



AGENDA & Notice of Planning Commission Work Session Meeting

The Planning Commission of the City of Newport will hold a work session meeting at **6:00 p.m., Monday, April 23, 2012**, at the Newport City Hall, Conference Room "A", 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder, 541-574-0613.

The City of Newport Planning Commission reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the work session.

NEWPORT PLANNING COMMISSION Monday, April 23, 2012, 6:00 P.M.

AGENDA

A. Unfinished Business.

1. Further discussion and closure on VRD issue.

B. New Business.

1. Review of sample erosion control codes and discuss general regulatory framework. (tabled from last meeting)

C. Adjournment.



Wanda Haney

From: Steve Salisbury [nyebeach1@gmail.com]
Sent: Thursday, April 12, 2012 5:24 PM
To: Mark McConnell; Richard Beemer; 'David N. Allen'; Lon Brusselback; Dean Sawyer; Wanda Haney
Subject: Forwarded Client letter in re: VRDs
Attachments: JYoungVRD.pdf

Members of the Council and Planning Commission,

The attached letter from a client is self explanatory. I sold their Lincoln City home and sold them a home in a Newport neighborhood where the CC&Rs prevent vacation rentals.

As for the current city ordinance regulating VRDs, it is sound policy, quite clear and designed well to protect the citizens and neighborhoods of Newport. Sure legal counsel is going to tell you that it can be litigated. That is how they make their money. But believing this is a Measure 56 issue transcends naivete by a significant margin. I remind all that this is the same city manager and planning (nee development) director that brought us the DOGAMI red lining, usurious system development fees, cost overruns on the bay front, change of water system plans while hiding same from the committee for 9 months (exceeding the bond funding) and giving themselves a raise while everyone else in the city was struggling to stay afloat. You were elected to stop such irresponsible behavior. The rest of us do not have PERS or County/City employee retirement benefits upon which to rely. It is time that each of you start thinking in generational terms rather than election ones.

Steve Salisbury
Steve Salisbury

--

Steve Salisbury
(Click Below for More)
NYE BEACH, OR



Memo

To: Newport Planning Commission / Commission Advisory Committee
From: Derrick Tokos, Community Development Director 
Date: April 19, 2012
Re: Vacation Rental and Bed and Breakfast Uses in R-1 and R-2 Zone Districts

As discussed at the April 9, 2012 work session, the following are approaches for the Planning Commission to consider in responding to the City Council's request that it explore whether or not the City can impose additional standards in the R-1 and R-2 zones for Vacation Rental Dwelling (VRD) and Bed and Breakfast Uses (B&B).

- Status Quo. This approach should be taken if you believe that the new endorsement criteria (effective July 1, 2012) adequately address the impacts of VRDs and B&B uses, or if you do not see a clear public need for additional standards at this time. Additional requirements could be put in place for the R-1 and R-2 districts in the future should the need arise.
- Tenancy Limits. A distinguishing factor between a typical residential occupancy and that of a VRD or B&B is the transient nature of the use. City rules that are now in effect limit tenancy of VRDs in all residential zones to not more than 10 "weekly rentals" in a calendar year. B&Bs are not permitted in the R-1 and R-2 Districts. The new endorsement standards will not impose any tenancy limits in these districts.

The R-1 and R-2 districts are distinguishable from the R-3 and R-4 districts in that they do not allow transient residential uses other than VRDs. The R-3 allows B&B and Rooming/Boarding House uses conditionally. That list of uses expands in the R-4 to include Hotels/Motels, and Hostels. Those are also conditional uses.

If you believe that the frequency of transient rental use could adversely impact the character of residential neighborhoods in the R-1 and R-2 zones then, as a matter of policy, it is reasonable to impose a tenancy limit. This could be an additional endorsement standard.

In doing so, you could take the position that the existing limit of 10 occurrences in a calendar year limitation is a known commodity and that we don't want the frequency to be appreciable greater because it is unclear how it will affect existing neighborhoods.

The current 10 weekly rental limit has proven unenforceable because it is difficult to track and there is no reasonable way to determine what is or isn't a paid occupancy. The tracking element has been addressed with the guest registry requirement. It may need to be

adjusted so that staff other than emergency responders can utilize the information. The issue of payment can be resolved by taking it out of the equation. In other words, a transient tenancy exists irrespective of whether or not the owner receives payment.

Cannon Beach and Durango have vacation rental codes with tenancy limits. Cannon Beach imposes a variable requirement (i.e. 1 tenancy every 14 to 30 days). Durango limits tenancies to 1 every 7 days. Measure 56 notice is not required unless it is evident that the proposed tenancy limit is more restrictive than the 10 weekly rental allowances. If the Commission wants to proceed with this option, hearing notices should be provided to all persons who have participated in the process to date.

- Density Limits. This approach would be similar to a tenancy limit, but gets at the number of units in transient use rather than the frequency of use. Bandon, Lincoln City, Cannon Beach, Manzanita, Seaside and Durango employ some form of limit. Those come in three flavors; an ownership based approach (e.g. one license per owner), proximity based (e.g. fixed setback or percentage of units within a given area) or a fixed cap (e.g. not more than a certain percentage of residential dwellings or a maximum number of permits). This could be structured as an additional endorsement standard. Measure 56 notice would be required.
- Conditional Use.

This approach requires conditional use approval for any VRD or B&B use in an R-1 and R-2 zone district. To do this you will need a problem statement. That is, you will need to be able to describe the impact that VRDs have had on residential areas within these zone districts and how subjecting them to a conditional use process addresses those impacts. This would help you identify the potential approval criteria as well (assuming the current conditional use standards are inadequate). I have not heard a clear explanation of the problem, at least for those VRDs that have been operating in compliance with the current rules, so I don't have a rationale to offer for your consideration.

If you go down this path, it is important that you focus on the transient nature of a VRD or B&B use as opposed to other uses that are allowed in residential zone districts. Arguments that start to characterize the residents living in our different zoning districts as opposed to land uses are out of bounds. That leads to exclusionary zoning, which is impermissible. Measure 56 notice would be required.

For Monday's work session, I'll be prepared to further discuss the above options or any other approaches that Commission members feel will be responsive to the City Council's request.

Attachments

Ordinance regulating Vacation Rental and Bed and Breakfast uses (No. 2032)
April 12, 2012 email from Rod Croteau
April 18, 2012 email from Bob Berman

CITY OF NEWPORT

ORDINANCE NO. 2032

AN ORDINANCE AMENDING THE NEWPORT ZONING ORDINANCE
(ORDINANCE NO. 1308, AS AMENDED) RELATING TO
VACATION RENTALS AND BED AND BREAKFAST FACILITIES

Findings:

1. The City of Newport Zoning Ordinance (No. 1308, as amended) contains criteria that apply to the use of dwelling units as vacation rentals or bed and breakfast facilities inside the City of Newport. The criteria are found in Section 2-1-1.101 ("Definitions"), Section 2-2-1 ("Zoning Districts") and Section 2-4-11 ("Bed and Breakfast Facilities") of the Ordinance.
2. These criteria set out the terms and procedures by which vacation rental and bed and breakfast uses may be permitted for the purpose of ensuring the safety and convenience of renters, owners and neighboring property owners; protecting the character of residential neighborhoods; and addressing potential negative effects such as excessive noise, overcrowding, illegal parking, and accumulation of refuse.
3. The City of Newport Planning Commission and an Ad-Hoc Work Group of community volunteers completed a comprehensive review of these code sections and determined that amendments are needed because the existing rules are difficult to interpret and enforce and, in the case of conditional uses, have led to inconsistent application and implementation of the requirements over time.
4. The City of Newport Planning Commission and the Ad-Hoc Work Group further find that creating clear and objective criteria to allow vacation rentals and bed and breakfast facilities in all residential zones is a more effective method of achieving the purpose of the regulations than existing requirements that limit vacation rentals or bed and breakfast uses through the imposition of discretionary criteria or arbitrary occupancy limits.
5. The Ad-Hoc Work Group, in consultation with the Newport Planning Commission, met seven (7) times between March and November of 2011 to develop draft amendments (File No. 1-Z-11). The Planning Commission met six (6) times in work session during this same time period to review the amendments. Following public hearings on January 9, 2012 and February 27, 2012, the Planning Commission voted to recommend adoption of the proposed amendments.
6. Prior to the Planning Commission hearings, a public workshop was held on September 12, 2011 at which the general public was provided an opportunity to comment on the proposed amendments. Mail notice of the workshop was provided to persons that will be subject to these regulations with an August water billing mailing. A stakeholder list compiled by the city of persons operating vacation rentals also received the notice.

7. The City Council held a public hearing on March 19, 2012 regarding the question of the proposed revisions and voted in favor of their adoption after considering the recommendation of the Planning Commission and evidence and argument in the record.
8. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted as support for the Council's Land Use Code amendments, below.

Section 2. Definitions for the terms "Bed and Breakfast Facility," "Hotel," "Motel," and "Residential Unit," of Section 2-1-1.101 of Ordinance No. 1308 (as amended), Definitions, are amended as follows:

- A. **Bed and Breakfast Facility.** An owner occupied single-family dwelling containing not more than five (5) guest rooms, where meals are provided for a fee on a daily or weekly room rental basis, not to exceed 30 consecutive days.
- B. **Hotel.** A building in which lodging is provided for guests for compensation and contains a common entrance and where lodging rooms do not have an entrance opening directly to the outdoors (except for emergencies), with or without cooking facilities, and where more than 50 percent of the lodging rooms are for rent to transient guests for a continuous period of less than 30 days. A bed and breakfast facility or a vacation rental conducted in a single family dwelling or individual dwelling unit is not a hotel use.
- C. **Motel.** A building or group of buildings in which lodging is provided for guests for compensation, containing guest units with separate entrances from the building exterior, with or without cooking facilities, and where more than 40 percent of the lodging rooms are for rent to transient guests for a continuous period of less than 30 days. A bed and breakfast facility or a vacation rental conducted in a single family dwelling or individual dwelling unit is not a motel use.
- D. **Residential Unit.** See definition of "Dwelling Unit."

Section 3. A definition for the term "Vacation Rental" is added to Section 2-1-1.101 of Ordinance No. 1308 (as amended), Definitions, as follows:

Vacation Rental. A dwelling unit containing not more than five (5) guest rooms that is rented for less than 30 consecutive days.

Section 4. Definitions for the terms "Pre-existing Time Share Project," "Time Share Interest," "Time Share Project," and "Weekly Rental," of Section 2-1-1.101 of Ordinance No. 1308 (as amended), Definitions, are deleted.

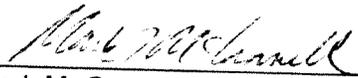
Section 5. Subsection 2-2-1.025(11) of Ordinance No. 1308 (as amended), Zoning Districts/Residential Uses is amended to list a "Bed and Breakfast Facility" and "Vacation Rental" as permitted uses in all residential zone districts subject to endorsement requirements of Section 2-4-11.

Section 6. Section 2-4-11 of Ordinance No. 1308 (as amended), Bed and Breakfast Facilities, is repealed in its entirety and replaced with a new Section 2-4-11, as shown in Exhibit "A".

Section 7. This ordinance shall take effect on July 1, 2012.

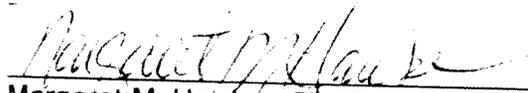
Adopted on April 2, 2012.

Signed by the Mayor on April 3, 2012.



Mark McConnell, Mayor

ATTEST:



Margaret M. Hawker, City Recorder

Exhibit A to Ordinance No. 2032, Repealing and Replacing Section 2-4-11 of the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) Relating to Vacation Rental and Bed and Breakfast Facilities

Section 2-4-11. BED AND BREAKFAST AND VACATION RENTAL FACILITIES

2-4-11.005. Purpose. This section establishes the terms, criteria and procedures by which bed and breakfast and vacation rental uses may be permitted to ensure the safety and convenience of renters, owners and neighboring property owners; protect the character of residential neighborhoods; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and accumulation of refuse.

2-4-11.010. General Provisions.

- A. Vacation rental and bed and breakfast use of an existing dwelling unit is permitted in all residential and commercial zone districts subject to a business license endorsement (“endorsement”) pursuant to the provisions of this section;
- B. An endorsement for a vacation rental or bed and breakfast use is specific to the owner of a dwelling unit. When the holder of an endorsement sells or transfers the real property, the new owner shall obtain an endorsement before using the dwelling unit as a vacation rental or bed and breakfast facility. However, if a vacation rental or bed and breakfast use was in existence on such real property as of the effective date of subsection 2-4-11.010(D), that subsection shall apply to the transferee as well;
- C. Vacation rental or bed and breakfast endorsements shall remain in effect so long as a valid business license is maintained for the rental use and the property is not sold or transferred;
- D. Each vacation rental and bed and breakfast use in existence as of the effective date of this section shall be subject to the provisions of this section.
 - (1) A business license endorsement shall be applied for within one hundred twenty (120) days of the effective date of the ordinance enacting this section. In the event an owner previously established a vacation rental or bed and breakfast facility use in accordance with applicable City of Newport land use codes, the City shall permit the existing land use to continue without requiring compliance with standards listed in subsection 2-4-11.025 relating to maximum overnight occupancy, parking, landscaping, and shared access. The exemption to standards in subsection 2-4-11.025 listed herein shall not apply to vacation rentals operated not more than ten times in a calendar year.
 - (2) A prior land use approval shall be voided and the standards of 2-4-11.025 complied with if:
 - (a) an owner fails to apply for an endorsement within one hundred twenty (120) days of the effective date of the ordinance; or
 - (b) a business license lapses for at least 12 consecutive months.

Exhibit A to Ordinance No. 2032, Repealing and Replacing Section 2-4-11 of the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) Relating to Vacation Rental and Bed and Breakfast Facilities

(3) The provisions of this subsection 2-4-11.010 govern, notwithstanding NZO Section 2-5-1, governing Nonconforming Uses, Structures, and Lots;

E. If one or more of the standards under subsection 2-4-11.025 cannot be met, an owner may seek approval of a vacation rental or bed and breakfast use as a Conditional Use, pursuant to Section 2-5-3 of this Ordinance. A Conditional Use Permit may allow relief from one or more of the endorsement standards of subsection 2-4-11.025, but does not excuse the general NZO Section 2-4-11 endorsement requirement.

2-4-11.015. Approval Authority.

- A. Upon receipt of an application for a vacation rental or bed and breakfast endorsement, the Community Development Director, or designee shall determine if the request satisfies the standards of subsection 2-4-11.025. If the request satisfies the standards, then the Director shall issue the endorsement and provide notice per subsection 2-4-11.035. Such action is ministerial and, as a non-discretionary act, is not subject to appeal. The endorsement is effective upon satisfaction of the inspection requirements of subsection 2-4-11.030.
- B. In the event that the Community Development Director or designee determines that an application does not meet one or more of the standards of subsection 2-4-11.025, an endorsement shall not be issued.
- C. A Conditional Use Permit application for a vacation rental or bed and breakfast use shall be submitted to the Community Development Director, or designee, and shall be reviewed by the Planning Commission via a Type III decision making process, consistent with NZO Section 2-6-1, Procedural Requirements.
- D. An approved Conditional Use Permit that grants relief from, or provides alternative requirements to, one or more of the standards of subsection 2-4-11.025 shall satisfy the standards of subsection 2-4-11.025 and permit the Director to issue the endorsement.

2-4-11.020. Application Submittal Requirements. An application for a vacation rental or bed and breakfast endorsement shall be submitted on a form provided by the Community Development Department, and shall include the following:

- A. Site plan, drawn to scale, showing the dimensions, property lines, existing buildings, landscaped area, and off-street parking locations;
- B. Lincoln County Assessor's map showing the subject property and notification area; and
- C. Names and addresses of property owners within 200' of the subject property (or outline of property that is held in common), as shown in the records of the County

Assessor. If the property is within a Homeowners Association, then contact information for the Association shall also be provided.

2-4-11.025. Standards for Vacation Rental or Bed and Breakfast

Endorsement. An application for a vacation rental or bed and breakfast use shall comply with the following standards:

- A. **Maximum Overnight Occupancy.** Maximum overnight occupancy shall be two (2) persons per bedroom, plus two additional persons per property;
- B. **Maximum Building Occupancy.** The maximum number of individuals permitted within a vacation rental or bed and breakfast is subject to the limitations of the Uniform Fire Code or such other provisions of said code as may be applicable;
- C. **Parking Standards.** One (1) off-street parking space per bedroom that is dedicated to the vacation rental or bed and breakfast use. The location and design of parking spaces shall comply with NZO Section 2-3-6, and designated spaces shall be available at all times to guests;
- D. **Waste Management.** Weekly solid waste disposal service shall be provided while the dwelling is occupied for vacation rental or bed and breakfast use;
 - (1) Owner or designee shall provide for regular garbage removal from the premises; and
 - (2) Trash receptacles shall be stored or screened out of plain view of the street.
- E. **Landscaping.** For vacation rental and bed and breakfast uses situated on individual lots or parcels in residential zones, at least 50% of the front yard and 40% of the total area shall be landscaped. No more than 50% of the front yard landscaping may be impervious surfaces, such as patios and decks. Driveway and parking areas shall not satisfy any portion of these landscaping requirements;
- F. **Guest Register.** Owner or designee shall maintain a guest and vehicle register for each tenancy. The register shall include the name, home address, and phone number of the primary tenant; the total number of occupants; vehicle license plate numbers of all vehicles used by the tenants, and the date of the rental period. This information shall be provided to City emergency responders upon request;
- G. **Contact Information.** Owner or designee shall maintain on file with the City the name, telephone number, mailing address and email address (if available) of a contact person responsible for responding to questions or concerns regarding operation of the vacation rental or bed and breakfast. The contact person or designee must accept calls on a 24 hour basis and respond to inquiries from a tenant, complainant or the City within 24 hours. For the purpose of this subsection "respond" means an attempt

Exhibit A to Ordinance No. 2032, Repealing and Replacing Section 2-4-11 of the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) Relating to Vacation Rental and Bed and Breakfast Facilities

to contact the person or persons that made the inquiry to address their questions or concerns;

- H. Emergency Information. Owner or designee shall provide information within the dwelling unit to inform and assist renters in the event of a natural disaster, power outage, or other emergency. Required information includes, but is not limited to:
- (1) A tsunami evacuation map produced by Lincoln County Emergency Services, Oregon Department of Geology and Mineral Industries or other agency with similar authority.
 - (2) Phone numbers and addresses for emergency responders and utility providers.
 - (3) Other information as established by resolution of the City Council;
- I. Noise. Noise levels shall conform to the requirements of Chapter 8.15 of the Newport Municipal Code;
- J. Posting. A copy of the business license endorsement shall be located within the vacation rental or bed and breakfast and its location shall be posted inside the dwelling unit's primary entrance. In addition to the endorsement, such information shall include occupancy limits; a phone number and address for the designated contact; a diagram of the premises with parking locations; the maximum number of vehicles that can be parked on-site; instructions for trash pick-up, storage and recycling; emergency information; and the noise limitations of Section 8.15.015 of the Newport Municipal Code. This information shall be maintained and current at all times;
- K. Shared Access. Written consent is required from affected owners for applications that rely upon shared driveway, parking or beach access;
- L. Signs. Signs shall conform with applicable provisions of Title X of the Newport Municipal Code;
- M. Business License Required. A business license for the rental use shall be obtained pursuant to Chapter 4.05 of the Newport Municipal Code; and
- N. Room Tax. Owner or designee shall adhere to the room tax requirements of Chapter 3.05 of the Newport Municipal Code.

2-4-11.030. Inspections.

- A. A dwelling unit proposed for a vacation rental or bed and breakfast use shall be inspected by the Building Official or designee to determine its conformance with the endorsement standards of subsection 2-4-11.025 and the following basic health and safety elements:

Exhibit A to Ordinance No. 2032, Repealing and Replacing Section 2-4-11
of the Newport Zoning Ordinance (Ordinance No. 1308, as Amended)
Relating to Vacation Rental and Bed and Breakfast Facilities

- (1) Bedrooms shall have an egress window or exterior door that is operable, with a minimum opening size of 5.7 sq. ft., and that is located not more than 44 inches above the finished floor;
 - (2) Interior and exterior hand railing shall be secure with a maximum width of four (4) inches between guard rails on open stairs. Hand and/or guard railing shall be installed for staircases with four (4) or more risers and on decks or porches that are more than 30 inches above grade;
 - (3) Windows within a 24 inch arc of doors shall be safety glazed;
 - (4) Wood frame decks shall be structurally sound. In cases where a deck supports a hot tub or other features of a similar size and weight, engineering analysis of the supports may be required;
 - (5) Electrical plug-ins and light switches shall have face plates;
 - (6) Electric breaker boxes shall have all circuits labeled, and empty breaker spaces must be plugged;
 - (7) GFCI (Ground Fault Circuit Interrupter) protected plug receptacles shall be provided for exterior, kitchen, and bathroom plugs;
 - (8) Functioning smoke detectors shall be installed in all bedrooms and in hallways between a potential fire source and sleeping areas.
 - (9) Functioning carbon monoxide alarms shall be installed if the unit (a) contains a heater, fireplace, appliance or cooking source that uses coal, kerosene, petroleum products, wood or other fuels that emit carbon monoxide as a by-product of combustion; or (b) includes an attached garage with an opening that communicates directly with a living space. Such alarms shall be installed in compliance with State Fire Marshal Rules and any applicable requirements of the State Building Code, and there shall be available in the premises a written notice containing instructions for testing the alarm.
 - (10) Water heaters shall be strapped and secured in accordance with seismic protections standards, with a TEP (Temperature and Pressure Relief) line that is run to an approved location.
- (B) If the Building Official or designee requires alterations, the identified deficiencies must be corrected as follows:
- (1) In circumstances where the unit is already subject to a rental agreement the Building Official or designee may allow continued use, provided corrective action is taken within 30 days, or an alternative timeline acceptable to the Building Official.

Exhibit A to Ordinance No. 2032, Repealing and Replacing Section 2-4-11 of the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) Relating to Vacation Rental and Bed and Breakfast Facilities

- (2) For units undergoing an initial inspection prior to vacation rental or bed and breakfast use, corrective action shall be undertaken before the dwelling unit can be rented.
- (C) Dwelling units with an endorsement for vacation rental or bed and breakfast use shall be subject to periodic re-inspection by the Building Official or designee at the City's discretion to ensure compliance with the provisions of this chapter. The timeframe for such inspections is subject to the City's discretion and available resources.

2-4-11.035. Notice Requirements. Upon issuance of an endorsement, the City shall provide notice to property owners within 200' of the subject property (or outline of property that is held in common) and a Homeowners Association, if one is established where the dwelling unit is located, advising that an endorsement for a vacation rental or bed and breakfast use has been issued. Such notice shall include the address of the dwelling unit that received the endorsement, a location where additional information can be obtained about the nature of the endorsement, and the name, phone number, mailing address, and email address (if available) of the owner or designated contact.

2-4-11.040. Complaints. The designated contact identified in subsection 2-4-11.025(G) above, is the initial point of contact for complaints regarding the use of the dwelling unit. That individual shall maintain a written log documenting the nature of all complaints related to endorsement standards, the dates they were received, and efforts taken to resolve issues that have been raised. The written log shall be provided to the City upon request.

2-4-11.045. Violations. Penalties, as specified in subsection 2-4-11.050, may be imposed for one or more of the following violations:

- A. Advertising; renting; using; or offering for use, occupancy or rent; a vacation rental or bed and breakfast facility where the owner does not hold a valid endorsement issued pursuant to this section;
- B. Advertising; renting; using; or offering for use, occupancy or rent; a vacation rental or bed and breakfast facility in a manner that does not comply with the endorsement requirements of subsection 2-4-11.025;
- C. Failure to comply with the endorsement standards and operational requirements of this NZO Section 2-4-11;
- D. Failure by the owner to pay the transient room tax required by Chapter 3.05 of the Newport Municipal Code; or
- E. Failure of the owner's designated contact to respond to tenant, citizen or City complaints or inquiries. "Failure to respond" occurs if City staff is unable to reach

Exhibit A to Ordinance No. 2032, Repealing and Replacing Section 2-4-11 of the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) Relating to Vacation Rental and Bed and Breakfast Facilities

the designated contact after three attempts, using the information that the owner or designee has on file with the City.

2-4-11.050. Penalties. Penalties for a violation of subsection 2-4-11.045.A shall be as established in NZO Section 2-6-8. Where the owner possesses a valid endorsement or land use permit, the penalties for violations of 2-4-11.045.B-E shall be as follows:

- A. For the first violation within a 12 month period, City shall issue a written warning to owner.
- B. For the second violation within a 12 month period, City shall suspend owner's vacation rental or bed and breakfast endorsement for 30 days.
- C. For the third violation within a 12 month period: 1) City shall revoke owner's vacation rental or bed and breakfast endorsement; and 2) where an endorsement includes a Conditional Use Permit, City shall also initiate the revocation procedure as outlined under NZO Section 2-6-1.075.

