Agenda Item # _____
Meeting Date June 14, 2011

# CITY COUNCIL AGENDA ITEM SUMMARY

City of Newport, Oregon

Issue/Agenda Title Public hearing on proposed amendments to the Newport Comprehensive Plan, Zoning Ordinance, and Municipal Code Relating to Geologic Hazards (File No. 12-Z-09)

Prepared By: Derrick Tokos/Penelope McCarthy Dept Head Approval: DT/PM City Mgr Approval: _____

**ISSUE BEFORE THE COUNCIL:** Consideration of whether or not it is in the public interest to amend the Natural Features Chapter of the Newport Comprehensive Plan, the Geologic Hazards Section of the Newport Zoning Ordinance (Section 2-4-7), and land division criteria related to geologic hazards in Title XIII of the Municipal Code.

This is the same package of changes that the City Council held hearings on in the fall of 2010. At that time, the Council closed the public record and referred the proposal back to the Planning Commission for an "on the record" review and recommendation on how to approach geologic permit requirements in areas the State of Oregon has mapped as being at moderate risk of bluff and dune backed erosion hazards. This was done in consideration of testimony they had received on the issue after the Planning Commission made its original recommendation.

The Planning Commission completed its review on February 14, 2011 and provided a recommendation that the draft Zoning Ordinance be amended to require geologic reports for new development in these areas only if some portion of the subject lot or parcel is mapped as being at a high risk. The rationale for this change, along with the proposed amendments is attached. At its April 18, 2011 meeting the City Council reopened the record for public comments until May 27, 2011. Comments received during this open record period are also enclosed.

**STAFF RECOMMENDATION:** The City Council may accept the Planning Commission's rationale and recommendation or it may make further amendments to the proposal. Staff recommends that proposed amendments to the Municipal Code relating new land divisions in potentially geologically hazardous areas be accepted as drafted, and that changes to the Comprehensive Plan, which incorporate technical information from the State Department of Geology and Mineral Industries (DOGAMI's) 2004 report also be accepted. Should the City Council elect to make additional changes to the Zoning Ordinance an explanation as to how those changes are consistent with the Newport Comprehensive Plan will be required. Copies of the relevant Comprehensive Plan policies are attached. A rationale, either the Planning Commission's or a substitute by the Council, will then need to be incorporated into an implementing ordinances to be reviewed by the City Attorney for legal sufficiency and to ensure the proposed changes adequately address shortcomings of the existing codes that have been pointed out in prior litigation.

Some members of the public believe that the draft code should be further revised to exempt new development in moderate risk areas from geologic permit requirements if an owner can establish that the construction will not occur on the portion of the lot or parcel that is mapped as being at high risk. Expert testimony in the record indicates that substantial geologic hazards exist in moderate risk areas that warrant a full report with new development. DOGAMI has also pointed out the limitations of its GIS based mapping should it be used in this manner. The Planning Commission considered these factors in developing their recommendation, and the Council should weigh these issues carefully should it desire to amend the code further.

Council members have discussed whether or not the City should display bluff and dune backed erosion and landslide hazard areas in color, consistent with how they are described in the DOGAMI report, or if more muted "neutral" shading should be used. A motion is included directing staff to utilize grayscale hatching instead of the colors used in the DOGAMI report should the Council prefer this approach.

## MOTIONS FOR ADOPTION:

Motion #1 – Accept the Planning Commission's Recommendation: I move that the Council accept the Planning Commission's recommendation regarding the moderate risk areas and direct staff to incorporate the changes into the prior draft. The Council further directs staff to prepare, in consultation with the City Attorney, an ordinance amending the Newport Comprehensive Plan, Zoning Ordinance and Municipal Code as it relates to development within geologically hazardous areas for consideration at a future meeting.

Motion #2 – Additional Flexibility in Moderate Risk Areas: I move that the Council direct staff to further amend the draft code to exempt new development on lots or parcels that are partially within high risk dune or bluff hazard areas if the owner establishes that construction and grading activities will occur outside of the high risk areas. Such amendments shall factor in the limitations of the DOGAMI mapping. The Council believes this change is consistent with the Newport Comprehensive Plan because _____.
Staff shall include this rationale in an implementing ordinance that is to be brought forward for consideration at a future meeting.

Motion #3 - Display of Geologic Hazards Maps: I move that the Council direct staff to utilize grayscale hatching or similar techniques that do not require the use of color when producing maps that display the bluff and dune backed hazards zones and landslide risk areas referenced in this ordinance.

**KEY FACTS AND INFORMATION SUMMARY:** The existing City of Newport Zoning Ordinance (No. 1308, as amended) requires that persons interested in developing property within geologically hazardous areas retain a certified engineering geologist to evaluate the site and building plans prior to city approval of a proposed development. Such evaluations are reviewed and approved by the City under a Geologic Permit.

As part of the City project to comprehensively update and streamline its Zoning Ordinance, the City of Newport Planning Commission and its Citizens Advisory Committee have completed a comprehensive review of Zoning Ordinance Section 2-4-7 ("Geologic Hazard Areas"). Changes include updates to the maps used to identify when site specific geologic evaluations are needed; replacement of certain provisions that are vague or overly strict with respect to when Geologic Permits are required; new standards for erosion control during construction; a requirement that engineering geologists perform a post-construction certification that development was undertaken in accordance with their recommendations; and a requirement that undeveloped lots in land divisions must include buildable sites outside of active or high risk areas. The Natural Features Chapter of the Newport Comprehensive Plan is being amended to update the Plan's description of landslide areas and coastal erosion areas in Newport to correspond with new mapping.

The Planning Commission and Citizens Advisory Committee reviewed the proposed changes at eight separate work sessions from October of 2009 through May of 2010. A public workshop was held by staff on February 17, 2010 and public hearings before the Planning Commission were conducted on March 8, 2010, April 26, 2010, June 14, 2010, and July 12, 2010. Affected property owners received direct mail notice of the workshop and initial hearing. At the July 12, 2010 public hearing, the Planning Commission voted to recommend adoption of the proposed amendments.

In making their initial recommendation, the Commission considered more than 120 written comments from affected property owners and interested parties. Most opposed provisions in earlier drafts of the ordinance that would have imposed specific construction limitations for development in high risk areas and required property owners developing in such areas to record a statement in the deed records acknowledging risk and disclosure requirements. The construction limitations and deed recording requirement have since been dropped.

The City Council held a joint work session with the Planning Commission on August 9, 2010. An initial hearing by the Council was held September 7, 2010. Following the hearing, the Council held another work session, on September 27, 2010, to consider the testimony it received. Staff prepared changes to the ordinance in response to public testimony.

The changes, outlined in a memo, were presented to the Council and public at the work session and subsequent hearing on October 18, 2010. At the conclusion of the October hearing, the Council closed the public record to additional testimony but kept its deliberations open. The Council continued its deliberations on November 15, 2010 and held a work session on November 29, 2010. At its December 6, 2010 meeting the Council referred the package of amendments to the Planning Commission for an "on the record" review and recommendation on how best to address development in moderate risk hazard areas, an issue they didn't feel was fully vetted when the Commission made its original recommendation back in July.

The Planning Commission conducted a work session on January 24, 2011 to consider the Council's referral and provided the requested recommendation on February 14, 2011. The City Council held a work session on April 4, 2011, and considering that there were four new members, elected to hold an additional public hearing before taking action on the proposal. The Council reopened the record to public testimony on April 18, 2011 and closed the record on May 27, 2011.

As this is a legislative item, there are no approval criteria.

**OTHER ALTERNATIVES CONSIDERED:** None.

**CITY COUNCIL GOALS:** The proposed changes are part of the comprehensive update to the Zoning Ordinance, which the Council set as a goal to complete.

**ATTACHMENT LIST:**

Attachment A: February 14, 2011 Recommendation from the Planning Commission
Attachment B: Relevant Comprehensive Plan policies
Attachment C: Hearing notice
Attachment D: Public comments received between April 18, 2011 and May 27, 2011
Attachment E: December 6, 2010 draft of the proposed Ordinance

**FISCAL NOTES:** A permit fee is established to partially offset the City's cost of reviewing the permit applications. The fee is subject to adjustment pursuant to Resolution #3486, with the objective of recovering 50% of the direct costs. Changes contained in this ordinance should not impact City resources to such a degree that the fee will need to be revisited.

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mombetsu, japan, sister city

To: Newport City Council

From: Newport Planning Commission

Date: February 14, 2011

**RE: Geologic Permit Requirements in Moderate Hazard Areas**

Dear Council Members,

At its December 6, 2010 meeting the Newport City Council remanded proposed amendments to the Geologic Hazards Section of the Newport Zoning Ordinance to the Planning Commission for an "on the record" review and recommendation on how to approach geologic permit requirements in moderate hazard areas in light of concerns raised by the Oregon State Board of Geologist Examiners (OSBGE) about the viability of the Reconnaissance Form option for these areas, and other testimony that the Council received on the issue.

