



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE MUNICIPAL COURT OF THE CITY OF SEATTLE
KING COUNTY, WASHINGTON

| | | |
|--|---|-------------------------------|
| THE CITY OF SEATTLE, a municipal corporation, |) | Civil Case No.: 1240000012 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | COMPLAINT FOR CIVIL PENALTIES |
| TAKE 3003, LLC, a Washington limited liability company; LOF HOLDING COMPANY, LLC, a Washington limited liability company; LEGACY OPPORTUNITY FUND, LLC, a Washington limited liability company; LEGACY GROUP CAPITAL, LLC, a Washington limited liability company, |) | |
| |) | |
| Defendants. |) | |
| |) | |

Plaintiff, The City of Seattle (City), alleges:

I. PARTIES AND JURISDICTION

1.1 The City is a municipal corporation, organized and existing under Title 35 RCW.

1.2 Defendant TAKE 3003, LLC (Take 3003) is an active for-profit Washington limited liability company registered with the State of Washington.

1.3 Defendant LOF HOLDING COMPANY, LLC (LOF Holding) is an active for-profit Washington limited liability company registered with the State of Washington.

1.4 Defendant LEGACY OPPORTUNITY FUND, LLC (Legacy Opportunity Fund) is an active for-profit Washington limited liability company registered with the State of Washington.

1 1.5 Defendant LEGACY GROUP CAPITAL, LLC (Legacy Group Capital) is an active for-
2 profit Washington limited liability company registered with the State of Washington.

3 1.6 Each Defendant is an entity responsible for removing a Tier 2 tree, which is the subject of this
4 lawsuit, located at 3003 NE 88th Street, Seattle, Washington (Property). The Property is legally described
5 as:

6 APN:536320-0205
7 THE WEST 59 FEET OF THE NORTHWEST QUARTER OF THE WEST
8 HALF OF TRACT 8, EARL J. MCLAUGHLIN'S ADDITION TO THE CITY
9 OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN
10 VOLUME 15 OF PLATS, PAGE 48, IN KING COUNTY, WASHINGTON.

11 1.7 Chapter 35.20 RCW provides that the Seattle Municipal Court has jurisdiction over the
12 subject matter and is the proper venue to adjudicate this case. This Court has jurisdiction over the Parties.

13 II. APPLICABLE CODES

14 2.1 The City of Seattle's Tree Protection Ordinance (Ordinance) is codified in SMC Chapter
15 25.11.

16 2.2 SMC 25.11.010's stated purpose and intent of the Ordinance includes "[p]rotect Tier 2 trees
17 and other trees that because of their unique historical, ecological, or aesthetic value constitute an important
18 community resource, and require flexibility in design to protect these trees."

19 2.3 SMC 25.11.010 also states that the purpose and intent of the Ordinance includes "[e]ncourage
20 retention of trees through the design review and other processes for larger projects, through education
21 concerning the value of retaining existing trees, and by not permitting their removal on undeveloped land
22 prior to development permit review."

23 2.4 SMC 25.11.130 provides that "Director" means the Director of SDCI.

2.5 SMC 25.11.130 provides that "responsible party" means, in cases of violations, a person in
control of property in fee ownership or tenancy where a tree or tree protection area is located and the
person or entity that damaged or removed the tree. The responsible party may include the owner or

1 owners, lessees, tenants, occupants, or other persons who direct or pay for the detrimental action. The
2 responsible party may also include the person, partnership, or corporation who violated the provisions
3 of this Chapter 25.11.

4 2.6 SMC 25.11.130 provides that “Tier 2 tree” means any tree that is 24 inches in diameter at
5 standard height or greater, tree groves, each tree comprising a tree grove, and specific tree species
6 below 24 inches in diameter at standard height as provided by Director's Rule.

7 2.7 SMC 25.11.130 provides that “tree removal“ means removal of tree(s) or vegetation,
8 through either direct or indirect actions including, but not limited to, clearing, topping, or cutting,
9 causing irreversible damage to roots or trunks; poisoning; destroying the structural integrity; and/or
10 any filling, excavation, grading, or trenching in the drip line area of a tree which has the potential to
11 cause irreversible damage to the tree, or relocation of an existing tree to a new planting location.

12 2.8 SMC 25.11.120.B provides that it is a violation of Chapter 25.11 for any person, firm, or
13 corporation to remove, clear, or take any action detrimental to trees contrary to or in violation of any
14 provision of Chapter 25.11, and that it is a violation of Chapter 25.11 for any person, firm, or corporation
15 to knowingly aid and abet, counsel, encourage, hire, commend, induce, or otherwise procure another to
16 violate or fail to comply with Chapter 25.11.

17 2.9 SMC 25.11.050 provides that the removal or topping of certain trees is prohibited except as
18 provided in other Ordinance provisions.

