

Section 2-4-7. GEOLOGIC HAZARDS OVERLAY

2-4-7.005. Purpose. The purpose of this section is to promote the public health, safety, and general welfare by minimizing public and private losses due to earth movement hazards and limiting erosion and related environmental damage, consistent with Statewide Planning Goals 7 and 18, and the Natural Features Section of the Newport Comprehensive Plan.

2-4-7.010. Geologic Hazard Areas. The following areas are considered geologically hazardous and are therefore subject to the requirements of this section:

- A. Bluff or dune backed shoreline areas within low, medium, high or active hazard zones identified in the Department of Geology and Mineral Industries (DOGAMI) Open File Report O-04-09 Evaluation of Coastal Erosion Hazard Zones along Dune and Bluff Backed Shorelines in Lincoln County, Oregon: Cascade Head to Seal Rock, Technical Report to Lincoln County, dated 2004.
- B. Active or potential landslide areas, prehistoric landslides, or other landslide areas identified in the DOGAMI Open File Report O-04-09.
- C. Any other documented geologic hazard area on file in the office of the City of Newport Building Official.

2-4-7.015. Geologic Permit Required. All persons proposing development, construction, or site clearing (including tree removal) on property within a geologic hazard area as defined in 2-4-7.010, shall obtain a geologic permit. The geologic permit may be applied for prior to or in conjunction with a building permit or any other permit required by the City.

Unless otherwise provided by City ordinance or other provision of law, any geologic permit so issued shall be valid for the same period of time as a building permit issued under the Uniform Building Code then in effect.

2-4-7.020. Exemptions. The following activities are exempt from the provisions of this chapter:

- A. Maintenance and repair of existing structures, including alterations within the existing footprint that do not add habitable floor area;
- B. An excavation which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;
- C. Fill which does not exceed two feet in depth or twenty-five cubic yards in volume;
- D. Exploratory excavations under the direction of a registered engineering geologist or geotechnical engineer;
- E. Structural alterations less than 500 square feet in size that are outside of active and high hazard zones and do not involve grading in excess of two feet in depth, or twenty-five cubic yards of volume;

- F. Detached accessory buildings less than 500 square feet in size that are outside of active and high hazard zones and do not involve grading in excess of two feet in depth, or twenty-five cubic yards of volume;
- G. Tree removal on slopes less than twenty-five percent;
- H. Tree removal on slopes greater than twenty-five percent where canopy area removal is less than twenty-five percent of the lot or parcel area;
- I. Forest practices as defined by ORS 527 (the State Forest Practices Act) and approved by the state Department of Forestry;
- J. Maintenance and reconstruction of public and private roads, streets, driveways, and utility lines, provided the work does not extend outside the previously disturbed area;
- K. Installation of utility lines in city rights-of-way or public easements, not including electric substations; and
- L. Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazard.

2-4-7.025. Application Submittal Requirements. In addition to a land use application form with the information required in Section 2-6-1.020, the application shall include the following:

- A. A site plan that illustrates areas of disturbance, ground topography (contours), roads and driveways, an outline of wooded or naturally vegetated areas, watercourses, erosion control measures, and trees with a diameter of at least 8-inches dbh (diameter breast height) proposed for removal; and
- B. An estimate of depths and the extent of all proposed excavation and fill work; and
- C. Identification of the bluff or dune backed hazard zone (active, high, medium, or low) or landslide hazard zone (active, potential, prehistoric, etc.) within which development is to occur. In cases where properties are mapped with more than one hazard zone, a certified engineering geologist shall identify the zone most appropriate to the area proposed for development.
- D. A geologic report (Section 2-4-7.030), prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development; or
- E. In Low or Moderate Hazard zones, a City of Newport Geologic Reconnaissance Form, completed by a certified engineering geologist, or registered professional geologist in consultation with a licensed engineer, with his/her stamp and signature affixed, indicating that the site is suitable for the proposed development;
 - (1) If the Geologic Reconnaissance indicates a need for further investigation, or if the Community Development Director requires further study based upon information contained in the completed Reconnaissance form, a geologic report (Section 2-4-7.030) as specified by the Community Development Director shall be prepared and submitted.

- F. An engineering report, prepared by a registered engineer, must be provided if engineering remediation is anticipated to make the site suitable for the proposed development.

2-4-7.030. Geologic Report Guidelines. Reports shall be prepared consistent with standard geologic practices and shall, at a minimum, contain the items outlined in the "Guidelines for Preparing Engineering Geologic Reports in Oregon," prepared by the Oregon State Board of Geologist Examiners, and address sub-sections 2-4-7.035 to 2-4-7.045, as applicable. For oceanfront property, reports shall also address the "Geological Report Guidelines for New Development on Oceanfront Properties," prepared by the Oregon Coastal Management Program of the Department of Land Conservation and Development. All geologic reports are valid as prima facie evidence of the information therein contained for a period of five (5) years. They are only valid for the development plan addressed in the report. The city assumes no responsibility for the quality or accuracy of such reports.

2-4-7.035. Limitations on Construction within Hazard Areas.

