

**FINDINGS OF FACT and FINAL ORDER
TYPE I LAND USE DECISION**

DATE: March 9, 2022

FILE NO.: 21-064 DR/FSH/TREE/HD

PROJECT NAME: 39601 Scenic Street Duplex Conversion

APPLICANT/OWNER: John Kallen

LEGAL DESCRIPTION: T2S R4E Section 13AB Tax Lot 1700

ADDRESS: 39601 Scenic Street

DECISION: Approved subject to conditions of approval

The above-referenced proposal was reviewed as a Type I Design Review with tree removal, three Flood and Slope Hazard (FSH) overlay reviews, and a Type I Hillside Development review. The following exhibits, findings of fact, and conditions (bold text) explain the proposal and the conditions of approval.

EXHIBITS:

Applicant Submittals

- A. Land Use Application Form
- B. Duplex and Tree Removal Narrative and FSH Review Narrative
- C. Plan Set
 - Sheet 1: Site Plan #1 (existing conditions)
 - Sheet 2: Site Plan #2 (existing trees)
 - Sheet 3: Site Plan #3 (tree retention and removal plan)
 - Sheet 4: Site Plan #4 (proposed driveway modifications)
- D. Landscape Plan
- E. Scaled FSH Site Plan
- F. Floor Plan
- G. Updated Geo-Assessment (January 6, 2022)
- H. Arborist Report (January 12, 2022)
- I. Revised Arborist Report (February 1, 2022)
- J. Incompleteness Response Letter dated January 13, 2022
- K. Incompleteness 2 Response Letter dated February 2, 2022

Agency Comments

- L. Public Works email (March 3, 2022)

Additional Items Submitted by Staff

- M. Fire Marshal pre-application meeting comments

FINDINGS OF FACT

General Findings

1. These findings are based on the applicant's original submittal received on December 15, 2021, with additional information received on January 13, 2022, January 26, 2022, and February 2, 2022. The application was deemed complete on February 4, 2022.
2. The subject property is located on the north side of Scenic Street, east of Revenue Avenue and west of Fir Drive. The subject property is 1 acre, though the applicant owns four contiguous parcels totaling 3.13 acres.
3. The subject property has a comprehensive plan designation of Low Density Residential and a zoning district designation of SFR, Single Family Residential.
4. The applicant is proposing to convert an existing single-family home into a duplex, which is an outright permitted use in the SFR zone. The proposal includes widening the western driveway and replacing the waterline along the western property line with an adequately sized line needed to accommodate the two dwellings. The proposal includes removal of 24 trees in front of the existing dwelling as well as removal of two (2) additional trees behind the dwelling and in the Flood and Slope Hazard (FSH) overlay zone. The applicant previously removed debris and vegetation from the FSH area without a permit. On February 28, 2020 staff issued a violation letter and required the applicant to obtain two (2) retroactive permits.
5. The City's mapped Flood and Slope Hazard (FSH) overlay district covers the entirety of the existing dwelling as well as a portion of the property south (in front) of the existing dwelling. The applicant noted that the dwelling is on a flat portion of the site. Staff visited the site on February 18, 2022 and confirmed that the existing dwelling is on a flat portion of the site. It appears the site may have been graded in the past to extend the flat area further north. Staff verified that the existing dwelling was built in 1958 (with an addition added around 2000) and concluded that the grading of the site and encroachment into the steep slope area occurred prior to adoption of Sandy's Development Code. Based on the site visit, the existing house appears to be located 25 feet beyond (south of) the 25 percent slope break and is therefore outside of the FSH overlay. The existing back porch appears to be partially in the 25-foot setback from the 25 percent slope break and is therefore partially in the FSH overlay. **The applicant shall not extend the dwelling, patio, or other structure any further north.**
6. This application is a Type I Design Review with a Type I Tree Removal Permit, three (3) Type I FSH Reviews and a Type I Hillside Development Review; therefore, notification to surrounding property owners is not required.

Chapter 17.34 – Single Family Residential (SFR) Zoning District

7. The applicant proposes to convert an existing single-family home into a duplex, which is a permitted use in the SFR zoning district.