Thoughts on Vacation Rental Prohibition in R-1 and R-2.....Bob Berman, 18 April 2012

As you know, I think that Vacation Rentals should not be allowed in zones R-1 and R-2, and I have testified several times to that effect. Because the commission is now considering such a prohibition and because I am now a member of the Citizens Advisory committee, I would like to share my thoughts with you on why such a prohibition might be justified.

It has been suggested that the commission must provide a rationale for distinguishing between Vacation Rentals in R-1 / R-2 and those in R-3 / R-4. Such a rationale could be based on the following four observations:

The current code distinguishes between the four residential zones mostly with reference to housing density, with additional differences concerning usage and activities. For example, in the current code Rooming and Boarding Houses, Bed and Breakfast Inns, and Residential Facilities are prohibited in R-1 and R-2 while they are allowed in R-3 and R-4— even though these types of businesses legally can be operated out of single-family residences.

One might base a further distinction between R-1/R-2 and R-3/R-4 on "permanence of residence" of the people living in the various zones. This is more subjective, and I know of no actual data on the subject, but I would submit that, in general, residents of Newport's R-1 and R-2 zones are more full-time in character than the city's R-3 and R-4 residents. Many of the permitted residential uses in R-3 and R-4 imply a relatively short duration of residence—think about Assisted Living Facilities, Apartments, Nursing Homes, and other types of single or multiple person/family residences that are based on rent or lease payments as opposed to those based on resident ownership.

Residences in R-1 and R-2 are theoretically more likely to coalesce into a neighborhood. By that I mean that those permanent resident-owners generally make an effort to know their neighbors, look after each other's interests, provide maintenance for the common areas, socialize, and develop bonds that residents of rented and leased properties might not choose to establish. Neighborhood development is facilitated by long-term ownership/occupancy.

One of the biggest problems with permitting Vacation Rentals in R-1 and R-2 zones is that, by definition, there is no full-time resident in the house. There is no opportunity for that property to be drawn into the neighborhood because there is no "neighbor"—all of the occupants are transient, one-night-stands as opposed to lasting relationships. The behavior of these transient occupants is not guided by the same ethical and behavioral norms as is the behavior of the surrounding R-1/R-2 neighbors. Some vacation-renters often behave in ways they would never dare to in their home neighborhoods. I think that this is the biggest problem with allowing Vacation Rentals in R-1 and R-2 and is the source of the majority of the problems we have had with the Vacation Rental in our neighborhood.

Based on these considerations, I would urge the commission to prepare amendments to the ordinance to prohibit Vacation Rentals in R-1 and R-2.



April 12, 2012

Dear Derrick and Commissioners:

My position on restricting vacation rentals in R-1 and R-2 districts is now well known. I would like to prohibit vacation rentals in these districts but I see no way of "justifiably" doing so without such a prohibition in all residential districts (R-1, R-2, R-3 & R-4); however, the latter would seem to be not feasible.

There may be an alternative to an outright ban that could provide some restriction to the outright use permitted in the new proposed "Vacation Rental Code Update". Why not leave in place the current restriction (quoted from the Memo of February 11, 2011) "No such residential unit may be permitted as a weekly rental unless the same shall be rented not more than 10 times in any calendar year . . .". I note from the same memo that "The city allows more frequent vacation rental use in its medium and high density residential districts (R-3 and R-4) subject to conditional use approval". Thus, there must already be some "frequency criteria" in place in the existing ordinance for vacation rental CUPs that could now be applied across all residential districts, including R-1 and R-2. This would not seem to create any "takings" issues, since it expands R-1 and R-2 usage beyond what is now permitted.

I appreciate that the frequency limit was unenforceable previously but this extant restriction, now coupled to the new set of proposed rules and its greater transparency, may give this provision more teeth, and make the presence of VRDs in R-1 and R-2 zones more acceptable and the VRBO business freer of abuse.

Sincerely,
Rod Croteau



Memo

To: Planning Commission / Commission Advisory Committee
From: Derrick Tokos, Community Development Director 
Date: April 6, 2012
Re: Development of an Erosion Control Ordinance

The City of Newport requires that erosion control measures be put in place in conjunction with new development in geologically hazardous areas. Given that the Planning Commission recently updated that code, I have not attached a copy. The City also requires that erosion control measures be utilized for development outside of geologically hazardous areas if the earthwork is not related to the construction of a structure. This is picked up under Appendix J of the 2010 Oregon Structural Specialty Code (attached).

The Oregon Department of Environmental Quality (DEQ) requires an erosion control permit for site work that involves an acre or more of clearing. This includes phased projects, where initial grading is under the one acre limit. As with many erosion control programs, DEQ's permitting process addresses storm water management (temporary and ongoing) in addition to erosion control. This is covered under a 1200-C permit, information for which is attached. For jurisdictions that have adopted local erosion control ordinances consistent with DEQ standards, the state allows applicant's to use the local permit as evidence of compliance with their requirements. That is the 1200-CN program. Participating cities are listed in the DEQ informational materials.

Also, enclosed are sample erosion control codes and informational materials from the cities of Astoria, Lincoln City, and Corvallis. Lincoln City implements erosion control requirements on behalf of Lincoln County within the Devils Lake Water District. A copy of the County ordinance is enclosed. Corvallis is a 1200-CN agency and, as with many of the more developed programs, they have an erosion control manual that serves as a technical resource for staff and the public. It is lengthy, so I'll send an email link to their webpage if you are interested in reviewing the document.

When reviewing the attached materials, you might consider the following questions:

1. Are you interested in creating a discretionary criteria, clear and objective standards, or some combination of the above?
2. What type of process would you like to use to develop a draft code?
3. What should the threshold be for requiring erosion control measures?
4. Should permanent storm water management be addressed as part of an erosion control code?
5. Is the 1200-CN program worth exploring as a regulatory streamlining step?

For this work session, I'll be prepared to address the above issues and answer any questions you may have related to the enclosed materials. See you on Monday!



APPENDIX J GRADING

(Adopted by the State of Oregon for optional use in municipalities)

The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.

SECTION J101 GENERAL

J101.1 Scope. The provisions of this chapter apply to grading, excavation and earthwork construction, including fills and embankments. Where conflicts occur between the technical requirements of this chapter and the geotechnical report, the geotechnical report shall govern.

J101.2 Flood hazard areas. The provisions of this chapter shall not apply to grading, excavation and earthwork construction, including fills and embankments, in *floodways* within *flood hazard areas* established in Section 1612.3 or in *flood hazard areas* where design *flood* elevations are specified but floodways have not been designated, unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed work will not result in any increase in the level of the base flood.

SECTION J102 DEFINITIONS

J102.1 Definitions. For the purposes of this appendix chapter, the terms, phrases and words listed in this section and their derivatives shall have the indicated meanings.

BENCH. A relatively level step excavated into earth material on which fill is to be placed.

COMPACTION. The densification of a fill by mechanical means.

CUT. See Excavation.

DOWN DRAIN. A device for collecting water from a swale or ditch located on or above a slope, and safely delivering it to an approved drainage facility

EROSION. The wearing away of the ground surface as a result of the movement of wind, water or ice.

EXCAVATION. The removal of earth material by artificial means, also referred to as a cut.

FILL. Deposition of earth materials by artificial means.

GRADE. The vertical location of the ground surface.

GRADE, EXISTING. The grade prior to grading.

GRADE, FINISHED. The grade of the site at the conclusion of all grading efforts.

GRADING. An excavation or fill or combination thereof.

KEY. A compacted fill placed in a trench excavated in earth material beneath the toe of a slope.

SLOPE. An inclined surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

TERRACE. A relatively level step constructed in the face of a graded slope for drainage and maintenance purposes.

SECTION J103 PERMITS REQUIRED

J103.1 Permits required. Except as exempted in Section J103.2, no grading shall be performed without first having obtained a *permit* therefor from the *building official*. A grading *permit* does not include the construction of retaining walls or other structures.

J103.2 Exemptions. A grading *permit* shall not be required for the following:

1. Grading in an isolated, self-contained area, provided there is no danger to the public, and that such grading will not adversely affect adjoining properties.
2. Excavation for construction of a structure permitted under this code.
3. Cemetery graves.
4. Refuse disposal sites controlled by other regulations.
5. Excavations for wells, or trenches for utilities.
6. Mining, quarrying, excavating, processing or stockpiling rock, sand, gravel, aggregate or clay controlled by other regulations, provided such operations do not affect the lateral support of, or significantly increase stresses in, soil on adjoining properties.
7. Exploratory excavations performed under the direction of a registered design professional.

Exemption from the permit requirements of this appendix shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

SECTION J104 PERMIT APPLICATION AND SUBMITTALS

J104.1 Submittal requirements. In addition to the provisions of Section 105.3, the applicant shall state the estimated quantities of excavation and fill.

J104.2 Site plan requirements. In addition to the provisions of Section 107, a grading plan shall show the existing grade and finished grade in contour intervals of sufficient clarity to indicate the nature and extent of the work and show in detail that it com-

APPENDIX J

plies with the requirements of this code. The plans shall show the existing grade on adjoining properties in sufficient detail to identify how grade changes will conform to the requirements of this code.

J 104.3 Geotechnical report. A geotechnical report prepared by a registered design professional shall be provided. The report shall contain at least the following:

1. The nature and distribution of existing soils;
2. Conclusions and recommendations for grading procedures;
3. Soil design criteria for any structures or embankments required to accomplish the proposed grading; and
4. Where necessary, slope stability studies, and recommendations and conclusions regarding site geology.

Exception: A geotechnical report is not required where the building code official determines that the nature of the work applied for is such that a report is not necessary.

J 104.4 Liquefaction study. For sites with mapped maximum considered earthquake spectral response accelerations at short periods (S_v) greater than 0.5g as determined by Section 1613, a study of the liquefaction potential of the site shall be provided, and the recommendations incorporated in the plans.

Exception: A liquefaction study is not required where the building official determines from established local data that the liquefaction potential is low.

SECTION J105 INSPECTIONS

J105.1 General. Inspections shall be governed by Section 109 of this code.

J105.2 Special inspections. The special inspection requirements of Section 1704.7 shall apply to work performed under a grading permit where required by the building official.

SECTION J106 EXCAVATIONS

J106.1 Maximum slope. The slope of cut surfaces shall be no steeper than is safe for the intended use, and shall be no steeper than two units horizontal to one unit vertical (50-percent slope) unless the owner or authorized agent furnishes a geotechnical report justifying a steeper slope.

Exceptions:

1. A cut surface shall be permitted to be at a slope of 1.5 units horizontal to one unit vertical (67-percent slope) provided that all of the following are met:
 - 1.1. It is not intended to support structures or surcharges.
 - 1.2. It is adequately protected against erosion.
 - 1.3. It is no more than 8 feet (2438 mm) in height.
 - 1.4. It is approved by the building code official.
 - 1.5. Ground water is not encountered.

2. A cut surface in bedrock shall be permitted to be at a slope of one unit horizontal to one unit vertical (100-percent slope).

SECTION J107 FILLS

J107.1 General. Unless otherwise recommended in the geotechnical report, fills shall comply with the provisions of this section.

J107.2 Surface preparation. The ground surface shall be prepared to receive fill by removing vegetation, topsoil and other unsuitable materials, and scarifying the ground to provide a bond with the fill material.

J107.3 Benching. Where existing grade is at a slope steeper than five units horizontal to one unit vertical (20-percent slope) and the depth of the fill exceeds 5 feet (1524 mm) benching shall be provided in accordance with Figure J107.3. A key shall be provided which is at least 10 feet (3048 mm) in width and 2 feet (610 mm) in depth.

J107.4 Fill material. Fill material shall not include organic, frozen or other deleterious materials. No rock or similar irreducible material greater than 12 inches (305 mm) in any dimension shall be included in fills.

J107.5 Compaction. All fill material shall be compacted to 90 percent of maximum density as determined by ASTM D 1557, Modified Proctor, in lifts not exceeding 12 inches (305 mm) in depth.

J107.6 Maximum slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes steeper than two units horizontal to one unit vertical (50-percent slope) shall be justified by a geotechnical report or engineering data.

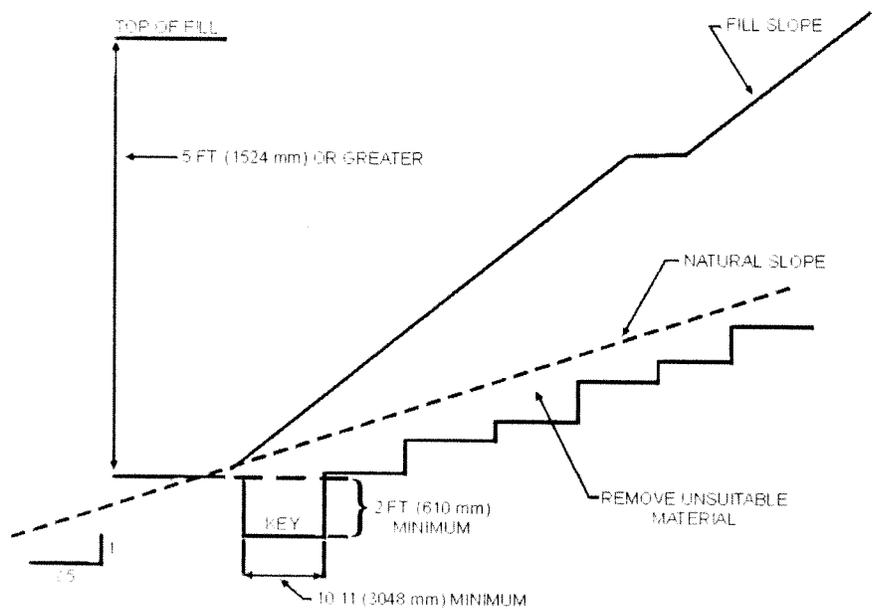
SECTION J108 SETBACKS

J108.1 General. Cut and fill slopes shall be set back from the property lines in accordance with this section. Setback dimensions shall be measured perpendicular to the property line and shall be as shown in Figure J108.1, unless substantiating data is submitted justifying reduced setbacks.

J108.2 Top of slope. The setback at the top of a cut slope shall not be less than that shown in Figure J108.1, or than is required to accommodate any required interceptor drains, whichever is greater.

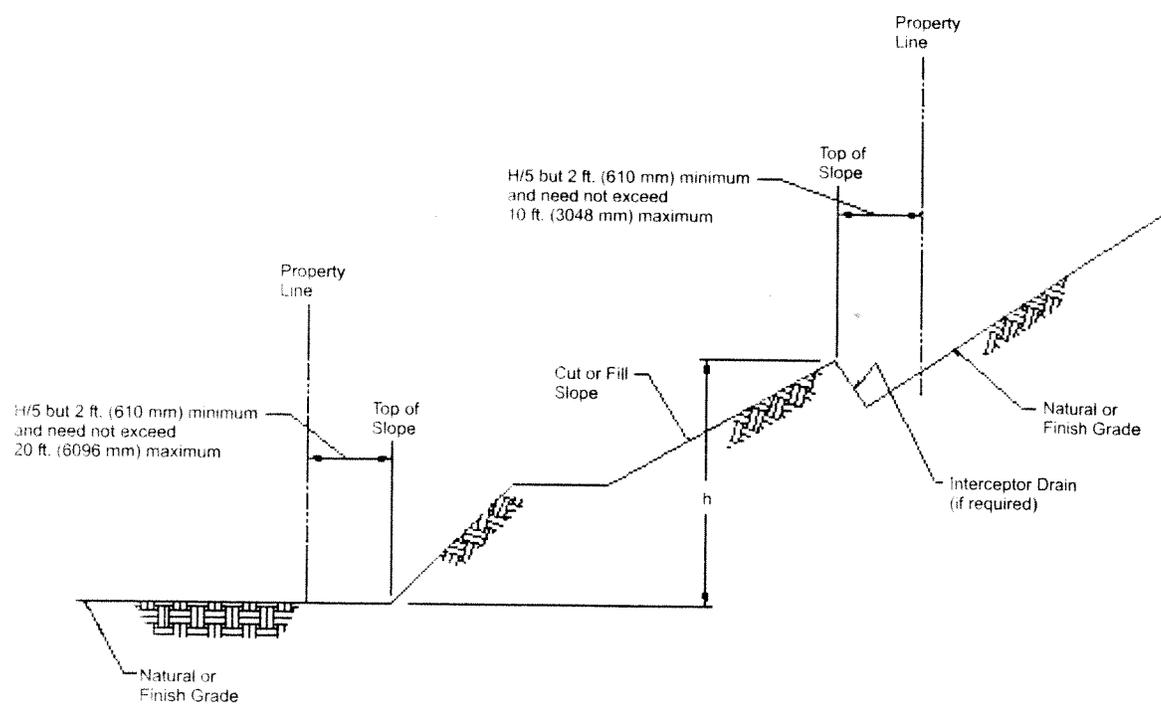
J108.3 Slope protection. Where required to protect adjacent properties at the toe of a slope from adverse effects of the grading, additional protection, approved by the building official, shall be included. Such protection may include but shall not be limited to:

1. Setbacks greater than those required by Figure J108.1.
2. Provisions for retaining walls or similar construction.
3. Erosion protection of the fill slopes.
4. Provision for the control of surface waters.



For SI: 1 foot = 304.8 mm.

**FIGURE J107.3
BENCHING DETAILS**



For SI: 1 foot = 304.8 mm.

**FIGURE J108.1
DRAINAGE DIMENSIONS**

APPENDIX J

SECTION J109 DRAINAGE AND TERRACING

J109.1 General. Unless otherwise recommended by a *registered design professional*, drainage facilities and terracing shall be provided in accordance with the requirements of this section.

Exception: Drainage facilities and terracing need not be provided where the ground slope is not steeper than 3 horizontal to 1 vertical (33 percent).

J109.2 Terraces. Terraces at least 6 feet (1829 mm) in width shall be established at not more than 30-foot (9144 mm) vertical intervals on all cut or fill slopes to control surface drainage and debris. Suitable access shall be provided to allow for cleaning and maintenance.

Where more than two terraces are required, one terrace, located at approximately mid-height, shall be at least 12 feet (3658 mm) in width.

Swales or ditches shall be provided on terraces. They shall have a minimum gradient of 20 horizontal to 1 vertical (5 percent) and shall be paved with concrete not less than 3 inches (76 mm) in thickness, or with other materials suitable to the application. They shall have a minimum depth of 12 inches (305 mm) and a minimum width of 5 feet (1524 mm).

A single run of swale or ditch shall not collect runoff from a tributary area exceeding 13,500 square feet (1256 m²) (projected) without discharging into a down drain.

J109.3 Interceptor drains. Interceptor drains shall be installed along the top of cut slopes receiving drainage from a tributary width greater than 40 feet (12192 mm), measured horizontally. They shall have a minimum depth of 1 foot (305 mm) and a minimum width of 3 feet (915 mm). The slope shall be approved by the *building official*, but shall not be less than 50 horizontal to 1 vertical (2 percent). The drain shall be paved with concrete not less than 3 inches (76 mm) in thickness, or by other materials suitable to the application. Discharge from the drain shall be accomplished in a manner to prevent erosion and shall be approved by the building official.

J109.4 Drainage across property lines. Drainage across property lines shall not exceed that which existed prior to grading. Excess or concentrated drainage shall be contained on site or directed to an approved drainage facility. Erosion of the ground in the area of discharge shall be prevented by installation of nonerosive down drains or other devices.

SECTION J110 EROSION CONTROL

J110.1 General. The faces of cut and fill slopes shall be prepared and maintained to control erosion. This control shall be permitted to consist of effective planting.

Exception: Erosion control measures need not be provided on cut slopes not subject to erosion due to the erosion-resistant character of the materials.

Erosion control for the slopes shall be installed as soon as practicable and prior to calling for final inspection.

J110.2 Other devices. Where necessary, check dams, cribbing, riprap or other devices or methods shall be employed to control erosion and provide safety.

SECTION J111 REFERENCED STANDARDS

ASTM D
1557-e01

Test Method for Laboratory
Compaction Characteristics
of Soil Using Modified Effort
[56,000 ft-lb/ft³ (2,700kN-m³)].

J107.6

Fact Sheet

Applying for the 1200-C Construction Stormwater Permit



State of Oregon
Department of
Environmental
Quality

Water Quality Division

811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
(800) 452-4011
Fax: (503) 229-5850
Contact: Erich Brandstetter
www.deq.state.or.us

Background

In November 2010, the Water Quality Administrator for DEQ signed the revised National Pollutant Discharge Elimination System Stormwater Construction General Permit No. 1200-C to be effective starting December 1, 2010. The permit regulates stormwater runoff to surface waters from construction activities that disturb one or more acres in Oregon.

What you need to know

The Oregon Department of Environmental Quality (DEQ) has made significant changes to the permit. Construction sites disturbing less than five acres within specific local government agencies jurisdictions will be managed through local codes and automatically be covered under the NPDES 1200-CN Permit. Construction sites disturbing less than one acre and part of a larger common development plan or sale will need to be covered under either the NPDES 1200-C Permit or the NPDES 1200-CN. Examples of a large common development or sale include a subdivision or possibly a business park where the larger development started after November 30, 2010.

Permit applications

1. Obtain the application and check to see where to send it.

You can obtain permit application forms on DEQ's Web site at:

<http://www.deq.state.or.us/wq/stormwater/constappl.htm>

If you have questions about the application or do not have access to the Internet, please contact the regional DEQ stormwater representative, Agent or Local Government Agency, who can provide assistance on the preparation and submittal of the application.

DEQ Agents:

City of Eugene, City of Hermiston, City of Troutdale, Clean Water Services (serving Washington County), Clackamas County Service District #1 and Rogue Valley Sewer Services.

DEQ Regional Offices for Stormwater:

Eugene, Pendleton, Bend and Portland

1200-CN Local Government Agencies:

City of Albany, City of Corvallis, City of Eugene, City of Milwaukie, City of Springfield, City of West Linn, City of Wilsonville, City of Gresham, City of Troutdale, City of Wood Village, Multnomah County, Clackamas County Service District #1 and Surface Water Management Agency of Clackamas County, Clean Water Services and Rogue Valley Sewer Services.

2. What you submit with your application

You need to submit a completed application form, an approved Land Use Compatibility Statement with Findings, if applicable, two full sized Erosion and Sediment Control Plan (ESCP) hard copies and one electronic (PDF) ESCP. These forms and related guidance documents, including the application and ESCP guidance document are available on DEQ's Web site at: <http://www.deq.state.or.us/wq/stormwater/constappl.htm> or can be obtained at a DEQ regional office or through a DEQ Agent.

3. Permit fees

You must submit the appropriate permit fees to DEQ or its Agent at the time you apply for new permit coverage.

If you are applying for a new permit, the fee is \$1,586. Please check

<http://www.deq.state.or.us/wq/wqpermit/stminfo.htm> for the appropriate fee. The permittee will also be billed an annual fee of \$804 for every year the permit coverage is in effect after the first year.

If you are submitting your application to a DEQ agent, please contact the Agent for information on the fees.

4. Processing your application

Once you submit the application materials, DEQ or its Agent will review the forms to make sure the application is complete as well as technically and administratively adequate. DEQ or its agent

will return any incomplete application with a list of missing information.

Please note: An incomplete application (incomplete forms, applications submitted without fees, etc.) will be returned to you and will slow the processing of your permit coverage.

5. Public review for construction sites disturbing five acres or more.

- Projects that have the potential to disturb five acres or more of land will be subject to public review. Applications and Erosion and Sediment Control Plans for these projects will be subject to a 14-calendar day public review and comment period.
- For five-acres-or-more of disturbance projects, a notice will be posted on DEQ's Web site <http://www.deq.state.or.us/wq/stormwater/swppubnotice1200c.asp> for public notice. The public will have 14-calendar days to review the application materials and submit comments to DEQ about the application and ESCP. The application materials may also be reviewed at the regional DEQ office.
- After the public comment period, DEQ will review the comments and determine if the Erosion and Sediment Control Plan is adequate. DEQ may request you to change the plan based on public comment.
- After approving the Erosion and Sediment Control Plan, DEQ or its agent will assign the applicant coverage under the 1200-C permit, and will notify all commenters.

6. TMDL - or 303(d) - listed streams

If there is a potential for discharge of stormwater to a portion of a waterbody that is listed for turbidity or sedimentation or that has an established Total Maximum Daily Load (TMDL) for sedimentation or turbidity (available at <http://www.deq.state.or.us/wq/tmdls/basinmap.htm>) from the construction site, then one or more of the BMPs listed below must be implemented. Identify the selected BMP(s) in the ESCP as one that address this condition of the permit, and provide the rationale for choosing the selected BMP(s). (Schedule A.1.1.) The 303(d) list can be found at:

<http://www.deq.state.or.us/wq/assessment/rpt0406/search.asp>.