Our original recommendation provided that persons developing on land identified as low or moderate dune or bluff hazard areas on Oregon Department of Geology and Mineral Industry (DOGAMI) 2004 maps be offered the option of preparing a geologic report or completing a Reconnaissance Form. The Reconnaissance Form was intended to be a simplified alternative to a full report.

Newport's acknowledged Comprehensive Plan contains policies stating that in areas of known or potential hazards, the City shall require a site evaluation of potential dangers prior to review and approval of proposed development, and that in geologic hazardous areas such review shall be conducted by a registered geologist or engineer at the applicant's expense. The OSBGE notes in its September 1, 2010 letter that a Reconnaissance Form is inappropriate for moderate hazard areas because those areas appear to have substantial geologic hazards, requiring more rigorous geologic investigation. Concerns raised by the public about requiring reviews in moderate hazard areas relate to the lack of track record in requiring them in the past and to cost.

DOGAMI Open File Report OFR O-04-09, upon which the maps are based, indicates that moderate hazard areas represent the average amount of bluff retreat that would occur from the combined processes of block failures, retreat to an angle of repose, and erosion for 60 to 100 years. Comparable factors were used to establish the dune backed moderate hazard zones.

The Planning Commission acknowledges testimony by the OSBGE, and DOGAMI earlier in the process, that there are risks associated with developing in moderate hazard areas, and agrees that it may be prudent for property owners to invest in geologic reports to ensure that construction is as safe as possible. However, given the 60 to 100 year timeframe we do not believe that the degree of risk rises to the level envisioned in the Comprehensive Plan as necessitating a site evaluation, at least not in all cases. In circumstances where an entire lot or parcel is within a moderate zone, a geologic report should not be required. For those instances where a portion of a property is shown within a moderate zone but also includes high or active hazard areas, then a geologic report is warranted in most cases. This ensures a factor of safety for the more susceptible properties, while acknowledging legitimate concerns raised by the public related to the lack of a track record in requiring geologic reviews in these areas and the cost of completing the reviews.

There are a handful of large properties (over 5 acres in size) that include active, high and moderate hazard areas and a significant amount of land that is not mapped as having any type of hazard. In cases where those properties are developed, and construction is to occur outside of the hazard areas, then a geologic report should not be required. Testimony provided by the public and state agencies made it clear that the hazard maps are not drawn to a scale that will allow the City to accurately assess where the hazard boundaries are on a particular lot or parcel. However, for large properties we believe that the risk is acceptable and outweighed by the chance that the code would require a geologic investigation for development that is clearly well removed from any hazard.

Requiring the use of erosion control measures to minimize soil erosion during construction is an important element of this code package. Our preference would be to apply these standards to low and moderate risk areas; however, it is not practical given that these areas will not otherwise be subject to review. The City Council should consider directing the Community Development Department to craft an erosion control code that applies to structural development generally within the City, not just geologically hazardous areas. The Commission would be happy to assist in pulling the standards together.

We hope that the City Council views these recommendations favorably and adopts the amendments to the geologic hazards code. Numerous hearings have been held with both the Planning Commission and City Council where issues and concerns that have been brought to the table have been well addressed. From the record that has been developed, it is clear that the City's existing Zoning Code is inadequate. It no longer ensures that geologic reviews are being performed where needed so that construction on our most unstable lands is as safe as possible. We believe that this package of revisions, with the changes to moderate hazard areas as discussed herein, address the problem and bring the Zoning Code into compliance with the Comprehensive Plan.

Sincerely,

Jim Patrick, Chairman
On behalf of the Planning Commission

Markup Copy for 2/14/11 PC Hearing - Exhibit A to Ordinance No. _____, Replacing Section 2-4-7 of the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) Relating to Geologic Hazards

## 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. Applicability of Geologic Hazards Regulations.**

A. The following are areas of known geologic hazards or are potentially hazardous and are therefore subject to the requirements of Section 2-4-7:

(1) Bluff or dune backed shoreline areas within ~~moderate,~~ 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.

(2) Active or potential landslide areas, prehistoric landslides, or other landslide risk areas identified in the DOGAMI Open File Report O-04-09.

(3) Any other documented geologic hazard area on file, at the time of inquiry, in the office of the City of Newport Community Development Department.

A "documented geologic hazard area" means a unit of land, which is shown by reasonable written evidence to contain geological characteristics/conditions which are hazardous or potentially hazardous for the improvement thereof.

B. The DOGAMI Open File Report O-04-09 is not intended as a site specific analysis tool. The City will use DOGAMI Open File Report O-04-09 to identify when a Geologic Report is needed on property prior to development. A Geologic Report that applies to a specific property and that identifies ~~a proposed development on~~ the property as being in a different hazard zone than that identified in DOGAMI Open File Report O-04-09, shall control over DOGAMI Open File Report O-04-09 and shall establish the bluff or dune backed shoreline hazard zone ~~(moderate, high, or active)~~ or landslide risk area that applies to that specific property. The time restriction set forth in sub-section 2-4-7.030 shall not apply to such determinations.

C. In circumstances where a Geologic Report identifies that ~~proposed development will not occur within a~~ a parcel or lot upon which development is proposed does not include any bluff or dune backed shoreline hazard zone or landslide risk areas, as defined above, no further review is required under this Section 2-4-7.

D. If the results of a Geologic Report are substantially different than the hazard designations contained in DOGAMI Open File Report O-04-09 then 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 agency comments and determine whether or not it is appropriate to issue a Geologic Permit.

Markup Copy for 2/14/11 PC Hearing - Exhibit A to Ordinance No. _____, Replacing Section 2-4-7 of the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) Relating to Geologic Hazards

*Staff: Changes eliminate reference to moderate hazard dune or bluff backed shoreline areas as being a known or potentially hazardous area subject to these regulations. The revisions also note that if no portion of a lot or parcel that is subject to development contains a mapped hazard area then no further review is required. Staff believes the changes are consistent with direction received from the Planning Commission at its January 24, 2011 work session.*

**2-4-7.015. <u>Geologic Permit Required</u>.** All persons proposing development, construction, or site clearing (including tree removal) on property ~~within~~ <u>containing</u> a geologic hazard area as defined in 2-4-7.010~~,~~ shall obtain a Geologic Permit<u>, irrespective of whether or not construction is occurring on the portion of the parcel or lot identified as a geologic hazard area</u>. The Geologic Permit may be applied for prior to or in conjunction with a building permit, grading 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.

*Staff: Changes note that a permit is required if any portion of a lot or parcel contains a geologic hazard area, irrespective of whether or not it is in the location where proposed development is to occur. Staff believes this is consistent with direction received from the Planning Commission at its January 24, 2011 work session.*

**2-4-7.020. <u>Exemptions</u>.** The following activities are exempt from the provisions of this chapter:

A. Maintenance, repair, or alterations to existing structures that do not alter the building footprint or foundation;

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 is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;

D. Exploratory excavations under the direction of a registered engineering geologist or geotechnical engineer;

~~E. Alteration (but not reconstruction) of a primary structure(s) that are outside of active and high hazard zones and active landslide areas;~~

~~F. Detached accessory buildings that are outside of active and high hazard zones and active landslide areas;~~

~~G.~~<u>E.</u> Construction of structures for which a building permit is not required;

~~H.~~<u>F.</u> Removal of trees smaller than 8-inches dbh (diameter breast height);

~~F.~~G. Removal of trees larger than 8-inches dbh (diameter breast height) provided the canopy area of the trees that are removed in any one year period is less than twenty-five percent of the lot or parcel area;

~~G.~~H. Forest practices as defined by ORS 527 (the State Forest Practices Act) and approved by the state Department of Forestry;

~~H.~~I. Maintenance and reconstruction of public and private roads, streets, parking lots, driveways, and utility lines, provided the work does not extend outside the previously disturbed area;

~~I.~~J. Installation of utility lines not including electric substations; and

K. Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazard.

~~M.~~L. Construction on a parcel or lot larger than 5 acres in size where proposed development is to occur outside of known or potential geologic hazardous areas as defined in 2-4-7.010(A).

*Staff: Exemptions that were targeted to moderate zoned areas have been deleted (those listed were presented to City Council at its December 6, 2010 meeting). An exemption has been added for large properties to ensure that a geologic permit is not triggered for development that is well removed from hazard areas.*

**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, an application for a Geologic Permit 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, or moderate)~~ or landslide hazard zone ~~(active, potential, prehistoric, etc.)~~ ~~within~~ for the parcel or lot upon which development is to occur. In cases where properties are mapped with more than one hazard zone, a certified engineering geologist shall identify the hazard zone(s) within which development is proposed; and

D. A Geologic Report prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development; and

E. An engineering report, prepared by a licensed civil engineer, geotechnical engineer, or certified engineering geologist (to the extent qualified), must be provided if engineering remediation is anticipated to make the site suitable for the proposed development.

