

## FINDINGS OF FACT and FINAL ORDER TYPE I REVIEW

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<b>DATE:</b>	October 23, 2024
<b>FILE NO.:</b>	24-054 TREE/FSH
<b>PROJECT NAME:</b>	Meinig Tree Removal
<b>PROPOSAL:</b>	Remove two trees to enhance view
<b>APPLICANT/OWNER:</b>	Dennis Meinig
<b>ADDRESS:</b>	15235 SE Bluff Road
<b>MAP/TAX LOTS:</b>	24E11AD, tax lot 01200 (east of Bluff Road)
<b>ZONING:</b>	Single Family Residential (SFR)/FSH Overlay
<b>STAFF CONTACT:</b>	Patrick Depa, Senior Planner

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### **BACKGROUND:**

The applicant owns property on both sides of Bluff Road. The applicant's home is on the west side of Bluff Road and the subject property where tree removal is requested is on the east side of Bluff Road. This property owner has applied and received approval for multiple tree removal permits.

The applicant requests approval to remove two trees within Tax Lot 1200 to the east of Bluff Road. Per the submitted narrative (Exhibit B) and site plan (Exhibit C), the trees are both Douglas firs (22-inch DBH & 20-inch DBH) numbered 52 and 53 on the submitted site plan.

The applicant previously received approval to remove two trees, six-inches or greater within the FSH overlay on five separate occasions. Based on previous land use decisions the site currently has 40 trees at six inches DBH or greater. The five previous tree removal approvals were as follows:

- January 29, 2007 (File Number 06-064 FSH/TREE)
- January 18, 2008 (File Number 07-043 FSH/TREE)
- November 24, 2015 (File Number 15-051 TREE/FSH)
- October 6, 2016 (File Number 16-036 TREE/FSH)
- February 6, 2018 (File Number 17-041 TREE/FSH)

There was a tree and site assessment conducted in 2018 to coincide with the tree removal application the property owner applied for that year. Included with the arborist report was a tree inventory for Tax Lot 1200. The arborist mapped over fifty (50) trees on the applicant's property. The report stated that the previous 20 replacement trees were assessed to be in good health.

The applicant stated that they let the trees previously allowed to be removed just fall to an area below and stay on the ground. The applicant also stated that all tree trunks and root systems were left beneath the ground as recommended.

## **EXHIBITS:**

### **Applicant's Submittals**

- A. Tree Removal Permit Application Form
- B. Narrative
- C. Site Plan

## **FINDINGS OF FACT:**

1. The subject lots have a Plan Map designation of LDR, Low Density Residential, and a Zoning Map designation of SFR/FSH (Single Family Residential/Flood Slope Hazard)
2. Tax Lot 1200 is entirely within the Flood and Slope Hazard (FSH) Overlay district. As such, the application must conform to the requirements of Chapter 17.60, Flood and Slope Hazard (FSH) Overlay District.
3. 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 applicant owns two contiguous parcels (Tax Lots 702 and 1200) totaling approximately 1.43 acres. The site contains greater than one acre, therefore, the proposal is reviewed to determine compliance with Chapter 17.102.
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 included on a list maintained by the Director; 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 six-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 trees six-inch DBH or greater per calendar year.
5. This staff report reflects the applicant's proposal to remove two trees greater than 6 inches DBH. This is the applicants first application since 2018. **The applicant shall not remove any more trees or native vegetation that has been approved within the FSH overlay district. A violation of the provisions set forth in Chapter 17.60, FSH, may result in a fine as specified in Section 17.06.80.**
6. Section 17.102.00 (C) specifies in cases of conflict between Chapter 17.60 and Chapter 17.102, Chapter 17.60 (FSH Overlay) shall prevail.
7. The applicant previously received approval to remove two trees, six-inches or greater within the FSH overlay on five separate occasions. Based on previous land use decisions the site

currently has roughly 52 trees at six-inches DBH or greater. The five previous tree removal approvals were as follows:

- January 29, 2007 (File Number 06-064 FSH/TREE)
  - January 18, 2008 (File Number 07-043 FSH/TREE)
  - November 24, 2015 (File Number 15-051 TREE/FSH)
  - October 6, 2016 (File Number 16-036 TREE/FSH)
  - February 6, 2018 (File Number 17-041 TREE/FSH)
8. The removal of two trees would still leave roughly 50 trees at 6-inches DBH or greater on Tax Lot 1200.
  9. The property has a recorded tree covenant attached to it with over twenty (20) replacement or mitigation trees. The two trees requested to be removed will require four additional replacement trees. These four trees will be added to the existing survey amongst the previously planted replacement trees and added to an updated covenant and recorded.
  10. Section 17.60.40 specifies that a request to remove up to two trees, six-inch DBH or greater within a calendar year within the FSH Overlay is reviewed as a Type I FSH procedure. **With these two trees removed the overall site will have had approval for removal of twenty-two (22) trees 6-inches or greater DBH since 2006.**
  11. 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 is proposing to plant four (4) Western Red Cedars. A Western Red Cedar is a large evergreen conifer with scale-like needles. Because conifer trees are not sold by caliper inches but height, the applicant shall replace each removed tree with two native evergreen trees (at least 6 feet in height) within the restricted development area of the site.**
  12. Per a condition of File Number 17-041 TREE/FSH, the applicant was required to submit an updated tree survey and site plan showing the location of the previous twenty (20) mitigation trees that were required to be planted with previous applications. **A site plan reflecting the 20 trees has been submitted to the Planning Division. The mitigation trees are reflected as letters (A, B C ...) and the existing trees six-inches DBH or greater and retention trees 11 inches DBH or greater are reflected by numbers.**
  13. **The mitigation trees shall be added to the tree inventory map and recorded with a new restrictive covenant that will replace the previously recorded covenant, 2019-006978. A copy of the recorded covenant shall be returned to the City.**
  14. The applicant's application states that the trees proposed for removal will be felled by a professional tree cutter and the stumps will be left in place. The applicant goes on to state

