

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

DATE: May 11, 2021

FILE NO.: 21-009 FSH

PROJECT NAME: 38015 Jonsrud Ln Landscaping and Tree Removal in the FSH

APPLICANT: Tim Sellin, Drake's 7 Dees

OWNER: John Thomas

ADDRESS: 38015 Jonsrud Lane

LEGAL DESCRIPTION: T2S R4E Section 11DD, Tax Lot 1000

PROPOSAL: Remove two (2) trees, remove invasive blackberry and replant with native kinnikinnick, and relocate four blueberry shrubs within the FSH overlay.

EXHIBITS:

Applicant's Submittals

- A. Land Use Application Form
- B. Sheet L1 – Existing Conditions Plan
- C. Sheet L2 – Bluff Planting Plan

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policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.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 lot has a Plan Map designation of LDR, Low Density Residential, and a Zoning Map designation of SFR, Single Family Residential. The property is also encumbered by the Flood and Slope Hazard (FSH) Overlay District.
3. The applicant requests approval to remove two trees within the Flood and Slope Hazard (FSH) Overlay District on the subject property. The trees proposed for removal are an 11-inch diameter at breast height (DBH) apple tree and a 5.5-inch DBH birch tree. The applicant is also requesting to remove a 6 foot by 85 foot swath of encroaching invasive blackberry bramble and plant native kinnikinnick in its place, and to transplant four existing blueberry shrubs within the FSH overlay. The applicant is not proposing any grading, excavation, or fill

in the FSH overlay area. **The applicant shall not grade, excavate, or fill in the FSH overlay area.**

4. The proposed tree and invasive species removal, replanting with native groundcover, and transplanting blueberries are all located within the FSH overlay district. As such, the application must conform to the requirements of Chapter 17.60, Flood and Slope Hazard Overlay District.
5. Section 17.60.20(B) specifies permitted uses in the FSH overlay district, all of which require a permit. Permitted uses related to vegetation include: planting of native vegetation species; removal of non-native/invasive vegetation, dead or dying trees or vegetation that is hazardous to the public; and removal of up to two trees 6-inches or greater DBH in a calendar year, 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. Removal of native vegetation of any type is not a permitted use within the FSH overlay district, with the exception of removal of up to two (2) trees 6-inches DBH or greater per calendar year. Planting non-native vegetation within the FSH overlay is also not a permitted use. The current proposal is for the following activities within the FSH overlay:
 - Planting non-native vegetation within the FSH overlay is not a permitted use.
 - Removal of invasive blackberry.
 - Planting native groundcover.
 - Transplanting four (4) blueberry shrubs.

The applicant is proposing to transplant four blueberry shrubs from within the FSH overlay to a different location within the FSH overlay. Digging up the existing blueberry shrubs located within the FSH overlay can be processed as removal of non-native species; however, the applicant's proposal to relocate the non-native blueberries to a different location within the FSH is not permitted by code as planting non-native species in the FSH is not a permitted use. **The applicant shall update the Planting Plan to detail the relocation of the blueberry shrubs to a location outside of the FSH overlay.** Future tree removal, vegetation removal, or planting within the FSH overlay area on the subject property requires additional permit approvals. **The applicant shall apply for a separate FSH review permit for any additional/future tree or vegetation removal, planting, or other development 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 if approved by permit. A violation of the provisions set forth in Chapter 17.60, FSH, (e.g., tree or vegetation removal, excavation, grading, or planting within the FSH overlay without permit authorization) may result in a fine as specified in Section 17.06.80.**

6. Section 17.60.20(B.5) specifies that trees removed from the FSH overlay 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. Removal of the 11-inch DBH apple tree requires replanting two (2) native trees in the FSH overlay. The submitted Bluff Planting Plan (Exhibit C) does not detail the two required replacement mitigation trees. **The applicant**

shall update the Planting Plan to detail the species, size, and location of the two (2) required mitigation trees for staff review and approval. The two mitigation trees shall be native species, 1.5-inch caliper or greater (or 4-6 feet in height if conifers) and located in the FSH overly.