*Staff: Reference to moderate hazard zones has been eliminated and language simplified. Changes note that hazard areas are to be identified for the entire lot or parcel, not just the portion that is being developed.*

**2-4-7.030. <u>Geologic Report Guidelines</u>.** Geologic Reports shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles and shall, at a minimum, contain the items outlined in the Oregon State Board of Geologist Examiners "Guidelines for Preparing Engineering Geologic Reports in Oregon," in use on the effective date of this section. Such reports shall 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, in use as of the effective date of this section. 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. <u>Construction Limitations within Geologic Hazard Areas</u>.**

A. ~~For bluff or dune backed shoreline areas that are within active or high hazard zones, or areas impacted by active landslides, n~~New construction shall be limited to the recommendations, if any, contained in the Geologic Report; and

(1) Property owners should consider use of construction techniques that will render new buildings readily moveable in the event they need to be relocated; and

(2) Properties shall possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site.

*Staff: This subsection was crafted so that it did not apply to moderate hazard areas. Since moderate hazard areas are being deleted, the lead language can be simplified.*

**2-4-7.040. <u>Prohibited Development on Beaches and Foredunes</u>.** Construction of residential, commercial, or industrial buildings is 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 the development 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. <u>Erosion Control Measures</u>.** In addition to completing a 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 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.

*Staff: At its January 24, 2011 meeting, the Commission expressed an interest in requiring erosion control measures in low and moderate risk areas, and for the city in general. Staff believes that it would be better to address this issue city-wide than to try and pull in low and moderate risk areas under this code.*

**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. Approval Authority.** An application shall be processed and authorized using a Type I decision making procedure.

**2-4-7.060. Appeals of Geologic Permits.** Any appeal from the issuance or denial of a Geologic Permit shall 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 Report shall submit their own analysis prepared by a certified engineering geologist. Such report shall be provided within 30 days of the date the appeal is filed. A failure to submit a report within this timeframe is grounds for dismissal of the appeal.

**2-4-7.065. Certification of Compliance.** No development requiring a Geologic Report shall receive final approval (e.g. certificate of occupancy, final inspection, etc.) 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.

**2-4-7.070. Removal of Sedimentation.** 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.

**2-4-7.075. Applicability of Nonconforming Use Provisions.**

A. A building or structure that is nonconforming under section 2-5-1 of the Zoning Ordinance that is destroyed by fire, other casualty or natural disaster shall be subject to the casualty loss provisions contained in section 2-5-1 of the Zoning Ordinance. Application of the provisions of

this section to a property shall not have the effect of rendering it nonconforming.

B. A building or structure that conforms to the Zoning Ordinance that is destroyed by fire, other casualty or natural disaster may be replaced with a building or structure of up to the same size provided a Geologic Report is prepared by a certified engineering geologist. A Geologic Report prepared pursuant to this subsection shall adhere to the Geologic Report Guidelines outlined in subsection 2-4-7.030. All recommendations contained in the report shall be followed, however the report need not establish that the site is suitable for development as required in subsection 2-4-7.025(D). An application filed under this subsection shall be processed and authorized as a ministerial action by the Community Development Department.

## GOALS/POLICIES
## NATURAL FEATURES

**Goal 1: To protect life and property, to reduce costs to the public, and to minimize damage to the natural resources of the coastal zone that might result from inappropriate development in environmentally hazardous areas.**

Policy 1: In areas of known hazards, the City of Newport shall require a site evaluation of the potential dangers posed by environmental hazards prior to city review and approval of a proposed development. It shall be the applicant's burden to show that construction in an environmentally hazardous area is feasible and safe. Site investigations in geologic hazardous areas shall be prepared by a registered geologist or engineer.

Policy 2: The city shall maintain and, where necessary, update ordinances that control development in an environmentally hazardous area.

Policy 3: Where hazardous areas have not been specifically identified but there is reason to believe that a potential does exist, a site specific investigation by a registered geologist or engineer shall be required prior to development.

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COAST GUARD CITY, USA

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OREGON

**ATTACHMENT "C"**
**Hearing Notice**

http://newportoregon.gov

mombetsu, japan, sister city

# Notice of Public Hearing
# Proposed Updates to Newport Geologic Hazards Code

On Tuesday, June 14, 2011, at 7:00 pm or soon thereafter the Newport City Council will hold a public hearing at the Newport City Hall (169 SW Coast Highway) to consider proposed amendments to the City Comprehensive Plan and Zoning Ordinance related to new construction in geologically hazardous areas (File #12-Z-09).

This is the same package of changes that the Council held hearings on in the fall of 2010. At that time, the Council closed the public record and referred the proposal back to the Planning Commission for an "on the record" review and recommendation on how to approach geologic permit requirements in areas the State has mapped as being at moderate risk of geologic hazards. This was done in response to comments the Council received from the Oregon State Board of Geologist Examiners and other testimony that occurred after the Planning Commission provided its original recommendation.

The Planning Commission has since completed its review, and a copy of their recommendation letter and changes they propose that the Council make to the draft amendments is available for review on the city website at: http://newportoregon.gov/ (look for link under Latest News). Copies are also available at the Community Development Department Office at City Hall.

Public testimony regarding the Commission's recommendation or any other aspect of the proposed amendments will be accepted in written form if submitted to the Community Development Department by Friday, May 27, 2011. Interested persons are also invited to attend and provide oral testimony at the hearing.

Questions about the proposed amendments may be directed to Derrick Tokos, Community Development Director at (541) 574-0626 or via email at d.tokos@newportoregon.gov.

EST. 1882

ATTACHMENT "D"
Public Comments Received Between
April 18, 2011 & May 7, 2011

Oregon
John Kitzhaber, Governor

Dept. of Land C
Oregon

810 SW Alder, Suite B
Newport, OR 97365
(541) 574-1095
Website: www.oregon.gov/LCD

May 26, 2011

Newport City Council
City of Newport
169 SW Coast Hwy,
Newport, Oregon 97365

**Re: Proposed City of Newport Geologic Hazards Code Updates; DLCD PAPA file Newport #001-10**

Dear Mayor McConnell and council members:

This letter is for the purpose of providing testimony to the city council related to the above referenced planning effort. We believe the city's work to update its geologic hazard provisions is important and we support this effort.

First, we commend the diligent efforts of your planning commission in working through this complex set of issues. The commission's extensive public process and thoughtful, deliberate approach to working through the large amount of input received provided for a thorough evaluation of the important issues to be addressed in managing development in potentially hazardous areas. The commission's recommendations to you contain a number of important improvements to the city comprehensive plan and code sections addressing geologic hazards, which we support.

We support the commission's recommendation to adopt the 2004 Department of Geology and Mineral Industries (DOGAMI) hazard maps (DOGAMI Open File Report #O-04-09) as the basis for determining areas within the city subject to known geologic hazards. The record before the commission clearly establishes that these maps and accompanying report represent the most up to date and accurate information available for the identification of areas subject to increased risk from geologic hazards. These maps should be adopted by the city.

We also support the commission's recommendation that these maps be used by the city as a means of identifying sites where proposed development will be subject to site specific engineering geologic reports. Once again, ample testimony in the record before the commission supports the conclusion that the 2004 DOGAMI maps are a technically sound and appropriate tool for identifying sites where detailed, site specific geologic hazard review is warranted.

We do have concerns with one element of the commission's recommendation regarding the

specific method of employing the information provided by the DOGAMI maps. Specifically, the commission's recommendation to limit the requirement for site specific engineering geologic reports to *only* the Active and High Hazard Zones is not, in our opinion, supported by the expert testimony in the record. The September 1, 2010 letter submitted into the record by the Oregon Board of Geologist Examiners (comprised of licensed experts in the fields of geology and engineering geology) states:

> "Based on the Board's knowledge of the Department of Geology and Mineral Industries (DOGAMI) Open File Report #O-04-09, Moderate Hazard Zones (per OFR O-04-09) appear to have substantial geologic hazards, and more rigorous geologic investigation may be warranted in these zones. A more rigorous Geologic Report (possibly with the Reconnaissance Form attached) should be used in Moderate, High and Active Hazard Zones."

Likewise, in their January 22, 2010 e-mail correspondence to Derrick Tokos, DOGAMI staff recommends requiring "... a full geologic report for active, high and moderate hazard zones ... ". Based on this testimony, we believe that the planning commission's recommendation to eliminate any requirement for further geologic investigation in the Moderate Hazard Zone could result in exposing both new development and surrounding properties to risks from geologic conditions that may not be properly identified in the development review process. This risk could become more acute over time as shoreline erosion continues and additional area within the Moderate Hazard Zone becomes exposed to increased risks. We concur with the Oregon Board of Geologist Examiners and DOGAMI recommendation that site specific geologic reports be required for development in Active, High and Moderate Hazard Zones, and we urge the city council to carefully consider the expert testimony in the record supporting this requirement.