19 2.10 SMC 25.11.050.A.3.b provides that when development is proposed in a Neighborhood
20 Residential Zone, Tier 2 trees may not be removed except as permitted under sections 25.11.070 and
21 25.11.080.

22 2.11 Table A for SMC 25.11.050 provides that, except for hazardous trees and in emergency
23 situations, a Tier 2 tree may be removed only as approved as part of a development permit.

2.12 SMC 25.11.060 outlines requirements for trees when development is proposed.

1 2.13 SMC 25.11.070 provides standards for SDCI to allow removal of Tier 2 trees in
2 Neighborhood Residential Zones.

3 2.14 SMC 25.11.120.A.1 provides that the Director has the authority to enforce the provisions of
4 this Chapter 25.11, issue permits, impose conditions and establish penalties for violations of applicable
5 law or rules by the responsible party, establish administrative procedures and guidelines, conduct
6 inspections, and prepare the forms and publish Director's Rules that may be necessary to carry out the
7 purposed of this Chapter 25.11.

8 2.15 SMC 25.11.120.C.1 provides that the Director is authorized to issue a notice of violation to a
9 responsible party, whenever the Director determines that a violation of this Chapter 25.11 has occurred
10 or is occurring. The notice of violation shall be considered an order of the Director.

11 2.16 SDCI Director's Rule 17-2018 implements SMC Chapter 25.11 by setting forth standards
12 for calculating tree valuations and civil penalties for violations of SMC Chapter 25.11, utilizing the
13 Guide for Plant Appraisal. Director's Rule 17-2018 states that where a tree is too large to replace in
14 kind, the Basic Tree Cost is multiplied by the species rating, condition rating, and location rating.

15 2.17 SMC 25.11.120.J provides that in addition to any other remedies available, violators of this
16 Chapter 25.11 shall be responsible for restoring unlawfully damaged areas in conformance with a plan,
17 approved by the Director, which provides for:

- 18 1. Repair of any environmental and property damage, and restoration of the site; and
- 19 2. Restored site condition that, to the greatest extent practicable, equals the site condition
20 at planting maturities that would have existed in the absence of the violation(s).

21 2.18 SMC 25.11.120.E.1 provides that a notice of violation issued pursuant to this Chapter 25.11
22 shall be final and not subject to further appeal unless an aggrieved party requests in writing a review
23 by the Director within ten days after service of the notice of violation. When the last day of the period
so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until 5 p.m. on the
next business day.

1 tree was identified has having a trunk that was fifty inches in diameter at DBH. “DBH” means “diameter
2 at breast height” which is a traditional way of measuring a tree’s size. A similar measure is called “DSH”
3 or “diameter at standard height.”

4 3.4 Western Red Cedar trees have a very thin layer of material just beneath the outer bark called
5 the cambium. This thin layer is only a few cells wide, and it carries water and nutrients up from the ground
6 and transports nutrients back to the roots. The integrity of the cambium is critical for a tree’s survival.
7 Cutting all the way around a tree to interrupt the function of a tree’s cambium will cause a tree to
8 eventually die. This process is sometimes done intentionally to compromise a healthy tree and is called
9 “girdling.”

10 3.5 On or around May 8, 2023, the Estate of Sandra Farley executed a Purchase and Sale
11 Agreement with Legacy Group Capital, which stated that Legacy Group Capital had the right to purchase
12 the Property.

13 3.6 On or around May 11, 2023, architect Talyn Kaskel submitted a request for a Pre-Application
14 Site Visit to SDCI for the Property on behalf of LOF Holding. The purpose of a Pre-Application Site
15 Visit is for SDCI to determine what site conditions exist prior to a permit application. On or around May
16 26, 2023, SDCI completed its Preliminary Assessment Report (PAR) for Project 002525-23PA, 3003 NE
17 88th St.

18 3.7 The Building and Land Use Pre-Application listed Ms. Kaskel and “LOF Holding Company
19 LLC, Brent Eley, 400 112th Ave. N.E. #400, Bellevue, WA 98004” as the contacts.

20 3.8 The Site Plan filed for Project 002525-23PA had the project description of “Construction of
21 a new single-family residence with a single car detached garage and detached accessory dwelling unit.”
22 It listed the “owner” as “Legacy Group Capital, 400 112th Ave. N.E., #400, Bellevue, WA 98004.”

23 3.9 On or around July 6, 2023, Legacy Group Capital assigned its rights under the Purchase and
Sale Agreement to Take 3003.

1 3.10 On or around July 10, 2023, the Estate of Sandra Farley executed a Personal Representative
2 Deed for the Property to Take 3003.

3 3.11 On or around July 12, 2023, Take 3003 executed a Deed of Trust and an Assignment of Rents
4 to Legacy Group Capital and a Construction Deed of Trust to Legacy Opportunity Fund.

5 3.12 On or around July 18, 2023, Legacy Group Capital applied for a construction permit under
6 SDCI permit number 6968497-CN. The initial Plan Set listed Legacy Group Capital as the
7 “Owner/Contractor” for the project. The initial Geotechnical Report for the project was “prepared for
8 Legacy Group Capital, LLC.”

