for removing the required retention trees.

5. Marshall Ridge Plat Note #8 states “Lots 1-3, 6, 9, 11, 12, 14-16, 19, 20, 22, and 23 are subject to a restrictive covenant for tree protection recorded as document no. 2019-075523, Clackamas County Deed Records.” The proposed tree mitigation request is on Lot 6.
  6. The two Douglas fir trees that are proposed for removal were identified by Integrated Arboricultural Solutions (Exhibit A) as dead and removal is recommended. The property owner, Kelsey Fogle, states that the dead trees pose a hazard to his home and people in the backyard.
  7. On June 8, 2021, the City assessed a \$2,000 fine (Exhibit D) for violating ‘Chapter 17.102.50(B) – Tree Protection Area’ as required by subdivision approval File No. 17-066 SUB/VAR, Marshall Ridge Subdivision. Staff was alerted of multiple encroachments into the tree protection areas of required retention Trees #2646 and 2647 on Lots 5 and 6. In an email submitted with the application, the project arborist noted a large amount of fill within the tree protection areas of Trees #2646 and 2647 as well as heavy machinery tracks within the tree protection area on the south side of both trees. It was noted in the violation that should either of these trees decline in the future and need to be removed, a separate hazard tree removal permit shall be applied for and the mitigation tree ratio shall be 4:1. The fine was never paid and is a recorded lien on the subject lot. **The applicant shall pay the recorded lien.**
  8. Per Section 17.102.60 removal of the protected tree requires replanting at a minimum 2 to 1 ratio. However, the violation (Exhibit D) states that the mitigation ration shall be at a 4 to 1 ratio. Thus, the removal of the two (2) required retention tree requires planting a minimum of eight (8) mitigation trees.
  9. Rather than require the applicant to plant and maintain mitigation trees, the property owner has the option to pay a fee-in-lieu of mitigation trees at \$500 per tree. **The applicant shall do one of the following within 90 days of the date of this final order:**
    - a. **Provide the City with plans to plant eight (8) mitigation trees on the property. The mitigation trees shall be 1.5-inch caliper if conifers or at least 6 feet in height if evergreen 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. The cost of planting, watering, and maintaining the trees is the burden of the property owner. If the applicant chooses to plant mitigation trees, they shall be planted prior to March 1, 2024.**
- OR-**
- b. **Pay a mitigation tree fee-in-lieu of \$500 per tree to relocate the eight mitigation trees off-site (\$4,000 total).**
10. If the applicant chooses to plant the eight mitigation trees, then a restrictive covenant shall be recorded to ensure the retention of the mitigation trees. **The two retention trees are**

**included in the Restrictive Covenant for the subdivision under recorded document #2019-075523. The applicant shall record a covenant that modifies the covenant that is already recorded, detailing the removal of the two retention trees and, if applicable, the location and species of the four mitigation trees. The City has a template the applicant can use and staff shall review the covenant prior to recording. This shall occur within one (1) year of the removal of the hazardous trees.**

11. 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 or information regarding whether the stump will be left in place or ground. **If the stump will be ground, the applicant shall cover all exposed soil with straw resulting from removal of the tree.**
12. The applicant did not provide specific information regarding how the trees proposed for removal with this application would be felled. **The applicant shall have the trees removed in such a way that does not negatively impact any adjacent property. If removal of the trees damages a healthy tree, the applicant shall be subject to a fine.**
13. The applicant did not indicate if there are nests in the tree proposed for removal. **If the tree is 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:**

The application for removal of two (2) Douglas fir trees from 38447 Maple Street (Lot 6 of Marshall Ridge Subdivision) is hereby **approved** as modified by the conditions listed below.

### **CONDITIONS OF APPROVAL:**

1. The applicant shall pay the recorded lien.
2. Provide the City with plans to plant eight (8) mitigation trees on the property. The mitigation trees shall be 1.5-inch caliper if conifers or at least 6 feet in height if evergreen 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. The cost of planting, watering, and maintaining the trees is the burden of the property owner.

-OR-

Pay a mitigation tree fee-in-lieu of \$500 per tree to relocate the eight mitigation trees off-site (\$4,000 total).

3. If trees are removed the stumps shall be ground and the applicant shall cover all exposed soil resulting from removal of the tree.
4. The applicant shall have the trees removed in such a way that does not negatively impact any adjacent property. If removal of the trees damages a healthy tree, the applicant shall be subject to a fine.
5. If the tree is 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.
6. If the applicant chooses to plant the eight mitigation trees, they shall be planted prior to March 1, 2024.
7. The two retention trees are included in the Restrictive Covenant for the subdivision under recorded document #2019-075523. The applicant shall record a covenant that modifies the covenant that is already recorded, detailing the removal of the two retention trees and, if applicable, the location and species of the four mitigation trees. The City has a template the applicant can use and staff shall review the covenant prior to recording. This shall occur within one (1) year of the removal of the hazardous trees.
8. Future tree removal from the subject property 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.
9. Successors-in-interest of the applicant shall comply with requirements of this final order. In the event the applicant 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 the applicant's heirs, personal representatives, successors, and assigns.



---

Patrick Depa  
Senior Planner

## **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.