“The roots of the trees will not be disturbed. The stumps will be left in place. Therefore, it should not be necessary to plant additional groundcover.” **The applicant shall replace any disturbed understory or groundcover with native understory or groundcover species that effectively cover the disturbed area. Should groundcover or native understory vegetation die or be disturbed in the future, the applicant shall replace any dead, dying, or disturbed understory or groundcover with native understory or groundcover species that effectively cover the disturbed area.**

15. Mitigation trees 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 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 tree.**
16. **The applicant shall have the removed trees felled such that they do not negatively impact the adjacent trees that are to be preserved. If a felled tree damages a healthy retention tree, the applicant may be subject to a fine.**
17. Due to the extensive history of tree and vegetation removal on the subject site in the restricted development area, **a geotechnical study and report shall be presented if another tree removal application is submitted.** The submitted narrative does not address short-term or long-term issues with slope stabilization and soil erosion which may come into effect after the large diameter trees (some as large as 22-28 inches DBH) are removed from such a steep slope. Where development is proposed on restricted development areas within the FSH overlay district as defined in Subsection 17.60.20.A., certain geotechnical reports may be required as determined by the Director. These reports shall be in addition to other information required for specific types of development and shall be prepared by professionals in their respective fields. The Director may require one or more of these reports where necessary to address potential adverse impacts from the removal of trees within this sloped area.

### **DECISION:**

The application is **approved** because the proposal complies with the standards of Section 17.102, Urban Forestry, and Section 17.60, Flood and Slope Hazard Overlay District, subject to conditions of approval.

### **CONDITIONS OF APPROVAL:**

1. Tree removal shall be limited to a maximum of two trees as detailed on the submitted site plan.

2. The applicant shall not remove any more trees or native vegetation within the FSH overlay district. A violation of the provisions set forth in Chapter 17.60, FSH, may result in a fine as specified in Section 17.06.80.
3. After obtaining staff approval for the proposed locations of the required mitigation trees, the applicant shall record a tree protection covenant specifying the following: (The tree protection covenant shall be submitted to the City for review and approval prior to recording.)
  - Protection of all mitigation trees planted on the site limiting future removal without submittal of an Arborist's Report and City approval.
  - This document shall include a sketch identifying the locations of the required mitigation trees associated with land use File Numbers 06-064 FSH/TREE, 07-043 FSH/TREE, 15-051 FSH/TREE, 16-036 FSH, and 17-041 FSH, and shall be recorded with Clackamas County.
  - Based on previous tree removal requests and required mitigation trees, there should be at least 20 mitigation trees (including the 4 trees that will be planted with this application). The tree protection covenant shall identify the location of all 20 required mitigation trees. If any of the 20 mitigation trees are missing or are not in good condition per the arborist report, the applicant shall replace them so that there are 20 mitigation trees in good condition on the site.
  - After obtaining staff approval for at least four (4) required retention trees, the applicant shall include the locations of the required retention trees in the recorded tree protection covenant.
  - The new restrictive covenant shall repeal and replace the previously recorded covenant, 2019-006978. A copy of the recorded covenant shall be returned to the City.
4. The applicant shall have the removed trees felled such that they do not negatively impact the adjacent trees that are to be preserved. If a felled tree damages a healthy retention tree, the applicant may be subject to a fine.
5. The applicant shall maintain all mitigation trees 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 tree.
6. Future removal of trees (whether included in the recorded covenant or not) or removal of vegetation on the subject property requires additional permit approvals. The applicant shall apply for a Type I permit prior to removing any non-native/invasive vegetation, dead or dying vegetation that is hazardous to the public, or up to two trees 6 inches DBH or greater in a calendar year. The applicant shall replace any disturbed understory or groundcover with native understory or groundcover species that effectively cover the disturbed area. Should

groundcover or native understory vegetation die or be disturbed in the future, the applicant shall replace any dead, dying, or disturbed understory or groundcover with native understory or groundcover species that effectively cover the disturbed area.

7. 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.
8. Due to the extensive history of tree and vegetation removal on the subject site in the restricted development area, a geotechnical study and report shall be presented if another tree removal application is submitted.



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Patrick Depa  
Senior Planner

### **RIGHT OF APPEAL**

A decision on a land use proposal or permit may be appealed to the Planning Commission by a party with appeal standings 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 Section 17.28.50;
5. Payment of required filing fees. Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision), 500 feet of the subject property for appeal of a Type II, III, or IV decision, or 1,000 feet for appeal of an annexation request. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal.