

FINDINGS OF FACT and FINAL ORDER
TYPE I DECISION

DATE: October 17, 2022

FILE NO.: 22-042 FSH

PROJECT NAME: 36800 Double Creek Drive FSH Review

APPLICANT/OWNER: John Mayner

LEGAL DESCRIPTION: 24E 14BD Tax Lot 700

The above-referenced proposal was reviewed as a Type I FSH 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
- B. Geotechnical Evaluation of Site Conditions
- C. Landscaping Plan

FINDINGS OF FACT

General

1. These findings are based on the applicant's submittal received on October 3, 2022.
2. This final order is based upon the Exhibits listed above.
3. The subject site is approximately 0.296 acres. The entirety of the site is within the Flood and Slope Hazard (FSH) Overlay.
4. While performing permitted building work on the subject property, the property owner moved soil on the property. Unbeknownst to him, this process requires land use approval as moving soil within the FSH has the potential to compromise geological stability. After consulting with the Development Services Director and based on a geotechnical review of the amount of soil moved (Exhibit B), staff determined that a Type I FSH review done in retrospect would satisfy the land use review requirements.

17.60 – Flood and Slope Hazard (FSH) Overlay District

5. The purpose of FSH Overlay reviews is to minimize public and private adverse impacts from flooding, erosion, landslides, or degradation of water quality consistent with Statewide Planning Goals 6 (Air, Land and Water Resources Quality) and 7 (Areas Subject to Natural

Disasters and Hazards) and the Sandy Comprehensive Plan (SCP). It is also intended to minimize public and private losses due to flooding in flood hazard areas.

6. The only areas subject to the restrictions and prohibitions of the FSH overlay district are those indicated on the City of Sandy Zoning Map on file in the Planning Division and areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled, "Flood Insurance Study (FIS) for Clackamas County, Oregon and Incorporated Areas," dated January 18, 2019, with accompanying Flood Insurance Rate Maps (FIRMs).
7. The entirety of the subject property is within the FSH due to its proximity to Tickle Creek.
8. According to Section 17.60.20(B), movement of soil and planting of native plants are both permitted uses within restricted development areas in the FSH given appropriate land use approval under the Type I procedure.
9. Section 17.60.60(A.4) pertains to cuts and fills and states "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." As described in Finding 4, the applicant moved soil from one part of the property to another part of the property while making improvements to the home on the property. Specifically, soil was moved from underneath the home to farther south on the property into the rear yard. According to the Registered Geologist and Certified Engineering Geologist who assessed the property, the moved soil was spread over an area of approximately 30 by 50 feet and is on average eight (8) inches in depth. Additionally, the surface of the soil had been covered with straw to protect from erosion. Based on this analysis, the geotechnical report concluded that "since the layer of soil spread out in the rear yard is so thin, it is our opinion that the risk of damage to the existing structure, the subject property, or to the adjoining properties is negligible. It is our opinion that no remedial measures are warranted" (Exhibit B).
10. The applicant submitted a landscaping plan showing intention to plant native vegetation (Exhibit C). No existing vegetation or trees are proposed for removal. The applicant intends to plant Evergreen Huckleberry, Thimbleberry, Oregon Oxalis, Wood Strawberry, Sword Fern, Spring Queen, and Twinflower. All of these species are considered native to the region as determined by the City of Portland's Native Plant List.
11. As required by Section 17.60.50(C), **the applicant shall be responsible for replacing any native plant species that do not survive the first two years after planting, and for ensuring the survival of any replacement plants for an additional two years after their replacement.**
12. **Any future development within the FSH overlay district as described in Chapter 17.60 of the Sandy Municipal Code shall require separate permit review.**

DECISION

For the reasons described above, the request by the John Mayner for a Type I FSH review for soil movement and native vegetation planting is hereby **approved as modified by the conditions listed below**.

CONDITIONS OF APPROVAL

- A. **The applicant shall be responsible for replacing any native plant species that do not survive the first two years after planting, and for ensuring the survival of any replacement plants for an additional two years after their replacement.**
- B. **Any future development within the FSH overlay district as described in Chapter 17.60 of the Sandy Municipal Code shall require separate permit review.**



10/17/2022

Shelley Denison
Associate Planner

Date

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.