9 3.13 On or around July 18, 2023, a Statement of Financial Responsibility/Agent Authorization was
10 filed under 6968497-CN. It listed the Financially Responsible Party as “Take 3003 LLC” with a mailing
11 address of “400 112th Ave NE Suite #400 Bellevue WA” and an email address of
12 “Permits@LegacyG.com.”

13 3.14 In August 2023, Legacy Group Capital applied to SDCI for a demolition permit under SDCI
14 permit number 6968498-DM. Both the construction and demolition permit listed “Construction of a
15 single-family residence with a detached accessory dwelling unit and detached garage” as the purpose of
16 each permit.

17 3.15 From August 2023 to February 2024, multiple plan sets were submitted to SDCI pursuant to
18 the demolition and construction permit applications and their various correction cycles. Correction cycles
19 are the method that SDCI uses to request additional or corrected information from permit applicants.
20 Each of the plan sets submitted listed Legacy Group Capital as the “Owner/Contractor” for the project.

21 3.16 On or around February 22, 2024, SDCI received several complaints that the owners of the
22 Property were removing or damaging a Western Red Cedar tree that was fifty inches in diameter.

23 3.17 On February 22, 2024, SDCI inspected the Property in response to the complaints. The
Inspector viewed the Western Red Cedar from public property and observed that the trunk had been cut

1 around the trunk near its base. The cut was visible on as much of the trunk as the Inspector could see.
2 The Inspector observed white or light-colored sawdust. Light-colored sawdust is an indication that the
3 cut to the trunk was deeper than the trunk's outer (brown) bark and that the cut is deep enough to
4 compromise the cambium.

5 3.18 The same day, the Inspector talked to an individual on the Property who identified himself as
6 the owner and general contractor for the Property. He said he was working with Legacy Group. He
7 denied cutting the tree.

8 3.19 SDCI has not approved removal (including cutting) of the Western Red Cedar.

9 3.20 On February 29, 2024, as a result of the inspection done on February 22, 2024, SDCI issued
10 to Take 3003, Legacy Group Capital, Legacy Opportunity Fund, and LOF Holdings Tree Protection
11 Ordinance Notice of Violation (NOV) Case No. 1057802-VI for violating SMC Chapter 25.11 by
12 removing a Tier 2 tree. *See Exhibit 1 attached and incorporated herein by reference.*

13 3.21 The NOV detailed the actions that needed to be taken by the responsible parties to comply
14 with the NOV as follows:

- 15 1. Submit a plan to restore the unlawfully damaged areas for approval by the Director;
16 implement that plan and submit to the Director confirmation prepared by a licensed
17 landscape professional certifying that the replanting adheres to the approved plan. The
18 plan must provide for repair of any environmental and property damage, and restoration
19 of the site and which results in a site condition that, to the greatest extent practicable,
20 equals the site condition that would have existed in the absence of the violation(s).
21 Potential civil penalties of up to \$1000 per day can be levied for non-compliance in
22 addition to the penalty listed on correction item #2 (below).
- 23 2. Pay a civil penalty as determined by the Director using the trunk formula methodology
as outlined by the Guide for Plant Appraisal, 9th edition. The penalty for the willful or
malicious act of removing or taking action detrimental to the above listed tree(s)
without approval is trebled. The total penalty is **\$221,994.00**. See enclosed Tree Penalty
Worksheet for more details.

The deadline for corrective action was March 29, 2024.

3.22 On February 29, 2024, SDCI also issued a Tree Penalty Worksheet that showed its

1 calculations for the Basic Tree Cost of the Western Red Cedar. The Tree Penalty Worksheet stated that
2 the Tree Penalty was \$49,332. The penalty with a 50% increase pursuant to SMC 25.11.120.I was
3 \$73,998. The Tree Penalty Worksheet noted that “Due to a willful or malicious act [1], the penalty is
4 trebled the subtotal.” The total penalty was \$221,994. See **Exhibit 2** attached and incorporated herein
5 by reference.

6 3.23 On March 4, 2024, Bobby Dias, a Real Estate Acquisitions and Development employee of
7 Legacy Group Capital, emailed SDCI. His email included the comment, “[w]e understand an NOV was
8 issued and we are internally investigating this with the builder and his clients to try to get to the bottom
9 of this ourselves.”

10 3.24 On March 8, 2024, Legacy Group Capital, Legacy Opportunity Fund, and LOF Holding
11 requested a Director’s Review of the NOV. On March 11, 2024, Take 3003 requested a Director’s
12 Review of the NOV.

13 3.25 On May 8, 2024, SDCI issued its Order of the Director Following Reconsideration of Notice
14 of Violation Tree Protection Code Case No. 1057802-VI. The Order sustained the NOV and extended
15 the compliance date to June 11, 2024. See **Exhibit 3** attached and incorporated herein by reference.