Once again, we very much appreciate the city's efforts to address these important issues, and we thank you for the opportunity to provide testimony on this proposal. Please enter these comments into the record for the June 14, 2011 city council hearing and subsequent hearings on this matter. If you have any questions regarding our comments, please contact me by phone at (541) 574-1095 or by e-mail at matt.spangler@state.or.us

Yours truly,

Matt Spangler
Regional Representative

Laren Woolley
Coastal Shores Specialist

Cc: Bob Bailey, Dale Blanton, Darren Nichols, DLCD

May 27, 2011

City Council,
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

Regarding: Geologic Hazards Ordinance

Madams and Sirs

I am the owner of Tax Lot 11-11-30-AD TL 900. I am also one of the owners, together with relatives, of Tax Lots 11-11-30-AD TL 901, and 902. These lots are located on the ocean at SW 68th Drive approximately ¼ mile south of the south boundary of the Southshore resort, at the southern boundary of the city of Newport.

In 2004 I annexed TL 900 into the city of Newport. In June, 2005 The city issued tentative plan approval for a partition of TL 900 into the current three lots, TL 900, 901, and 902.

As a part of the annexation and partitioning of TL 900, we were required to prepare and submit the following Geologic Reports to the city of Newport:

> Professional Service Industries, Inc
> Preliminary Engineering Geologic Hazard Reconnaissance Report,
> Southbeach Heights, Tax Lot 900 (Map 11, 11, 30, AD)
> PSI Report No. 704-45280-1
> Dated November 18, 2004
>
> Professional Service Industries, Inc
> Geotechnical Subsurface Exploration and Slope Stability Analyses
> Southbeach Heights, Tax Lot 900 (Map 11, 11, 30, AD)
> PSI Report No. 704-45280-2
> Dated February 23, 2005

On March 5, 2010, we e-mailed and sent via overnight delivery copies of these reports to Derrick Tokos at the city of Newport with a request that the reports and the e-mail transmittal letter be entered into the record at the March 8, 2010 Planning Commission Hearing regarding modifications to the cities Geologic Hazards regulations. We have been advised recently that these reports were not available for public review when requested. If the reports are not available for your review, please e-mail me at Lloyd@hillarchitects.com or telephone me at 503-781-5197, and I will make arrangements to provide another copy of the reports for your review.

The Transmittal letter to Mr. Tokos stated the following:

> *As we discussed, these Investigations indicate that the landslide area near the oceanfront, which the engineers believe occurred during the Middle to Late Pleistocene Epoch on the order of 10,000 to 15,000 years ago, is currently stable with a slope stability safety factor of 1.4 to 1.5 for the current static condition including the proposed development of new houses, and a safety factor of 1.1 in the event of a 500 year Seismic event. This investigation was completed five years ago in February 2005.*
>
> *As we discussed, we believe that the above referenced geologic investigations should take precedence over the DOGAMI hazard inventory maps which are not based on detailed site specific investigations. We would*

*like to request a modification to the Hazard Mapping and regulations to allow the development proposed and supported by these site specific investigations.*

In addition to the Geotechnical Investigations relating to our property, extensive Geotechnical Investigations were prepared for the five lot development located immediately North of our property. These site specific investigations included the following:

Wright & Associates
Geologic Hazards Evaluation & Geotechnical Investigation
Proposed Kaimana Terrace Subdivision, SW 68th Street, South Beach, Lincoln County, Oregon
Project Number OC98-0124
Dated April 6, 1998

Wright & Associates
Additional Studies
Kaimana Terrace Subdivision, SW 68th Street, South Beach, Lincoln County, Oregon
Project Number OC98-0124
Dated June 15, 1998

Wright & Associates
Geologic Hazards Evaluation & Geotechnical Investigation - Revised June 1998
Proposed Kaimana Terrace Subdivision, SW 68th Street, South Beach, Lincoln County, Oregon
Project Number OC98-0124
Dated June 15, 1998

These site specific investigations, among other things, documented the installation and monitoring of several "Monitoring Wells" specifically installed to monitor the ground to detect any movement instability. These reports also found that the land is stable and suitable for development

The proposed regulations refer specifically to the DOGAMI Open File Report O-04-09. This report includes mapping that identifies the oceanfront areas of TL 901 and 902 as well as the adjacent oceanfront lots to the north as being located in an "Active Hazard Area." As a result of classifying this area as an "Active Hazard Area" the inland portions of TL 900,901 and 902 are, classified as High, Moderate and Low risk Bluff Erosion Areas. These designations are not consistent with the extensive Site Specific Geotechnical investigations that have been done for our property, or the observable features and recorded history of the property dating back over sixty years. They are also not consistent with extensive site specific Geotechnical Investigations that were prepared for the development located to the immediate North of our property.

As noted above, the two Geotechnical Investigations prepared for our property determined that the front portion of the property is an Ancient Land Slide dating from *"the Middle to Late Pleistocene Epoch on the order of 10,000 to 15,000 years ago"* They also determined that the land is currently stable with a slope stability safety factor of between 1.4 and 1.5 for the current static conditions, and a slope stability safety factor of 1.1 in the event of a 500 year seismic event.

We will present additional evidence at the Public hearing demonstrating that the ocean front bluff in this area has not eroded or retreated from the beach in over sixty years (since the oldest available Air Photos taken in 1937). This evidence will further substantiate our position that the ocean front portions of TL 901 and 902 should not be classified as an "Active Erosion Hazard Zone"

We have reviewed the proposed amendments to the city of Newport Municipal Code, specifically the Markup Draft for the 2/14/11 Planning Commission hearing of Section 2-4-7.005 Geologic Hazards Regulations. We appreciate the many changes and refinements that have been made to the proposed Geologic Hazards Regulations, however we continue to have concerns that the proposed regulations negatively impact the value of our three lots, and many other similar lots throughout the city. We would like to specifically call your attention to the following issues:

## Geologic Permit required for development on any Lot which includes any High Hazard designation.

The revised draft regulations include changes in several sections that relate to which properties will require a Geologic Hazard Permit. As originally drafted, the regulations would have applied to buildings or development that is proposed to take place within areas mapped as Active, High and Moderate risk. We understand that for a number of reasons a decision was made to not require a Geologic Hazard Permit for buildings or developments in the Moderate Risk areas, however the proposed modifications have changed the regulations to include all properties that include even a very small area of Active or High hazard land. The effect of this is to require geologic hazard permits for many properties that could be developed avoiding any development on Active or High hazard areas and limiting the development to only Moderate or Low, or no hazard areas. There are many properties in the city where a small portion or the lot is in the area mapped as High Hazard, but the majority of the lot is outside the High Hazard area. We believe that the proposed changes are not appropriate and will result in a hardship for many property owners. We recommend keeping the prior language that requires a Geologic Hazard Permit based on hazard designation of the property that a development is proposed on, rather than the lot or parcel that a development is proposed on.

## Geologic Permit for Undeveloped Property

We understand that the intent of the regulations is to allow development of property that is mapped in Hazard Areas if a site specific Geologic Investigation supports the development. Unfortunately as the regulations are currently drafted, it will be difficult of nearly impossible to obtain a geologic permit without locking in a specific design. Even then the Geologic Permit would only be valid as long as the building permit or grading permit is in valid, which would normally be a period of one year with the possibility of a one year extension. Once the construction work has been completed, the building permit or grading permit will expire, and as currently drafted, the Geologic Permit would also expire. Alternatively, if the construction work is not completed, then the Geologic Permit would expire at the same time the underlying construction permit expires. In any event, there is no mechanism to allow a property owner to obtain a Geologic Permit confirming that a lot or parcel of land is buildable or suitable for development of some type of structure.

We would like to request Article 2-4-7.015 to be amended and clarified to explicitly allow the issuance of a Geologic Permit that for site development, grading and/or development of a building pad for future development. We believe it would be appropriate for the Geologic Permit to remain valid and in force as long as the supporting Geologic Reports remain in valid, whether or not a building permit has been issued for construction of a building. Article 2-4-7.030 sets a limit of five (5) years for Geologic Reports to remain valid. It is common practice to update a geologic report to confirm that the findings and recommendations in the report remain valid after a certain period of time, such as the five year limit in the proposed Geologic Hazards Regulations. We believe it would

be appropriate to issue a Geologic Permit which would be valid for a period of at least five years, or as long as the supporting Geologic Report, including any periodic updates, remains valid. This would provide a mechanism for a land owner to obtain a Geologic Permit for an undeveloped property, and thereby allow the land owner to sell the property to a third party without the need to receive building permits for a specific structure.

## 2-4-7.035 Construction Limitations within Geologic Hazard Areas

The originally proposed language begins:

***For bluff or dune backed shoreline areas that are within active ore high hazard zones, or areas impacted by active landslides,*** *new construction shall be lilmited to the recommendations, if any contained in the Geologic Report; ...*

The proposed revisions including striking the bold section. Staff advises that this can be simplified as result of eliminating the applicability of the regulations to moderate hazard areas. This change is not necessary, and will have the effect of broadening the applicability of the following provisions to include all Geologic Hazard Areas, and not just the specific areas listed in the original draft language. We recommend leaving this language as originally drafted.