Staff: Considering public concern that language in the original draft was overly limiting in terms of construction options and the associated impact to property values, this subsection now includes three different policy options for addressing risk of property loss in high hazard areas.

OPTION A

- A. For bluff or dune backed shoreline areas that are within active or high hazard zones, or areas impacted by active landslides, construction is limited to the recommendations, if any, contained in the geologic report and the following:
- (1) Expansion of existing structures provided such expansion is limited to no more than a 10% increase in the total square footage of the building footprint as it existed on (effective date of ordinance);
 - (2) Relocation of existing structures on the same property;
 - (3) Manufactured dwellings provided such dwellings:
 - (a) Have a dimensional width of 28 feet or less; and
 - (b) Have access to and from the site of sufficient width and grade to permit the structure to be relocated;
 - (4) Single family residences, other than manufactured dwellings, provided such residences:
 - (a) Are single story structures with less than 1,500 square feet of total floor area; and
 - (b) Have a dimensional width of 28 feet or less; and

- (c) Are placed on perimeter footing, piling, or other type of foundation that will render them readily movable. Slab on grade foundations do not meet this criterion; and
 - (d) Are composed of stud wall or similar frame type of construction that will render them readily movable. Walls that are constructed of masonry, including stone walls, concrete poured or concrete block walls and brick veneer walls do not meet this criterion; and
 - (e) Have access to and from the site of sufficient width and grade to permit the structure to be relocated;
- (5) Single story non-residential buildings, provided such buildings:
- (a) Have a dimensional width of 28 feet or less; and
 - (b) Are constructed upon a foundation that allows them to be readily moved; and
 - (c) Have access to and from the site of sufficient width and grade to permit the structure to be relocated;
- (6) Detached accessory buildings less than 500 square feet in total floor area, which are bolted to a slab foundation and do not have plumbing or interior walls;
- (7) Improvements for beach access;
- (8) Shore front protective structures as otherwise determined eligible by the City and permitted by the Oregon Parks and Recreation Department;
- (9) Accessory structures, other than buildings; and
- (10) Public infrastructure and related improvements.
- B. For bluff or dune backed shoreline areas that are within moderate hazard zones, construction is limited to the recommendations, if any, contained in the geologic report or Geologic Reconnaissance Form and the following:
- (1) The building footprint shall be less than 2,500 square feet per structure with the total footprint for all buildings not exceeding 5,000 square feet.
- C. For bluff or dune backed shoreline areas that are within low hazard zones, and potential, prehistoric, or other landslide/hazard areas construction is limited by the recommendations, if any, contained in the geologic report or Geologic Reconnaissance Form.
- D. Construction limitations outlined in A-D above, do not apply to the area known as the Southshore Development (Newport File No. 1-PD-93). Construction within the Southshore Development is limited by the recommendations, if any, contained in the geologic report or Geologic Reconnaissance Form.

OPTION B

- A. For bluff or dune backed shoreline areas that are within active or high hazard zones, or areas impacted by active landslides, new construction shall be limited to the recommendations, if any, contained in the geologic report and buildings **shall** be constructed in a manner that renders them readily moveable in the event they need to be relocated. Readily movable structures include:
- (1) Manufactured dwellings and modular structures; or
 - (2) Conventional construction utilizing:
 - (a) Perimeter footing, piling, or similar foundations. Slab on grade foundations do not meet this criterion;
 - (b) Stud wall or similar frame construction. Walls that are constructed of masonry, including stone walls, concrete poured or concrete block walls, and brick veneer walls do not meet this criterion; or
 - (c) Other construction methods that a licensed architect or professional engineer establishes can be readily dismantled and removed from the property.
- B. Properties within bluff or dune backed shoreline areas that are within active or high hazard zones shall possess access of sufficient width and grade to permit new buildings to be relocated.
- C. For bluff or dune backed shoreline areas that are within moderate or low hazard zones and potential, prehistoric, or other landslide/hazard areas, construction is limited to the recommendations, if any, contained in the geologic report or Geologic Reconnaissance Form.

OPTION C

- A. For bluff or dune backed shoreline areas that are within active or high hazard zones, or areas impacted by active landslides, new construction shall be limited to the recommendations, if any, contained in the geologic report and buildings **should** be constructed in a manner that renders them readily moveable in the event they need to be relocated. Examples of readily movable structures include:
- (1) Manufactured dwellings and modular structures; or
 - (2) Conventional construction utilizing:
 - (a) Perimeter footing, piling, or similar foundations. Slab on grade foundations are not readily removable;
 - (d) Stud wall or similar frame construction. Walls that are constructed of masonry, including stone walls, concrete poured or concrete block walls, and brick veneer walls are not readily removable.

- B. Properties within bluff or dune backed shoreline areas that are within active or high hazard zones shall possess access of sufficient width and grade to permit new buildings to be relocated.
- C. For bluff or dune backed shoreline areas that are within moderate or low hazard zones and potential, prehistoric, or other landslide/hazard areas, construction is limited to the recommendations, if any, contained in the geologic report or Geologic Reconnaissance Form.