16 3.26 On June 20, 2024, SDCI referred the case to the City Attorney’s Office for further action.

17 3.27 To date, Defendants have failed to take either of the corrective actions required by the NOV,
18 neither submitting a plan to restore the unlawfully damaged area nor paying the \$221,994 civil penalty.

19 IV. CAUSES OF ACTION

20 4.1 Pursuant to SMC 25.11.100.I of the Seattle Tree Protection Ordinance Code, any person who
21 violates SMC Chapter 25.11 is subject to civil penalties in an amount based on the appraised value of the
22 tree(s) affected in accordance with the Guide for Plant Appraisal, 9th Edition, or successor, with a fifty
23 percent increase above that amount. If the violation is found to have been willful or malicious, conducted
purposefully to improve views, increase market value, or expand development potential, or the result

1 of negligence by a contractor or operator of construction machinery, the amount of the penalty may
2 be trebled as punitive damages.

3 4.2 Pursuant to SMC 25.11.100.J of the Seattle Tree Protection Ordinance Code, Defendants are
4 required to restore unlawfully damaged areas of the subject Property in conformance with a restoration
5 plan approved by SDCI, which must provide for repair of any environmental and property damage and
6 restoration of the site to its original condition to the greatest extent practicable and equals the site condition
7 that would have existed prior to the violation.

8 4.3 The City is entitled to any other remedy authorized by law or equity.

9 **V. RELIEF REQUESTED**

10 The City requests entry of an order that:

11 5.1 Awards the City civil penalties in an amount based on the appraised value of the Western Red
12 Cedar, in accordance with SDCI Director's Rule 17-2018, the Guide for Plant Appraisal 9th Edition, or
13 successor, and trebled as punitive damages pursuant to SMC 25.11.100.I;

14 5.2 Awards the City injunctive relief requiring the Defendants to restore the damaged areas in
15 conformance with a restoration plan approved by the Director pursuant to SMC 25.11.100.J;

16 5.3 Awards the City its costs and statutory attorneys' fees; and

17 5.4 Grants other and further legal or equitable relief as the Court deems just and proper.

18 DATED this 9th day of July 2024.

19 ANN DAVISON
Seattle City Attorney

20 By: /s/ Cindi Williams
21 **CINDI WILLIAMS, WSBA #27654**
22 Assistant City Attorney
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
23 Seattle, WA 98104-7095
Phone: 206-727-8441 | Email: cindi.williams@seattle.gov
Attorneys for Plaintiff, The City of Seattle



Seattle Department of
Construction & Inspections

**TREE PROTECTION ORDINANCE
NOTICE OF VIOLATION
CASE NO. 1057802-VI**

February 29, 2024

Property Owner: TAKE 3003 LLC
Property known as: **3003 NE 88TH ST**
APN: 5363200205
W 59FT OF NW 1/4 OF W 1/2 OF LOT 8, MC LAUGHLINS EARL J
ADDN, AS RECORDED IN RECORDS OF KING COUNTY,
WASHINGTON.

TAKE 3003 LLC
REGISTERED AGENT: JENNI LAUSIVA
720 N 10TH ST
SUITE A 409
RENTON, WA 98057

TAKE 3003 LLC
400 112TH AVE NE
SUITE 300
BELLEVUE, WA 98004

LEGACY OPPORTUNITY FUND LLC
REG. AGENT: BRENT ELEY
400 112TH AVE NE, STE 400
BELLEVUE, WA 98004

LOF HOLDING COMPANY LLC
REG. AGENT: BRENT ELEY
400 112TH AVE NE, STE 400
BELLEVUE, WA 98004

LEGACY GROUP CAPITAL LLC
REG. AGENT: SCOTT RERUCHA
400 112TH AVE NE, STE 400
BELLEVUE, WA 98004

We received a complaint about this property. SDCI Housing and Zoning Inspector, Antoine Anderson, investigated and found a violation or violations of the Tree Protection Ordinance, Seattle Municipal Code Chapter 25.11, Section(s) 25.11.020, 25.11.050, 25.11.120.

The Tree Protection Ordinance was violated by:

Exhibit 1

Removing, topping or taking action detrimental to a tree designated as Tier 2 tree without SDCI approval:

Western Red Cedar - 50" at DSH.

To correct the violation(s) and comply with this Notice of Violation, you must do the following:

1. Submit a plan to restore the unlawfully damaged areas for approval by the Director; implement that plan and submit to the Director confirmation prepared by a licensed landscape professional certifying that the replanting adheres to the approved plan. The plan must provide for repair of any environmental and property damage, and restoration of the site and which results in a site condition that, to the greatest extent practicable, equals the site condition that would have existed in the absence of the violation(s). Potential civil penalties of up to \$1000 per day can be levied for non-compliance in addition to the penalty listed on correction item #2 (below).