In addition we would like to request that Article 2-4-7.035 be amended to eliminate the apparent inconsistency between the requirements related to relocating buildings. 2-4-7.035 A. (1) states only the *"Property owners "Should Consider" use of construction techniques that will render new buildings readily moveable in the event that they need to be relocated;"* 2-4-7.035 A. (2) goes on to require *"Properties shall possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site."* This language is vague and open to many interpretations. We have been advised that during the hearings regarding these regulations the planning commission has indicated that this would not require vehicular access for trucks to move the building or part of the building, but would only require some minimal degree of access. Since this could be open to may interpretations in the future, we believe that this requirement should also be made in the form of a suggestion, requiring the Property owner to "consider" this while finalizing the development plans for the property.

We appreciate your consideration of these recommendations. I will be available at the hearing June 14th to answer questions and provide additional supporting evidence related to these issues.

Sincerely,

Lloyd W. Hill AIA

CC: Derrick Tokos
Billijean Hill
Bob Hill
04256/CF

## Derrick Tokos

**From:** George Priest [george.priest@dogami.state.or.us]
**Sent:** Thursday, May 26, 2011 3:01 PM
**To:** Derrick Tokos
**Cc:** Vicki McConnell; Jonathan Allan; Rob Witter; Don Lewis
**Subject:** Spatial accuracy of mapped boundaries on DOGAMI OFR O-04-09

Derrick,

In answer to your phone question today, the relevant text addressing spatial accuracy of our 1993 orthophotos (base maps for most GIS data released in DOGAMI OFR O-04-09) is on page 44 and is as follows:
Field-mapped boundaries are located no better
than the inherent error of the 1993 orthophotos.+/-25 feet horizontal

**Other base maps were used here and there in northern Lincoln County (e.g. Cape Foulweather and areas east of the 1993 orthophotos) but this is the best estimate for most of the Newport mapping, particularly the erosion hazard zones along the shoreline and landslides classified as active, potentially active, and prehistoric.**

**Exceptions to the +/-25 ft are mainly inland polygons labeled Qls (USGS landslides) and Landslide Terrain (DOGAMI Bulletin 81). Pages 44-45 discuss potentially larger errors associated with creating these polygons from scanned paper maps. These old paper maps are generally at 1:48,000-1:62,500, so spatial accuracy is limited by the width of drawn lines at those scales. The maximum error was +/-160 ft, when checked against detailed mapping, and minimum error is the width of the drawn lines. Most of these polygons have errors somewhere between these extremes, although this was not quantified in our study. As you know these polygons affect mainly easternmost Newport.**

**As I mentioned over the phone, relative accuracy when locating zone and slide boundaries by inspection on the 1993 orthophoto base maps relative to duplicate features on other base maps can be better than +/-25 ft. For example, if the original orthophoto map shows the boundary half way between two adjacent houses that are on the newer map, that pins it down to within a few feet, since the field mapper used the same features; likewise for boundaries that closely follow a street, sidewalk or other easily identified feature.**

**I hope this helps. Spatial accuracy is a very tricky thing to quantify, as you can see.**

**Regards,**

George R. Priest, Ph.D., CEG
Oregon Dept. of Geology and Mineral Industries
Newport Coastal Field Office
PO Box 1033
Newport, OR 97365
541-574-6642 x3
george.priest@dogami.state.or.us
http://www.oregongeology.org/sub/fieldoffices/George/georgepriest.htm

## Derrick Tokos

**From:** John Salstrom [john@salemtrophy.net]
**Sent:** Thursday, May 26, 2011 2:58 PM
**To:** Derrick Tokos
**Subject:** RE: Zones...etc..

Hello Derrick,

Thank you for the detailed and timely response.

Obviously, the letter from Mr. Ward created some anxiety on the part of myself and my wife. It painted a picture of a much more dire situation than apparently exists.

Your response eases our concerns.

Again, I appreciate your time and professional response.

Officials like you give public servants a good name.

Sincerely,

John Salstrom
1055 SW Mark Street
Newport

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**From:** Derrick Tokos [mailto:D.Tokos@NewportOregon.gov]
**Sent:** Thursday, May 26, 2011 1:58 PM
**To:** 'John Salstrom'
**Subject:** RE: Zones...etc..

Hi John,

Thanks for the note. As we discussed on the phone, I do not believe the statements Mr. Ward makes in the letter with respect to your ability to obtain financing or insurance to be accurate. The City of Newport has used DOGAMI Geologic Hazards maps for decades in determining whether or not geologic reports are required. More current maps are available and that is what we are looking to use to identify when reports are needed for new development. There is no evidence in the record to suggest that the owners of any homes in existing geologic hazards areas have ever had difficulty obtaining financing or that the fact that the City identifies them as being within a geologically hazardous area has had any impact on their resale value.

In developing a draft code update, the City of Newport sent out questionnaires to lending institutions, insurance agencies, and title companies. Some lenders did express concerns about a proposal to require a disclosure statement be recorded advising that a geologic report had been prepared for a site and its potential impact on new loan processing requirements. The proposed disclosure requirement has since been dropped.

Lenders also pointed out that they are aware of DOGAMI's updated maps, which were released in 2004, that they investigate properties, and make their own judgments as to whether or not they are prepared to issue a loan. Ditto with insurance companies, who pointed out that they do their own risk assessments when setting policy for what they will insure and what the City may or may not require in terms of geologic reviews for new construction really isn't a factor in their decision making.

As to your question about how much of your property is designated "high risk" as opposed to "moderate," the map I provided does not provide a definitive answer. In the opinion of DOGAMI geologist's it is sufficient as a trigger for identifying when site specific reports are needed in conjunction with new development. The site specific report would include a detailed evaluation of your site that would answer your question. With that said, the DOGAMI maps were produced using LiDAR based topographic data that when displayed over tax lots and aerial photographs (which have their own limitations) you are looking at +/- 25 feet from the line depicted on the map.

I hope that I have adequately addressed your concerns. Please don't hesitate to contact me if you have further questions.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
fax: 541-574-0644
d.tokos@NewportOregon.gov

---

**From:** John Salstrom [mailto:john@salemtrophy.net]
**Sent:** Monday, May 23, 2011 7:13 PM
**To:** Derrick Tokos
**Subject:** Zones...etc..

Derrick Tokos
City of Newport Oregon

Derrick,

I appreciate you returning my call last week about the DOGAMI hazard maps and the issue of zoning and potential code restrictions on my property.

The letter I received from Bob Ward that I faxed you a copy of last week has caused some concern on my wife and I.

I see from the map that you emailed me that the "Red Zone" stretches approximately 20 feet onto my property at 1055 SW Mark. Other maps I had seen in the past showed the line down the center of Mark street.

In reviewing the map it looks like the Red Zone extends just to the beginning of our garage.

The sections of Mr. Ward's letter that are of particular concern to me relate to the potential negative affect of my property's value, difficulty in securing future financing and the obtaining of reasonable insurance for it.

"You may not even be aware of it, but a small part of your property is now classed as being in a high hazard zone, the notorious 'red zone'. This alone has significant implications for the market value of your property, and for the ability to finance, re-finance or sell."

Since, you have had time to read Mr. Ward's letter can you comment on how accurate his statements are.

When reading this to you on the phone you stated that this was not accurate and that being in the "Red Zone" would not have any effect on the value, refinancing or obtaining of insurance for my property.

Did I understand that correctly?

In a follow telephone conversation with Mr. Ward stated that "we" did a survey of lending institutions and that they all said that they would not enter into the financing of any property that was located in the "Red Zone". That is a little scary.

Does the fact that a small portion of my property is in the "Red Zone" dictate that all of my property is considered to be in it?

I truly appreciate the time you have devoted to my inquiries. I expect that you are tired of the subject.

I have read the "Markup Copy for 2/14/11 PC Hearing". I am not opposed to doing some more research. I am hoping that you can confirm what I believe you said to said to me on the phone last week. That being, that in essence, my property will not be affected negatively in any way from being partially in the "Red Zone".

I have a huge investment financially and emotionally in my property and I just want to make sure that after all of the different takes that I have heard on this issue I have a firm grounding it the facts.

I would be more than happy to read anything that you might suggest to me for more background.

I am also willing to attend any upcoming council or other meetings that would be beneficial for me.

If you would rather talk on the phone again, please call me at 503-363-0545.

I do not wish to increase your workload and do not expect a lengthy reply. But just a few words in summary may ease the anxiety level of both my wife and myself.

I appreciate your time, attention and courtesy.