- b. Erosion control mats;
- c. Tackifiers used in combination with perimeter sediment control BMPs;
- d. Established vegetated buffers sized at 50 feet (horizontally) plus 25 feet (horizontally) per 5 degrees of slope;
- e. Water treatment by electro-coagulation, flocculation, or filtration; and/or
- f. Other substantially equivalent sediment or turbidity BMP approved by DEQ or Agent.

For more assistance, please contact the DEQ Regional Stormwater representative in your area.

DEQ regional (stormwater) offices:

Bend: (541) 388-6146

Eugene: (541) 686-7838

Pendleton: (541) 276-4063

Portland: (503) 229-5263

- a. Compost berms, compost blankets, or compost socks;



**NPDES General Permit 1200-C for Construction Activities
Application Instructions**

A. PROJECT INFORMATION

1. Enter the legal name and contact information of the applicant. Permit coverage will be issued to this entity. This is the person, business, public organization, or other entity responsible for ensuring that erosion and sediment controls are in place and in working order through the life of the project.
 - This must be the **legal** Oregon name (for example, Acme Products, Inc.) or the **legal** representative of the company if it operates under an assumed business name (for example, John Smith, dba Acme Products). This will most likely be the property owner but may be a developer, general contractor, etc.
 - If the applicant is not the individual property owner then the name must be a legal, active name registered with the Oregon Department of Commerce, Corporation Division in Salem at 503-378-4752 or http://egov.sos.state.or.us/br/pkg_web_name_srch_inq_login, unless otherwise exempted by their rules. If the name of the applicant is not registered with the Corporation Division and the applicant is a partnership or doing business as a corporate entity, attach legal documents that verify the entity's existence with the application. The applicant may not use an assumed business name.
 - Permit coverage may be transferred from one party to another. For example, a developer may apply for a permit and then transfer the permit to a contractor. Transfer forms are available from DEQ or at <http://www.deq.state.or.us/wq/stormwater/constappl.htm>.
2. Provide the name of the subdivision, business park, industrial park, etc. Also, provide the latitude and longitude for the approximate center of the site (DEQ Location Tool at <http://deqgisweb.deq.state.or.us/lid/lid.html>) and the acreage involved in the project.
3. Provide the location of the site with respect to crossroads in the area, and, if available, a street address.
4. Check the box that best describes the nature of the construction activity.
5. Provide the name of the receiving waterbody.

B. SIGNATURE OF LEGALLY AUTHORIZED REPRESENTATIVE

- ◆ Corporation – President, secretary, treasurer, vice-president, or any person who performs principal business functions; or a manager of one or more facilities that is authorized in accordance to corporate procedures to sign such documents. Proof of authorization for other than the officers may have to be provided..
- ◆ Partnership – General partner.
- ◆ Sole Proprietorship – Owner. If more than one person is the sole proprietor, each person must sign the form.
- ◆ City, County, State, Federal, or other Public Facility – Principal executive officer or ranking elected official.
- ◆ Limited Liability Company – Member.
- ◆ Trusts – Acting trustee.

APPLICATION AND FEE SUBMITTAL

The following must be completed and submitted to the appropriate DEQ regional office or DEQ agent (below).

- DEQ application form signed by the Legally Authorized Representative meeting the signature requirements in B above
- Site Sketch showing the locations of the erosion and sediment controls, surface water flow arrows, and any drainfields and wells.
- Standard Notes and applicable BMP Detail Sheets.
- The fee for a new application is \$230 payable to Oregon DEQ and must be submitted with this application. The fee is subject to change; please visit <http://www.deq.state.or.us/wq/wqpermit/stminfo.htm> for the current fee. If you are sending your application to a DEQ Agent, check with the DEQ Agent for appropriate fee and make check payable to the DEQ Agent.

DEQ Northwest Region 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987 503-229-5438 or 1-800-452-4011	DEQ Western Region 165 East 7th Avenue, Suite 100 Eugene, OR 97401 541-687-7326 or 1-800-452-4011	DEQ Eastern Region 700 SE Emigrant Avenue, Suite 330 Pendleton, OR 97801 541-278-4605 or 1-800-304-3513
	City of Hermiston 215 Gladys Avenue Hermiston, OR 97838 541-667-5025	

<p style="text-align: center;">DEQ USE ONLY</p> <p>File #: _____</p> <p>Application #: _____</p> <p>LLID #: _____</p> <p>River Mile: _____</p> <p>Legal Name Confirmed: <input type="checkbox"/></p> <p>Notes: _____</p> <p>_____</p>	<p>SMALL LOT APPLICATION</p> <p>NPDES GENERAL PERMIT #1200-C</p> <p>For stormwater discharges to surface waters from construction activities disturbing less than 1 acre that are part of a common plan of development disturbing one or more acres. Sites that meet the automatic coverage requirements of the 1200-CN permit are not required to submit this application.</p>  <p>Oregon Department of Environmental Quality</p>	<p style="text-align: center;">DEQ USE ONLY</p> <p>Date Received: _____</p> <p>Amount: \$ _____</p> <p>Check Name: _____</p> <p>Check #: _____</p> <p>Deposit #: _____</p> <p>Receipt #: _____</p> <p>Notes: _____</p>
--	---	---

Please answer all questions.

A. PROJECT INFORMATION

<p>1. _____</p> <p style="text-align: center;">Applicant (Owner, Developer, or General Contractor)</p> <p>_____</p> <p style="text-align: center;">Contact Name (if different than applicant)</p> <p>_____</p> <p style="text-align: center;">Address</p> <p>_____</p> <p style="text-align: center;">City State Zip</p> <p>_____</p> <p style="text-align: center;">Telephone E-Mail Address</p>	<p>2. _____</p> <p style="text-align: center;">Name of Subdivision or Commercial/Industrial Park</p> <p>Approximate location of center of site: *</p> <p>Latitude: _____</p> <p>Longitude: _____</p> <p>Total Site Acreage (acres): _____</p> <p>Total Disturbed Area (acres): _____</p> <p><i>*For assistance: Location Tool at:</i> http://deqgisweb.deq.state.or.us/llid/llid.html</p>
<p>3. Site location</p> <p>_____</p> <p style="text-align: center;">Address or Cross Street</p> <p>_____</p> <p style="text-align: center;">City State Zip</p> <p>_____</p> <p style="text-align: center;">County</p>	<p>4. Nature of Construction Activity</p> <p><input type="checkbox"/> Single Family (SIC Code 1521)</p> <p><input type="checkbox"/> Multi-Family Residential (SIC Code 1522)</p> <p><input type="checkbox"/> Commercial (SIC Code 1542)</p> <p><input type="checkbox"/> Industrial (SIC Code 1541)</p>

5. Stormwater runoff during construction will flow to:
- Creek/Stream (provide name):
- Ditch (provide name of receiving stream for ditch):
- Municipal storm sewer or drainage system (provide name of receiving stream for system):

B. SIGNATURE OF LEGALLY AUTHORIZED REPRESENTATIVE

I hereby certify that the information contained in this application is true and correct to the best of my knowledge and belief. In addition, I agree to pay all permit fees required by Oregon Administrative Rules 340-045.

<p>_____</p> <p style="text-align: center;">Name of Legally Authorized Representative (Type or Print)</p>	<p>_____</p> <p style="text-align: center;">Title (if applicable)</p>
<p>_____</p> <p style="text-align: center;">Signature of Legally Authorized Representative</p>	<p>_____</p> <p style="text-align: center;">Date</p>



1.5 Minimum BMPs for Small Projects

This manual has been prepared primarily to support development of storm water best management programs for construction sites required to comply with the NPDES 1200-C General Permit. It should be noted that the concepts and BMPs presented in this manual may also be of use to smaller projects, such as those disturbing less than one acre of soil and projects involving single lots or small developments.

The most effective way to minimize the discharge of pollutants in runoff from any construction activity is to implement pollution prevention BMPs such as erosion prevention controls, sediment controls, non-storm water pollution controls, and runoff controls. For small projects, minimum BMPs to consider include:

- Scheduling to avoid earth disturbing activities during wet weather.
- Perimeter sediment controls.
- Storm drain inlet protection.
- Site entrance and exit controls.
- Non-storm water pollution controls, such as materials use and waste management BMPs.
- Covering or otherwise protecting stockpiles
- Projects that include slopes susceptible to erosion should also include runoff and erosion prevention measures.

BMPs should be inspected regularly to identify areas in need of maintenance or improvement to minimize pollutant discharges.

General Information: 1200-CN Construction Stormwater General Permit

1200-CN **Permit** Copy PDF and Permit **Evaluation Report** PDF

Issued December 1, 2010. This permit document is for reference purposes only. In some local jurisdictions with eligible stormwater programs, construction activities that disturb less than five acres will be automatically covered under the 1200-CN permit. In a few jurisdictions, construction activities that disturb less than one acre are automatically covered. Information needed to determine if your project qualifies for the 1200-CN is available below.

Owners and operators of automatically covered construction activities must comply with performance requirements and other terms of the 1200-CN permit, but do not submit a DEQ application or pay fees to DEQ. Owners and operators must comply with all applicable local code, ordinance and permit requirements. The local jurisdiction will provide a copy of the 1200-CN permit when construction is approved. If you do not obtain 1200-CN coverage through the local jurisdiction, you must register for the 1200-C. The 1200-CN applies only to the jurisdictions listed below. Please read the permit to determine if your project meets all the eligibility requirements.

1200-C and 1200-CN **Response to Comments** PDF

1200-CN Jurisdictions for Construction Activities

That will disturb less than 5 acres:

- Albany
- Corvallis
- Eugene
- Milwaukie
- Springfield
- West Linn
- Wilsonville
- Clackamas County Water Environment Services
- Rogue Valley Sewer Services
- Clean Water Services
- Lane County within the MS4 Phase II Permit area
- Multnomah County (unincorporated portions of the county)

That will disturb less than 1 acre:

- Gresham
- Troutdale
- Wood Village



City of Astoria
1095 Duane
Astoria, OR 97103

FOR CITY USE ONLY:	
Permit No.	_____
Date Paid:	_____
Amount Paid:	_____

Engineering Department
 503-338-5173

Community Development Department
 503-338-5183

Fax
 503-338-6538

GRADING & EROSION CONTROL PERMIT APPLICATION

Development Code Section 3.300- 3.330

Check all that apply: Clearing Fill Excavation

Property Location/Address: _____

Lot/Block/Subdivision: _____ Map/Tax Lot: _____

Applicant Name: _____ Email: _____

Business Name (if applicable): _____

Mailing Address: _____

Phone: _____ Business Phone: _____ FAX: _____

Property Owner Name: _____ Email: _____

Mailing Address: _____

Phone: _____ Business Phone: _____ FAX: _____

Signature of Applicant: _____ Date: _____

Existing Use: _____

Proposed Use: _____

This permit grants no rights to trespass on adjacent property and in no way relieves the owner of the property from liability for any damages caused by acts relative to this permit. Any materials deposited on City streets or walks shall be promptly removed.

For Staff Use Only:

LAND USE ZONE _____ FLOOD ZONE _____ GEOLOGIC HAZARD _____

APPROVALS:

Engineering Department _____ Date _____

Community Development Department _____ Date _____

Building Inspection Division _____ Date _____

REVIEW PROCESS:

Time Limit: (Authorization of a permit shall be void after 180 days unless substantial construction or use pursuant thereto has taken place.)

Final Inspection: (The City shall review all regulated activities one year after completion and/or installation of permanent vegetation. After one year, permit will expire and a new permit must be obtained to proceed.)

CALL THE ENGINEERING OFFICE AT 503-338-5173 FOR EROSION CONTROL INSPECTION PRIOR TO STARTING EARTHWORK.

INFORMATION REQUIRED:

Site Plan and Cross Sections - Drawn to an appropriate scale with sufficient dimensions showing:

- Property line locations, roads, areas where clearing, grading, excavating, stripping, or filling is to occur
- Area where existing vegetative cover will be retained
- Location of any springs, streams or wetland areas on or immediately adjacent to the property
- General direction of slopes with slope arrows showing direction of water flow on existing slopes & graded slopes
- Construction access
- Location of the proposed development
- Location of soil stock piles
- Depth of Cuts and Fills
- Finished Slope Grades
- Location of existing and proposed structures
- Location of existing and proposed parking, access and egress
- Location and square footage of landscaped areas

Sediment and Erosion Control Plan - The City shall require that the sedimentation and erosion control plan be prepared by a Registered Professional Engineer where the disturbed area is greater than 20,000 square feet or the disturbed area has an average slope of 35% or greater. Type and location of proposed erosion/ sedimentation control measures:

- Short term
- Post construction

Storm Water Management Methods - Type and location of proposed stormwater management.

- From roofs, parking and other impervious surfaces
- Storm water calculations prepared by a Registered Professional Engineer may be required by the City Engineer as part of the permit application
- Ground and surface water diversion plan if needed. If property construction will result in alterations of natural hydrology such that damage to neighboring properties will occur, the City shall require that any known ground or surface water be diverted to an alternate natural path or to a man-made system to prevent any damage to other properties that may be affected by the water.

Slope Stability Plan in Steep Areas - The City shall require a grading plan prepared by a Registered Professional Engineer and/or Registered Engineering Geologist where the disturbed area has an average slope of 35% or greater, the disturbed area is located in known geologic hazard area, or is part of a partition or subdivision. Such grading plan shall, at a minimum, include the following additional information:

- Existing and proposed contours of the property at two foot contour intervals
- Location of existing structures and buildings, including those within 25 feet of the development site on adjacent property
- Design details for proposed retaining walls
- Direction of drainage flow and detailed plans and locations of all surface and subsurface drainage devices to be constructed
- Methods for ensuring slope stability during and after construction

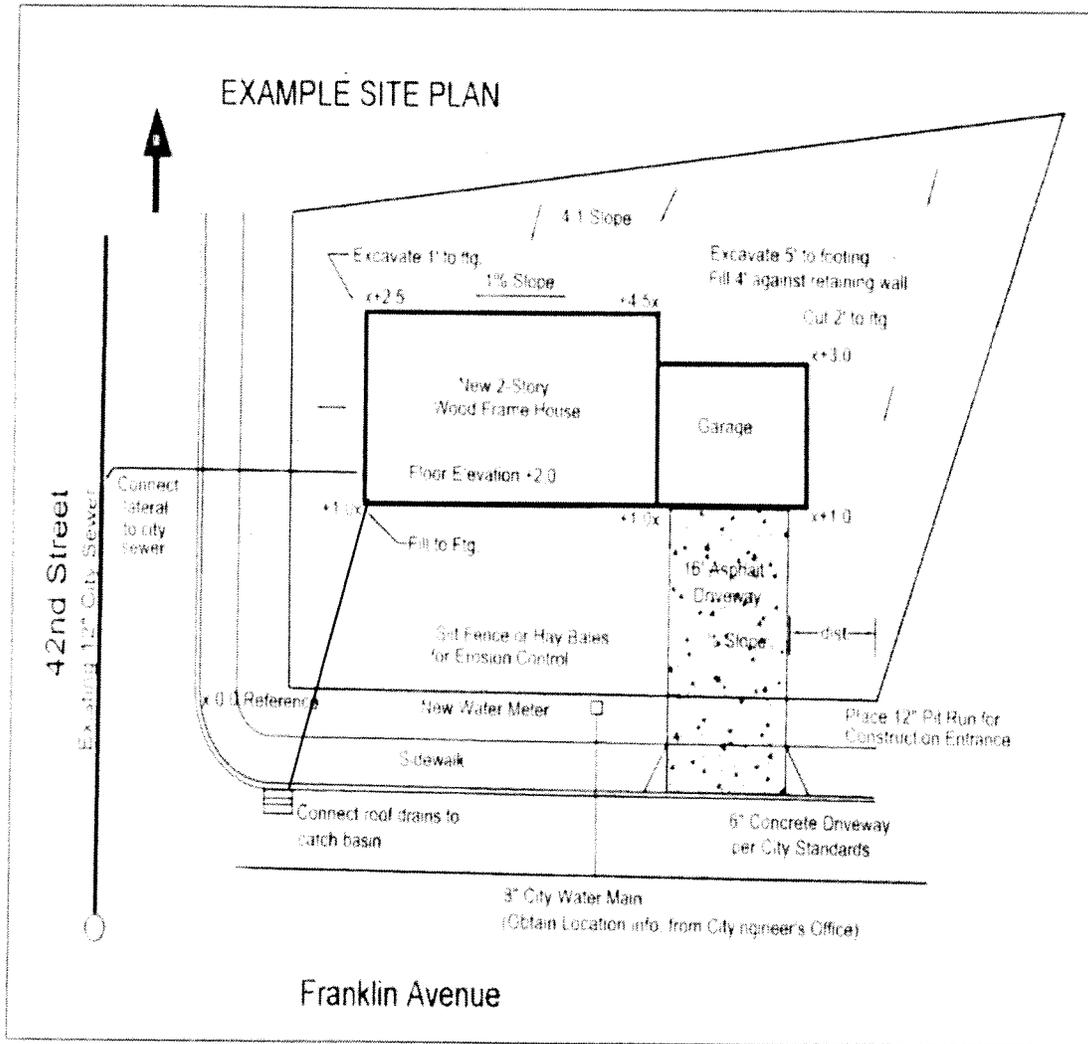
UTILITIES - Owner and/or contractor shall take care to avoid damage to subsurface and above ground utilities and shall be responsible for repairs to utilities damaged by their actions.

Erosion Control Inspected By _____

Final Grading Inspected By _____

SITE PLAN MUST SHOW:

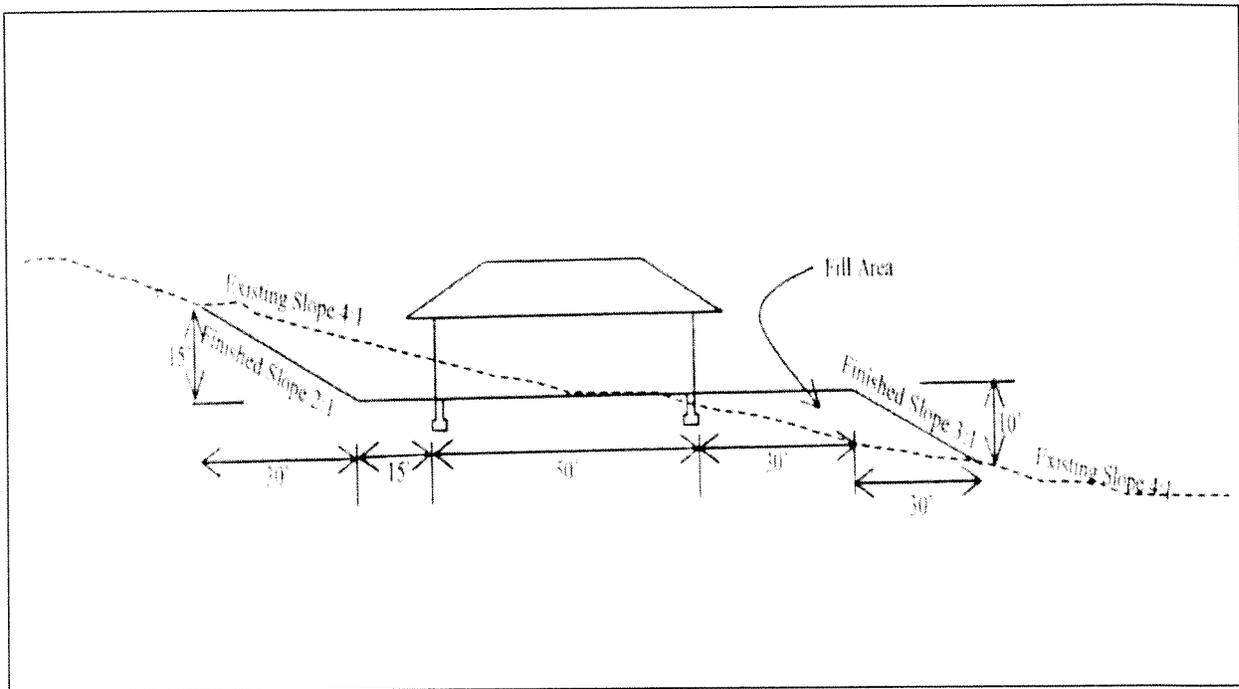
1. Lot dimensions and property lines.
2. Directional arrow indicating north.
3. Any existing or proposed roads or driveways.
4. All proposed and existing structures and their distances to each other, to property lines, to the centerline of the road and to ascending and descending slopes.
5. Location of City water and sewer mains
6. Proposed water meter location and sanitary sewer connection point to City's system.
7. Location of roof, footing and other storm drains and connection point to City's system.
8. Location and dimensions of any excavation or grading.
9. Location and type of erosion control measures to be installed to ensure sediment laden run off does not leave the site.



CROSS SECTION MUST SHOW:

1. The location of the proposed buildings.
2. The height of all descending and ascending slopes.
3. The depth of all fills and the height of all cuts.
4. The setbacks from the building location to the descending slope.
5. The setbacks from the building to the ascending slope.
6. Provide details for slopes extending at least 20 feet beyond the scope of the work in all directions.
7. Label and provide a grade for the existing slope.
8. Label and provide a grade for the finished slope.

Example cross section:



GRADING AND EROSION CONTROL PERMIT FEES

AREA TO BE GRADED:

Up to 5,000 Square Feet	\$20.00
5,000 to 9,999 Square Feet	\$40.00
10,000 to 14,999 Square Feet	\$60.00
15,000 to 19,999 Square Feet	\$80.00
20,000 to 24,999 Square Feet	\$100.00
25,000 to 29,999 Square Feet	\$120.00
30,000 to 34,999 Square Feet	\$140.00
35,000 to 43,559 Square Feet	\$160.00
43,560 Square Feet and Over	\$180.00
Permit Extensions beyond 180 Days	\$10.00

City of Astoria
Development Code

EROSION CONTROL AND STORMWATER MANAGEMENT

3.300. **REGULATION OF EROSION CONTROL AND STORMWATER MANAGEMENT.**

A. **Purpose.**

The purpose of this ordinance is to:

1. Minimize impacts associated with excavation and grading,
2. Minimize the erosion of land during clearing, excavation, grading, construction and post-construction activities,
3. Prevent the transport of sediment and other soil borne pollutants into the Columbia River estuary and its tributaries, wetlands and riparian areas,
4. Prevent the transport of sediment onto adjacent property and into City rights of way and storm systems,
5. Prevent the unnecessary clearing, excavation, and stripping of land; and
6. To reduce the amount of soil exposure during construction.

B. **Definitions.**

The following definitions shall apply for this ordinance:

1. **Clearing**: Any activity that removes vegetative cover while leaving the root system intact.
2. **Erosion**: Movement of soil by water or wind.
3. **Excavation**: Removal of topsoil, gravel, sand, rock or any other type of soil material.
4. **Fill**: Placement of topsoil, gravel, sand, rock or any other type of soil material.
5. **Fill, Structural**: Fill that is intended to support structures.
6. **Grading**: Any combination of excavation and/or fill activities.
7. **Regulated Activities**: The clearing, grading, excavation, filling, or stripping of land, and post construction activities.
8. **Sedimentation**: Deposition of soil moved by water or wind from its site of origin.

City of Astoria
Development Code

9. Stripping: Removal of vegetation and roots.
10. Tracking: Movement of soil from a disturbed area onto streets, sidewalks, or adjacent property by vehicle tracks or tires.
11. Undeveloped Site: A lot or parcel of land with no permanent structure such as a dwelling or commercial building or other permanent man made structure.

(Section 3.300 added by Ordinance 04-08, 10-4-04)

3.305. PERMITS.

A. Permit Required.

Persons proposing to clear, grade, excavate, strip, or fill land (regulated activities) shall obtain a permit before commencing any of the following activities unless exempted elsewhere by this ordinance:

1. Any proposed clearing, grading, filling, stripping, or excavating (regulated activity) within 100 feet of a river, bay, stream, watercourse or wetland; or
2. Any proposed regulated activity located more than one hundred feet from a river, bay, stream, watercourse or wetland that exceeds an area of 2,000 square feet; or
3. Any proposed clearing, grading, filling, stripping, or excavating (regulated activity) within 100 feet of a known geologic hazard as indicated on the City's "Areas of High Water and Past Slides" map; or
4. Any proposed clearing, grading, filling, stripping, or excavating (regulated activity) if any portion of the site has a slope of 35% or greater; or
5. The proposed cumulative volume of excavation and fill exceeds ten cubic yards in a 12 month period; or
6. Excavation or fill in excess of one (1) foot deep.

B. Permits in Conjunction with Building Permits.

A grading permit for regulated activities in conjunction with a structure requiring a building permit shall be reviewed and issued as part of the City's building permit process using the standards herein.

City of Astoria
Development Code

C. Permits in Conjunction with a Partition or Subdivision.

A grading permit for regulated activities in conjunction with a partition or subdivision shall be reviewed and issued in conjunction with the partition or subdivision process using the standards herein. New subdivisions or housing developments should cause minimal earth disturbance and removal of trees.