AND

2. Pay a civil penalty as determined by the Director using the trunk formula methodology as outlined by the Guide for Plant Appraisal, 9th edition. The penalty for the willful or malicious act of removing or taking action detrimental to the above listed tree(s) without approval is trebled. The total penalty is **\$221,994.00**. See enclosed Tree Penalty Worksheet for more details.

Corrective action must be completed no later than Friday, March 29, 2024.

The Housing and Zoning Inspector will re-inspect on or after the date set for compliance to determine if the required corrections have been made.

If you need information about the application process for a permit to repair any environmental and property damage and requirements for doing work under that permit, visit the virtual Applicant Services Center of the Seattle Department of Construction and Inspections at <https://www.seattle.gov/sdci/about-us/who-we-are/applicant-services-center>.

PENALTIES/FINES

If you have removed a tree or trees in violation of the Tree Protection Ordinance or in violation of any notice, decision, or order issued by SDCI under this ordinance, you are subject to a civil penalty (fine) in the amount equal to the appraised value of the trees affected. This amount may be tripled if the violation is determined to be willful or malicious. The value of the trees has been determined by reference to the *Guide for Plant Appraisal*, 9th Edition, using the attached Tree Penalty Worksheet.

You may pay this penalty by mailing a check or money order payable to the City of Seattle addressed as follows:

Seattle Department of Construction and Inspections
Attn: Hillarie Lee
700 5th Ave, Suite 2200
PO Box 34234
Seattle WA 98124-1234

You must include the Notice of Violation case number on the check or money order.

If you do not correct the violations by the deadline listed above, the City may file a lawsuit against you to collect the penalty. If this case goes to court, the City would have to prove that the code violation exists/existed in order to collect any penalties.

DIRECTOR'S REVIEW

If you disagree with this Notice of Violation, you may request a review of this Notice by a Department Review Officer. You must ask for this review within ten days.

You may request the Review by writing to the Director of Code Compliance, in care of Antoine Anderson, Housing and Zoning Inspector, Department of Construction and Inspections, 700 5th Avenue, Suite 2200, PO Box 34019, Seattle, WA, 98124-4019.

If you request a review by the Director, the request

- must be in writing,
- must be received by the Director no later than ten days following service of this Notice, and
- must contain the signature, mailing address and telephone number of the person requesting the review.

The request should also include a brief statement including

- specific objections to the Notice of Violation
- how the requestor is significantly affected by, or interested in, the Review by the Director.

If more than one person is cited in the Notice, the request for Review by the Director should specify the person to be contacted about the Review.

* * *

If you have questions or do not understand the violation(s) or what is necessary to correct them, please contact Antoine Anderson, Housing and Zoning Inspector by phone at 206-475-1146 or by e-mail at Antoine.Anderson@seattle.gov.

If needed, Inspector Antoine Anderson will meet with you or someone representing you on the site to discuss how you will bring the property into compliance with the Tree Protection Code. Once you have corrected the violation, the inspector must verify compliance. If you need

CASE NO.: 1057802-VI
Page 4 of 4

more information or would like a meeting, please contact the inspector. Thank you for your attention to this matter.

/S/ *ANTOINE ANDERSON*
ANTOINE ANDERSON
Housing and Zoning Inspector
206-475-1146
Antoine.Anderson@seattle.gov

City of Seattle Department of Construction and Inspections
700 5th Avenue, Suite 2200
PO Box 34019
Seattle WA 98124-4019
206-615-0808 / 206-233-7156 (TTY)
www.seattle.gov/sdci

Enclosure: Tree Penalty Worksheet



Seattle Department of Construction & Inspections

Code Compliance Program

700 Fifth Avenue, Suite 2200
P.O. Box 34019
Seattle, Washington 98124-4019
(206) 615-0808/(206) 233-7156 (TTY)
www.seattle.gov/sdci

Tree Penalty Worksheet

Address: 3003 NE 88th St

Case#: 1057802-VI

Date of Inspection: 2/22/2024

Tree Name/Species: Western Red Cedar - Thuja plicata

The Tree Value amount is determined using the formula:

Tree Value = (Basic Tree Cost) x (Species Rating %) x (Condition Rating %) x (Location Rating %).

Species rating varies depending on whether the tree cut is an Exceptional tree with a different species rating; however, if a tree has already been cut and the tree species cannot readily be determined, SDCI uses species, condition and location ratings of **70%** each.

Basic Tree Cost is the area of a cross-section of the trunk multiplied by the base price for the type of tree, which is **\$57** per square inch for conifers and **\$72** per square inch for deciduous trees. The area of the cross section is calculated using the formula **$\pi \times (1/2 \times \text{diameter})^2$** .

For each tree:

Base Price per tree type:

 Deciduous base price = \$72 per square inch

X Conifer base price = \$57 per square inch

Tree Diameter: 50-inches (Tier 2 Tree)

(Diameter measurement taken at 4.5ft)

Basic Tree Cost is calculated using **$\pi \times (\text{diameter}/2)^2 \times \text{the base price per square inch}$** .