Sincerely,

John Salstrom
1055 SW Mark St.
Newport

No virus found in this message.
Checked by AVG - www.avg.com
Version: 10.0.1375 / Virus Database: 1509/3661 - Release Date: 05/26/11

**Salem Trophy Co.**

# FAX

1030 MARKET ST. NE SALEM, OREGON 97301
503-363-0545 503-363-5051 (fax)

DATE: 5-19-11

TO: Derrick Tokos

COMPANY: City of Newport

FAX# 541 574 0644

PHONE#

FROM: John Salstrom

NUMBER OF PAGES INCLUDING COVER SHEET 2

COMMENTS: Derrick, thank you again for returning my calc. Here is the lettering I received from Bob Ward. It got me a little concerned. Please call me if you have any comments or questions.

Thank you,
John Salstrom

503-363-0545 503-363-5051 (fax)

1055 S.W. MARK, Newport

525 NW 57th Street
Newport
Oregon 97365

Tel: 541 574 4475
wcmi@live.com

April 18, 20011

Dear Fellow Newport Property Owner,

**Re: Proposed Geologic Hazards Ordinance**

I do not know if you have been following developments in the new Geologic Hazards Ordinance that the City of Newport is proposing to introduce, but if you haven't, you should, because as it stands the ordinance is going to adversely affect your property values and inflict cost and inconvenience on you.

Fortunately, the City Council is re-opening their hearings for more Public Input, and I hope you will think it worthwhile to send a letter to the City Council, or even better, to give testimony in person.

You may not even be aware of it, but a small part of your property is now classed as being in a high hazard zone, the notorious "red zone". This alone has significant implications for the market value of your property, and for the ability to finance, re-finance or sell it. There are over 300 properties like yours and mine that straddle the boundary between the high and moderate hazard zones, and as a result of recent changes to the proposed ordinance, these will be treated as if they were completely in the red zone. For example, should your property burn down, or be lost to some such disaster, you will have to get a geologic report before you can rebuild it, and implement any and all recommendations in the report, no matter if they make economic sense or not.

I am writing to you because the proportion of your property in the red zone is small, and there would be plenty of room on that part of your property that is in the moderate zone to build a replacement home, according to the 2004 DOGAMI (Department of Geology and Mineral Industry) maps that are driving these proposed amendments to the ordinance. Properties that are wholly within the moderate zone are not subject to these restrictions, but if so much as a foot of your property lies in the red zone, you will be treated as if the whole of your property is ..... unless you do something about it, and quickly.

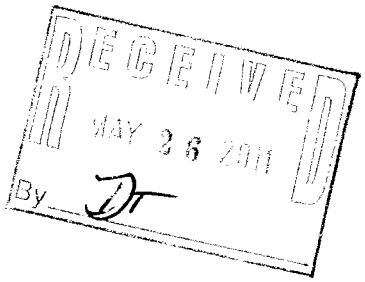
Take a look at your property and the DOGAMI maps via the City of Newport web-site at: http://www.thecityofnewport.net/dept/pln/GeologicHazards.asp from which you can select the "DOGAMI Dune and Bluff Hazard Area Maps" near the bottom of the left hand column, and look at the proposed ordinance by clicking on: "12-2-09 Code Amendments" near the top of the right column.

People like you who live on the east side of SW Mark Street, over 400 feet from the front of the ocean bluff, will probably be surprised to even find yourself in a hazard zone, let alone a high hazard zone. The slump to your west used to be classified as an "ancient landslide" that had stabilized and was eroding at the ocean side at less than a foot per year. Then in 1999, slight movement was detected by a City contractor looking at putting in a sewage line, and DOGAMI re-classified the whole thing as an "active hazard zone." When DOGAMI then published its 2004 maps, it placed a "high hazard zone" inland of the active zone. In the absence of any evidence of movement of the edge of the slump on the west of Mark Street (I could not detect any movement when comparing a 1952 aerial photo with today's Google Earth) DOGAMI applied their default width for high hazard zones of 20 feet, starting in the middle of Mark Street. That took the high hazard zone into the front portion of your property, and will cause you to be treated as if you are wholly within the red zone, if the ordinance remains as currently crafted.

If you don't want this, write to the City Council and ask them to change the proposed ordinance so you alone can make the decisions if you need to replace your home, but do it soon, or it will be too late.

Bob Ward

May 23, 2011




Community Development Department
Newport City Hall
169 S.W. Coast Hwy
Newport, OR 97365

Attn: Derek Tokos, Director of Community Development
Mayor and Members of the Newport City Council

RE: Proposed Changes to Newport Geologic Ordinance 2.4-7

This letter is in regard to the Council's decision on April 4, 2011, to re-open public testimony on the Geologic Hazards changes proposed by Community Development Director, Derek Tokos. After nearly fifteen months of work on this proposal, including contentious public hearings, a mountain of written comments, TV and newspaper coverage, Planning and City Council deliberations, a four-month pause and changes in Mayor and Council members, residents are again offered an opportunity to express their opinions to City leaders. I hope they have the energy to do so.

I'm not sure what to add to the many letters I've already written and testimony I've already given. Below, I will outline the basis of my opposition to this proposal. But a question I continue to ask is what is driving this? Why would Newport want to be the first and only City in the State "Red Zone" itself? Why adopt the DOGAMI maps and language that stigmatizes so many valuable homes and businesses and discourages investment in our close to the ocean properties? If this were simply a map update meant to simplify building practices it would have been approved without opposition a long time ago. But it hasn't. It's not simple. And opposition continues.

First of all, it is important to give credit of all who have been involved in softening and re-shaping this proposal, including both City officials and concerned citizens. It has been a tedious, emotional, and complicated process. And if approved, the economic consequences could be significant to those of us who suddenly find our properties re-labeled and re-zoned. I urge Council to look carefully at all the ramifications of these proposed changes--scientific, economic, legal, and ethical.

Please consider the following comments:

1.**"The Red Zone" - Maps, colors and labels**. On October 18, 2010, Council asked Mr. Tokos to provide a neutral map for its review. As far as I know, this

has not been forthcoming. Attached is a copy of a City Council Agenda Item Summary dated November 15, 2010 where two motions are listed (Attachment A). Previous Council was interested in seeing a neutral map (check the record) and I encourage the New Council to ask for one if this proposal moves forward. Labels could also become more neutral. Why not leave the title "Geologic Hazard Zone" to refer to all development requiring geologic investigations?

Drop the "Red Zone" and references to properties in this manner. Reports about the recent tragedy in Japan and nuclear contamination in "Red Zones" is just one more extreme example of how this term is used. It is unfortunate that DOGAMI chose these colors for its coastal maps. Also, as a graphic, it does not work.

Tsunami maps and warning signs are blue. Imagine if they were colored bright red as you drove through beach areas. There is a reason why states got together and adopted the tsunami logo—it is people friendly, and urges caution, not panic. (Attachment B).

2. **Triggers.** It has been suggested that the zones are simply "triggers" to identify where geologic reports are needed for new construction and to make it easier for owners of existing properties to change out windows, decks, etc. However, by re-labeling homes and businesses, and lumping them all together as part of a "Red Zone" the trigger is more like part of a smoking gun that just shot holes in the value of properties, most of which are existing homes and businesses.

3. **De-watering**. As Mr. Priest said, much of the problem in the areas near the ocean is due to surface water not being adequately removed. After meeting with City officials about our area on Mark St., there are many questions that cannot be answered about how/where water goes. We have heard consistently, that proper de-watering could stabilize land and add decades to its lifetime. Please, work with residents to better understand how to deal with surface water removal and stabilize the land close to the ocean.

4. **Trust.** When I went to the City in May, 2007 to gather information about the Mark St. house I was considering buying, and again in December 2009 to apply for a permit to add on to my house, both times I was assured that my home was located 10 ft outside a geologic hazard zone. The decision to invest hundreds of thousands of dollars to buy the property and thousands more for an addition was based on that information and other inspections. Six weeks after construction started, the City announced the zone change. I was shocked. No one EVER mentioned DOGAMI or impending map changes. If I had been given this information, I would have made other decisions.

Citizens rely on rules and regulations. Not only for financial reasons but to feel safe. We follow the rules, build according to regulations, have homes inspected and approved. The City should abide by its rules as well. Officials co-created and approved everything that exists in Newport. Permit fees and property taxes help fund City budgets. Retain existing agreements with property owners. Focus on new construction and land development, a small percentage of the residents affected by these changes.

5. **Legal rights**. Is it true that residents cannot sue the City if this amendment is approved? Is it true that no other City in Oregon has adopted the DOGAMI map to outline its zones? Is this landmark legislation? ? Wouldn't a judge be making the decision based on the facts and merit of each lawsuit? Does the City believe so strongly in this legislation that it is willing to back it up with expensive and potentially lengthy legal battles?

6. **Economic Impact**: Can the City really separate itself from the economic impact that may result from re-labeling and re-zoning valuable close to the ocean homes and businesses. Conservative estimates suggest over $300 million in real estate value at risk here. ? What about re-assessing taxes on properties that have been de-valued or cannot be sold?