D. Exceptions.

The following activities are exempted from the requirements of this ordinance:

1. Residential landscaping and gardening activities up to 1,000 square feet;
2. Forest management activities in an area zoned Land Reserve (LR) for forest management.
3. Utility construction by public or private utility agencies, involving less than 20 cubic yards of excavation or fill.
4. Emergency repair work by a utility agency. After the emergency repairs are completed, the site shall be subject to the requirements of this ordinance.

E. Permit Review and Approval.

Permits shall be obtained from the Engineering Department. All permits shall be reviewed and approved by both the Engineering Department and Community Development Department for compliance with this Ordinance and other City codes and building codes.

F. Permit Fees.

Permit fees shall be established by City Resolution.

(Section 3.305 added by Ordinance 04-08, 10-4-04)

3.310. INFORMATION REQUIRED.

The following information is required for permits:

A. Site Plan.

A site plan, drawn to an appropriate scale with sufficient dimensions, showing the property line locations, roads, areas where clearing, grading, excavating, stripping, or filling is to occur, the area where existing vegetative cover will be retained, the location of any springs, streams or wetland areas on or immediately adjacent to the property, the general direction of

City of Astoria
Development Code

slopes with slope arrows showing direction of water flow on existing slopes and graded slopes, construction access, the location of the proposed development, and the location of soil stock piles, if any.

B. Erosion Control Methods.

The type and location of proposed erosion and sedimentation control measures, both short term and post construction.

C. Stormwater Management Methods.

The type and location of proposed stormwater management from roofs, parking and other impervious surfaces. Stormwater calculations prepared by a Registered Professional Engineer may be required by the City Engineer as part of the permit application.

D. Grading Plan in Steep Areas.

The City shall require a grading plan prepared by a Registered Professional Engineer and/or Registered Engineering Geologist where the disturbed area has an average slope of 35% or greater, the disturbed area is located in known geologic hazard area, or is part of a partition or subdivision. Such grading plan shall, at a minimum, include the following additional information:

1. Existing and proposed contours of the property at two foot contour intervals;
2. Location of existing structures and buildings, including those within 25 feet of the development site on adjacent property;
3. Design details for proposed retaining walls;
4. The direction of drainage flow and detailed plans and locations of all surface and subsurface drainage devices to be constructed.

E. Sedimentation and Erosion Control Plan.

The City shall require that the sedimentation and erosion control plan be prepared by a Registered Professional Engineer where the disturbed area is greater than 20,000 square feet, or the disturbed area has an average slope of 35% or greater.

F. Development Plan.

The City shall require a development plan for the site where the disturbed area is greater than 2,000 square feet to assure the least amount of earth disturbance as necessary, and to assure that the development is consistent with zoning and other City regulations. Such development

City of Astoria
Development Code

plan shall, at a minimum, include the following additional information:

1. Site plan as described above;
2. Location of existing and proposed structures;
3. Location of existing and proposed parking, access and egress;
4. Location and square footage of proposed landscaped areas.

G. Ground and Surface Water Diversion Plan.

If property construction will result in alterations of natural hydrology such that damage to neighboring properties will occur, the City shall require that any known ground or surface water be diverted to an alternate natural path or to a man-made system to prevent any damage to other properties that may be affected by the water.

(Section 3.310 added by Ordinance 04-08, 10-4-04)

3.315. GRADING STANDARDS.

A. Cuts.

The following Grading Standards shall be required for cuts:

1. The design shall minimize the need for cuts. The proposed grading plan shall be designed to blend with the existing topography as much as possible without the use of retaining walls.
2. Long, steep cut and fill slopes shall be avoided.
3. The slope of cut surfaces shall not be steeper than is necessary for the intended use and shall not be steeper than two horizontal to one vertical (2:1) unless an engineering geology report determines that a cut at a steeper slope will be reasonably stable and not create a hazard to public or private property.
4. Cuts shall not remove the toe of any slope where a known potential or historic land slide exists as determined by the City Engineer.
5. Cuts shall be set back a minimum of five (5) feet from property lines so as to minimize danger and disturbance to adjoining property.
6. Retaining walls shall be constructed in accordance with the Structural Specialty Codes as adopted by the City.

City of Astoria
Development Code

B. Fills.

The following Grading Standards shall be required for fills:

1. The design shall minimize the need for fills.
2. The slope of fill surfaces shall not be steeper than two horizontal to one vertical (2:1) unless an engineering geology report determines that a steeper slope will be reasonably stable and not create a hazard to public or private property. Fill slopes shall not be constructed on natural slopes steeper than two horizontal to one vertical.
3. Fills shall be set back from property lines a minimum of five (5) feet so as to minimize impact on adjoining property. Retaining walls shall be required by the City where the City Engineer deems it necessary.
4. The ground surface shall be prepared to receive fill by removing vegetation, inappropriate fill, topsoil, and other unsuitable materials, and shall be scarified to provide a bond with the new fill.
5. Any structural fill shall be designed by a Registered Professional Engineer, in accordance with standard engineering practices.
6. Fill material shall be broken into pieces no larger than 12 inches to assure proper compaction.
7. The following items are unsuitable materials and shall not be used for fill:
 - a. Roofing material, fiberglass, metals, asphalt, or large slabs of concrete, and other man-made construction debris inappropriate for fill
 - b. Stumps, organic materials, and other natural debris inappropriate for fill
8. A compaction report shall be required for any area with fill prior to any construction on the site.

C. Drainage.

The following Grading Standards shall be required for drainage:

1. Proposed grading, cuts or fills shall not alter drainage patterns so that additional stormwater is directed onto adjoining property.
2. All cut and fill slopes shall be provided with subsurface drainage as necessary for stability.

City of Astoria
Development Code

D. Streets.

Refer to the Astoria "Street Design Standards" on file in the office of the City Engineer.

(Section 3.315 added by Ordinance 04-08, 10-4-04)

3.320. EROSION AND SEDIMENTATION CONTROL STANDARDS.

A. Authority.

Review and approval of grading permits for regulated activities shall be based on the conformance of the development plans with the standards of this section. Conditions of approval may be imposed to assure that the development plan meets the standards. The City Engineer shall require modifications to the erosion and sedimentation control plan at any time if the plan is ineffective in preventing the discharge of sediment to City streets and storm drains, surface waters, wetlands, or adjacent property.

B. Department of Environmental Quality (DEQ) Standards.

The current DEQ "Best Management Practices for Stormwater Discharges Associated with Construction Activities" document are incorporated as part of this document by reference.

C. General Erosion and Sedimentation Control Standards.

1. Natural vegetation shall be retained and protected wherever possible.
2. Stream and wetland areas shall only be disturbed in accordance with US Army Corps of Engineers and Oregon Division of State Lands permits, as well as riparian preservation requirements in Astoria Development Code Article 4, "Columbia River Estuary and Shoreland Regional Standards".
3. Sedimentation barriers, as described in the DEQ "Best Management Practices for Stormwater Discharges Associated with Construction Activities" document shall be placed to control sedimentation from entering the river, bay, streams, wetlands, adjacent property or City streets and storm sewers. The barriers shall be installed prior to site clearance or grading activities.
4. The City Engineer or Building Official may require areas to be temporarily stabilized with straw mulch, sod, mat or blanket in combination with seeding, or other acceptable sediment control method. Prior to the completion of construction, such areas shall be permanently stabilized by seeding or other vegetative ground cover.
5. Stormwater catch basins, inlets or culverts shall be protected by sediment traps or filter barriers such as "bio bags".

City of Astoria
Development Code

6. Soil storage piles or fill shall be located so as to minimize the potential for sedimentation of streams, wetlands, adjacent property or City streets or storm sewers. The City Engineer or Building Official may require temporary stabilization of soil storage piles or fill.
7. Temporary sedimentation control, not in conjunction with a structure, shall be required in any situation where the City Engineer or Building Official determine that sedimentation or erosion may affect streams, wetlands, adjacent property, City streets or storm sewers.
8. Erosion and sedimentation control measures shall be continually maintained during the period of land disturbance and site development in a manner that ensures adequate performance. Soil that has been transported by any means to a street or any area where stormwater flows to a storm drain or surface water, shall be cleaned up to prevent transport to the drain or surface water. All temporary erosion and sedimentation control measures shall remain in place until the disturbed area is stabilized with permanent vegetation.
9. The City shall require a graveled construction road or access of sufficient length, depth, width, and rock size to prevent sedimentation from being tracked onto City streets.
10. Sediment trapped by sediment control methods shall be redistributed on-site, removed, or permanently stabilized to prevent further erosion and sedimentation.
11. The City Engineer shall require the cleanup of any streets, catch basins or storm sewers affected by regulated activities on a site at the expense of the person responsible for those regulated activities. Measurable amounts of sediment that leave the site shall be cleaned up and placed back on the site or disposed of in an approved manner.
12. Under no conditions shall soil on sidewalks, streets, or equipment be washed or hosed into storm sewers, drainage ways, streams or other water bodies.
13. The City shall make periodic inspections to ascertain that erosion and sediment control measures as proposed have been implemented and are being effectively maintained. The City Engineer or the Building Official are authorized to place an immediate "stop work" order on any project that does not meet the standards imposed in this ordinance.

(Section 3.320 added by Ordinance 04-08, 10-4-04)

City of Astoria
Development Code

3.325. STORMWATER MANAGEMENT STANDARDS.

Projects that are 40,000 square feet (land area) or larger shall install a stormwater management system as part of the landscaping requirements. Such a system shall be designed by a Registered Professional Engineer and/or Registered Landscape Architect and shall be capable of meeting the standards in the DEQ "Best Management Practices for Stormwater Discharges Associated with Construction Activities", or other guidelines acceptable to the City Engineer.

(Section 3.325 added by Ordinance 04-08, 10-4-04)

3.330. ENFORCEMENT.

A. Final Inspection.

The City shall review all regulated activities one year after completion and/or installation of permanent vegetation to assure that any erosion control or regulated activity measures installed continue to meet the standard imposed in this ordinance. The applicant shall be responsible for continued maintenance until the City Engineer and Building Official has approved a final inspection on the project.

B. Responsible Party and/or Change of Ownership.

The applicant shall be responsible for the work to be performed in accordance with the approved plans and specifications in conformance with the provisions of this code. In the event of a change of ownership prior to the Final Inspection, the applicant shall enter into a Performance Agreement with the City and proposed new property owner. The Performance Agreement shall, at minimum, identify the party responsible for completion of the project until a Final Inspection has been approved by the City.

C. Continued Maintenance.

If an erosion control or regulated activity measure system fails due to lack of maintenance or breakage, and there are impacts to adjacent property owners, or downstream water quality or quantity as a result of the failure, the City shall perform the maintenance or repair and charge the current property owner for the required repairs.

D. Penalties.

In addition to any other method of enforcement available to the City, including City Code Section 1.010, the provisions of this ordinance may be enforced by the issuance of citations by duly appointed officers of the City pursuant to Astoria City Code Section 6.135.

City of Astoria
Development Code

E. Additional Costs.

Where the City Engineer, Community Development Director, or Building Official deem it necessary, in the interest of public health, safety, or welfare, to incur additional costs such as, but not limited to, the hiring of independent geotechnical experts or other technical expertise, or costs to complete or correct work not completed by the applicant during the course of the project, such costs shall be borne by the applicant. Such costs shall not exceed actual costs.

F. Performance Bond.

The City Engineer or Community Development Director may require that the applicant furnish to the City a performance bond up to, and not to exceed, the value of the cost of the required improvements in order to assure that the conditions imposed are completed in accordance with the plan and specifications as approved by the City Engineer or Community Development Director and that the standards established in granting the permit are observed.

G. Time Limit on Permit.

Authorization of a permit shall be void after 180 days unless substantial construction or use pursuant thereto has taken place. However, the City Engineer or Building Official may, at their discretion, extend authorization for an additional 180 day period upon written request by the applicant and a determination that the conditions of the project or permit application have not changed sufficient to warrant review of a new permit application.

(Section 3.330 added by Ordinance 04-08, 10-4-04)



EXCAVATING/ GRADING/ FILL PERMIT

MAP & TAX LOT NUMBER:	PERMIT NUMBER:
PROPERTY ADDRESS:	APPLICATION DATE:
	EXPIRATION DATE:
PROPERTY OWNER:	CONTRACTOR:
OWNER ADDRESS:	CONTRACTOR ADDRESS:
OWNER PHONE:	CONTRACTOR PHONE:
WORK TO BE DONE:	
FILL MATERIAL (cubic yards):	EXCAVATED MATERIAL (cubic yards):
SOURCE OF FILL MATERIAL:	DESTINATION OF EXCAVATED MATERIAL:

SPECIAL PROVISIONS:

1. This permit is only valid for six (6) months from date of issue.
2. A grading plan is required for any grading in excess of 50 cubic yards. For grading in excess of 2000 cubic yards, an engineered grading plan is required.
3. A grading and erosion control plan is required in accordance with Chapter 12.08 of the City's Municipal Code.
4. Obstruction of natural drainage courses, diversion or causing runoff to accumulate on surrounding properties is prohibited.
5. No rocks or construction debris larger than 12-inches in diameter shall be included in fill material. Brush, Stumps, Vegetation, etc. shall not be used as fill material.
6. All fill shall be compacted to a minimum of 90-percent maximum density per Lincoln City's Grading Ordinance. Compaction tests shall be taken every 1000 square feet of area.
7. Compaction test results shall be submitted to the Public Works Dept. within five (5) working days of grading work.
8. Fill shall be confined to subject property. Top of cuts shall be no closer than 2-feet to property boundary lines.
9. Contractor/ Developer shall call for final inspection at time of completion of work done under this permit. 24 hours notice required for inspection.

	BOND RECEIVED: YES ___ NO ___
	For the Amount of \$
CITY ENGINEER APPROVAL _____	DATE _____
	BOND RETURNED:
	GRADING PLAN REVIEW FEES =
	GRADING PERMIT FEES =
PUBLIC WORKS DIRECTOR APPROVAL _____	DATE _____
	TOTAL FEES =

Revised 09/16/09



Chapter 12.08 GRADING AND EROSION CONTROL

Sections:

<u>12.08.010</u>	Adoption of Appendix Chapter 33, Uniform Building Code.
<u>12.08.020</u>	Revisions to Uniform Building Code.
<u>12.08.030</u>	Erosion prevention and control findings.
<u>12.08.040</u>	Definitions.
<u>12.08.050</u>	Purpose and general requirement.
<u>12.08.060</u>	Erosion prevention and control plan required.
<u>12.08.070</u>	Submission of erosion control plan.
<u>12.08.080</u>	Review and approval.
<u>12.08.090</u>	Design and operation standards and requirements.
<u>12.08.100</u>	Maintenance of control measures.
<u>12.08.110</u>	Hazards on private property.
<u>12.08.120</u>	Review of city engineer decisions.
<u>12.08.130</u>	Violation – Injunctive relief – Other remedies.
<u>12.08.140</u>	Education.
<u>12.08.150</u>	Erosion prevention and sediment control within urban growth boundary.

Prior legislation: Ords. 83-9, 84-3 and 96-16.

12.08.010 Adoption of Appendix Chapter 33, Uniform Building Code.

Appendix Chapter 33 of the Uniform Building Code, 1997 Edition, a copy of which is on file and available for reference at the department of public works, is adopted by this reference, subject to the revisions set out in LCMC 12.08.020. (Ord. 2000-04 § 1; Ord. 97-13 § 1)

12.08.020 Revisions to Uniform Building Code.

Revisions to Appendix Chapter 33 of the Uniform Building Code, 1997 Edition, shall be as follows:

A. All references to the “building official” shall be to the city engineer. The “city engineer” means the city engineer or the city engineer’s designated representative.

B. The list of exemptions from the grading permit requirement, set out in Section 3306.2 (Exempted Work), shall be expanded by adding:

10. Emergency measures taken to clear roadways or to save endangered property; and

11. Grading on single-family residential lots when all of the following conditions are met:

a. There is no interference, encroachment, or alteration to any natural drainage course to any public drainage improvement,

b. There is no apparent danger to any property, and

c. The area does not lie within a landslide area as defined on the Environmental Quality Overlay Zone Natural Hazards of Lincoln City Map, or 500-year flood boundary, as defined on the Federal Emergency Management Administration Flood Insurance Rate Map. The Department of Public Works shall maintain a copy of each map on file and available for reference at the Department.

C. Section 3309.2 (Application) is amended by adding the following requirements:

1. Applications shall be submitted to the Department of Public Works.

2. Before a permit application is accepted as complete by the Department of Public Works, the city engineer shall visit the proposed project site with the applicant or the applicant's representative, to aid the applicant in submitting an acceptable grading plan and in noting any special conditions.

D. The criterion in Section 3309.3 (Grading Designation) identifying grading that must be "engineered grading," as distinguished from grading that may be "regular grading," shall be grading involving 2,000 or more cubic yards rather than grading involving in excess of 5,000 cubic yards.

E. Section 3309.9 (Issuance) is amended by adding the following requirement:

After receipt of a completed application for a grading permit, the city engineer shall review the grading plan submitted with the application to determine whether the grading plan conforms to the provisions of this chapter and shall, in writing:

1. Approve the application, if the grading plan as submitted conforms to the provisions of this chapter;

2. Approve the application, subject to such reasonable conditions as may be necessary for the grading plan to conform to the provisions of this chapter; or

3. Disapprove the application, if the grading plan, either as submitted or with conditions, does not conform to the provisions of this chapter. A disapproval shall indicate the appeal procedure provided for in this chapter and the procedure for submitting a revised grading plan.

Any approval by the city engineer shall be subject to the condition that, prior to the implementation of the grading plan, a tree removal permit first must be obtained, as required by LCMC 17.52.220, if the grading plan will involve the removal of trees other than those exempt under LCMC 17.52.220(C).

F. Section 3311 (Bonds) is amended to read:

For any grading for which a permit is required, if the grading involves grading, paving, drainage, and erosion control measures, or any of them, with a total cost in excess of \$100,000, the city engineer shall require a bond in such form and amount as the city engineer deems necessary to assure that the work, if not completed in accord with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

In lieu of a surety bond, the applicant may file a cash bond or instrument of credit, in a form approved by the city engineer, in an amount equal to that which would be required in the surety bond.

(Ord. 2002-09 § 3; Ord. 2000-04 § 2; Ord. 97-13 § 1)

12.08.030 Erosion prevention and control findings.

A. Excessive quantities of soil may erode from areas undergoing development for uses including but not limited to the construction of dwelling units, commercial and other buildings, and industrial plants, the construction of roads and highways, the modification of stream channels and drainage ways, and the creation of recreational facilities.

B. The washing, blowing, and falling of eroded soils across and upon streets and roads endangers the health of users thereof by decreasing vision and reducing traction of road vehicles.

C. Soil erosion necessitates the costly repairing of gullies, washed-out fills, and embankments.

D. Sediment from soil erosion tends to clog storm drains and ditches and to pollute and silt up rivers, streams, wetlands, lakes, and wastewater treatment settling ponds.

E. Sediment limits the use of bays, lakes, and waterways for most beneficial purposes, destroys fish and other desirable aquatic life, leads to excessive growth of undesirable aquatic plants, and is costly and difficult to remove. (Ord. 97-13 § 1)

12.08.040 Definitions.

As used in LCMC 12.08.030 through 12.08.140:

“City engineer” means the city engineer or the city engineer’s designated representative.

“Clearing” means any activity that removes vegetative groundcover.

“Erosion” and “soil erosion” mean the wearing away of the land surface by running water, wind, ice, or other geologic agents, including such processes as gravitational creep; and detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

“Erosion Prevention and Control Manual” means the Erosion Prevention and Control Manual as approved and amended from time to time by resolution of the city council. Copies of the manual shall be available for purchase from the department of public works.

“Excavation” means any act by which organic matter, earth, sand, gravel, rock, or any other material is cut into, dug, uncovered, removed, displaced, relocated, or bulldozed by a person, including the conditions resulting therefrom.

“Fill” means any act by which earth, sand, gravel, rock, or any other material is deposited, placed, replaced, pushed, dumped, pulled, transported, or moved by a person to a new location, including the conditions resulting therefrom.

“Grading” means excavation or fill or any combination thereof.

“Land disturbing activity” means any clearing, grading, stripping, excavation, fill, or any combination thereof.

“Sedimentation” means the depositing of solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, or gravity.

“Stripping” means any activity that removes the vegetative surface cover including tree removal, clearing, and storage or removal of top soil.

“Watercourse” means any established channel where water draining from a land area collects and flows on the ground surface. (Ord. 97-13 § 1)

12.08.050 Purpose and general requirement.

A. It is the purpose of LCMC 12.08.030 through 12.08.100 to regulate land disturbing activities that may lead to soil erosion and sedimentation into watercourses, wetlands, riparian areas, and public and private property.

B. No land disturbing activity shall be conducted so as to cause slides of mud, soil, rock, vegetative material, or any erosional or depositional material to be pushed onto, deposited upon, or gravitated to the property of another, either public or private. (Ord. 97-13 § 1)

12.08.060 Erosion prevention and control plan required.

A. Plan Required. Except as otherwise provided in subsection (B) of this section, no person shall commence or perform any of the following activities without first receiving the city engineer’s approval of an erosion control plan:

1. Any land disturbing activity that will affect an area in excess of 1,000 square feet.

2. Any land disturbing activity that will affect an area in excess of 500 square feet if the activity is within 25 feet of a river, stream, lake, bay, watercourse, or wetland.

3. Any grading, excavation, fill, or any combination thereof that will exceed 50 cubic yards on a lot or parcel.

B. Exceptions. The following activities are exempt from the requirements of subsection (A) of this section:

1. Cutting brush where groundcover will remain intact.
2. Maintenance of public infrastructure by state or local government agencies.

State and local government agencies, however, shall implement best management practices to prevent erosion and control sediment; and shall make regular inspections to ascertain that erosion and sediment control measures consistent with best management practices have been implemented and are being effectively maintained.

3. Emergency measures taken to clear roadways or to save endangered property.
(Ord. 97-13 § 1)

12.08.070 Submission of erosion control plan.

In the event an erosion control plan is required by LCMC 12.08.060, the owner of the land or the owner's agent shall submit an erosion control plan to the department of public works on a site plan at a scale sufficient to indicate the nature and extent of the work. The plan shall be prepared in accord with LCMC 12.08.030 through 12.08.100 using methods and standards shown in the Erosion Prevention and Control Manual. If an engineered grading plan is required for the project under LCMC 12.08.010 and 12.08.020, then the erosion control plan shall be prepared by the same person who prepared the engineered grading plan. Each erosion control plan shall include a certification that any land disturbing activity will be in accord with the submitted and approved erosion control plan. The erosion control plan shall contain the following information:

- A. The location of the development site showing adjacent roads and streets and the development site boundaries.
- B. Indication of north direction.
- C. Any lakes, bays, rivers, streams, wetlands, channels, ditches, or other watercourses on and immediately adjacent to the development site.
- D. Areas where existing vegetative cover will be retained and measures to protect vegetation from damage.
- E. Accurate location, size, and shape of proposed and existing structures.
- F. Direction of surface water flows.
- G. Indication of slope steepness or existing and proposed contours at intervals of two feet or as approved by the city engineer.
- H. Location of construction access driveway(s) and designated vehicle parking area(s).
- I. Location of soil stockpiles.
- J. Type and location of temporary and permanent erosion and sediment control measures, such as, but not limited to, silt fencing, matting, straw bales, mulching, seeding, and sodding.
- K. A schedule of construction operations and phasing.
- L. The name(s), address(es), and telephone number(s) of the owner of the land, the developer of the site, and the person responsible for placement and maintenance of temporary and permanent erosion control measures.
- M. The general slope characteristics of adjacent property. (Ord. 97-13 § 1)

12.08.080 Review and approval.

The city engineer shall review each erosion control plan to determine whether it conforms to the provisions of LCMC 12.08.030 through 12.08.100. After receipt of a complete erosion control plan and following final review of the plan, the city engineer shall, in writing:

- A. Approve the plan, if the plan conforms to the provisions of LCMC 12.08.030 through 12.08.100;
- B. Approve the plan, subject to such reasonable conditions as may be necessary for the plan to conform to the provisions of LCMC 12.08.030 through 12.08.100; or

C. Disapprove the plan, if the plan, either as submitted or with conditions, does not conform to the provisions of LCMC 12.08.030 through 12.08.100. A disapproval shall indicate the appeal procedure provided for in this chapter and the procedure for submitting a revised erosion control plan. (Ord. 97-13 § 1)

12.08.090 Design and operation standards and requirements.

All land disturbing activities that are subject to the erosion control plan approval requirements of LCMC 12.08.060 shall be subject to the following standards and requirements:

A. Prior to initiation of land disturbing activities, on-site sediment barriers, including sediment fences or equivalent measures, shall be constructed and functional to control off-site runoff, as specified in the Erosion Prevention and Control Manual. Vegetated strips with a minimum width of 25 feet may be used as an alternative only where runoff in sheet flow is expected.