Therefore: $3.14 \times (50/2)^2 \times \$57 = 3.14 \times 25 \times 25 \times \$57 = \$111,863$ Basic Tree Cost

Tree Value is the **Basic Tree Cost** multiplied by the **species(%)**, **condition(%)**, and **location(%)** ratings.

The Tree Value is **\$111,863 X 90% X 70% X 70% = \$49,332** in penalty for this tree.

Basic Tree Cost: \$111,863

Penalty: **\$49,332**

50% Increase per 25.11.120.I: **\$24,666**

Subtotal: \$73,998*

***Due to a willful or malicious act[1], the penalty is trebled the subtotal. The Total Penalty Amount is**

\$221,994.00 (SMC 25.11.120.I).

[1] Repeat violation by the same responsible party (DR17-2018)



Seattle Department of
Construction & Inspections

**Order of the Director
Following Reconsideration of Notice of Violation
Tree Protection Code**

Case No. 1057802-VI

May 8, 2024

Responsible Party: TAKE 3003 LLC
Property known as **3003 NE 88TH ST**
APN: 5363200205
W 59FT OF NW 1/4 OF W 1/2 OF LOT 8, MC LAUGHLINS EARL J
ADDN, AS RECORDED IN RECORDS OF KING COUNTY,
WASHINGTON.

First Avenue Law Group, PLLC
321 First Avenue West
Seattle, WA 98119

Helsell Fetterman, LLP
800 Fifth, Suite 3200
Seattle, WA 98104

TAKE 3003 LLC
REGISTERED AGENT: JENNI LAUSIVA
720 N 10TH ST
SUITE A 409
RENTON, WA 98057

TAKE 3003 LLC
400 112TH AVE NE
SUITE 300
BELLEVUE, WA 98004

LEGACY OPPORTUNITY FUND LLC
REG. AGENT: BRENT ELEY
400 112TH AVE NE, STE 400
BELLEVUE, WA 98004

LOF HOLDING COMPANY LLC
REG. AGENT: BRENT ELEY
400 112TH AVE NE, STE 400
BELLEVUE, WA 98004

LEGACY GROUP CAPITAL LLC
REG. AGENT: SCOTT RERUCHA
400 112TH AVE NE, STE 400

Exhibit 3

BELLEVUE, WA 98004

Responsible party was cited in a Notice of Violation (NOV) dated February 29, 2024, for removing, topping, or taking action detrimental to a tree designated as a Tier 2 tree without SDCI approval (Western Red Cedar – 50” at DSH). Brandon S. Gribben of Helsell Fetterman LLP, representing Legacy Group Capital LLC, Legacy Opportunity Fund LLC, and LOF Holding Company LLC, requested reconsideration of the NOV. Separately, Stephan D. Wakefield of First Avenue Law Group, PLLC, representing Take 3003 LLC, requested reconsideration of the NOV. The Director's representative reviewed the notice in accordance with the Tree Protection Code, Seattle Municipal Code Chapter 25.11. **Based on the evidence presented, the Director has determined and orders that the Notice of Violation is sustained, and the compliance date is extended to June 11, 2024.**

Background

SDCI received a complaint about this property. At his visit on February 22, 2024, SDCI Inspector Antoine Anderson identified one Tier 2 tree cut: a Western Red Cedar, measured at 50 inches at DSH. Both Inspector Anderson and, in a subsequent visit, SDCI arborist Deborah McGarry, were denied access to the property. Based on the record, a permit application for removal of the tree had been filed, but no permit had been issued by SDCI.

Inspector Anderson issued a NOV on February 29, 2024, with a compliance date of March 29, 2024. Inspector Anderson set the penalty amount based on trunk formula methodology outlined by the Guide for Plant Appraisal, 9th Edition for a Western Red Cedar. The penalty was trebled for the willful or malicious act of removing or taking action detrimental to the tree.¹ The total penalty was set at \$221,994.00.

The NOV also required the owner to provide a plan to restore the unlawfully damaged areas for approval by the Director, implement that plan, and submit to the Director confirmation prepared by a licensed landscape professional certifying that the restoration plan adheres to the approved plan.

Request for review

Brandon S. Gribben of Helsell Fetterman LLP, representing Legacy Group Capital LLC, Legacy Opportunity Fund LLC, and LOF Holding Company LLC, requested reconsideration of the NOV. Separately, Stephan D. Wakefield of First Avenue Law Group, PLLC, representing Take 3003 LLC, requested reconsideration of the NOV. SDCI responded and set April 9, 2024, as the due date for receipt of any additional information.

In their formal request for review, Gribben stated that Legacy Group Capital, Legacy Opportunity Fund, and LOF Holding Company have no control over the property where the tree was cut and did not hire or induce the hiring of the entity responsible for taking action detrimental to the Western Red Cedar identified in the NOV. As such, Gribben posits that none of the above entities meet the definition of a responsible party under SMC 25.11.130, and therefore should not be subject to penalty.