7. **Ethical**. If the City passes this and the judge says it can, is it right? How does it feel to sign your names to this amendment? Does it fit with your vision for the future development of the community? If homes and businesses lose their value, can't get loans due to the re-labeling, what happens to them in 5, 10, 20, 30 years?

Thank you for reading this letter. Good luck with the continuation of the hearings and the process of discernment. And if you continue to have doubts, let it go until the Comprehensive Planning process begins in a couple of years.

Sincerely yours,

Mary Stupp-Greer

Agenda Item # _____
Meeting Date November 15, 2010

**CITY COUNCIL AGENDA ITEM SUMMARY**
City of Newport, Oregon

Issue/Agenda Title Continued Council deliberation on amendments to the Newport Comprehensive Plan, Zoning Ordinance, and Municipal Code Relating to Geologic Hazards (File No. 12-Z-09)

Prepared By: Derrick Tokos/Penelope McCarthy Dept Head Approval: DT/PM City Mgr Approval: _____

**ISSUE BEFORE THE COUNCIL:** Consideration of whether or not it is in the public interest to amend the Natural Features Chapter of the Newport Comprehensive Plan, the Geologic Hazards Section of the Newport Zoning Ordinance (Section 2-4-7), and land division criteria related to geologic hazards in Title XIII of the Municipal Code.

At their July 12, 2010 meeting, the Planning Commission voted unanimously to recommend adoption of the changes.

The Council held work sessions on August 9, 2010 and September 27, 2010 and public hearings on September 7, 2010 and October 18, 2010. Changes discussed at the work sessions and hearings have been incorporated into the proposed ordinance.

**STAFF RECOMMENDATION:** Staff recommends the Council accept the Planning Commission's recommendation to adopt the code updates, with the additional changes made following the Council work sessions and hearings.

**MOTIONS:**

Motion #1 - Adoption of Geologic Hazards Update: I move for reading by title only of an ordinance amending the Newport Comprehensive Plan, Zoning Ordinance and Municipal Code as it relates to development within geologically hazardous areas, **[with/without]** the optional language under NZO 2-4-7.075, and for adoption by roll call vote.

Motion #2 - Display of Geologic Hazards Maps: I move that the Council direct staff to utilize grayscale hatching or similar techniques that do not require the use of color when producing maps that display the bluff and dune backed hazards zones and landslide risk areas referenced in this ordinance.

**KEY FACTS AND INFORMATION SUMMARY:** The City of Newport Zoning Ordinance (No. 1308, as amended) requires that persons interested in developing property within geologically hazardous areas retain a certified engineering geologist to evaluate the site and building plans prior to city approval of a proposed development. Such evaluations are reviewed and approved by the City under a Geologic Permit.

As part of the City project to comprehensively update and streamline its Zoning Ordinance, the City of Newport Planning Commission and its Citizens Advisory Committee have completed a comprehensive review of Zoning Ordinance Section 2-4-7 ("Geologic Hazard Areas"). Changes include updates to the maps used to identify when site specific geologic evaluations are needed; replacement of certain provisions that are vague or overly strict with respect to when Geologic Permits are required; new standards for erosion control during construction; a requirement that engineering geologists perform a post-construction certification that development was undertaken in accordance with their recommendations; and a requirement that undeveloped lots in land divisions must include buildable sites outside

ATTACHMENT A.

of active or high risk areas. The Natural Features Chapter of the Newport Comprehensive Plan is being amended to update the Plan's description of landslide areas and coastal erosion areas in Newport to correspond with new mapping.

The Planning Commission and Citizens Advisory Committee reviewed the proposed changes at eight separate work sessions from October of 2009 through May of 2010. A public workshop was held by staff on February 17, 2010 and public hearings before the Planning Commission were conducted on March 8, 2010, April 26, 2010, June 14, 2010, and July 12, 2010. Affected property owners received direct mail notice of the workshop and initial hearing. At the July 12, 2010 public hearing, the Planning Commission voted to recommend adoption of the proposed amendments.

Over 120 written comments were received from affected property owners and interested parties. Most opposed provisions in earlier drafts of the ordinance that would have imposed specific construction limitations for development in high risk areas and required property owners developing in such areas to record a statement in the deed records acknowledging risk and disclosure requirements. The construction limitations and deed recording requirement have since been dropped.

The City Council held a joint work session with the Planning Commission on August 9, 2010. An initial hearing by the Council was held September 7, 2010. Following the hearing, the Council held another work session, on September 27, 2010, to consider the testimony it received. Staff prepared changes to the ordinance in response to public testimony. The changes, outlined in a memo, were presented to the Council and public at the work session and subsequent hearing on October 18, 2010. At the conclusion of the October hearing, the Council closed the public record to additional testimony but kept their deliberations open. This meeting on November 15, 2010 is an opportunity for the Council to complete its deliberations and take action on the proposed amendments.

Staff has prepared two (2) minor changes to the proposed ordinance in response to issues raised at the October 18, 2010 hearing. Section 2-4-7.010(D) of the Zoning Ordinance has been revised such that state agencies will receive 15 days to comment on geologic reports that differ substantially from the DOGAMI Open File Report. The prior language gave agencies "at least" 15 days. The second change is to the optional add-in language under Section 2-4-7.075 where the reference to replacement in the same footprint has been eliminated in favor of a clause that requires the replacement building or structure to be the same size as the original building or structure.

Council members have discussed whether or not the City should display bluff and dune backed erosion and landslide hazard areas in color, consistent with how they are described in the DOGAMI report, or if more muted "neutral" shading should be used. Unless directed otherwise, staff intends to continue to depict hazard areas in a manner that is consistent with the DOGAMI report. If the Council wants to take a different approach, then a grayscale hatching would seem most appropriate and a motion to that effect is included.

As this is a legislative item, there are no approval criteria.

**OTHER ALTERNATIVES CONSIDERED:** None.

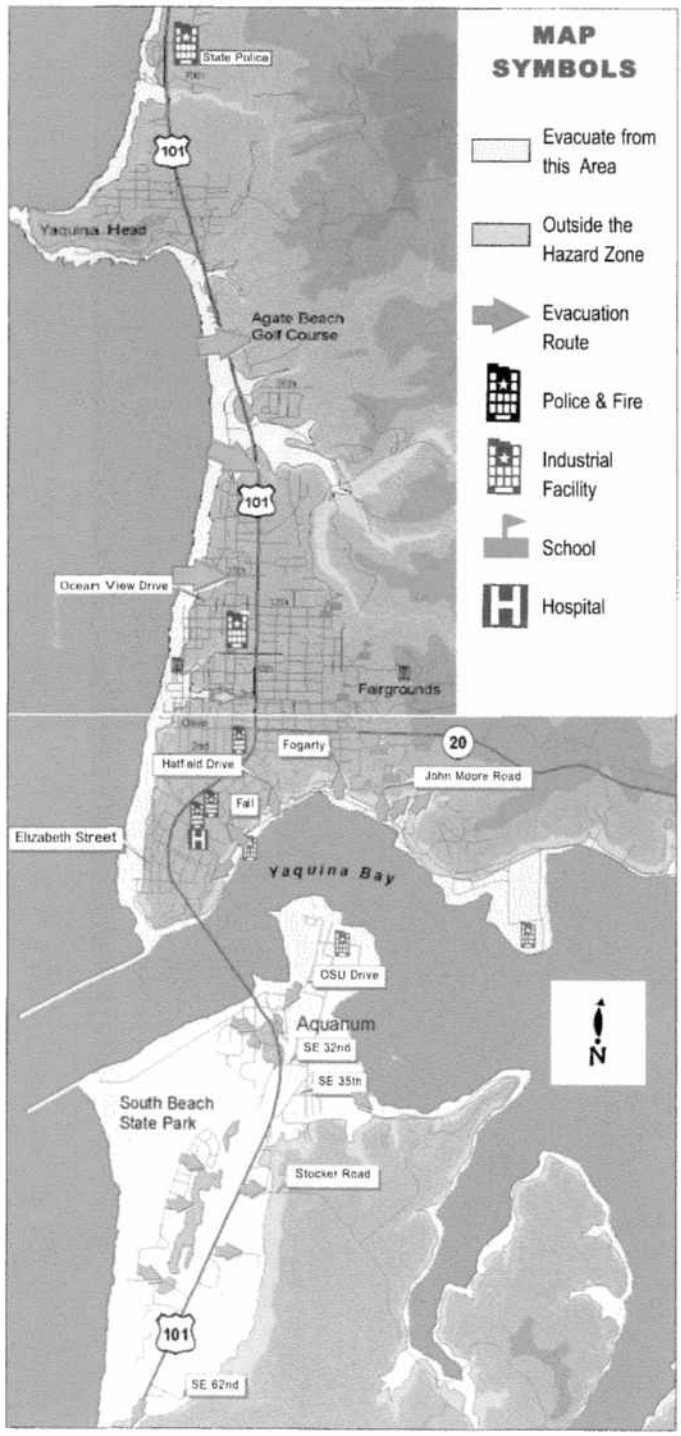
**CITY COUNCIL GOALS:** The proposed changes are part of the comprehensive update to the Zoning Ordinance, which the Council set as a goal to complete.