B. Disturbed areas shall be stabilized with temporary or permanent measures within seven calendar days, or as otherwise required by the city engineer, following the end of active disturbance, or redisturbance, consistent with the following criteria:

1. Appropriate temporary or permanent stabilization measures shall include matting, seeding, mulching, sodding, or nonvegetative measures, or a combination thereof.

2. Areas having slopes greater than 12 percent shall be stabilized with sod, mat, or blanket in combination with seeding, or an equivalent thereto.

C. Land disturbing activities in stream channels and riparian areas shall be avoided unless the city engineer determines there are no other points of access. If the city engineer determines such activities cannot be avoided, the following requirements shall be met:

1. Construction vehicles shall be kept out of the stream channel to the maximum extent possible. Where construction crossings are necessary, temporary crossings shall be constructed of non-erosive material, such as rip-rap or gravel.

2. The riparian area shall have erosion protection measures in place within 24 hours of disturbance, which time may be extended to a maximum of 48 hours at the discretion of the city engineer.

3. All required local, state, and federal permits shall be received prior to the activity.

D. Storm sewer inlets and culverts shall be protected by sediment traps or filter barriers meeting design standards and specifications approved by the city engineer.

E. Soil storage piles containing more than 10 cubic yards of material shall not be located with a down slope drainage length of less than 25 feet to a roadway or drainage channel. Filter barriers or impervious covering shall be installed to prevent or contain sediment runoff.

F. Each site shall have a graveled, or equivalent, entrance road(s) of sufficient length, depth, and width to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public or private roadway shall be removed by shoveling or street cleaning (not flushing) before the end of each workday and transported to a controlled sediment deposit area.

G. All temporary erosion and sediment control measures shall be disposed of within 30 days after final site stabilization is achieved with permanent soil stabilization measures. Trapped sediment and other disturbed soils resulting from the disposed-of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation. (Ord. 2000-04 § 3; Ord. 97-13 § 1)

12.08.100 Maintenance of control measures.

A. The owner of land on which land disturbing activities are occurring, or the owner's agent, shall maintain all erosion and sediment control measures necessary to meet the requirements of LCMC 12.08.030 through this section. The land owner or the land

owner's agent shall inspect erosion and sediment control measures every 24 hours during storm or rain events to ensure the measures are functioning properly.

B. The city engineer shall make regular inspections to ascertain that erosion and sediment control measures as proposed in the erosion control plan have been implemented and are being effectively maintained. (Ord. 97-13 § 1)

12.08.110 Hazards on private property.

If the city engineer becomes aware of or is notified of any land containing disturbed soil areas, or containing unprotected soil storage piles, creating erosion and sedimentation that affects property of another or is in violation of any provision of this chapter, the city engineer shall require the land owner to follow procedures and employ practices set out in this chapter to control the erosion and sedimentation. The land owner shall follow the required procedures and employ the required practices. (Ord. 97-13 § 1)

12.08.120 Review of city engineer decisions.

A professional judgment decision made by the city engineer under this chapter may be appealed by the owner, the owner's agent or representative, or any other person subject to the decision, to a five person grading and erosion control review board appointed by the city council. The appeal shall be submitted in writing to the department of public works and shall state the relevant facts and the basis for the appeal. The decision of the review board shall be rendered within seven days of an appeal, shall be consistent with the provisions of this chapter, and shall not be subject to further appeal within the city government. A decision of the city engineer shall be fully effective while an appeal is pending. (Ord. 97-13 § 1)

12.08.130 Violation – Injunctive relief – Other remedies.

A. Any violation of any provision of this chapter is classified as a Class A infraction under Chapter 1.16 LCMC. Any violation may be enforced in accord with the provisions of Chapter 1.16 LCMC.

B. The city shall have, in addition to the remedies available under Chapter 1.16 LCMC, all other remedies allowed by the city's ordinances and the laws of the state, including but not limited to the remedy of injunctive relief necessary to prevent violations of this chapter.

C. If the city engineer determines that a violation of this chapter has occurred, the city engineer may notify the owner of the land and the developer, general agent, architect, builder, contractor, or other person or entity who has participated in committing the violation, or any of them, to cease all further development until such time as the violation has been remedied, and the person or persons notified shall cease further development. If development continues in disregard of notice from the city engineer, the city may seek an injunction to stop further development until the violation is remedied.

D. If the city engineer determines that a violation of this chapter has occurred, the city engineer shall give written notice to the owner of the land and the developer, general agent, architect, builder, contractor, or other person or entity who has participated in committing the violation, or any of them, that a violation has occurred and that the violation must be remedied within a time specified. The amount of time to remedy the violation shall depend on the nature of the violation, the circumstance then existing, and whether an emergency exists. In the event of noncompliance within the time set by the city engineer, the city may take remedial steps to cure the violation and charge the costs, fees, and expenses of the remedial action to the owner of the land. This shall include any expenses, costs, and fees paid by the city to third persons for labor and materials to remedy the violation. Charges made under this subsection shall be a lien against the real property on which the violation arises, and the city recorder is authorized to enter the amount of such charges immediately in the docket of city liens. (Ord. 97-13 § 1)

12.08.140 Education.

A. The city shall declare each September to be Erosion Prevention Awareness Month and during September shall conduct events to promote a greater awareness of the problems with erosion and the solutions to prevent it.

B. The city, in cooperation with the Devils Lake Water Improvement District, shall sponsor an annual workshop on erosion prevention and sediment control. (Ord. 97-13 § 1)

12.08.150 Erosion prevention and sediment control within urban growth boundary.

A. To maximize the likelihood that appropriate erosion prevention and sediment control requirements will be followed within the Lincoln City urban growth boundary, the city shall not provide a new water service to any property, outside the city but inside the urban growth boundary, unless the property owner first enters into a written agreement, approved by the city engineer, that before, during, and following any land disturbing activity on the property, the owner will fully comply with all requirements, procedural and substantive, of this chapter, as though the property were within the city.

B. In the event land disturbing activity occurs in violation of an agreement entered into under subsection (A) of this section, the city engineer, as a remedy in addition to any other available remedy, may cause a termination of water service to the property. (Ord. 97-14 § 1)



EROSION CONTROL

3.100 Definitions for LCC 3.100 through 3.195

As used in LCC 3.100 through 3.195:

- (1) "Clearing" means any activity that removes vegetative ground cover.
- (2) "Engineer" means the Lincoln County Public Works Director and the Director's duly appointed designees.
- (3) "Erosion" and "soil erosion" means the wearing away of the land surface by running water, wind, ice, or other geologic agents, including such processes as gravitational creep, and detachment and movement of soil or rock fragments by water, wind, ice, or gravity.
- (4) "Erosion Prevention and Control Manual" means the Erosion Prevention and Control Manual as approved and amended from time to time by resolution of the Board of Commissioners. Copies of the Manual shall be available for purchase from the Public Works Department.
- (5) "Excavation" means any act by which organic matter, earth, sand, gravel, rock, or any other material is cut into, dug, uncovered, removed, displaced, relocated, or bulldozed by a person, including the conditions resulting therefrom.
- (6) "Fill" means any act by which earth, sand, gravel, rock, or any other material is deposited, placed, replaced, pushed, dumped, pulled, transported, or moved by a person to a new location, including the conditions resulting therefrom.
- (7) "Grading" means excavation or fill or any combination thereof.
- (8) "Land disturbing activity" means any clearing, grading, stripping, excavation, fill, or any combination thereof.
- (9) "Sedimentation" means the depositing of solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, or gravity.
- (10) "Public Works Department" means the Lincoln County Public Works Department unless expressly identified as the Lincoln City Public Works Department.
- (11) "Stripping" means any activity that removes the vegetative surface cover including tree removal, clearing, and storage or removal of top soil.
- (12) "Watercourse" means any established channel where water draining from a land area collects and flows on the ground surface. [2000 o.395 §2]

3.105 Application of LCC 3.100 to 3.195

The provisions of LCC 3.100 to 3.195 apply to all property lying within the boundaries of the Devils Lake Water Improvement District and outside of the city limits of the City of Lincoln City. [2000 o.395 §3]

3.110 Adoption of Uniform Building Code Appendix Chapter 33

Appendix Chapter 33 of the Uniform Building Code, 1994 Edition, a copy of which is on file and available for reference at the Public Works Department, is adopted by this reference, subject to the revisions set out in LCC 3.115. [2000 o.395 §4]

3.115 Revisions to Uniform Building Code Appendix Chapter 33

Revisions to Appendix Chapter 33 of the Uniform Building Code, 1994 Edition, shall be as follows:

(1) All references to the "building official" shall be to the engineer. The engineer means the engineer or the engineer's designated representative.

(2) The list of exemptions from the grading permit requirement, set out in section 3306.2 (Exempted Work) shall be expanded by adding the following:

"10. Emergency measures taken to clear roadways or to save endangered property; and
11. Grading on single-family residential lots when all of the following conditions are met:
a. There is no interference, encroachment, or alteration to any natural drainage course to any public drainage improvement; and

b. There is no apparent danger to any property.

12. Grading undertaken as part of a forest practice in compliance with Oregon Forest Practices Act and administrative rules adopted thereunder."

(3) Section 3309.2 (Application) is amended by adding the following requirements:

"1. Applications shall be submitted to the Lincoln City Public Works Department.

"2. Before a permit application is accepted as complete by the Lincoln City Public Works Department, the engineer shall visit the proposed project site with the applicant or the applicant's representative, to aid the applicant in submitting an acceptable grading plan and in noting any special conditions."

(4) The criterion in section 3309.3 (Grading Designation) identifying grading that must be "engineered grading," as distinguished from grading that may be "regular grading," shall be grading involving 2,000 or more cubic yards rather than grading involving in excess of 5,000 cubic yards.

(5) Section 3309.9 (Insurance) is amended by adding the following requirement:

"After receipt of a completed application for a grading permit, the engineer shall review the grading plan submitted with the application to determine whether the grading plan conforms to the provisions of LCC 3.100 to 3.195 and shall, in writing:

1. Approve the application, if the grading plan as submitted conforms to the provisions of LCC 3.100 to 3.195;

2. Approve the application, subject to such reasonable conditions as may be necessary for the grading plan to conform to the provisions of LCC 3.100 to 3.195; or

3. Disapprove the application, if the grading plan, either as submitted or with conditions, does not conform to the provisions of LCC 3.100 to 3.195. A disapproval shall indicate the appeal procedure provided for in LCC 3.100 to 3.195 and the procedure for submitting a revised grading plan."

(5) Section 3311 (Bonds) is amended to read:

"For any grading for which a permit is required, if the grading involves grading, paving, drainage and erosion control measures, or any of them, with a total cost in excess of \$100,000, the engineer shall require a bond in such form and amount as the engineer deems necessary to assure that the work, if not completed in accord with the approved plans and specifications, will be corrected to eliminate hazardous conditions. In lieu of a surety bond, the applicant may file a cash bond or instrument of credit, in a form approved by the engineer, in an amount equal to that which would be required in the surety bond. [2000 o.395 §5]

3.120 Erosion Prevention and Control Findings

(1) Excessive quantities of soil may erode from areas undergoing development for uses including but not limited to the construction of dwelling units, commercial and other buildings, and industrial plants, the construction of roads and highways, the modification of stream channels and drainage ways, and the creation of recreational facilities.

(2) The washing, blowing, and falling of eroded soils across and upon streets and roads endangers the health of users thereof by decreasing vision and reducing traction of road vehicles.

(3) Soil erosion necessitates the costly repairing of gullies, washed-out fills, and embankments.

(4) Sediment from soil erosion tends to clog storm drains and ditches and to pollute and silt up rivers, streams, wetlands, lakes, and waste-water treatment settling ponds.

(5) Sediment limits the use of bays, lakes, and waterways for most beneficial purposes, destroys fish and other desirable aquatic life, leads to excessive growth of undesirable aquatic plants, and is costly and difficult to remove. [2000 o.395 §6]

3.125 Purpose and General Requirement of LCC 3.100 to 3.195

(1) It is the purpose of LCC 3.100 to 3.195 to regulate land disturbing activities that may lead to soil erosion and sedimentation into watercourses, wetlands, riparian areas, and public and private property.

(2) No land disturbing activity shall be conducted so as to cause slides of mud, soil, rock, vegetative material, or any erosional or depositional material to be pushed onto, deposited upon, or gravitated to the property of another, either public or private. [2000 o.395 §7]

3.130 Erosion Prevention and Control Plan Required

(1) Plan Required

Except as otherwise provided in subsection (2) of this section, no person shall commence or perform any of the following activities without first receiving the engineer's approval of an erosion control plan:

(a) Any land disturbing activity that will affect an area in excess of 1,000 square feet.

(b) Any land disturbing activity that will affect an area in excess of 500 square feet if the activity is within 25 feet of a river, stream, lake bay watercourse, or wetland.

(c) Any grading, excavation, fill, or any combination thereof that will exceed 50 cubic yards on a lot or parcel.

(2) Exceptions

The following activities are exempt from the requirements of subsection (1) of this section:

(a) Cutting brush where ground cover will remain intact.

(b) Maintenance of public infrastructure by state or local government agencies. State and local government agencies, however, shall implement best management practices to prevent erosion and control sediment; and shall make regular inspections to ascertain that erosion and sediment control measures consistent with best management practices have been implemented and are being effectively maintained.

(c) Emergency measures taken to clear roadways or to save endangered property.

(d) Forest practices undertaken in compliance with the Oregon Forest Practices Act and administrative rules adopted thereunder. [2000 o.395 §8]

3.135 Submission of Erosion Control Plan

In the event an erosion control plan is required by LCC 3.130, the owner of the land or the owner's agent shall submit an erosion control plan to the Lincoln City Public Works Department on a site plan at a scale sufficient to indicate the nature and extent of the work. The plan shall be prepared in accordance with LCC 3.100 through 3.195, using methods and standards shown in the Erosion Prevention and Control Manual. If an engineered grading plan is required for the project under LCC 3.110 and 3.115, then the erosion control plan shall be prepared by the same person who prepared the engineered grading plan. Each erosion control plan shall include a certification that any land disturbing activity will be in accord with the submitted and approved erosion control plan. The erosion control plan shall contain the following information:

- (1) The location of the development site showing adjacent roads and streets and the development site boundaries.
- (2) Indication of north direction.
- (3) Any lakes, bays, rivers, streams, wetlands, channels, ditches, or other watercourses on and immediately adjacent to the development site.
- (4) Areas where existing vegetative cover will be retained and measures to protect vegetation from damage.
- (5) Accurate location, size, and shape of proposed and existing structures.
- (6) Direction of surface water flows.
- (7) Indication of slope steepness or existing and proposed contours at intervals of two feet or as approved by the engineer.
- (8) Location of construction access driveways and designated vehicle parking areas.
- (9) Location of soil stockpiles.
- (10) Type and location of temporary and permanent erosion and sediment control measures, such as, but not limited to, silt fencing, matting, straw bales, mulching, seeding, and sodding.
- (11) A schedule of construction operations and phasing.
- (12) The name, address, and telephone number of each of the owners of the land, the developer of the site, and the person responsible for placement and maintenance of temporary and permanent erosion control measures.
- (13) The general slope characteristics of adjacent property. [2000 o.395 §9]

3.140 Review and Approval

The engineer shall review each erosion control plan to determine whether it conforms to the provisions of LCC 3.100 through 3.195. After receipt of a complete erosion control plan and following final review of the plan, the engineer shall, in writing:

- (1) Approve the plan, if the plan conforms to the provisions of LCC 3.100 through 3.195;
- (2) Approve the plan, subject to such reasonable conditions as may be necessary for the plan to conform to the provisions of LCC 3.100 through 3.195; or
- (3) Disapprove the plan if the plan, either as submitted or with conditions, does not conform to the provisions of LCC 3.100 through 3.195. A disapproval shall indicate the appeal

procedure provided for in LCC 3.100 to 3.195 and the procedure for submitting a revised erosion control plan. [2000 o.395 §10]

3.145 Design and Operation Standards and Requirements

All land disturbing activities that are subject to the erosion control plan approval requirements of LCC 3.130 shall be subject to the following standards and requirements:

(1) Prior to initiation of land disturbing activities, on-site filter barriers, including filter fences, straw bales, or equivalent measures, shall be constructed and functional to control off-site runoff, as specified in the Erosion Prevention and Control Manual. Vegetated strips with a minimum width of 25 feet may be used as an alternative only where runoff in sheet flow is expected.

(2) Disturbed areas shall be stabilized with temporary or permanent measures within 7 calendar days, or as otherwise required by the engineer, following the end of active disturbance, or redisturbance, consistent with the following criteria:

(a) Appropriate temporary or permanent stabilization measures shall include matting, seeding, mulching, sodding, or non-vegetative measures, or a combination thereof.

(b) Areas having slopes greater than 12 percent shall be stabilized with sod, mat, or blanket in combination with seeding, or an equivalent thereto.

(3) Land disturbing activities in stream channels and riparian areas shall be avoided unless the engineer determines there are no other points of access. If the engineer determines such activities cannot be avoided, the following requirements shall be met:

(a) Construction vehicles shall be kept out of the stream channel to the maximum extent possible. Where construction crossings are necessary, temporary crossings shall be constructed of non-erosive material, such as rip-rap or gravel.

(b) The riparian area shall have erosion protection measures in place within 24 hours of disturbance, which time may be extended to a maximum of 48 hours at the discretion of the engineer.

(c) All required local, state, and federal permits shall be received prior to the activity.

(4) Storm sewer inlets and culverts shall be protected by sediment traps or filter barriers meeting design standards and specifications approved by the engineer.

(5) Soil storage piles containing more than 10 cubic yards of material shall not be located with a down slope drainage length of less than 25 feet to a roadway or drainage channel. Filter barriers or impervious covering shall be installed to prevent or contain sediment runoff.

(6) Each site shall have a graveled, or equivalent, entrance road or roads of sufficient length, depth, and width to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public or private roadway shall be removed by shoveling or street cleaning (not flushing) before the end of each workday and transported to a controlled sediment deposit area.

(7) All temporary erosion and sediment control measures shall be disposed of within 30 days after final site stabilization is achieved with permanent soil stabilization measures. Trapped sediment and other disturbed soils resulting from the disposed of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation. [2000 o.395 §11]

3.150 Maintenance of Control Measures

(1) The owner of land on which land disturbing activities are occurring, or the owner's agent, shall maintain all erosion and sediment control measures necessary to meet the requirements of LCC 3.100 through 3.195. The land owner or the land owner's agent shall inspect erosion and sediment control measures every 24 hours during storm or rain events to ensure the measures are functioning properly.

(2) The engineer shall make regular inspections to ascertain that erosion and sediment control measures as proposed in the erosion control plan have been implemented and are being effectively maintained. [2000 o.395 §12]

3.155 Hazards on Private Property

If the engineer becomes aware or is notified of any land containing disturbed soil areas, or containing unprotected soil storage piles, creating erosion and sedimentation that affects property of another or is in violation of any provision of LCC 3.100 to 3.195, the engineer shall require the land owner to follow procedures and employ practices set out in LCC 3.100 to 3.195 to control the erosion and sedimentation. The land owner shall follow the required procedures and employ the required practices. [2000 o.395 §13]

3.160 Review of Engineer Decisions

A professional judgment decision made by the engineer under LCC 3.100 to 3.195 may be appealed by the owner, the owner's agent or representative, or any other person subject to the decision, to the Lincoln City Grading and Erosion Control Review Board. The appeal shall be submitted in writing to the Lincoln City Public Works Department and shall state the relevant facts and the basis for the appeal. The decision of the Review Board shall be rendered within 7 days of an appeal, shall be consistent with the provisions of LCC 3.100 to 3.195, and shall not be subject to further appeal within the city or county government. A decision of the engineer shall be fully effective while an appeal is pending. [2000 o.395 §14]

3.165 Education

(1) The county shall declare each September to be Erosion Prevention Awareness Month, and during September shall participate with the City of Lincoln City and the Devils Lake Water Improvement District in events to promote a greater awareness of the problems with erosion and the solutions to prevent it.

(2) The county, in cooperation with the City of Lincoln City and the Devils Lake Water Improvement District, shall participate in an annual workshop on erosion prevention and sediment control. [2000 o.395 §15]

3.170 Intergovernmental Agreement for Administration of LCC 3.100 to 3.195

The engineer may negotiate intergovernmental agreements between Lincoln County and the City of Lincoln City, and Lincoln County and the Devils Lake Water Improvement District, for administration of any part of LCC 3.100 to 3.195. Any intergovernmental agreement negotiated pursuant to this section shall be presented to the Board of Commissioners for review and approval. [2000 o.395 §16]

3.175 Comparative Table for Lincoln City and County Ordinances

The following table is for purposes of cross reference between LCC 3.100 to 3.195 and the sections of Lincoln City Ordinance # 97-13, codified in Chapter 12.08 of the Lincoln City Municipal Code:

<u>Lincoln County Code Section</u>	<u>Lincoln City Ordinance Section</u>
3.100	12.08.040
3.105	none
3.110	12.08.010
3.115	12.08.020
3.120	12.08.030
3.125	12.08.050
3.130	12.08.060
3.135	12.08.070
3.140	12.08.080
3.145	12.08.090
3.150	12.08.100
3.155	12.08.110
3.160	12.08.120
3.165	12.08.140
3.170	none
3.175	none
3.195	12.08.130
[2000 o.395 §17]	

3.195 Violation

(1) Any violation of any provision of LCC 3.100 to 3.195 may be enforced in accordance with the provisions of LCC Chapter 10.

(2) If the engineer determines that a violation of LCC 3.100 to 3.195 has occurred, the engineer may notify the owner of the land and the developer, general agent, architect, builder, contractor, or other person or entity who has participated in committing the violation, or any of them, to cease all further development until such time as the violation has been remedied, and the person or persons notified shall cease further development. If development continues in disregard of notice from the engineer, the county may seek an injunction to stop further development until the violation is remedied.

(3) If the engineer determines that a violation of LCC 3.100 to 3.195 has occurred, the engineer shall give written notice to the owner of the land and the developer, general agent, architect, builder, contractor, or other person or entity who has participated in committing the violation, or any of them, that a violation has occurred and that the violation must be remedied within a time specified. The amount of time to remedy the violation shall depend on the nature of the violation, the circumstance then existing, and whether an emergency exists. In the event of non-compliance within the time set by the engineer, the county may take remedial steps to cure the violation and charge the costs, fees, and expenses of the remedial action to the owner of the land. This shall include any expenses, costs, and fees paid by the county to third persons for labor and materials to remedy the violation. Charges made under this subsection shall be a lien against the real property on which the violation arises, and the County Clerk is authorized to

record a memorandum of such charges immediately in the Lincoln County Book of Deeds and Mortgages. [2000 o.395 §18]





Erosion Prevention and Sediment Control

Residential Plan Submittal Requirements

Overview

To expedite your permit process, follow this guide to preparing an Erosion Prevention and Sediment Control (EPSC) site plan showing how soil erosion will be minimized and sediment contained on-site during residential construction activities.

What do I need to submit?

You must submit a completed *Excavation & Grading/Erosion Prevention and Sediment Control* permit application along with 2 copies of an EPSC site plan. Follow the checklist below to create the EPSC site plan.