2-4-7.040. Prohibited Development on Beaches and Foredunes. Construction of residential, commercial, or industrial buildings are prohibited on beaches, active foredunes, other foredunes that are conditionally stable and subject to ocean undercutting or wave overtopping, and interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if a certified engineering geologist determines that it is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; and is designed to minimize adverse environmental effects. Such a determination shall consider:

- A. The type of use proposed and the adverse effects it might have on the site and adjacent areas;
- B. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
- C. Methods for protecting the surrounding area from any adverse effects of the development; and
- D. Hazards to life, public and private property, and the natural environment that may be caused by the proposed use.

2-4-7.045. Erosion Control Measures. In addition to completing a Geologic Reconnaissance Form or geologic report, a certified engineering geologist shall address the following standards.

- A. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;
- B. Development plans shall minimize cut or fill operations so as to limit and prevent offsite impacts;
- C. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;
- D. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;
- E. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;
- F. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above

such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;

- G. All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty year frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure.
- H. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;
- I. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:
 - (1) Energy absorbing devices to reduce runoff water velocity;
 - (2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;
 - (3) Dispersal of water runoff from developed areas over large undisturbed areas;
- J. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures; and
- K. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.

2-4-7.050. Storm water Retention Facilities Required. For structures, driveways, parking areas, or other impervious surfaces in areas of 12% slope or greater, the release rate and sedimentation of storm water shall be controlled by the use of retention facilities as specified by the City Engineer. The retention facilities shall be designed for storms having a 20 year recurrence frequency. Storm waters shall be directed into a drainage with adequate capacity so as not to flood adjacent or downstream property.

2-4-7.055. Land Divisions within Hazard Areas. New land divisions within geologic hazard areas shall:

- A. Include within each lot or parcel a minimum 1500 square foot building footprint which is located landward of active and high hazard zones; and
- B. Locate all public infrastructure landward of active and high hazard zones.

2-4-7.060. Approval Authority. An application shall be processed and authorized using a Type I decision making procedure.

2-4-7.065. Appeal. Appeals may be filed within 15 calendar days of the date the City issues a final order as provided by Section 2-6-1.050. Appellants challenging substantive elements of a Geologic Reconnaissance Form or geologic report are encouraged to submit their own analysis prepared by a certified engineering geologist.

2-4-7.070. Certification of Compliance. No development requiring a geologic report shall receive final approval until the City receives a written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. If mitigation measures involve engineering solutions prepared by a licensed professional engineer, then the City must also receive an additional written statement of compliance by the design engineer.

2-4-7.075. Responsibility. Whenever sedimentation is caused by stripping vegetation, grading, or other development, it shall be the responsibility of the person, corporation, or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems and to return the affected areas to their original or equal condition prior to final approval of the project.

2-4-7.080. Applicability of Nonconforming Use Provisions. Provisions of the nonconforming use section of the zoning code that are applicable within geologic hazard areas are those that apply to alteration, expansion, or replacement due to casualty loss or health, safety and related standards. A geologic report is required in active or high risk areas.

2-4-7.085. Hazard Disclosure and Liability Waiver. Prior to issuance of building permits, applicants' in high or active hazard zones or with properties where geologic reports have been prepared for the development shall submit a copy of a Hazard Disclosure and Liability Waiver. This waiver shall be executed by the subject property owner and recorded in the deed records of Lincoln County and which sets forth the following:

- A. A statement that the property is subject to chronic natural hazards and that development thereon is subject to risk of damage from such hazards;
- A. A statement that the property owner has commissioned a geologic report, a copy of which is on file with the City, has reviewed the document and has thus been informed and is aware of the type and extent of hazards present and the risks associated with development of the subject property;
- B. A statement that the property owner has disclosed all known geologic reports completed prior to the preparation of a geologic report for the subject development and that copies are on file with the City. If a previous report is known to have been completed but cannot be obtained, a written explanation and documentation of due diligence has been filed by the property owner with the City.
- C. A statement acknowledging that the property owner assumes all risks of damage from natural hazards associated with the development of the subject property; and

D. A statement releasing the City of Newport, its agents and employees, from any and all claims which may arise as a result of damages, losses or injuries sustained by the property owner and his/her heirs, successors and assigns, from natural hazards.

2-4-7.090. Site Specific Adjustments to Geologic Hazard Area Boundaries. An applicant may seek an adjustment to the location of bluff or dune backed shoreline hazard zone or landslide hazard zone boundary identified in the DOGAMI Open File Report O-04-09, when a certified engineering geologist establishes that such changes are warranted based upon site specific conditions or proposed remediation. If remediation through an engineering solution is the basis for adjustment of the hazard zone, then a registered engineer with the required expertise for the solution must approve the remediation scheme. The rationale for the change shall be documented in a report and any alternative hazard designations that apply to the subject site shall be identified.

Upon receiving the report, the city shall provide notice to the Department of Geology and Mineral Industries (DOGAMI) and Department of Land Conservation and Development (DLCD). The agencies will have 15 days to provide comments, and the city shall consider comments received from these agencies prior to issuing a permit.