8. Section 17.34.30 details the development standards for the SFR zoning district. The applicant is not proposing to change the building footprint or exterior of the structure.
9. Section 17.34.40 requires the improvements on the site to connect to municipal services including water and sanitary sewer. The applicant did not submit a Utility Plan. The submitted narrative (Exhibit B) states that the existing waterline along the western property line is proposed to be replaced with an adequately sized line needed to accommodate the two dwellings. **The applicant shall submit a Utility Plan detailing any proposed changes to the utility connections. A larger line and meter size shall require additional SDCs.**

Chapter 17.56 – Hillside Development

10. Section 17.56.30 outlines the required map and studies needed for hillside development. The applicant submitted an Updated Geo-Assessment (Exhibit G) dated January 6, 2022 and prepared by Mia Mahedy, PE GE of Rapid Soil Solutions, Inc.
11. Section 17.56.50(C) states that the approval authority shall rely on the conclusions and recommendations of the required reports to determine compliance with Chapter 17.56. The Updated Geo-Assessment (Exhibit G) recommends that **all trash and debris shall be removed off the slope as safely as possible and that all exposed soils shall be covered with jute matting and planted with native plants before the wet weather season begins. The applicant shall submit a planting plan detailing the species, size, location, and quantity of the native vegetation proposed to be planted in the FSH overlay.**

Chapter 17.60 – Flood & Slope Hazard (FSH) Overlay District

12. 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. Permitted uses include: removal of refuse and permitted fill (B.2); planting of native vegetation species (B.3); removal of non-native/invasive vegetation (B.4); removal of up to two (2) 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 (B.5); and repair or stabilization of unstable slopes (B.9). The applicant previously removed refuse and invasive vegetation from the FSH area without a permit and was issued a violation letter from the City on February 28, 2022. The violation letter required the applicant to retroactively apply for two (2) FSH reviews for removal of refuse and removal of invasive vegetation. The current proposal includes an additional FSH review for removal of two (2) trees 6-inches or greater DBH within the FSH overlay (Trees # 25 and 26 as identified in the Arborist Report (Exhibit H)). *(Note: two additional trees proposed for removal from in front (south) of the existing dwelling (Trees #21 and 22 in the Arborist Report) are located in the city's mapped FSH overlay; however, as explained in Finding #5, these trees are well outside of the 25-foot setback from the 25 percent slope break and therefore, their removal was not processed as an FSH review.)* The applicant is also proposing to plant native vegetation and stabilize the slope within the FSH overlay; however, these two FSH reviews were reviewed as part of the two retroactive permits for removal of invasive vegetation and removal of refuse,

respectively, so additional FSH review fees were not charged. The applicant is also proposing to convert the existing dwelling into a duplex. As noted in Finding #5, staff confirmed the existing dwelling is located outside of the 25-foot setback from the 25 percent slope layer; therefore, the conversion was not processed as an FSH review.

13. Section 17.60.40 specifies that a request to remove up to two (2) trees six-inches DBH or greater within a calendar year, a request to remove invasive vegetation, and a request to remove refuse from within the FSH overlay are all reviewed as Type I FSH procedures. This application includes the following three (3) Type I FSH reviews, including two (2) retroactive reviews for previous work done in the FSH overlay:

- Removal of two trees in the FSH overlay (Tree #25: a 24-inch DBH Douglas fir that is dead and dying; and Tree #26: a 39-inch DBH Douglas fir in poor condition);
- Removal of invasive vegetation in the FSH overlay, including Himalayan blackberry, Canada thistle, and English ivy (retroactive) and planting native vegetation; and,
- Removal of refuse from the FSH overlay, including tires, wood, and metal (retroactive) and slope stabilization.

Future activity on the subject property within the FSH overlay requires additional land use review. **The applicant shall apply for a separate FSH review permit for all additional/future activity within the FSH overlay; including but not limited to grading, removal of fill, removal of trees, removal of vegetation, planting vegetation, and repair of unstable slopes. 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. 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.**

14. 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. The applicant previously removed garbage and invasive vegetation and is proposing to remove two (2) trees from the FSH overlay with this application. 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, the narrative (Exhibit B) states that the applicant proposes planting 10-15 native plants in the area where debris and invasive vegetation had previously been removed. The submitted Updated Geo-Assessment (Exhibit G) dated January 6, 2022 and prepared by Mia Mahedy, PE GE of Rapid Soil Solutions, Inc. recommends all trash and debris be removed from the slope as safely as possible and that all exposed soils shall be covered with jute matting and planted with native plants. **The applicant shall remove trash and debris from the slope as safely as possible. All exposed soils shall be covered with jute matting and planted with native plants before the wet weather**

season begins. The applicant shall submit a planting plan detailing the species, size, location, and quantity of the native vegetation proposed to be planted in the FSH overlay. With these conditions of approval, Criteria A.1 can be met.