SDCI received one additional document from Helsell Fetterman LLP: a sworn declaration by Jenni Lausiva of Take 3003 stating that Take 3003 is the sole owner and responsible party for the property located at 3003 NE 88th Street, Seattle, WA 98115; and Legacy Group Capital's involvement was limited to financing and assistance with construction permitting.

¹ Repeat violation by the same responsible party (DR17-2018)

In their separate request for review, Wakefield stated that the extent of any damage to the tree was unknown and an independent arborist review would be needed to determine the appropriateness of the NOV as well as the calculations of the tree penalty worksheet. Wakefield also argued that Take 3003 has no previous violations of the Tree Protection code, and therefore treble damages for willful or malicious activity should not be applied. They further and separately argue that the code and director's rule are ambiguous about the mathematical order of operations for calculating the penalty amount, which should be construed in favor of Take 3003 in the form of a lower penalty amount.

SDCI received two additional letters with exhibits from Stephan Wakefield on behalf of Take 3003. The first letter and exhibits, dated March 26, 2024, noted that Take 3003 had applied for a permit to remove the Western Red Cedar in question as part of their development application. While arguing that the permit appeared likely to be approved based on commentary from SDCI staff, the letter acknowledges that the permit had not yet been issued at the time of the detrimental action as the replacement tree had not yet been approved by SDCI.

The second letter and exhibits, dated April 9, 2024, highlight several documents produced by community organization Tree Action Seattle in opposition to the removal of the Western Red Cedar. The letter notes that Tree Action Seattle led several protests which resulted in trespass against Take 3003's property, causing them to request law enforcement assistance. The letter also rebuts claims made in the Tree Action Seattle documents, notably that Take 3003 took action detrimental to the tree in question in order to "pre-emptively kill the subject tree," and that there exist architectural plans which allow for full site development while retaining the Western Red Cedar.

The second letter also examines the Tree Action Seattle claim that the "girding attempt likely failed, which means Astra could live on for her full lifespan," positing this statement has relevance to the calculation of the penalty imposed.

Tree Protection Code and Tree Tiers

SMC 25.11.120.I states:

"Any person, firm, or corporation responsible for the removal, topping, or other action detrimental to a tree in violation of this Chapter 25.11 or any notice, decision, or order issued by the Director pursuant to this Chapter 25.11 **shall** be subject to a civil penalty in an amount as stated in a Director's Rule with a 50 percent increase above that amount. If the violation is found to have been willful or malicious, conducted purposefully to improve views, increase market value, or expand development potential, or the result of negligence by a contractor or operator of construction machinery, the amount of the penalty may be trebled as punitive damages.

The Tree Protection Code stipulates tree regulations and requirements based on tree size, location, and property development status. SMC 25.11.050 states:

"A Tier 2 Tree Includes trees 24 inches at DSH or greater, tree groves, and specific tree species as provided by Director's Rule... Approval for removal is part of overall development permit."

"When development is proposed, in Neighborhood Residential, Lowrise, Midrise, commercial, and Seattle Mixed zones... Tier 2 trees may not be removed except as permitted under Sections 25.11.070 and 25.11.080"

SMC 25.11.090.A further states:

“In all zones, Tier 1, Tier 2, and Tier 3 trees removed in association with development or because they are hazardous, infested by insects, pests, or pathogens, or an invasive or nuisance tree, or in accordance with the removal criteria in subsection 25.11.050.D, shall be replaced by one or more new trees, the size and species of which shall be determined by the Director.”

Responsible Party

SMC 25.11.130 states:

“Responsible party’ means, in cases of violations, a person in control of property in fee ownership or tenancy where a tree or tree protection area is located and the person or entity that damaged or removed the tree. The responsible party may include the owner or owners, lessees, tenants, occupants, or other persons who direct or pay for the detrimental action. The responsible party may also include the person, partnership, or corporation who violated the provisions of this Chapter 25.11.”

Penalties are not discretionary but presumed ratings may be challenged by credible evidence

The Tree Protection code does not include discretion to reduce the value-based penalty for tree-cutting violations. Further, if the violation is found to have been willful or malicious, the amount of the penalty may be trebled as punitive damages.

To determine tree value to calculate penalties, the Basic Tree Cost² is multiplied by the percentage rating of the Species, the Condition, and the Location. Inspector Guerrero used the Species rating provided in the *2007 Species Ratings for Landscape Tree Appraisal, 2nd Edition* for the Western Red Cedar. He assigned the presumptive value of 70% allowed by Rule 17-2018 to the condition and location ratings. This means that the tree is already presumed not to be in perfect health; some heart rot and defects are expected and anticipated. Tree value was calculated as follows:

Western Red Cedar (*Thuja plicata*)

Basic Tree Cost (\$111,863) x 90% (species) x 70% (condition) x 70% (location) =
\$49,332.00.