7. Section 17.60.40 specifies that a request to plant native vegetation, remove invasive/non-native vegetation, or remove up to two trees, six-inch DBH or greater within a calendar year within the FSH overlay are all reviewed as Type I FSH procedures. This application includes the removal of two trees in the FSH overlay. One of the trees (the 5.5-inch DBH birch tree) is less than 6-inches DBH so is processed as removal of non-native vegetation in the FSH overlay. The second tree is an 11-inch DBH apple tree so is processed as removal of a tree in the FSH overlay. The application also includes removal of invasive blackberry and transplanting blueberries, which are processed as removal of invasive/non-native vegetation, and planting native kinnikinnick (*Arctostaphylos uva-ursi*), which is processed as planting native species.
8. Section 17.60.60 contains approval standards and conditions for development proposed within the restricted development area of the FSH overlay. Section 17.60.60(A.1) pertains to cumulative impacts. This is the first application for development within the FSH on the subject property and the proposal is limited to removal of trees/vegetation and planting native species. Future development requests within the FSH overlay will require a separate application and permit review, at which time cumulative impacts would be assessed.
9. Section 17.60.60(A.2) states that 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 surface within the FSH overlay area.
10. Section 17.60.60(A.3) relates to construction materials and methods. The applicant is not proposing to construct any structures within the FSH overlay.
11. Section 17.60.60(A.4) states that 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 within the FSH overlay.
12. Section 17.60.60(A.5) states that 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. The subject property does not have any streams or wetlands and is part of the FSH overlay due to steep slope.
13. Section 17.60.60(A.6) states that 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. As previously noted, **the applicant shall update the**

Planting Plan to detail the species, size, and location of the two (2) required mitigation trees for staff review and approval. The two mitigation trees shall be native species, 1.5-inch caliper or greater (or 4-6 feet in height if conifers), and located in the FSH overly. The applicant is proposing to replant the area where the invasive blackberry will be removed with a native groundcover (kinnikinnick) in compliance with Section 17.60.60(A.6). The applicant did not indicate a plan to cover the disturbed area where the two trees are removed or where the blueberries are transplanted from. **The applicant shall update the Planting Plan to detail native understory and/or groundcover species to be planted in the disturbed areas (i.e., where the two trees are removed and where the blueberries are transplanted from) such that the native vegetation effectively covers the disturbed areas.**

14. The applicant did not indicate how the proposed trees will be felled or whether stumps will be left in place. **The applicant shall have the removed trees felled such that they do not negatively impact adjacent trees/vegetation that are to be preserved.**
15. Mitigation trees and understory/groundcover must be maintained in good condition in order to mitigate the loss of other trees and to stabilize slopes and control soil erosion. **The applicant shall maintain all mitigation trees and understory/groundcover 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. The applicant shall replace any dead or dying mitigation trees or understory/groundcover.**
16. 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.**

DECISION:

The application is **approved with conditions** in conformance with the standards of Chapter 17.60, Flood and Slope Hazard Overlay District.

CONDITIONS OF APPROVAL:

1. Tree removal shall be limited to the 11-inch apple (and the 5.5-inch birch, which is processed as removal of non-native vegetation).
2. Within 90 days from issuance of this Final Order, the applicant shall submit an updated Planting Plan for staff review and approval that details the following:
 - Species, size, and location of the two (2) required mitigation trees. The two mitigation trees shall be native species, 1.5-inch caliper or greater (or 4-6 feet in height if conifers), and located in the FSH overly.

- Native understory and/or groundcover species to be planted in the disturbed areas (i.e., where the two trees are removed and where the blueberries are transplanted from) such that the native vegetation effectively covers the disturbed areas.
 - Relocation of the blueberry shrubs to a location outside of the FSH overlay.
3. By November 15, 2021 the applicant shall plant the following vegetation and shall call for an inspection by staff to confirm the trees/vegetation have been planted:
 - Two native mitigation trees (1.5-inch caliper or greater, or 4-6 feet in height if conifers) within the FSH overlay of the development area.
 - Native understory and/or groundcover species in the disturbed areas (i.e., where the two trees are removed and where the blueberries are transplanted from) such that the native vegetation effectively covers the disturbed areas.
 4. The applicant shall have the removed trees felled such that they do not negatively impact adjacent trees/vegetation that are to be preserved.
 5. 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.
 6. The applicant shall maintain all mitigation trees and understory/groundcover 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. The applicant shall replace any dead or dying mitigation trees or understory/groundcover.
 7. The applicant shall apply for a separate FSH review permit for any additional/future tree or vegetation removal, planting, or other development 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 if approved by permit. A violation of the provisions set forth in Chapter 17.60, FSH, (e.g., tree or vegetation removal, excavation, grading, or planting within the FSH overlay without permit authorization) may result in a fine as specified in Section 17.06.80.
 8. The applicant shall not grade, excavate, or fill in the FSH overlay area.
 9. No land disturbing activity shall be conducted so as to cause slides of mud, soil, rock, vegetative material, or any other material to be pushed onto, deposited upon, or gravitated to the property of another, either public or private, as specified in Ordinance 2002-12.



Emily Meharg
Senior Planner

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.