15. 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 refuse, invasive vegetation, and tree removal and does not include any impervious surfaces, construction, or cuts/fills in the restricted development area of the FSH overlay district. The Revised Arborist Report (Exhibit I) dated February 1, 2022 and prepared by Kyle Offerdahl and Todd Prager of Teragan & Associates, Inc. contains specifications regarding how Trees #25 and 26 will be removed without negatively impacting the remaining trees to be retained in the FSH overlay. **The applicant shall adhere to the recommendations in the Revised Arborist Report regarding removal of Trees #25 and 26 including the following:**

- **Grubbing of Trees #25 and 26 or their stumps by mechanized equipment is not permitted.**
- **The use of backhoe or excavator grubbing is not permitted to protect tree roots of the surrounding trees, specifically Trees #27 through 31.**
- **Removal of the trees must be done by directional chainsaw felling as to also avoid damaging the branches or trunks of surrounding trees.**
- **If the logs are to be removed, 3/4-inch plywood must be installed for skid steer operation. The skid steer shall not drive off the plywood.**
- **If stumps are to be removed, they must be done by stump grinder to a depth no greater than six inches.**
- **No grubbing of stumps is allowed to protect the roots of surrounding trees.**

Trees # 25 and 26 shall be felled such that they don't damage adjacent trees to be retained. Heavy machinery, equipment, and vehicles shall not be permitted within the restricted development area of the FSH overlay. With these conditions of approval, Criteria A.2-A.4 can be met.

16. 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. The Updated Geo-Assessment (Exhibit G) states that no springs, seeps, or free flowing water were observed within the development area and that no sag ponds were observed down slope. Section 17.60.60(A.6) requires that development shall minimize the loss of native vegetation. **Where native 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 for a total of four (4) native mitigation trees planted in the FSH overlay. 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.

Chapter 17.84 Improvements Required with Development

17. Section 17.84.20 contains standards for timing of improvements. **All improvements required by the standards in Chapter 17.84 shall be installed concurrently with development. Where a land division is not proposed, the site shall have required public and franchise utility improvements installed or financially guaranteed in accordance with the provisions of Chapter 17 prior to temporary or final occupancy of structures.**

18. Section 17.84.30 contains pedestrian requirements. The subject property has curb but no sidewalk or planter strip. Per Section 15.20.020 (A), “No building permit shall be issued for remodeling, alteration or addition to any building or structure when the estimated cost of the remodeling, alteration or addition exceeds 50 percent of the value of the building or structure before such remodeling, alteration or addition is commenced on any lot which does not have existing curbs, sidewalks and half-street improvements meeting the city standards on all abutting streets to such lots, unless the applicant agrees to construct curbs, sidewalks and half-street improvements to city standards along all such city streets which abut the property described in the building permit in conjunction with the construction activity related to the building permit.” **The applicant shall install sidewalk and street trees (i.e., quarter-street improvements) on Scenic Street. Due to the placement of the existing overhead power lines and existing sidewalk east and west of the subject property, the applicant shall install five-foot wide curb-tight sidewalks with street trees on the private property side of the sidewalk. If there is insufficient right-of-way to accommodate the curb and five-foot wide sidewalk, the applicant shall either dedicate the needed right-of-way or record a pedestrian easement for the portion of the sidewalk that doesn’t fit into the existing right-of-way. Public Works (Exhibit L) noted that there is an existing pole on the SW corner of the property. In order to provide ADA access around the utility pole at the SW corner of the property, the applicant shall either relocate the utility pole or modify the sidewalk to wrap around the pole.**

19. Per Section 15.20.020 (B), “No building permit shall be issued for remodeling, alteration or addition to any building or structure when the estimated cost of the remodeling, alteration or addition exceeds 50 percent of the value of the building or structure before such remodeling, alteration or addition is commenced on any lot which is not served by underground utilities, unless the applicant agrees to construct equipment and related facilities to accept and receive all underground utility lines which shall serve the building or structure, including but not limited to those required for all electric communication and cable TV services in conjunction with the construction activity related to the building permit.” **The applicant shall underground all utility lines in compliance with Section 15.20.020(B).**

Chapter 17.90 – Design Standards

20. Section 17.90.150(B) contains the applicability of residential design standards as well as exemptions. Additions and alterations adding less than 50 percent to the existing floor area of the structure are exempt per Section 17.90.150(B.1). The applicant is not proposing to modify the footprint or exterior of the existing dwelling; therefore, the proposal is exempt from the design standards of Section 17.90.150.