SMC 25.11.120.I, as adopted by Ord 126821 in May 2023, states that the civil penalty imposed for removal, topping, or other action detrimental to a tree in violation of Chapter 25.11 shall be 50% greater than the amount stated in a Director’s Rule. Therefore, the \$49,332 basic tree cost was increased to \$73,998.00.

SDCI determined that the action taken constituted a willful or malicious act by nature of being a repeat violation by the same responsible party in Legacy Group Capital, as provided in Director’s Rule 17-2018. The penalty was therefore trebled to \$221,994.00.

Conclusion

The position of Helsell Fetterman LLP that Legacy Group Capital LLC, Legacy Opportunity Fund LLC, and LOF Holding Company LLC do not constitute responsible parties is rejected. While not the property owner, as affirmed by the declaration by Jenni Lausiva of Take 3003, these entities

² Inspector Anderson used the Trunk Formula method described in the *Guide for Plant Appraisal, 9th Edition* and interpreted in Rule 17-2018. To determine tree value and hence the civil penalty amount using this approach, *Basic Tree Cost* is calculated first: the area of a cross-section of the trunk is multiplied by the base price for the type of tree, which is \$57 per square inch for conifers and \$72 per square inch for deciduous trees.

had a contractual relationship and engaged in development activity on behalf of the owner, including assisting in project management, filing permit applications, and procuring arborists reports. These entities further have a financial relationship with the property owner and financial interest in the development occurring at the property. As such, whether by intentional direction, negligence, or ignorance of the activities occurring at the property, these entities meet definition of a responsible party as “other persons who direct or pay for the detrimental action.”

Stephan Wakefield asserted several defenses on behalf of Take 3003: 1) Take 3003 had applied for a permit to remove the tree and had received indications from SDCI staff that the permit would likely be approved, 2) treble damages are not appropriate because Take 3003 is not a repeat offender and therefore the action is not willful or malicious, and 3) even if the action was willful or malicious, there is ambiguity in the code and director’s rule in how to calculate the penalty, and that ambiguity should be construed in Take 3003’s favor.

Point 1. Wakefield notes on multiple occasions that Take 3003 had a pending application for removal of the Western Red Cedar. At the time of the detrimental action, Take 3003 was engaged in conversations with SDCI staff about tree replacement requirements. However, as Wakefield and Take 3003 acknowledge, no permit had been issued when the action was taken. Therefore, the action clearly constitutes detrimental action without prior approval from SDCI and is subject to civil penalty.

Point 2. Wakefield asserts that the detrimental action is not willful or malicious because Take 3003 is not a repeat offender. Assessment of trebled damages was based on repeat violation by Legacy Capital Group and is applied to the NOV in totality.

Point 3. Wakefield makes a contingent argument that the code and director’s rule are unclear in how penalty modifiers should be applied. SMC 25.11.120.I states that a violator “shall be subject to a civil penalty in the amount as stated in a Director’s Rule with a 50 percent increase above that amount.” That clearly indicates that base civil penalty includes both the basic tree cost as calculated under DR 17-281 as well as the 50 percent increase required by the code. That amount is then subsequently modified by the treble damages clause which follows. The argument that the base tree cost should constitute the base civil penalty and be separately and independently subject to the 50% increase and treble damages is a specious attempt to inject ambiguity where none exists in a straightforward reading of the code.

Claims made by Tree Action Seattle have no bearing or relevance on the NOV, nor do third party disputes between Take 3003 and Tree Action Seattle. Tree ratings in the penalty calculation may be challenged by credible evidence, but no such evidence was presented by Wakefield or Tree Action Seattle. SDCI was denied access to the property during the inspection, necessitating the use of presumed ratings. Further, Wakefield’s implication that the tree penalty calculation assumed the tree would not survive and a healthier tree would reduce the penalty is inaccurate. The NOV was issued based on detrimental action taken and used the presumed health rating for the tree; a higher health rating, if warranted by credible evidence, would result in an increase in the value of the penalty imposed.

The responsible parties’ positions do not overcome their code requirements under the Tree Protection Code. This NOV is sustained. The compliance date is extended to June 11, 2024.

Please contact Housing & Zoning Inspector Antoine Anderson (206-615-0378; antoine.anderson@seattle.gov) when the corrections have been completed so that he may verify compliance.

CASE NO. 1057802
Order of the Director
Page 6 of 6

A handwritten signature in black ink that reads "K. Michele Hunter". The signature is written in a cursive, flowing style.

K. Michele Hunter
Review Officer
City of Seattle Department of Construction and Inspections
700 5th Avenue, Suite 2000
PO Box 34019
Seattle WA 98124-4019
206-615-0808 / 206-233-7156 (TTY)
www.seattle.gov/sdci

cc: SDCI Inspector Antoine Anderson