EPSC site plan checklist

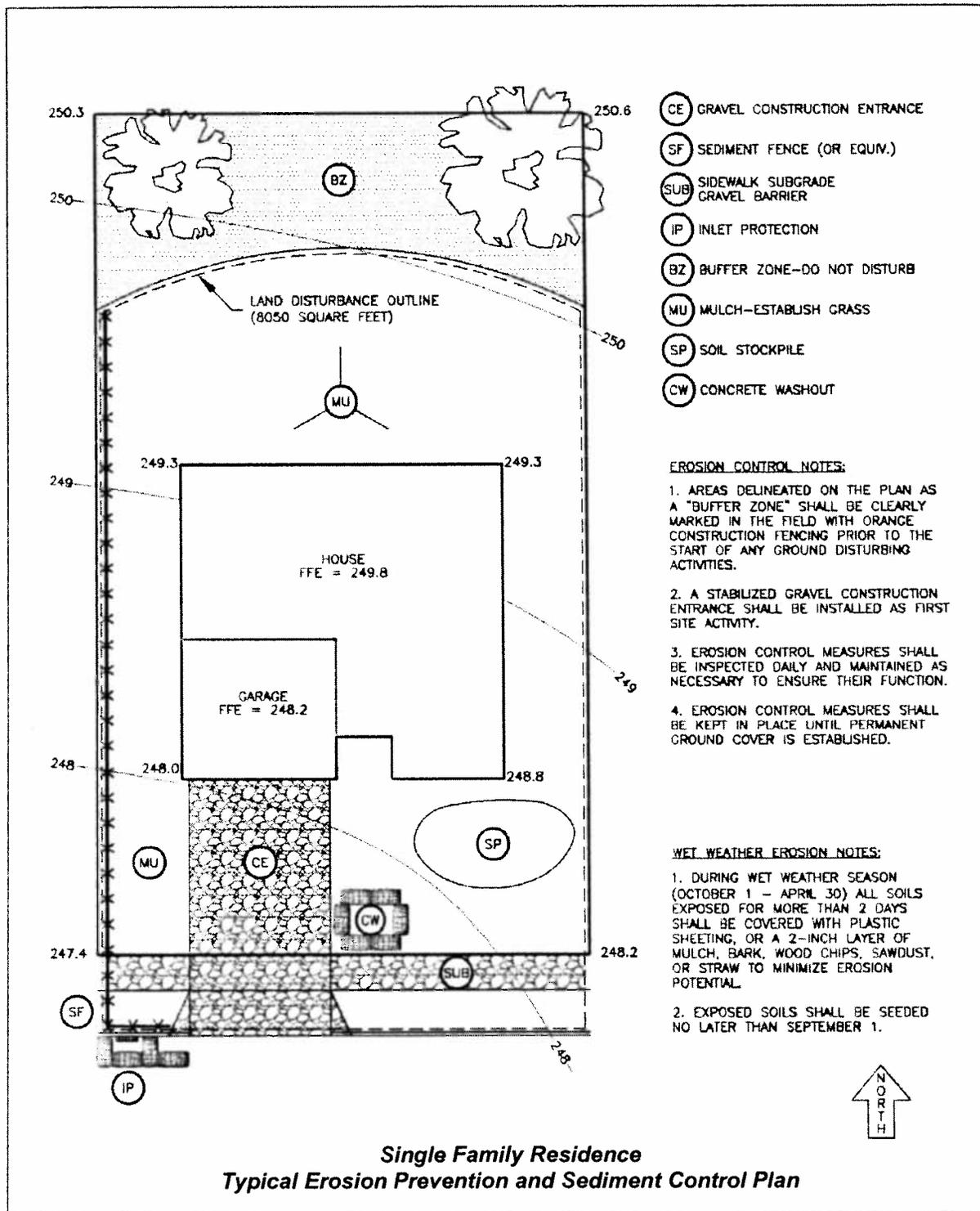
Start with a copy of your site plan, showing the following:

- Property lines, easements, and north arrow
- Existing and proposed contour lines at 2-foot intervals
- Footprint of all structures (including decks, porches, retaining walls, etc.)
- Location of driveway and sidewalks

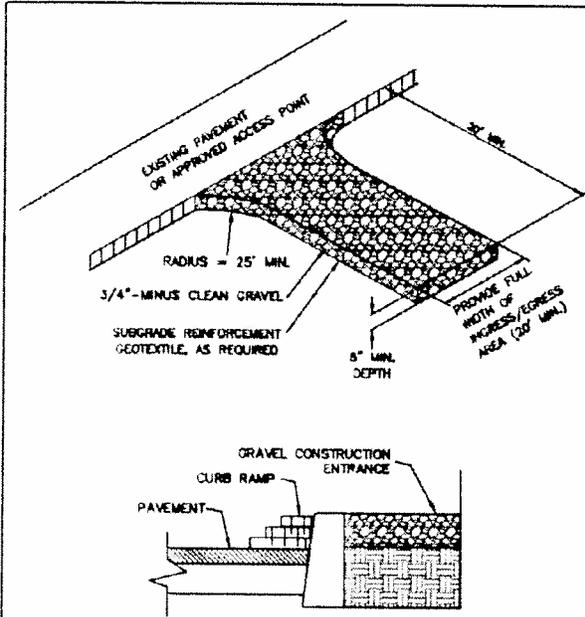
Add the following EPSC information:

- Gravel construction entrance/exit (20-foot length x 20-foot width minimum, 8-inches of gravel).
- Location for any temporary stockpiling of soil during construction.
- Outline all areas of land disturbance on the site, including areas that will be cleared, graded, or excavated during any phase of construction.
- Place erosion control measures on the downhill side of all disturbed areas on the construction site. Appropriate measures include:
 - Sediment fence
 - Rice straw/coconut fiber (coir)/excelsior wattle
 - Excavated sidewalk (4-foot width x 4-inch depth minimum for slopes < 10%, 2-inches of gravel)
 - Mulch or gravel berm
 - Undisturbed buffer zone (10-foot minimum width for slopes < 10%, fence off with orange construction fencing)
- Provide curb gutter filtration and inlet protection for all downhill storm sewer inlets. Appropriate measures include:
 - Biobags (for curb inlets, catch basins, and area drains in low-traffic areas)
 - Curb inlet sediment filters (for curb inlets in high-traffic areas)
 - Filter inserts (for catch basins and area drains in high-traffic areas)
- Provide a concrete wash-out facility for all concrete truck, mortar, and concrete tool wash out:
 - Wash-out facilities are a below-grade excavated basin or above-grade basin constructed of straw bales or lumber, lined with plastic sheeting, where waste can solidify and excess water evaporate.
 - Wash-out facilities must be clearly marked and located away from the street, storm sewer inlets, and water quality facilities.

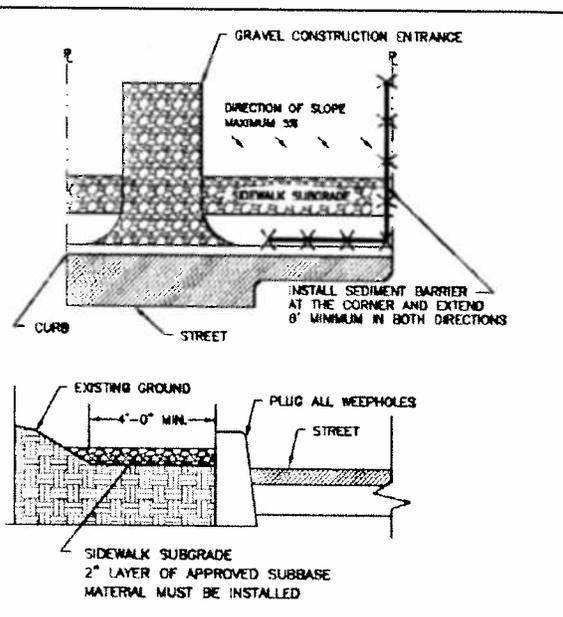
EPSC site plan example



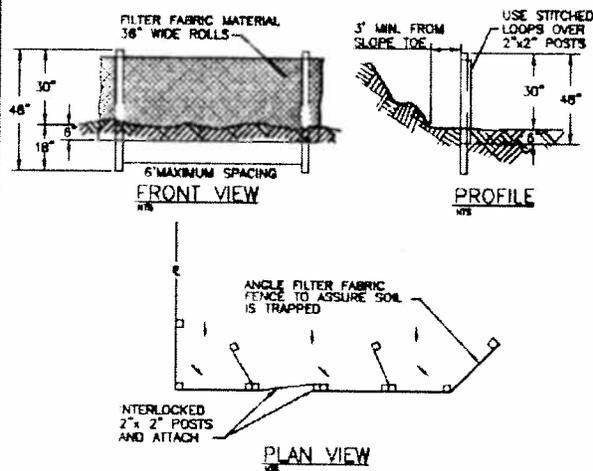
Commonly used residential erosion control measures



Residential Gravel Construction Entrance

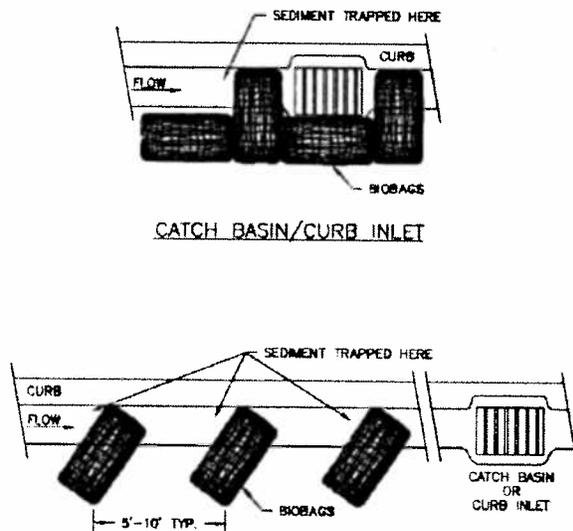


Excavated Sidewalk Gravel Barrier



- NOTES:
1. EXCAVATE A 4" X 8" TRENCH.
 2. USE 36" WIDE FILTER FABRIC WITH STITCHED STAKE POCKETS.
 3. STAKE WITH 2" X 2" FIR, PINE, OR STEEL FENCE POSTS.
 4. POSTS TO BE INSTALLED ON UPHILL SIDE OF SLOPE.
 5. BURY BOTTOM OF FILTER FABRIC 6" VERTICALLY BELOW FINISHED GRADE.
 6. WHERE JOINTS ARE NECESSARY, INTERLOCK POSTS.
 7. BACKFILL AND COMPACT BOTH SIDES OF FILTER FABRIC IN TRENCH.

Sediment Fence



BioBag Inlet Protection

Refer to the *City of Corvallis Erosion Prevention and Sediment Control Manual*, available on-line at www.corvallispermits.com for additional information and erosion control measures.

Standard permit conditions

1. Prior to any ground disturbing activity on the site, an initial inspection by City staff is required. Erosion Prevention and Sediment Control (EPSC) measures should be in place prior to the inspector arriving. Call (541) 766-6745 to schedule your inspection.
2. EPSC measures must be constructed in conjunction with, and prior to, all clearing and grading activities and in a manner as to ensure that sediment and sediment-laden water does not enter the drainage system, roadways, or violate applicable water quality standards.
3. EPSC measures shown on the plans are minimum requirements for anticipated site conditions. During the construction period, the EPSC measures shall be upgraded as needed for unexpected storm events and to ensure that sediment and sediment-laden water does not leave the site.
4. EPSC measures shall be inspected daily by the permit holder, and maintained as necessary to ensure their function.
5. Stabilized gravel construction entrances shall be installed at the beginning of construction and maintained for the duration of the project. Additional measures may be required to ensure that all paved areas are kept clean for the duration of the project.
6. EPSC measures shall be kept in place until permanent ground cover is established.
7. All exposed soil must be permanently stabilized against wind and water erosion before the EPSC permit can be closed. Once the site is stabilized, schedule a final inspection by calling (541) 766-6745. Permanent soil stabilization includes landscaping, seeding, or covering exposed soil with a minimum 2-inch layer of bark or wood chips. For residential construction, where areas of the lot have a final grade less than 10% slope, a 5-foot wide strip of perimeter stabilization may be substituted in lieu of complete site stabilization.

Wet weather permit conditions

1. Wet weather erosion prevention measures will be in effect from October 1 through April 30.
2. Soil exposed for more than 2 days shall be seeded, or covered with plastic sheeting, matting, or a 2-inch layer of mulch, bark, wood chips, sawdust, or straw to minimize erosion potential.
3. Exposed soils shall be seeded no later than September 1 to allow time for proper germination and growth before the wet weather season.

Where can I get assistance?

We are here to help you. Staff is typically available from 8:00 am to 4:00 pm weekdays to answer your questions by phone (541) 766-6929 and at the Development Services front counter in City Hall, 501 SW Madison Avenue. We encourage you to call and make arrangements for a free on-site consultation.

For more information

*City of Corvallis
Development Services
501 SW Madison Avenue
P.O. Box 1083
Corvallis, OR 97339
(541) 766-6929
www.corvallispermits.com*



Erosion Prevention and Sediment Control

Permit Process for Commercial Construction

Overview

To protect local waterways, all ground-disturbing commercial construction sites in Corvallis must comply with water quality standards. This includes developing and implementing a plan to limit soil erosion and contain sediment and other pollutants on-site during construction activities.

What constitutes commercial construction?

All land disturbance *except* for construction of one single-family or duplex dwelling on a site is considered commercial construction.

Construction of one single-family or duplex dwelling on a site disturbing less than 1 acre of land surface is considered residential construction, and applicants should refer to the *EPSC Permit Process for Residential Construction* handout.

When is a permit required?

An Erosion Prevention and Sediment Control (EPSC) permit is required for all construction sites that disturb *2,000 square feet or more* of land surface. Sites that disturb less than 2,000 square feet of land surface are not required to obtain a permit, but property owners must protect water quality.

In addition, an NPDES 1200-C permit from the Oregon Department of Environmental Quality (DEQ) is required for all construction sites that disturb *1 acre or more* of land surface.

Applicants should refer to the *DEQ 1200-C Fact Sheet*.

What constitutes a land disturbing activity?

Any activity that exposes soil, including but not limited to grading, excavating, filling, vegetation removal, or logging.

What is required to obtain an erosion prevention permit?

Applicants must submit a completed EPSC application form and 3 copies of an EPSC site plan, details, and notes showing how soil erosion will be minimized and sediment contained on-site during construction activities.

Sample plans, details, and notes are available in the *City of Corvallis Erosion Prevention and Sediment Control Manual*, available online at www.corvallispermits.com.

Are there special qualifications to prepare this plan?

Yes. For commercial construction a professional design must be submitted by a person licensed in Oregon as a civil engineer, environmental engineer, landscape architect, geologist, or a certified professional in erosion and sediment control (CPESC).

Where can I get assistance?

We are here to help you. Staff is typically available from 8:00 am to 4:00 pm weekdays to answer your questions by phone (541) 766-6929 and at the Development Services front counter in City Hall, 501 SW Madison Avenue.

Handouts and sample plans are available at the counter and online at www.corvallispermits.com. We also encourage you to call and make arrangements for a free on-site consultation.

Are fees required?

Yes, the amount varies depending on the size of the land disturbance.

Over →

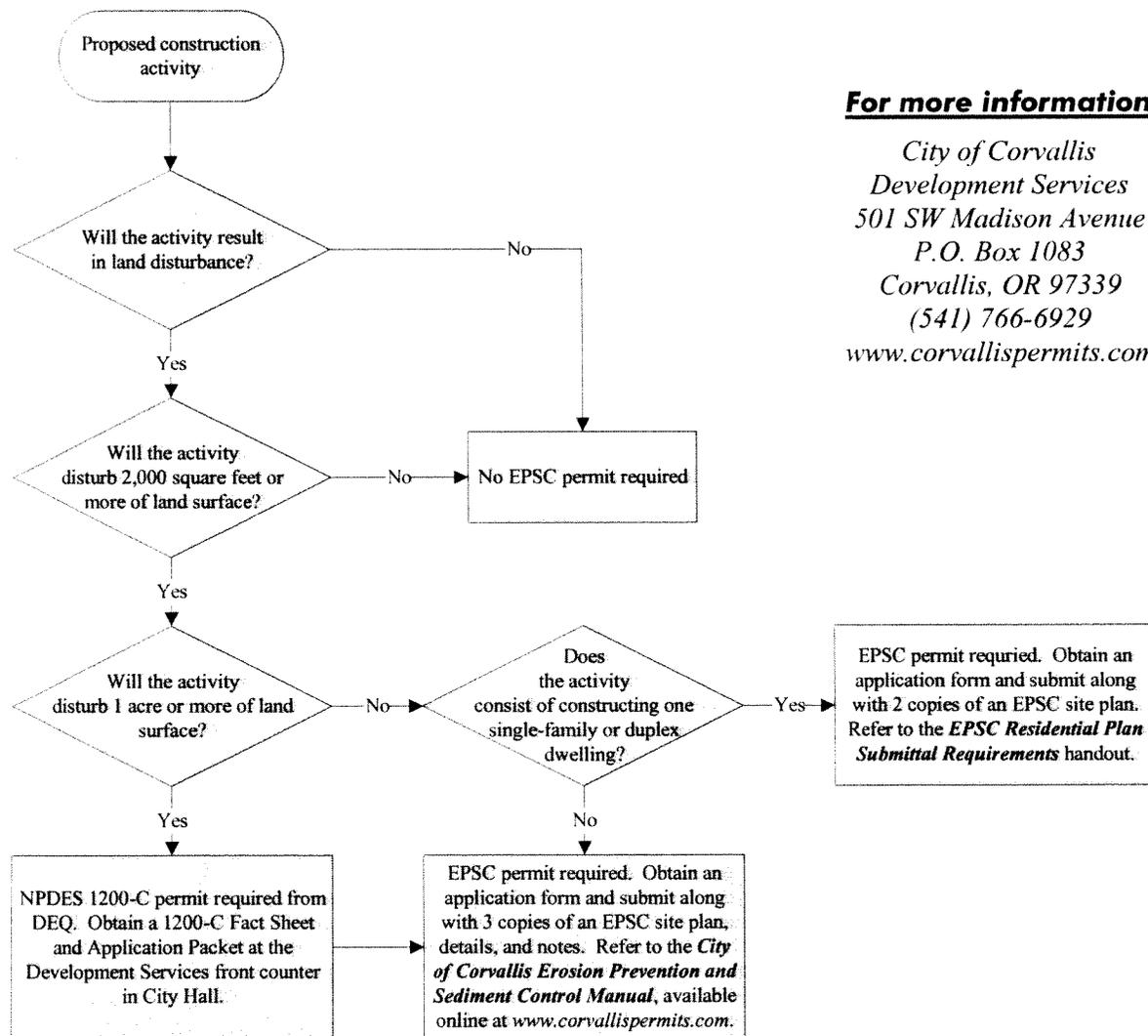
Why are construction sites a problem?

The City's stormwater system consists of open channels, creeks, wetlands, and pipes that carry untreated runoff to the Willamette and Mary's Rivers. Construction activities can cause erosion and sedimentation, which reduces the capacity of the storm water system to convey water away from homes and businesses and reduces water quality. This can lead to drainage and flood problems, polluted drinking water sources, can harm fish and other aquatic life, and otherwise reduce beneficial uses.

What are examples of stormwater pollutants?

Anything other than rain that enters the stormwater system is considered a pollutant. This includes soil sediment, fertilizer, paint, oil, solvents, concrete-washout, and any other garbage, trash or debris.

When is a permit required?



Chapter 9.03

Erosion Prevention and Sediment Control

Sections:

9.03.010	Title.
9.03.020	Purpose.
9.03.030	Scope.
9.03.040	Severability.
9.03.050	Liability.
9.03.060	Definitions.
9.03.070	Authority.
9.03.080	Erosion Prevention and Sediment Control.
9.03.090	Permit Required.
9.03.100	Erosion Prevention & Sediment Control Plan Requirements.
9.03.110	Enforcement / Penalties.
9.03.120	Appeals.
9.03.130	Fees.
9.03.140	Nuisance Abatement.

Section 9.03.010 Title.

These regulations contained herein, together with the Erosion Prevention & Sediment Control Manual, shall be known as the "City of Corvallis Erosion Prevention and Sediment Control Standards," may be cited as such and will be referred to herein as "these Standards."
(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.020 Purpose.

The purpose of these Standards is to establish uniform requirements for development and construction related activities in order to control the occurrence of erosion and to prevent the creation, migration and/or transport of erosion at the source during construction and development.
(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.030 Scope.

- 1) These Standards apply to all ground disturbing activities whether or not a permit is required, unless such activities otherwise are exempted by Corvallis Municipal Code.
- 2) Compliance with Other Laws.
 - a) The requirements of these Standards are minimum requirements. Compliance with these Standards does not in any way imply, either directly or indirectly, compliance with any other law. Where the provisions of these Standards are more restrictive than those set forth in other regulations under the City Municipal Code, Land Development Code, or ordinance, the provisions of these Standards shall control. Where State or Federal natural resource agency permit requirements address erosion prevention and sediment control, the responsible party shall ensure that the State or Federal resource protection requirements have been resolved.
(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.040 Severability.

Corvallis Municipal Code

If any section, paragraph, subdivision, clause, sentence, or provisions of this title shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of the title, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered, it being the intent of the governing body to enact the remainder of this title notwithstanding the parts to be declared unconstitutional and invalid.
(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.050 Liability.

The City officials charged with the enforcement of this code, acting in good faith and without malice in the discharge of the duties required by this code or other related laws and ordinances shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties.
(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.060 Definitions.

For the purpose of this chapter, the following definitions shall apply:

- 1) **Approval or Approved** - a determination by the City Manager or his/her designee that the provisions of these Standards have been met.
- 2) **Best Management Practices (BMPs)** - a physical, chemical, structural or managerial practice that prevents, reduces, or treats contamination of water or which prevents or reduces soil erosion.
- 3) **City Manager** - the City Manager or other designated authority charged with the administration and enforcement of these Standards, or the City Manager's duly authorized representative.
- 4) **Erosion** - the wearing away of the earth's surface due to the action of gravity, wind, water or other mechanical forces.
- 5) **Ground Disturbing Activity** - any activity that exposes soil.
- 6) **Pollutants** - substances that contaminate the soil or water originating on a construction site. Pollutants commonly associated with construction sites include sediment, solid and sanitary wastes, fertilizers, pesticides, oil and grease, concrete truck washout, sheet rock taping compound, glues, epoxies, paints, construction chemicals and construction debris.
- 7) **Responsible Party** - the property owner or person authorized to act on the owner's behalf; or any person allowing, causing or contributing to a violation of the Code.
- 8) **Sediment** - mineral or organic matter generated as a result of erosion.
- 9) **Visible and Measurable Erosion and Sediment Release** -
 - a) sloughing, mud flows, gullies, sediment laden water, or other visual evidence that erosion has occurred or is likely to occur.
 - b) the presence of deposits or tracking of sediment exceeding one half cubic foot in volume at any one time on public or private streets, in drainage systems, and/or on adjacent property.
 - c) in streams or drainage systems, an increase in total suspended solids and/or turbidity relative to a control point immediately upstream of the discharge point of the sediment generating activity.
 - d) evidence of off site airborne sediment clearly visible to the eye.

(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.070 Authority.

- 1) These Standards shall be administered and enforced by the City Manager.
- 2) The City Manager shall have the authority to develop and implement procedures, forms,

policies, and interpretations for administering the provisions of these Standards.
(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.080 Erosion Prevention and Sediment Control.

Erosion and sediment release shall be minimized to the greatest extent practicable utilizing best management practices and the standards in the Erosion Prevention and Sediment Control Manual. The City Manager shall make minimization determinations based upon the visible and measurable erosion and sediment release criteria versus the best management practices (BMP's) being applied.
(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.090 Permit Required.

An erosion prevention and sediment control (EPSC) permit is required before commencing ground disturbing activity affecting 2000 square feet or greater, cumulatively, throughout the duration of the development.
(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.100 Erosion Prevention & Sediment Control Plan Requirements.

The applicant shall submit an Erosion Prevention & Sediment Control Plan (EPSCP) for projects requiring an EPSC permit prior to commencing any ground disturbing activity. All plans shall comply with the minimum standards set forth in the City of Corvallis Erosion Prevention & Sediment Control Manual.

1) Erosion Prevention and Sediment Control Plans

a) Erosion prevention and sediment control plans shall be prepared in conformance with and shall demonstrate compliance with these Standards and the City of Corvallis Erosion Prevention & Sediment Control Manual in effect at the time of application.

b) The EPSCP shall be reviewed and approved by the City Manager prior to commencing any ground disturbing activity including installation of erosion and sediment control BMPs.

c) The EPSCP shall be implemented only after approval and prior to commencing any ground disturbing activity.

d) Subsequent development permits (Grading, Public Improvement, or Building) will not be issued prior to implementation of the EPSCP unless authorized by the City Manager or his/her designee.

2) Approval of Erosion Prevention and Sediment Control Plan

a) The City Manager or his/her designee shall approve the EPSCP if it demonstrates compliance with these Standards and the adopted City of Corvallis Erosion Prevention & Sediment Control Manual. An EPSC permit shall be issued following approval of the plan and verification from the applicant that all other rules and laws governing this aspect of development have been addressed and are in compliance.

b) The responsible party shall be accountable for obtaining re-authorization for implementing any EPSCP modifications needed due to conflicts, omissions, changed conditions, damage or other factor jeopardizing compliance with these Standards.

c) In cases where erosion is occurring, the responsible party must immediately install interim control measures to stabilize the condition and minimize sediment leaving the site. The responsible party will be required to provide new plans, or revisions to existing plans, for review that provide for long term erosion and sediment control. Upon approval of the plans, the new measures described must be implemented in a timely manner.

(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.110 Enforcement / Penalties.

The City Manager is authorized and directed to enforce all the provisions of these Standards and may conduct inspections whenever it is necessary to enforce any provisions of these Standards to determine compliance or whenever the City Manager has reasonable cause to believe there exists any violation of these Standards.

1) Inspection and Right of Entry. When it may be necessary to inspect to enforce the provisions of these Standards, the City Manager, in accordance with administrative policy, may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such building or premises be occupied, that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the City Manager shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the City Manager shall have recourse to the remedies provided by Municipal Code Chapter 1.15 to secure entry.

2) Notification. When it is determined that a violation of this code has occurred, the City Manager shall notify the responsible party and the property owner in writing of the violation observed. The notice of violation shall either be delivered to the responsible party or posted at the property site of the violation, and mailed to all responsible parties.