21. Section 17.90.70 specifies that **design review approval shall be void after two (2) years from the date of the Final Order, unless the applicant has submitted plans for building permit approval.**

Chapter 17.92 – Landscaping and Screening

22. Chapter 17.92 contains standards for landscaping and screening. Section 17.92.10(C) states that significant plant and tree specimens should be preserved to the greatest extent practicable and integrated into the design of a development. Significant trees are defined as those that are approximately 8-inches diameter at breast height (DBH) or greater. The Arborist Report and Revised Arborist Report (Exhibits H and I) detail 39 existing trees on the subject property varying from 8-inches to 43-inches DBH. The applicant is proposing to remove 25 of the 28 existing trees that are located in front of the house (*note: this includes Tree #3.1, which is included in the tree inventory table but is not identified on the map*) and to retain the remaining 3 trees (*note: Trees #37 and 38 are shown as separate trees on the map, but are detailed as the same tree with a co-dominant stem in the inventory table*). The applicant is also proposing to remove two (2) of the 11 existing trees identified in the FSH overlay portion of the site behind (north of) the house and to retain the remaining 9 trees identified in the FSH overlay. **The applicant shall install tree protection fencing 25 feet south of the 25 percent slope break; the fencing shall not be removed until after the final Planning inspection.**
23. Per Section 17.92.10(L), **all landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacement of dead or dying vegetation. Any areas disturbed during modification of the existing site shall be re-vegetated to pre-project condition.**
24. Section 17.92.30 requires street trees spaced approximately 30 feet on center. **The applicant shall update the site plan to detail four (4) street trees along the Scenic Street frontage of the site. The street trees shall be selected from the City’s Street Tree List and shall be planted per the City’s standard planting detail. Staff is not approving maples or ashes as street trees at this time due to concerns with Asian Longhorn Beetle and Emerald Ash Borer as well as an interest in increasing species diversity.**

Chapter 17.98 – Parking, Loading, & Access Requirements

25. Section 17.98.20(A.8) indicates that a duplex is required to provide one off-street parking space per unit for a total of two (2) off-street parking spaces. Site Plan #4 (Exhibit C, Sheet 4) details four (4) existing parking spaces including two garage parking spaces and two additional parking spaces to the east of the garage. The submitted narrative (Exhibit B) states that one parking space will be provided for each unit in the garage and a second space will be provided in the existing pad on the east side of the garage in compliance with the off-street parking requirement.
26. Section 17.98.100 contains driveway standards. The subject property has an existing 10-foot-wide circular driveway with two (2) driveway accesses (western and eastern) for a total driveway width of 20 feet. The applicant is proposing to increase the width of the

western driveway to 20 feet and to keep the eastern driveway at 10 feet, which would result in a total driveway width of 30 feet. Per Section 17.98.100(B), **a driveway for a single-family dwelling or duplex shall have a minimum width of ten feet. The driveway approach within the public right-of-way shall not exceed 24 feet in width measured at the bottom of the curb transition. A driveway approach shall be constructed in accordance with applicable City standards and the entire driveway shall be paved with asphalt or concrete.** The applicant's narrative (Exhibit B) states that the proposed widening of the western driveway is to improve emergency access to the site. At the pre-application meeting for this proposal, the Fire Marshal submitted comments (Exhibit M) that included specifications for fire apparatus access roads. Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches; fire apparatus access roads serving two or less dwelling units and accessory buildings may reduce their driving surface to 12 feet although the unobstructed width shall be 20 feet. The proposal is for a duplex; therefore, the minimum required driving surface is 12 feet with 20 feet of unobstructed width. The applicant is proposing to remove all of the trees within the circular driveway so both the eastern and western driveways will have an unobstructed width of 20 feet. In order to comply with the requirements of Section 17.98.100, **the applicant shall do one of the following:**

- a. Update the Site Plan to detail one of the driveways at 12 feet and the other driveway not to exceed 12 feet.**
- b. Update the Site Plan to detail one of the driveways at a minimum of 12 feet and a maximum of 24 feet and remove the second driveway approach.**

27. Section 17.98.130 requires all parking areas, driveways, and driveway approaches to be paved with concrete, asphalt, or comparable surfacing and be constructed to city standards for off-street vehicle areas. The submitted narrative states that all proposed parking spaces are existing and contain a hard surface and that the driveway is paved as required.

28. The subject property currently has a circular 10-foot-wide driveway with two accesses/driveway cuts to Scenic Street. Based on Site Plan #4 (Exhibit C, Sheet 4) and the narrative (Exhibit B), the applicant is proposing to widen the paved surface of the western driveway to 20 feet to improve emergency access to the site. Staff requested a stormwater plan as part of the incompleteness letter; however, the applicant responded (Exhibit J) stating that the proposal is to convert an existing single-family structure to a duplex so the stormwater facilities won't change. The applicant requested that the application be deemed complete without a stormwater report. Therefore, staff does not know the applicant's plan for the additional stormwater that would result from widening the driveway. **If the new development and/or redevelopment activities create or replace 500 square feet or more of impervious area on the property or in the right-of-way, the applicant shall submit a detailed stormwater management plan to be reviewed and approved by the Public Works Director, or her designee, per the standards of Subsection 13.18 and the City of Portland Stormwater Management Manual methods.**

Chapter 17.102 – Urban Forestry

29. 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 1.0 acre; however, the applicant owns four contiguous parcels that total 3.13 acres. The site contains greater than one acre, therefore, the proposal is reviewed to determine compliance with Chapter 17.102.
30. Section 17.102.20 (A) states: “no person shall cut, harvest or remove trees 11 inches DBH or greater without first obtaining a permit and demonstrating compliance with this chapter.” Section 17.102.80 specifies that violations of this section are subject to enforcement procedures contained in Chapter 17.06, specifically Section 17.06.80. This section specifies that each violation of the code is considered a separate offense punishable by a fine up to \$1,000.00.
31. 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 3.13-acres of contiguously owned property requires retention of a minimum of nine (9) trees 11-inches DBH or greater that are healthy, likely to grow to maturity, and located to minimize the potential for blow-down following the harvest.
32. The applicant submitted an Arborist Report (Exhibit H) dated January 12, 2022 and a Revised Arborist Report (Exhibit I) dated February 1, 2022, both of which were prepared by Kyle Offerdahl and Todd Prager of Teragan & Associates, Inc. Both the Arborist Report and the Revised Arborist Report identify 12 trees for retention (Trees #27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 39); however, four (4) of the trees (Trees #30, 31, 34, and 35) were evaluated as being in good condition in the January 12, 2022 Arborist Report, and evaluated as being in fair condition in the more recent February 1, 2022 Revised Arborist Report. The trees proposed for retention are as follows:
- Tree #27: 27-inch DBH Douglas fir in good condition
 - Tree #28: 17-inch DBH Douglas fir in good condition with ivy covering the base
 - Tree #29: 23-inch DBH Douglas fir in good condition
 - Tree #30: 33-inch DBH Douglas fir in fair condition with a bend in the stem
 - Tree #31: 37-inch DBH Douglas fir in fair condition with ivy covering the base
 - Tree #32: 38-inch DBH Douglas fir in good condition
 - Tree #33: multi-stemmed 16- and 15-inch DBH Douglas fir in good condition with a co-dominant stem
 - Tree #34: 35-inch DBH Douglas fir in fair condition with low live crown ratio
 - Tree #35: 40-inch DBH Douglas fir in fair condition with deadwood greater than 2-inches
 - Tree #36: 21-inch DBH Port Orford cedar in good condition
 - Tree #37: multi-stemmed 11- and 11-inch DBH Port Orford cedar in good condition with a co-dominant stem
 - Tree #39: 35-inch DBH Douglas fir in good condition

In the past, the City has allowed trees in fair condition to count as retention trees at a 2:1 ratio. The proposal includes retention of four (4) trees in fair condition, which would count as an additional two (2) retention trees. With this allowance, the proposal includes 10 retention trees, which meets the minimum retention requirement. **The applicant shall retain Trees #27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 39 as well as all trees within the FSH overlay, with the exception of Trees #25 and 26.**

