

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

**DATE:** May 23, 2022

**FILE NO.:** 22-021 FSH

**PROJECT NAME:** 14450 Baumback Native Planting

**APPLICANT/OWNER:** Bruce and Patricia Myers

**ADDRESS:** 14450 Baumback Avenue

**LEGAL DESCRIPTION:** T2S R4E Section 1, Tax Lot 3900  
(Portion of Lot 16 of Hoodview Acres)

The above-referenced proposal was reviewed as a Type I FSH Overlay Review. The following exhibits, findings of fact, and conditions (bold text) explain the proposal and the conditions of approval.

**EXHIBITS:**

**Applicant's Submittals**

- A. Land Use Application Form
- B. Native Planting Plan
- C. May 12, 2022, email
- D. May 13, 2022, email

**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policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.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 also contains the Flood and Slope Hazard (FSH) Overlay District.
3. The applicant requests approval to replant a hillside within the Flood and Slope Hazard (FSH) Overlay District on the subject property. The area was previously covered with invasive vegetation and was since covered in black tarps as is evident via Google Earth imagery. This proposal will remove the black tarps and restore the hillside to native plantings. As such, the application must conform to the requirements of Chapter 17.60, Flood and Slope Hazard Overlay District.

4. 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 applicant's planting plan detailed St. John's Wort and grass. On May 12, 2022, (Exhibit C) the applicant submitted an email specifying the replacement of the St. John's Wort with kinnikinnick. On May 13, 2022, (Exhibit D) the applicant submitted an email specifying that the grass proposed on the planting plan would be in the form of a ryegrass mix. Ryegrass is not native to Oregon and, therefore, cannot be permitted to be planted in the restricted development area in the FSH overlay district. **The applicant shall propose a native grass or other native species for review and approval by staff. The applicant shall update the native planting plan to detail kinnikinnick and a native grass or other native species reviewed and approved by staff.**
5. Future development, including but not limited to 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 17.60.40 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 planting of ryegrass and kinnikinnick. Kinnickinick is a native groundcover; however, ryegrass is not native. As specified previously, **the applicant shall propose a native grass or other native species for review and approval by staff.** Staff recommends Roemer's fescue or tufted hairgrass since both tolerate direct sun and are good for erosion control. Planting native grass and native kinnickinnick groundcover in the FSH overlay district is processed as a Type I FSH review.
7. 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 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.

8. 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 new impervious surface within the FSH overlay area.
9. 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.
10. 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.
11. 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 that staff is aware of. The subject property is part of the FSH overlay due to steep slope.
12. 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. The vegetation on the hillside was removed by the previous property owner. The current property owner, Bruce and Patricia Myers, want to replant the hillside and stabilize the slope in compliance with the Sandy Development Code.

### **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. Within 30 days from issuance of this Final Order, the applicant shall submit an updated native planting plan for staff review and approval that details kinnikinnick and a native grass or other native species reviewed and approved by staff.
2. By November 15, 2022, the applicant shall plant the native vegetation approved on the revised native planting plan.
3. The applicant shall maintain all 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 groundcover.

4. 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.
5. The applicant shall not grade, excavate, or fill in the FSH overlay area.
6. 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.



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Kelly O'Neill Jr.  
Development Services Director

## **RIGHT OF APPEAL**

A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within twelve (12) days of notice of the decision. The notice of appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

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.