3) Stop Work Orders. When it is necessary to gain compliance with this code, the City Manager may issue a written stop work order requiring that all work, except work directly related to the elimination of the violation, be immediately and completely stopped. The responsible party shall not resume work until such time as the City Manager provides specific approval in writing.

4) Penalties. Any person violating any of the provisions herein for which a penalty has not been otherwise provided, shall upon court conviction thereof, be punished by a fine of at least \$100.00 but not more than \$5000.00 per offense. Each day that a violation exists is a separate offense.
(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.120 Appeals.

1) Appeals of orders, decisions or determinations made by the City Manager relative to the application and interpretation of the technical and/or scientific requirements of this Chapter shall be to the Board of Appeals established in Section 9.01.090 of this code, and shall be conducted in the same manner set forth in that Section, except that the City Manager shall be substituted for the Building Official, where appropriate.

2) Appeals of orders, decisions or determinations made by the City Manager related to the application and interpretation of the administrative or procedural requirements of this chapter shall be made to the City Council in the manner set forth under Chapter 1.11 of this Code, and shall be reviewed according to the standards set forth in Chapter 1.11. Decisions about whether a matter is administrative or technical shall be made by the City Manager and any appeal shall be to the City Council in the manner set forth above.

3) Filing Parties

a) Appeals may only be filed by the following parties affected by a decision:

1] Any responsible party as defined in this Standard;

2] Any resident or property owner within 150 feet of a parcel of land that is the subject of the decision; or,

3] Any agency, officer, or department of the City which has the responsibility for providing City facilities and/or services to the parcel of land.

b) Appeals submitted under this chapter shall include a \$240 filing fee.

c) Appeals may be filed regarding notices, orders, interpretations and decisions made by

Corvallis Municipal Code

the City Manager relative to these Standards.

d) An appeal must be in writing and include the following:

- 1] name of person filing the appeal
- 2] copy of the notice and order
- 3] copy of the section of these Standards which is being appealed
- 4] a complete explanation of the appeal
- 5] what is requested of the City Council

e) The City Manager shall schedule a meeting of the board within 30 days of the filing of the appeal. The board of appeals shall grant a hearing or dismiss the appeal. The appeal shall be dismissed if the board finds that the appeal does not meet the criteria in subsection 9.01.090.020 or this Standard. If the appeal is dismissed, the City Manager's decision is final. The hearing shall be held not later than 30 days after filing the appeal.

4) Filing Date. Appeals must be filed within seven (7) calendar days plus three (3) days for mailing from the date of the decision of the Director.

(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.130 Fees.

The City shall collect a fee for the purpose of offsetting administrative costs associated with processing applications, reviewing plans, issuing permits, conducting inspections and enforcing these Standards. Fees charged under these Standards shall be as provided in Chapter 8.03.

(Ord. 2004-17 §1, 09/20/2004)

Section 9.03.140 Nuisance Abatement.

1) Summary Abatement Authorized

The City Manager may determine that the failure or non-existence of erosion, sediment and pollutant control measures as required by this Code constitute a nuisance presenting an immediate threat of injury to the public health, the environment, or public or private property. Such nuisances shall be subject to the requirements of this Section. In cases where the City Manager determines it is necessary to take immediate action in order to meet the purposes of this Code, summary abatement of such nuisance is authorized.

2) Notification Following Summary Abatement

When summary abatement is authorized by this Code, the decision regarding whether or not to use summary abatement shall be at the City Manager's discretion. In case of summary abatement, notice to the responsible party prior to abatement is not required. However, following summary abatement, the City Manager shall post upon the affected site the abatement notice describing the action taken to abate the nuisance and shall cause a notice to be mailed to the owner at the owner's address as recorded in the county assessment and taxation records for the property.

3) Financial Responsibility.

a) Whenever a nuisance is abated under this section, the City Manager shall keep an accurate account of all expenses incurred.

b) The City Manager shall file a statement of such costs with the City Finance Department. Upon receipt of the statement, the Finance Director or his/her designee shall mail a notice to the property owner, stating the City's intent to assess the property in question the amount due plus charges to cover the costs of processing. In the event that amount due set forth in the notice is not paid in full within 30 days of the date of notice, the City Finance Director shall enter the amount of the unpaid balance, plus charges to cover administrative costs in the Docket of City liens which shall therefore constitute a lien against the property.

(Ord. 2004-17 §1, 09/20/2004)

Corvallis Municipal Code



AGENDA & NOTICE OF PLANNING COMMISSION MEETING

The Planning Commission of the City of Newport will hold a meeting at **7:00 p.m., Monday, April 23, 2012**, at the Newport City Hall, Council Chambers, 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder, 541-574-0613.

The City of Newport Planning Commission reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

NEWPORT PLANNING COMMISSION Monday, April 23, 2012, 7:00 p.m. AGENDA

A. Roll Call.

B. Approval of Minutes.

1. Approval of the Planning Commission work session and regular session meeting minutes of April 9, 2012.

C. Citizens/Public Comment.

1. A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

D. Consent Calendar.

1. Final Order for File No. 1-PD-12. Approval of a request submitted by Peter Heisler (Doug Holbrook, agent) for an amendment to the preliminary planned development plan approved in 1991 for Newport Bay Estates removing Tract A of Newport Bay Estates (designated as open space) from the approved preliminary planned development plan. The Planning Commission held a public hearing on this matter on April 9, 2012.

E. Public Hearings.

****NOTE: AT THE REQUEST OF THE APPLICANT, THE FOLLOWING HEARING, WHICH WAS NOTICED FOR THIS DATE, WILL BE POSTPONED UNTIL TUESDAY, MAY 29th.****

1. File No. 2-ADJ-12. A request submitted by Murray M. & Nancy K. Tilson for approval of an adjustment to Section 2-3-2.005/"Required Yards" of the Newport Zoning Ordinance (NZO) (No. 1308, as amended) to allow replacement of an existing deck with expansion into the 15-foot rear yard setback required in the R-1 district. The proposed deck would have a distance of about 7.82 feet at the narrowest point. NZO Section 2-3-2.025(B)(2) allows up to a 2-foot projection into a yard setback; therefore the request would result in a setback of 9.75 feet (a 35% adjustment). The subject property is located at 136 SE Larch St (Assessor's Map 11-11-09-BA, Tax Lot 4700).

F. Unfinished Business.

G. New Business.

H. Director Comments.

I. Adjournment.

Please Note: ORS197.763(6): "Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing."



Draft MINUTES
City of Newport
Planning Commission Work Session
City Hall Conference Room "A"
Monday, April 9, 2012

Planning Commissioners Present: Jim Patrick, Gary East, Mark Fisher, Glen Small, and Rod Croteau.

Planning Commissioners Absent: Jim McIntyre and Melanie Sarazin.

Citizens Advisory Committee Members Present: Lisa Mulcahy and Bill Branigan.

City Staff Present: Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

Chair Patrick called the Planning Commission work session to order at 6:00 p.m. and turned the meeting over to CDD Tokos.

A. New Business.

1. Discussion of the City Council's request to the Planning Commission for additional consideration on the Vacation Rental and B&B code update. Tokos noted that the City Council adopted the entire package of the ordinance with one additional change, which is discussed in the Council minutes Tokos provided. Based on testimony, Tokos recommended that those operating less than ten times in a calendar year are not authorized for grandfathering. The 120 days are intended for those that received approval through a conditional use permit. He said that those types of operators going from a residence rented ten times to unlimited really need to meet the standards. Tokos said the whole package goes into effect July 1st, but the Council did direct the Commission to take a further look at the R-1 and R-2 zones to see if further criteria or restrictions can be imposed in those zones. Tokos said that one thing the Commission has to be careful about is that their decision doesn't lead to arbitrary or capricious restrictions. It is incumbent upon the Commission to identify the rationale of what is unique or different in the R-1 and R-2 zones that warrants different treatment. Tokos had posted the maps that were available at the open house so the Commission could take a look at where the R-1 and R-2 districts are. Branigan said that how he read the newspaper article was that the Commission needed to look at the need for a conditional use permit in R-1 and R-2. Tokos said a conditional use permit is something to explore. He said that the bottom line is that the Council is hoping that the Commission will come back with some ideas before the code goes into effect. Fisher suggested that in R-1 and R-2, vacation rentals and B&Bs not be allowed except for those that are properly permitted as of July 1st. Those would be grandfathered as long as they are properly permitted at that moment. Tokos said the Commission has a range of options, and that would be one. One option would be for the Commission to say, "No, we don't believe further changes are warranted at this time." and to outline your reasons. Secondly, the Commission could come up with something with tenancy limits; such as you can't have more than one rental every two weeks like Cannon Beach does. Or another option would be to flat out say that they are not allowed in the R-1 and R-2 unless certain additional standards (that is the design part) are met, like a conditional permit. Tokos said that for that option, we would have to send out a Measure 56 notice stating that their zoning is going to be further restricted and they may not be able to do the same with their property as they can today. Right now they can do up to ten times; but if we say they have to go through a conditional use, there is no guarantee they can do vacation rentals. Fisher wondered if in that case, the Commission would be overwhelmed with conditional use hearings we would have to hold. Tokos said that the Commission would have to hold those hearings. Also, the Commission would hold the Measure 56 hearing, and then the second would be at City Council. Tokos explained that the exact language for the Measure 56 notice is spelled out in statute. We did it for the geologic code update. He said it is alarmist language. It is put in that way on purpose to get people concerned enough so they will get engaged. He said if we go down that path, there will be people saying, "Don't take my right away", and people will show up and say they don't want them in the R-1 and R-2 zones. We may have strong opinions on both sides. Croteau wondered why that was bad if the Council is willing to go with Measure 56.

From the audience, Bob Berman said that certain clauses in the ordinance are more restrictive than it is now and wondered why that doesn't trigger Measure 56. Tokos said that right now they have the ability to rent not more than ten times; and the code has no restriction on frequency of use. Further restrictions within the code are offset by basically letting them do it any time they want. If it's set up that they can only do it through a conditional use permit, they may not be able to do it at all. That is why Tokos talked to legal counsel. He said part of it is the degree of restriction. What the Council adopted didn't restrict; in a sense it made it more permissive in parts. It didn't require Measure 56 notice.

Audience member Steve Salisbury said that he spent a couple of years in law school and knows a lot about Measure 56 as a realtor. He said this isn't even a smoking gun. He said that what he isn't hearing is what we want our community to evolve to in the future. He is concerned it is or monetary reasons. Salisbury said that we should be trying to create a way of life. He wondered if the concern is not to take away from those that have it today and actually expand it, will it cost us more in property values. Patrick said that after the battle with the public over the geologic hazard code update, the Commission was hesitant to

restrict people's rights with their property. He questioned where Salisbury had been during the hearings. He said the City did as much outreach as possible getting to this point. The testimony the Commission got basically other than two problem owners, we didn't have anybody testifying against it. Small noted that the Commission has been all over this route. He asked the Commission to focus their attention to the issue at hand of whether they are appropriate in R-1 and R-2. Tokos agreed that was a fair approach. Tokos just wanted the Commission to be aware that with Measure 56, if they to down that path, they will likely get people engaged that were not in the past. He said that if the Commission looks at R-1 and R-2 and determine additional standards are needed, they have to explain what is inherently different in those zones that warrant different rules and how those rules address those differences. Croteau asked why not consider whether a conditional use permit is required in all residential zones. Tokos said that getting clear and objective standards was a desire. He said that one problem with conditional use permits is that they were not drafted for vacation rentals. The standards are fairly broad, and what that has led to is inconsistent decisions. With clear and objective standards, they can get there or not. It is not that this particular Planning Commission had different views. Fisher said that he thinks we either have to allow them or not. Small wondered what criteria would be used for someone in the R-1 zone that had never rented before but came in for a conditional use permit to do so. Fisher thought that conditional use permits would open a terrible Pandora's box of hearings. Tokos noted that we do have complaints come in from other zoning districts as well. He said the problem is not with the zone, it's with the person operating them. Patrick wanted to know more about the one option Tokos mentioned regarding tenancy limits. Fisher wondered how that would be enforced. Tokos said the one thing different now is that we require guest registry, which could be used if the City received complaints in adhering to tenancy. The guest registry would be a way to enforce that. Tokos said he is not saying this is something we should or shouldn't do. It's just that we did receive testimony from one individual requesting that we do tenancy limits. The ad hoc committee didn't thinking we wanted to go down that path because of the difficulty in enforcement. The only one of the nine jurisdictions we looked at that does that is Cannon Beach. They have a registry. The limit could be maybe not more than one occurrence every one week or every two weeks; whatever you feel is appropriate. Tokos said the rationale for that might be that, based on the evaluation of our zoning districts, R-1 and R-2 are less likely to have vacation rentals now and we don't know how frequent turnover beyond the ten times in a calendar year would impact the neighborhood. That would set it more permissive than the ten times, but not every weekend. Croteau thought that was still unenforceable; and Tokos agreed that it does have enforcement problems. Berman wondered if everybody has to register; even relatives. Tokos said that under the current code of ten times a calendar year, there often were issues because they would claim it was a friend or relative.

Salisbury asked the Commissioners that rather than looking at what isn't broken and looking for revenue, to step away from that issue and look at what they want the future of Newport to be. He said that with respect to R-1 and R-2, he thinks anyone would agree that the environment is for children and families and is supportive and friendly. He felt that what they decide is what Newport is going to become.

Tokos wanted to go through the options again. One, if the Commission feels that no further changes are warranted, they can direct Tokos to put together a letter for their review saying that they don't think any further changes are warranted at this time and say why. Another way is for the Commission to think of some additional standards. If the end result cannot lead to an absolute prohibition, then we don't need to go through as extensive of an outreach process. A third option is if the Commission feels that they want to see some standards that would require more extensive review in R-1 and R-2 for whatever reasons that could lead to flat-out prohibition, then we can go down that path and provide the appropriate notice. Small wondered if we had any sense of how many are operating in R-1 right now. Tokos said it is a handful that are actually paying room tax and have business licenses. We can try to ferret out by VRBO. Others doing it one to three times and not reporting, we don't know. Fisher said that if they are not properly licensed, whatever happens on July 1st is what counts for them. If they are properly licensed, we can't take it away once they have it. Small said that the properties that are going to be the most attractive are ocean-view properties, which are not necessarily the residential neighborhoods. He was trying to remember where that discussion led us, but he thinks it was that it will be a bit self-regulating. Tokos said that is where the ad hoc committee came out. They looked at these maps. We have properties attractive for vacation rentals because of the view aspect. That is going to run the gamut in different zoning districts. They felt it best to set clear and objective standards that are enforceable, and traffic will take care of it. East said that what we wanted was something enforceable. Tokos noted that some jurisdictions had tenancy that was ratio-based or hard cap in place. Manzanita's was ratio-based at 17.5% of total dwellings. Cannon Beach has a hard cap at 92 permits. They had grandfathering, and their advice was to be careful about how often we do that. They have several tiers now, and it got challenging. Bandon was proximity-based with no more than 30% of dwellings within a 300-foot parameter. Durango required a 500 foot separation. Bandon had zoning distinctions that were set up to fit vacation rentals. Cannon Beach, Lincoln City, and Manzanita had ownership-based where there can be only once license per owner. Tokos said density was shot down by the ad hoc committee because it is hard to manage whatever is set up and what is the magical figure. Croteau said that jurisdictions have tried to put some limitations on vacation rentals based on conceptual limits; and he thinks that the reason these jurisdictions have is because these uses are bad in residential neighborhoods. East said that is what some of this code would take care of. It would give residents recourse.

Summing up the options, Tokos said it is status quo, some additional standards but not prohibition, or full out prohibition. Fisher said that he would like to see R-1 and R-2 be family residential. He voted for the ordinance, but he would rather not

have R-1 and R-2 included. Croteau agreed that has been his position all along. He said if the City Council is willing to defend a ban on R-1 and R-2, he goes along with them. He would like to see the residential neighborhood preserved. Tokos asked Croteau if his view was that R-1 and R-2 is different in that regard. Croteau said that when you go through those neighborhoods, they are more residential. There are more well-kept houses, and there are more kids, animals, and people out and about. Fisher added that home ownership is greater in R-1. Patrick noted that he lives in R-2, and it is a neighborhood. Tokos noted that when we went through the housing study, 68% of permits issued in R-3 and R-4 were for single-family development. Most condos were in commercial districts. He said that Southshore is R-4, and they went through VRDs in private covenants.

Patrick said that he doesn't like conditional uses because he can't figure a way to do it right. He thought the Commission should either leave the code as is or figure time limitations. He said that if we say none in R-1 and R-2, it will bring out more people. East thought that if people think their rights are being taken away, they will be upset whether they are renting or not. Berman said that he thought most people would be grateful for that regulation. Fisher thought R-1 and R-2 should be excluded, and Croteau thought so too. Fisher said that if they are done before July 1st, we have no right to take that away from them. Tokos asked Fisher if he meant those would have the ability to come in and get an endorsement. Fisher said that he was never in favor of these, but it is a way to get them legally operating. Berman said he didn't have a problem with the concept; he has a problem with strangers in his neighborhood on weekends with no contact. He said it would be really nice to have this under control. Tokos told Fisher that with the concept he was kicking out, that individual would still be doing a vacation rental. They have to come get an endorsement; but would still be able to do that.

Patrick thought this needs to be brought up at another work session when the full membership is present. He noted that the Commission will need a rationale if they don't want to allow them in R-1 and R-2 that they can sell to the public. He added that if the Commission doesn't want to do that, then they need to come up with rational for time limiting or something. Fisher said that after everything he has heard, read, and seen, he doesn't feel they fit in neighborhoods. Branigan asked about the other jurisdictions the committee took a look at. He said this is a beach community where we have a different type of renter than in Sisters for instance. Tokos said that is why we had six coastal communities to look at. He noted also that Astoria doesn't allow VRDs in residential districts.

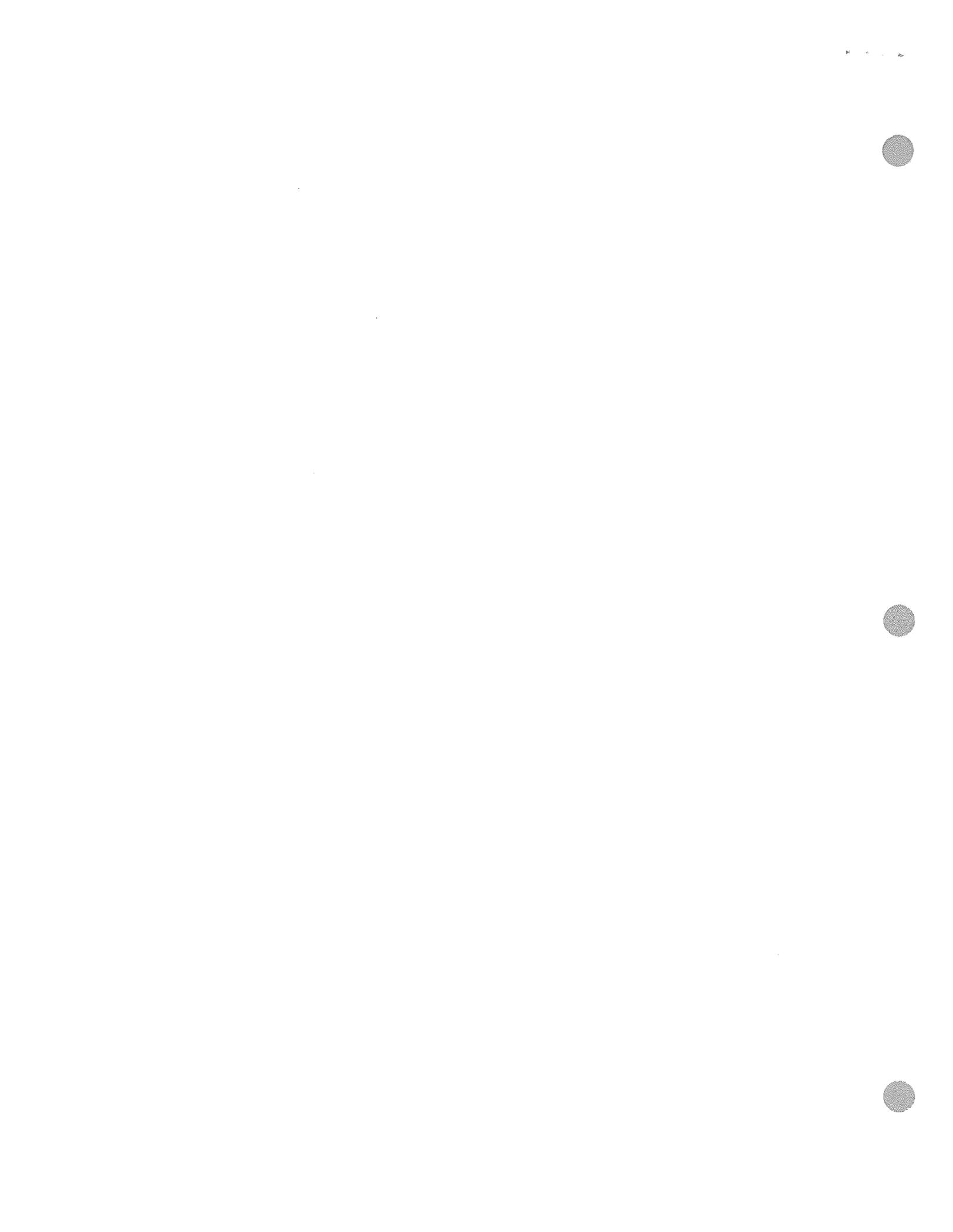
Tokos said what he can do is take some of what he heard here tonight and work it into a series of options for the Commission to review and tweak or go with coming out of the next work session. Croteau asked what it would do to ban them in R-1 to R-4. Tokos said that if they are banned in R-1 and R-2, that is a substantial amount of ocean-view properties. If they were banned in all residential districts, that would take everything ocean-view except for Nye Beach and the hotel strip. He said that for context, that is the impact. Tokos said he wants to put on paper a few options for the Commission to chew on. He thinks he can give them about three and at least some rationale to think about for each. It will be something to work on and start to tweak and tear away at to get something formalized. He said the Council's hope was that any changes would be put in before July 1st. If there are no changes made, then the code goes into effect as is. If there is flat out ban in any zones, it would be a prohibition of how it is currently used, and we would have to do notice. If the Commission does a complete prohibition, we would have to do one Measure 56 notice for a Planning Commission hearing. The Commission is the one setting it up for the Council. You would hear whatever response came in and would sort it out and send on another package to the City Council. That is the way the process works.

2. Review of sample erosion control codes and discuss general regulatory framework. This agenda item will be held over until the next meeting. Tokos said the City is just starting down this path. Tokos said that he is not sure we want contractors to be involved on the ad hoc committee. He thinks it would be better to have them respond to something actually written. Croteau asked about point four on Tokos' memo regarding storm water management and erosion control. He thought it would be difficult to separate. Tokos noted that some codes don't get into permanent storm water management. He thinks that is the best way to go, but the City is just not there yet. We need to do a storm water master plan, and it is premature to tackle it at this point. Tokos said if the Commissioners feel they don't want to parse that, then maybe we don't do the erosion plan until we get to the storm water master plan. Tokos said there is some property on Ocean View that would show the Commissioners what happened where a property owner did grading and cut the slope. Croteau suggested that if the others hadn't looked at the Corvallis code, to do so. He said it is thorough. Patrick noted that Corvallis' code also meets EPA standards. Tokos agreed that the Corvallis code is great. He said it is the "Cadillac" of codes, but with that comes the burden of making it work.

B. Adjournment. Having no further time, the work session meeting adjourned at 7:03 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant



Draft Minutes
City of Newport Planning Commission Regular Session
Monday, April 9, 2012

Commissioners Present: Jim Patrick, Mark Fisher, Glen Small, Rod Croteau, and Gary East.

Commissioners Absent: Jim McIntyre and Melanie Sarazin (*both excused*).

City Staff Present: Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

A. Roll Call. Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:04 p.m. On roll call, Small, Croteau, Patrick, Fisher, and East were present. McIntyre and Sarazin were absent, but excused.

B. Approval of Minutes.

1. Approval of the Planning Commission regular session meeting minutes of March 26, 2012.

MOTION was made by Commissioner Croteau, seconded by Commissioner East, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

C. Citizen/Public Comment. No comments on non-agenda items.

D. Consent Calendar. Nothing on the consent calendar.

E. New Business.

1. Review applications and select a Citizens Advisory Committee member to fill vacancy.

One application to fill the vacancy was received from Bob Berman. **MOTION** was made by Commissioner Fisher, seconded by Commissioner Small, to appoint Berman to fill the Advisory Committee vacancy. The motion carried unanimously in a voice vote.

F. Public Hearings.

Patrick opened the public hearing portion of the meeting at 7:05 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, bias, ex parte contact, or site visits. East declared a site visit. Patrick called for objections to any of the Planning Commissioners or the Commission as a whole hearing these matters; and no objections were raised.