33. Two of the retention trees were noted as having ivy covering the base of the trees. **The applicant shall submit a memo from the project arborist containing a recommendation for the preferred way to remove ivy from the trees for staff review and approval. Once the ivy removal strategy is approved by staff, the applicant shall remove the ivy in accordance with the approved method.**

34. 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 planting four (4) Douglas fir trees along the east property line and within the FSH overlay. In the past, staff has seen many conflicts when trees are located close to a shared property line. Douglas fir trees are large evergreens, thus, if planted too close to the property line, the tree's roots and branches will eventually grow over the property line making it more difficult to ensure the tree grows to maturity. The largest Douglas fir identified in the Revised Arborist Report is Tree #3, a 43-inch DBH Douglas fir proposed for removal. A 43-inch DBH tree has a 43-foot radius critical root zone and a 22.5-foot radius minimum root protection zone. Therefore, to ensure the mitigation Douglas firs are able to grow to maturity, the trees will need to be planted at least 22.5 feet from the property line to ensure no future encroachment into the minimum root protection zone. **The applicant shall update the planting plan detailing the four (4) proposed Douglas fir mitigation trees a minimum of 22.5 feet from any property line or developed portion of the site. The applicant shall plant four (4) Douglas fir trees (at least 6 feet in height) within the restricted development area of the FSH overlay to mitigate for removal of Trees #25 and 26.**

35. The submitted incompleteness response letter dated January 13, 2022 (Exhibit J) indicates that the applicant will not be removing the stumps of the two (2) trees proposed for removal from the FSH overlay. It is unclear whether the applicant will just be leaving stumps or if they will leave snags and/or downed wood. The Revised Arborist Report includes recommendations related to removal of Trees #25 and 26 from the FSH overlay with requirements related to potential log removal. **The applicant shall adhere to all recommendations in the Revised Arborist Report regarding removal of Trees #25 and 26 and protection of Trees #27-31. Staff recommends the applicant leave Trees #25 and 26 as snags.** The incompleteness response letter from January 13, 2022 also states that the stumps of the 24 trees proposed to be removed from the area south of the dwelling will be removed and that the area will be backfilled and leveled as necessary and then reseeded. **Per Section 17.102.60(A), all areas of exposed soils resulting from tree removal shall be replanted with a groundcover of native species within 30 days of harvest during the active growing season, or by June 1st of the following year. If**

the applicant removes stumps from the area to the south of the dwelling, the applicant shall submit a planting plan detailing the species, size, location, and quantity of the native vegetation proposed to be planted in the area south of the dwelling where the trees were removed.

36. The applicant did not indicate if there are nests in any of the trees proposed for removal. **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.**
37. **The applicant shall record a tree protection covenant that identifies the species and location of the retention trees (Trees #27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 39) with the critical root zones around each retention tree detailed at 1-foot per 1-inch DBH. The covenant shall also identify the four (4) mitigation trees and the FSH overlay area. 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, Chapter 17.92, and/or Chapter 17.60, and a determination by a qualified professional (i.e., ISA-certified arborist with the Tree Risk Assessment Qualification (TRAQ)) 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.**

Chapter 15.44 Erosion Control Regulations

38. The incompleteness response letter from January 13, 2022 (Exhibit J) states that the stumps of the 24 trees proposed to be removed from the area south of the dwelling will be removed and that the area will be backfilled and leveled as necessary and then reseeded (Item #2). The same incompleteness letter also states that no site grading is proposed (Item #8). Therefore, it is not clear whether the applicant is proposing any grading that would trigger a grading and erosion control permit. **If needed, the applicant shall apply for and receive approval for a grading and erosion control permit in conformance with City standards detailed in Section 15.44 of the Municipal Code.**
39. All erosion control and grading shall comply with Section 15.44 of the Municipal Code. **All on-site earthwork activities including any retaining wall construction shall follow the requirements of the most current edition of the Oregon Structural Specialty Code (OSSC). The earthwork activities shall be observed and documented under the supervision of a geotechnical engineer.**
40. **Site grading shall not in any way impede, impound, or inundate the surface drainage flow from the adjoining properties without a proper collection system. All the work within the public right-of-way and within the paved area should comply with American Public Works Association (APWA) and City requirements as amended. The applicant shall submit a grading and erosion control permit and request an inspection of installed devices prior to any additional grading onsite. The grading and erosion control plan shall include a re-vegetation plan for all areas disturbed**

during construction of the subdivision. **All erosion control and grading shall comply with Section 15.44 of the Municipal Code.**

DECISION

For the reasons described above, the request by John Kallen to convert a single-family home to a duplex and to remove 24 trees from in front of the house and two (2) additional trees from the FSH overlay portion of the site is hereby **approved** as modified by the conditions listed below. In addition, the applicant's retroactive request to remove refuse and invasive vegetation from the FSH overlay is hereby **approved** as modified by the conditions listed below.

CONDITIONS OF APPROVAL

A. Prior to applying for a grading and erosion control permit (if needed) or building/plumbing/ mechanical permits the applicant shall submit additional information as identified below:

1. Submit a detailed stormwater management plan to be reviewed and approved by the Public Works Director, or her designee, per the standards of Subsection 13.18 and the City of Portland stormwater manual methods if the new development and/or redevelopment activities create or replace 500 square feet or more of impervious area on the property or in the right-of-way.
2. Submit a Utility Plan detailing any proposed changes to the utility connections. A larger line and meter size shall require additional SDCs.
3. Update the Site Plan to detail four (4) street trees along the Scenic Street frontage of the site. The street trees shall be selected from the City's Street Tree List and shall be planted per the City's standard planting detail. Staff is not approving maples or ashes as street trees at this time due to concerns with Asian Longhorn Beetle and Emerald Ash Borer as well as an interest in increasing species diversity.
4. Update the Site plan in accordance with one of the following:
 - a. Detail one of the driveways at 12 feet and the other driveway not to exceed 12 feet.
 - b. Detail one of the driveways at a minimum of 12 feet and a maximum of 24 feet and remove the second driveway approach.
5. Update the Planting Plan with the following:
 - a. Detail the four (4) proposed Douglas fir mitigation trees a minimum of 22.5 feet from any property line or developed portion of the site.
 - b. Detail the species, size, location, and quantity of the native vegetation proposed to be planted in the FSH overlay where trash and debris is removed.
 - c. Detail the species, size, location, and quantity of the native vegetation proposed to be planted in the area south of the dwelling where the trees were

removed if stumps are removed. Staff recommends the applicant leave Trees #25 and 26 as snags and not remove stumps.

6. Submit a memo from the project arborist containing a recommendation for the preferred way to remove ivy from the trees for staff review and approval.
7. Confer with the Sandy Fire District to ensure compliance with the requirements of the Sandy Fire Marshal. The applicant shall provide construction documents detailing compliance with firefighting water supply requirements to the Sandy Fire District for review and approval upon building permit submittal.

B. Prior to earthwork, grading, excavation, or tree removal the applicant shall complete the following and receive necessary approvals as described:

1. Apply for and receive approval for a grading and erosion control permit, if needed, in conformance with City standards detailed in Section 15.44 of the Municipal Code.
2. Install tree protection fencing 25 feet south of the 25 percent slope break; the fencing shall not be removed until after the final Planning inspection.
3. Request an inspection of erosion control measures and tree protection fencing.
4. 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.

C. The applicant shall apply for and receive approval for all necessary building, plumbing, mechanical, and electrical permits prior to any construction. Contact the Building Division for submission requirements. Electrical permits shall be coordinated with Clackamas County and/or PGE as applicable.

D. Prior to Occupancy, the applicant shall complete the following:

1. Install sidewalk and four street trees (i.e., quarter-street improvements) on Scenic Street. Sidewalks shall be five-foot wide curb-tight sidewalks with street trees on the private property side of the sidewalk. If there is insufficient right-of-way to accommodate the curb and five-foot wide sidewalk, the applicant shall either dedicate the needed right-of-way or record a pedestrian easement for the portion of the sidewalk that doesn't fit into the existing right-of-way. In order to provide ADA access around the utility pole at the SW corner of the property, the applicant shall either relocate the utility pole or modify the sidewalk to wrap around the utility pole.
2. Plant four (4) Douglas fir trees (at least 6 feet in height) within the restricted development area of the FSH overlay to mitigate for removal of Trees #25 and 26.

3. Record a tree protection covenant that identifies the species and location of the retention trees (Trees #27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 39) with the critical root zones around each retention tree detailed at 1-foot per 1-inch DBH. The covenant shall also identify the four (4) mitigation trees and the FSH overlay area. 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, Chapter 17.92, and/or Chapter 17.60, and a determination by a qualified professional (i.e., ISA-certified arborist with the Tree Risk Assessment Qualification (TRAQ)) 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.
4. Remove trash and debris from the slope as safely as possible. All exposed soils shall be covered with jute matting and planted with native plants before the wet weather season begins.
5. All areas of exposed soils resulting from tree removal shall be replanted with a groundcover of native species within 30 days of harvest during the active growing season, or by June 1st of the following year.
6. Once the ivy removal strategy is approved by staff, the applicant shall remove the ivy in accordance with the approved method.
7. Retain Trees #27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 39 as well as all trees within the FSH overlay, with the exception of Trees #25 and 26.
8. All improvements required by the standards in Chapter 17.84 shall be installed concurrently with development. Where a land division is not proposed, the site shall have required public and franchise utility improvements installed or financially guaranteed in accordance with the provisions of Chapter 17 prior to temporary or final occupancy of structures.

E. General Conditions of Approval

1. Design review approval shall be void after two (2) years from the date of the Final Order, unless the applicant has submitted plans for building permit approval.
2. Future changes to the structure or development of the site may require separate land use approval, including potentially a pre-application conference, and shall comply with the design standards in Chapter 17.90.
3. All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacement of dead or dying vegetation.
4. Any areas disturbed during modification of the existing site shall be re-vegetated to pre-project condition.

5. The applicant shall adhere to all recommendations in the Revised Arborist Report regarding removal of Trees #25 and 26 and protection of Trees #27-31 including the following:
 - a. Grubbing of Trees #25 and 26 or their stumps by mechanized equipment is not permitted.
 - b. The use of backhoe or excavator grubbing is not permitted to protect tree roots of the surrounding trees, specifically Trees #27 through 31.
 - c. Removal of the trees must be done by directional chainsaw felling as to also avoid damaging the branches or trunks of surrounding trees.
 - d. If the logs are to be removed, 3/4-inch plywood must be installed for skid steer operation. The skid steer shall not drive off the plywood.
 - e. If stumps are to be removed, they must be done by stump grinder to a depth no greater than six inches.
 - f. No grubbing of stumps is allowed to protect the roots of surrounding trees.
6. Trees # 25 and 26 shall be felled such that they don't damage adjacent trees to be retained. Heavy machinery, equipment, and vehicles shall not be permitted within the restricted development area of the FSH overlay.
7. Where native 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 for a total of four (4) native mitigation trees planted in the FSH overlay. Disturbed understory and groundcover shall be replaced by native understory and groundcover species that effectively covers the disturbed area.
8. The applicant shall apply for a separate FSH review permit for all additional/future activity within the FSH overlay; including but not limited to grading, removal of fill, removal of trees, removal of vegetation, planting vegetation, and repair of unstable slopes. 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. 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. A driveway for a single-family dwelling or duplex shall have a minimum width of ten feet. The driveway approach within the public right-of-way shall not exceed 24 feet in width measured at the bottom of the curb transition. A driveway approach shall be constructed in accordance with applicable city standards and the entire driveway shall be paved with asphalt or concrete.
10. All existing and proposed franchise utilities (i.e., cable, electric, phone, etc.) shall be installed underground and in conformance with City standards. If applicable, the applicant shall call the PGE Service Coordinators at (503) 323-6700 when the developer is ready to start the project.

11. The applicant shall not extend the dwelling, patio, or other structure any further north.
12. The building shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. The address shall be plainly legible and visible from the street. In addition, the address numbers shall be a minimum of 4-inches and contrasting colors.
13. Land use approval does not connote approval of utility or public improvement plans submitted with the land use application. Applicable plan details will be reviewed by the City Engineer and Public Works Director.
14. Successors-in-interest of the applicant shall comply with site development requirements prior to the issuance of building permits.
15. Comply with all other conditions or regulations imposed by Clackamas County, Fire District No. 72, or state and federal agencies. Compliance is made a part of this approval and any violations of these conditions and/or regulations may result in the review of this approval and/or revocation of approval.



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) 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 Chapter 17.28.50; and,
5. Payment of required filing fees.