1. **File No. 1-PD-12.** A request submitted by Peter Heisler (Newport Bay Estates Homeowners Assn., property owner) (Douglas Holbrook, Holbrook & Associates, authorized representative) for an amendment to the preliminary planned development plan approved in 1991 for Newport Bay Estates (File No. 1-PD-91) as follows: That Tract A of Newport Bay Estates (designated as open space) be removed from the approved preliminary planned development plan, leaving the balance of Newport Bay Estates subdivision (served by SE Running Springs Drive) intact. The subject property consists of .3 acre more or less and is identified as Tax Lot 3700 of Assessor's Map 11-11-09-DB (Tract A of Plat of Newport Bay Estates, Book 15, Page 52 (1995)).

Patrick opened the hearing for File No. 1-PD-12 by reading the summary of the file from the agenda. He called for the staff report. Tokos noted that in the packet the Commissioners had the staff report that includes the criteria against what this has been evaluated. He noted that the way that the City's planned development code works is that if an amendment is done that could increase density it requires the Commission to evaluate the request against the entire planned development criteria. By removing this piece from an open space designation, it would potentially be used for other purposes. The lot is at the corner of Bay Road and Running Springs. The property is sloped and vegetated. The City's sewer pump station is situated on the lot right there at that corner and is partially screened by a fence. Tokos explained that the planned development concept originally included four phases. In 2005, it was stepped down to one phase. It is a residential subdivision, Newport Bay Estates, along Running Springs Road containing a number of large single-family lots and open spaces. This parcel is one of those open spaces on the planned development. The analysis indicates that it is not unreasonable to find that the planned development criteria have been met. He mapped it out in the Staff Report, and it's in part because this isn't the same concept originally laid out. It was a much larger development with higher densities. What is left is single-family development with large lots, and there are other open space properties. Tokos said that having this piece come off the open space wouldn't compromise the planned development. Tokos

noted a couple of challenges. The sewer pump station was situated on the property, and because it was open space and wasn't planned to be developed, there is no easement over it to the pump station. Because this property could potentially be developed if it's removed, the City will need an easement. Another challenge has to do with access. As seen in the original development, because this had open space designation, it was designed that the only place Bay Road could access the development is Running Springs. A condition is imposed that direct access not occur from this parcel to Yaquina Bay Road directly because that would be a safety issue that near to Running Springs. Because this is unraveling a piece of the planned development, it will need a plat. If the Commission agrees and takes away the open space designation, the applicant would follow with a minor replat and would have to lift it on the plat itself. Basically, what they would do if they are successful here is come in with a replat or a partition to lift that as well. That's not something that would come before the Planning Commission. Croteau asked how the pump station is accessed. East explained that it sits right there at Bay Road, then there is a retaining wall behind it. Patrick said that as he read back through the previous conditions of approval, one had to do with the Port of Newport as an operating port. He wondered if that still carries forward. Tokos said that presumably any other restrictions are still in effect. He said the property is not pulled out of the development; it just leaves the open space designation.

Proponents: Doug Holbrook, attorney for the applicant, testified. Holbrook noted that they agree with the staff report that the criteria are all in order for approval. He said that, with respect to the recommendation for the two conditions (the utility easement and no direct access to Yaquina Bay Road), they are fine. Fisher noted that he knows people that live up there, and he hasn't heard any negatives. Holbrook agreed this would be the time for them to raise any opposition.

Opponents or Interested Parties: No opponents or interested parties were present.

Patrick closed the public hearing at 7:15 p.m. for deliberation. East said that he doesn't see any problem as long as they grant an easement and keep access off the Bay Road. He said that with those two conditions, he would recommend approval. Fisher said that where this is, he doesn't see a problem. Croteau thought it meets criteria and doesn't see any issues. Small agreed with the others. He said it seems to meet all requirements and conditions. Patrick felt the same. He said as long as there are the two conditions; he is more than happy with it.

MOTION was made by Commissioner East, seconded by Commissioner Croteau, to approve the amendment to the Planned Development for Yaquina Bay Estates with the two conditions recommended by staff for an easement and regarding access. The motion carried unanimously in a voice vote. Tokos noted that we will bring back a final order and findings for the Commission's consideration at the next meeting.

G. Unfinished Business. Tokos noted that the codification of the zoning ordinance is scheduled for the City Council at their next meeting on Monday, April 16th.

H. Director's Comments. Tokos noted that there are a lot of meetings in April and wanted to cover them with the Commissioners. The Coho/Brant effort kicks off April 11th from 3:30-5:00 p.m. at the HMSC. McIntyre and East are representing the Commission on that committee. The general public meeting is at HMSC from 6:00-8:00 p.m. On April 12th, the EOA TAC is meeting again from 3:00-5:00 p.m. at City Hall. Small is the Commission representative on that. The EOA TAC will meet again on April 23rd from 3:00-5:00 p.m. The Coho/Brant design charette will be held April 25th at HMSC from 2:00-5:00 p.m. and 6:00-8:00 p.m. That is where actual design concepts will be discussed. On April 18th from 6:00-7:00 p.m. at City Hall, Public Works will be holding an open house on the sidewalk infill project for 3rd and 6th Streets. They will have specific design details. This has been budgeted for some time. On April 30th, the City Council will be doing a town hall meeting in the Agate Beach neighborhood at the Lakeview Hills club house at 6:00 p.m. The Council has been holding these meetings to get public engagement in the different neighborhoods.

Tokos wanted to let the Commissioners know that on the TSP update for South Beach, he has been successful in getting ODOT to pin down their last open house date. It will be May 24th.

I. Adjournment. Having no further business to discuss, the meeting adjourned at 7:25 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION FILE)
NO. 1-PD-12, APPLICATION FOR MODIFICATION OF)
PRELIMINARY DEVELOPMENT PLAN APPROVAL,) FINAL
AS SUBMITTED BY PETER HEISLER (NEWPORT BAY) ORDER
ESTATES HOMEOWNERS ASSN, PROPERTY OWNERS))
(DOUGLAS HOLBROOK (HOLBROOK & ASSOCIATES,)
LLC), AUTHORIZED REPRESENTATIVE))**

ORDER APPROVING A MODIFICATION to the Preliminary Planned Development Plan approved in 1991 for Yaquina Bay Estates (File No. 1-PD-91) removing the “open space” designation for the subject property from Phase 1 of the preliminary planned development plan. The property was platted as Tract A, of the Newport Bay Estates subdivision. The subject property is identified as Tax Lot 3700 of Lincoln County Assessor’s Tax Map 11-11-09-VD (Tract A of Plat of Newport Bay Estates, Book 15, Page 52 (1995)) and consists of .3 acre more or less.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance (NZO) (No. 1308, as amended); and
- 2.) The Planning Commission has duly held a public hearing on the request for the planned development, with a public hearing a matter of record of the Planning Commission on April 9, 2012; and
- 3.) At the public hearing on said application, the Planning Commission received evidence and recommendations from the applicants, interested persons, and Community Development (Planning) Department staff; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, approved the request for the preliminary development plan modification with conditions of approval.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") are adopted in support of approval of the request for preliminary development plan approval modifications, and the following conditions of approval are adopted in support of approval of this request:

1. A utility easement shall be provided to the benefit of the City of Newport over those portions of the property that contain the sewer pump station and related utilities. Such easement shall be provided in a form acceptable to the City Engineer.
2. Direct access to the subject property from Yaquina Bay Road shall be prohibited.

BASED UPON THE ABOVE, the Planning Commission determines that the request is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 23rd day of April, 2012.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director
City of Newport

EXHIBIT "A"

File No. 1-PD-12

FINDINGS OF FACT

1. On February 21, 2012, Peter Heisler (Newport Bay Estates Homeowners Assn., property owner) (Douglas Holbrook (Holbrook & Associates, LLC), authorized representative) submitted an application for approval of amendments to the preliminary planned development plan approved in 1991 for Yaquina Bay Estates (File No. 1-PD-91) as follows: That the "open space" designation for the subject property be removed from Phase 1 of the preliminary planned development plan. The property was platted as Tract A, of the Newport Bay Estates subdivision. Removing the open space designation on the preliminary development plan will allow the property owner to pursue a replat of the Newport Bay Estates subdivision to remove the tract designation and the limitation on the plat that the tract be retained by the Homeowner's Association as open space and recreational area.
2. The subject property is identified as Tax Lot 3700 of Lincoln County Assessor's Tax Map 11-11-09-VD (Tract A of Plat of Newport Bay Estates, Book 15, Page 52 (1995)) and consists of .3 acre more or less.
3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: Low Density Residential.
 - b. Zone Designation: R-2/"Medium Density Single-Family Residential".
 - c. Surrounding Land Uses: Other R-2 residential uses are to the west, north, and east; to the south, across Bay Blvd., are I-3 heavy industrial uses.
 - d. Topography and Vegetation: The subject property is steeply sloped and is vegetated with trees and shrubbery.
 - e. Existing Structures: A City of Newport sewer pump station is located on the southeast corner of the property. The pump station is partially fenced to screen its view from the Yaquina Bay Road.
 - f. Utilities: All are available to the property.
 - g. Development Constraints: Portions of the property are steeply sloped and appear to contain wetlands. The site is within the City's Geologic Hazards Overlay Zone.
 - h. Past Land Use Actions:

File No. 3-PD-05. Amendment to planned development removing property for Phases 2-4, Yaquina Bay Estates.

File No. 2-PD-93. Approval of a request for a tentative plan and final plat approval for an amendment to Phase I of Yaquina Bay Estates Development (#1-PD-92) increasing the number of single-family residential lots to 21.

File No. 1-PD-92. Final planned development plan/plat approval for Phase I consisting of 18 single-family residential lots and 4 tracts in open space and recreational area.

File No. 1-PD-91. Preliminary planned development plan approval for up to 80 townhouses and/or condominiums and up to 40 single-family residential lots.

File No. 1-AX-90. Annexation of property.

4. Upon submission and acceptance of application, the Community Development (Planning) Department mailed notice of the proposed actions on March 5, 2012, to property owners within 200 feet required to receive such notice by the Newport Zoning Ordinance, and to various City departments, public/private utilities and agencies within Lincoln County, and other individuals. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., April 9, 2012. Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on March 30, 2012. No comments were received from any of the affected parties.

5. Pursuant to NZO Section 2-5-4.060/"Procedure for Modification of a Planned Development Plan," any change that includes any change in the character of the development or any increase in the intensity or density of the land use or in the location or amount of the land devoted to specific land uses is considered a major change requiring approval by the Planning Commission following a public hearing. Pursuant to NZO Section 2-5-4.060(D), in considering any request for a change in a Preliminary Development Plan, the Planning Commission shall apply the same standards as are provided for the approval of Preliminary Plans. The Planning Commission may approve, reject, modify, or attach special conditions to a request for modification of a Preliminary Development Plan.

6. A public hearing was held on April 9, 2012. At the public hearing, the statement of rights and relevance and applicable criteria were read. The Planning Commission disclosed any ex parte contact, conflicts of interest, and/or bias. No objections were made to any of the Planning Commissioners hearing the matter. The Planning Commission received the staff report and heard testimony from Doug Holbrook, attorney for the applicant. The minutes of the April 9, 2012, meeting are hereby incorporated by reference into the findings. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

- Attachment "A" – Applicant's Application Narrative
- Attachment "A-1" – Map of Phase I, Yaquina Bay Estates
- Attachment "A-2" – Plat of Newport Bay Estates
- Attachment "B" – Notice of Public Hearing and Map
- Attachment "C" – Final Order for File No. 1-PD-91
- Attachment "D" – Final Order for File No. 1-PD-92
- Attachment "E" – Final Order for File No. 2-PD-93
- Attachment "F" – Final Order for File No. 3-PD-05

7. The planned development received preliminary planned development plan approval in File No. 1-PD-91 for a four-phased development allowing up to 80 townhouses and/or condominiums and up to 40 single-family residential lots. The subject property was designated on the plan as open space. Final development plan approval was given for Phase I in File No. 2-PD-92. Phase I was completed and platted as Newport Bay Estates (served by SE Running Springs Drive). The property is

identified as "Tract A" on the plat, with the stipulation that it be retained by the Homeowner's Association as an open space and recreational area. Phases 2-4 were withdrawn from the preliminary planned development with File No. 3-PD-05, leaving the Newport Bay Estates subdivision (Phase 1 of the planned development) as the only part of the original planned development. Tract "A" of the subdivision was sold to the applicant in August 2007. The applicant is requesting that the open space designation for the subject property be removed from Phase 1 of the preliminary development plan. This will allow the property owner to pursue a replat of the Newport Bay Estates subdivision to remove the tract designation and associated plat limitations.

8. Major changes to approved preliminary development plans must satisfy the original approval criteria (NZO 2-5-4.060). Therefore, the request must be consistent with criteria set forth in Section 2-5-4.040 of the Newport Zoning Ordinance (NZO) (No. 1308, as amended).

9. Criteria For Preliminary Development Plan Approval:

***NZO Section 2-5-4.040: (Findings for Project Approval):** A. Except as set forth in subsection (A)(2) of this section, a planned development shall be on a tract of land at least two acres in low-density residential areas. B. The minimum lot area, width, frontage, and yard requirements otherwise applying to individual buildings in the zone in which a planned development is proposed do not apply within a planned development. C. If the spacing between main buildings is not equivalent to the spacing that would be required between buildings similarly developed under this Code on separate parcels, other design features shall provide light, ventilation, and other characteristics equivalent to that obtained from the spacing standards. D. Buildings, off-street parking and loading facilities, open space, landscaping, and screening shall provide protection outside the boundary lines of the development comparable to that otherwise required of development in the zone. E. The maximum building height shall, in no event, exceed those building heights prescribed in the zone in which the planned development is proposed, except that a greater height may be approved if surrounding open space within the planned development, building setbacks, and other design features are used to avoid any adverse impact due to the greater height. F. The building coverage for any planned development shall not exceed that which is permitted for other construction in the zone exclusive of public and private streets. G. The planned development may result in a density in excess of the density otherwise permitted within the zone in which the planned development is to be constructed not to exceed 5%... H. No open areas may be accepted as common open space within a planned development unless it meets the following requirements: (1) The location, shape, size, and character of the common open space is suitable for the planned development; (2) The common open space is for amenity or recreational purposes, and the uses authorized are appropriate to the scale and character of the planned development, considering its size, density, expected population, topography, and the number and type of dwellings provided; (3) Common open space will be suitably improved for its intended use, except that common open space containing natural features worthy of preservation may be left unimproved. The buildings, structures, and improvements to be permitted in the common open space are appropriate to the uses which are authorized for the common open space; (4) The development schedule that is part of the development plan coordinates the improvement of the common open space and the construction of buildings and other structures in the common open space with the construction of residential dwellings in the planned development; and (5) If buildings, structures, or other improvements are to be made in the common open space, the developer shall provide a bond or other adequate assurance that the buildings, structures, and improvements will be completed. The City Manager shall release the bond or other assurances when the buildings, structures, and other improvements have been completed according to the development plan. I. The planned development is an effective and unified treatment of the development possibilities on the project site while remaining consistent with the Comprehensive Plan and making appropriate provisions for the preservation of natural features such as streams and shorelines, wooded cover, and rough terrain. J. The planned development will be compatible with the area surrounding the project site and with no greater demand on public facilities and services than other authorized uses for the land. K. Financial assurance or bonding may be required to assure completion of the streets and utilities in the planned development prior to final approval.*

10. The proposed request would allow for the subdivision of land through the planned development process. The Planning Commission is required to follow ORS 197.522 which states:

A local government shall approve an application for a permit, authorization or other approval necessary for the subdivision or partitioning of, or construction on, any land that is consistent with the comprehensive plan and applicable land use regulations or shall impose reasonable conditions on the application to make the proposed activity consistent with the plan and applicable regulations. A local government may deny an application that is inconsistent with the comprehensive plan and applicable land use regulations and that cannot be made consistent through the imposition of reasonable conditions of approval.

CONCLUSIONS

This request is for modification of the preliminary approval for the planned development for Yaquina Bay Estates. Modifications to planned development approvals must be consistent with the approval criteria contained in the Newport Zoning Ordinance (NZO). In order to approve this request, the Planning Commission must find that the applicant has addressed and met all standards.

After consideration of the application materials, the Planning Staff Report and Attachments, and the testimony in the record, the Planning Commission concludes as follows in regard to the criteria established in Newport's Zoning Ordinance (No. 1308, as amended) for approving the modification requested to the preliminary planned development plan for Yaquina Bay Estates:

Compliance with NZO Section 2-5-4.040, Criteria for Approval of a Preliminary Development Plan:

1. NZO Section 2-5-4.040(A) requires that: "Except as set forth in subsection (A)(2) of this section, a planned development shall be on a tract of land at least two acres in low-density residential areas." The Plat of Newport Bay Estates shows that Phase 1 of the planned development satisfies this requirement (ref: Staff Report Attachment "A-2").
2. NZO Section 2-5-4.040(B)(1) requires that: "The minimum lot area, width, frontage, and yard requirements otherwise applying to individual buildings in the zone in which a planned development is proposed do not apply within a planned development." The Planning Commission previously determined that the lots in Newport Bay Estates met this requirement. As depicted on the Newport Bay Estates subdivision plat (Attachment "A-2"), the configuration of Tract "A" is comparable to that of the platted, developable lots. The proposed amendment, removing the tract designation, would therefore meet this requirement.
3. NZO Section 2-5-4.040(B)(2) states that: "*If the spacing between main buildings is not equivalent to the spacing that would be required between buildings similarly developed under this Code on separate parcels, other design features shall provide light, ventilation, and other characteristics equivalent to that obtained from the spacing standards.*" The Planning Commission previously determined that the lots in Newport Bay Estates met this requirement. As depicted on the Newport Bay Estates subdivision plat (Attachment "A-2"), the configuration of Tract "A" is comparable to that of the platted, developable lots. The proposed amendment, removing the tract designation, would therefore meet this requirement.

4. Pursuant to NZO Section 2-5-4.040(B)(3), “buildings, off-street parking and loading facilities, open space, landscaping, and screening shall provide protection outside the boundary lines of the development comparable to that otherwise required of development in the zone.” The Planning Commission previously determined that the lots in Newport Bay Estates met this requirement. Tract ‘A’ is open space located in the extreme southwest corner of the development. It provides no real buffer to the boundary due to its location and the fact a major access road crosses it into the development. There are no open space or screening requirements in the R-2/“Medium density single-family residential” zone.

5. NZO Section 2-5-4.040(B)(4) states that: “The maximum building height shall, in no event, exceed those building heights prescribed in the zone in which the planned development is proposed, except that a greater height may be approved if surrounding open space within the planned development, building setbacks, and other design features are used to avoid any adverse impact due to the greater height.” The Planning Commission previously determined that the lots in Newport Bay Estates met this requirement. The proposed amended planned development would therefore meet this requirement as no height variance is requested.

6. NZO Section 2-5-4.040(B)(5) requires that: “The building coverage for any planned development shall not exceed that which is permitted for other construction in the zone exclusive of public and private streets.” As depicted on the Newport Bay Estates subdivision plat (Attachment "A-2"), Tract “A” is large enough that if the open space designation is removed, the property could be developed in a manner comparable to other lots within the subdivision. The Planning Commission previously determined that the lots in Newport Bay Estates met this requirement. The proposed amended planned development would therefore meet this requirement.

7. NZO Section 2-5-4.040(C)(1) states that “*The planned development may result in a density in excess of the density otherwise permitted within the zone in which the planned development is to be constructed not to exceed 5%...*” Lots within the planned development, including Tract A, exceed the minimum lot size of the zoning district. Therefore, removing the open space limitation will not increase building densities beyond what is permitted in the district.

8. NZO Section 2-5-4.040(D)(1) provides that: “No open areas may be accepted as common open space within a planned development unless it meets the following requirements: (1) The location, shape, size, and character of the common open space is suitable for the planned development; (2) The common open space is for amenity or recreational purposes, and the uses authorized are appropriate to the scale and character of the planned development, considering its size, density, expected population, topography, and the number and type of dwellings provided; (3) Common open space will be suitably improved for its intended use, except that common open space containing natural features worthy of preservation may be left unimproved. The buildings, structures, and improvements to be permitted in the common open space are appropriate to the uses which are authorized for the common open space; (4) The development schedule that is part of the development plan coordinates the improvement of the common open space and the construction of buildings and other structures in the common open space with the construction of residential dwellings in the planned development; and (5) If buildings, structures, or other improvements are to be made in the common open space, the developer shall provide a bond or other adequate assurance that the buildings, structures, and improvements will be completed. The City Manager shall release

the bond or other assurances when the buildings, structures, and other improvements have been completed according to the development plan.” Several open space areas exist in the planned development plan, and the lots in the development exceed the minimum lot size of the district. This provides for separation of uses, and privacy consistent with the objectives of a planned development designation. Removal of the open space designation for the subject property would not compromise this objective. The property was designated and found to be suitable as open space. A City of Newport pump station and related utility improvements were constructed on the property in reliance upon the open space limitation. If the open space restriction is lifted, then some form of utility easement should be put in place to allow the continued operation and maintenance of these facilities. This is addressed with a condition of approval.

9. NZO Section 2-5-4.040(E) requires that: “The planned development is an effective and unified treatment of the development possibilities on the project site while remaining consistent with the Comprehensive Plan and making appropriate provisions for the preservation of natural features such as streams and shorelines, wooded cover, and rough terrain.” The approved development consists of 21 large-sized lots for single-family residential use and with 4 open space tracts. The CC&Rs contain provisions regarding use of native plants and restrictions on tree removal. Additionally, SE Running Springs was constructed below the typical City road width standards otherwise required through a standard subdivision application. According to the Staff Report for File No. 1-PD-91, the streets were narrow in order to minimize disruption of the hillside. Tract ‘A’ was designated open space. The proposed amendment to the planned development will not change the development possibilities of the remainder of the planned development.

As shown on the map of Phase I, Yaquina Bay Estates (Attachment "A-1") and the plat for Newport Bay Estates (Attachment "A-2"), open space areas restrict direct vehicle access from subdivision lots onto Yaquina Bay Road. Vehicles are directed to SE Running Springs. Removing the open space designation on the subject property opens up the possibility that Yaquina Bay Road could be accessed from this site. Given the property's proximity to SE Running Springs, a road approach at this location would be inherently unsafe. This would also be inconsistent with the development concept originally envisioned for Phase 1. A condition of approval is imposed prohibiting vehicle access from this property onto Yaquina Bay Road.

10. NZO Section 2-5-4.040(F) requires that: “The planned development will be compatible with the area surrounding the project site and with no greater demand on public facilities and services than other authorized uses for the land.” Newport Bay Estates was determined to be compatible with the surrounding area in Files No. 1-PD-91, No. 1-PD-92, and No. 3-PD-05. Services are available to the site, so removing the open space limitation will not place greater demands on public services than were envisioned when the property was put into a residential zoning designation.

11. NZO Section 2-5-4.040(G) states that: “Financial assurance or bonding may be required to assure completion of the streets and utilities in the planned development prior to final approval.” Phase I of Newport Bay Estates is constructed. There is the improved SE Running Springs street accessing the development and utilities are in place. No further financial assurances are needed.

OVERALL CONCLUSION

Based on the staff report, the application material, and other evidence and testimony in the record, the Planning Commission concludes that the request as presented in the application materials complies with the criteria established in the Zoning Ordinance for granting modifications to the preliminary development plan; and the request is hereby **APPROVED** with the conditions listed below.

1. A utility easement shall be provided to the benefit of the City of Newport over those portions of the property that contain the sewer pump station and related utilities. Such easement shall be provided in a form acceptable to the City Engineer.
2. Direct access to the subject property from Yaquina Bay Road shall be prohibited.



Memo

To: Newport Planning Commission

From: Derrick Tokos, Community Development Director 

Date: April 18, 2012

Re: 136 SE Larch Street – Request for Rear Yard Setback Adjustment (File No. 2-ADJ-12)

Enclosed is a letter from the applicant in the above referenced request seeking a four week continuance so that they can further review the concept with their neighbors. The proposal involves reconstructing a deck and expanding it such that it would be just less than eight (8) feet from the rear property line.

Considering that the proposal may change as a result of these conversations, staff has not attached a copy of the staff report and application materials.

May 29th would be the next hearing date at which this matter could be taken up.

Murray M. Tilson
136 SE Larch St.
Newport, OR 97365

Derrick Tokos
Community Development Director
City of Newport
168 SW Coast Hwy
Newport, OR 97365

April 18, 2012

Re: Request to postpone Public Hearing on 4/23/12 for Murray & Nancy Tilson Variance
Request for deck extension

Dear Sir,

We request that the scheduled public hearing date be moved out 1 month to allow us time to personally review our variance request with effected neighbors.

We appreciate your consideration in this matter.

Sincerely,



Murray M. Tilson