**ATTACHMENT LIST:**

Proposed Ordinance
Minutes from the October 18, 2010 Council Meeting

# Tsunami Safety:
## *It's Up To You!*

## Newport Evacuation Map




## What We Know...

**Q.** What is a (soo-nah-mee) tsunami?
**A.** A Tsunami is a series of waves caused by an undersea earthquake.

TSUNAMI EVACUATION ROUTE

| Distant Tsunami | Local Tsunami |
|---|---|
| ▪ Caused by an undersea earthquake *FAR AWAY* from the Oregon Coast. | ▪ Caused by an undersea earthquake *NEAR* the Oregon Coast. |
| ▪ 1-4 hours before the Tsunami waves arrive. | ▪ 15-20 minutes before the Tsunami waves arrive. |
| ▪ You won't feel the earthquake. Get a "NOAA Weather Alert Radio" to receive an immediate warning. | ▪ You will feel the earthquake. *THIS IS YOUR WARNING.* |
| ▪ Move immediately to higher ground. | ▪ Move immediately to higher ground. |

## 15-20 MINUTES!

If the earth begins to shake, *DROP, COVER & HOLD.* Once the shaking stops, grab your emergency kit and quickly head for higher ground. Because of possible roadway jams, plan to travel by foot. The first Tsunami waves could arrive within 15-20 minutes. Additional waves may come hours after the first waves arrive. Listen for an official 'ALL CLEAR' before returning home.

ALERT

## Emergency Kit

- Water
- Food
- First Aid Kit
- Mylar Blankets
- Rain Gear
- Flashlight & Batteries
- Radio & Batteries
- Toilet Paper/Sanitary Supplies
- Essential Medications
- Heavy Gloves & Sturdy Shoes
- Water Proof Matches
- Food & Water for Pets
- Money

## For More Info...

www.co.lincoln.or.us  www.oregongeology.com  www.pmel.noaa.gov/tsunami-hazard

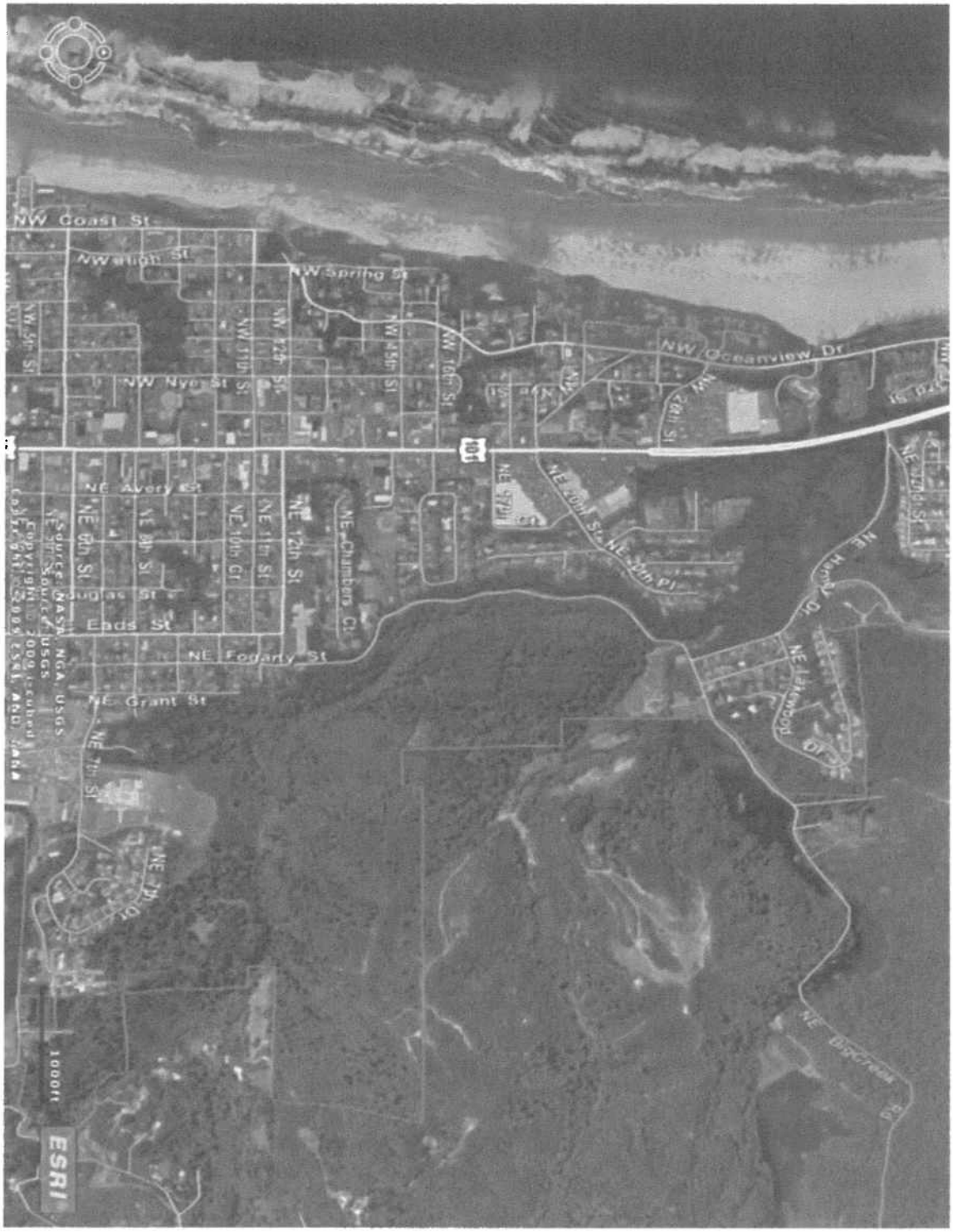
Lincoln County OREGON

NOAA

*Funds for this publication of Lincoln County School District (www.lincoln.k12.or.us) were provided by an Emergency Response Crisis Management Grant from the US Department of Education's Office of Safe & Drug-Free Schools.*

8/05

ATTACHMENT B


NW Coast St
NW High St
NW Spring St
NW Nye St
NW Oceanview Dr
NE Avery St
NE Douglas St
Eads St
NE Fogarty St
NE Grant St
NE Chambers Ct
NE 12th St
NE 11th St
NE 10th Ct
NE 8th St
NE 6th St
NE 7th St
NE 7th Dr
NE 20th St
NE 20th Pl
NE Hardy Dr
NE Lakewood Dr
NE Bigcreek Rd
1000ft
ESRI

Sample maps

## Newport (NW 11th – SW 2nd)

## Derrick Tokos

**From:** Derrick Tokos
**Sent:** Wednesday, May 25, 2011 12:06 PM
**To:** 'George Watson'
**Subject:** RE: Letter and Query
**Attachments:** Southshore Ltr_final.PDF

Hi George,

Attached is a final draft of the letter. Since the City Council has reopened the Geologic Hazards process for public comment, I'll include a copy of this letter and your prior email into the written record, which closes this Friday (May 27th).

All of the written comments will be forwarded to the City Council. The draft letter was reviewed by the City Attorney before I forwarded it to you back in February.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
fax: 541-574-0644
d.tokos@NewportOregon.gov

**From:** George Watson [mailto:georgew@exchange.asu.edu]
**Sent:** Monday, March 07, 2011 8:47 AM
**To:** Derrick Tokos
**Subject:** Letter and Query

Hi Derrick,

I cannot find that I sent you a response to your draft letter regarding Southshore and especially section 7.040 of the hazards draft proposal. If not, let me thank you for it and let you know that it has the approval of our SOA. The only thing we ask when you take it out of draft form is that you send copies to the City Council members and the city attorney.

On another item, Ed Colton mentioned to me last week that you two had a chance encounter at which the topic of short-term rentals came up. Ed indicated that you agreed that short-term rentals, i.e., rentals of less than 30 days, were permitted at Southshore, despite the August 1996 Amended and Restated Declaration which specifies no short-term rentals. If I understand Ed correctly, there may have been some previous documents that suggested otherwise and that the section in the CC&Rs that we have taken as gospel was put there in error.

Can you help me with this?

Thanks.

-- George

CITY OF NEWPORT
169 SW COAST HWY
NEWPORT, OREGON 97365

COAST GUARD CITY, USA

NEWPORT
OREGON

phone: 541.574.0629
fax: 541.574.0644
thecityofnewport.net

mombetsu, japan, sister city

May 25, 2011

George Watson, President
Southshore Owners Association
6038 SW Cupola Drive
South Beach, OR 97366

Dear Mr. Watson,

Thank you for the opportunity to discuss the status of the Geologic Hazards code update with you and other residents of the Southshore development on February 15, 2011. Several individuals in attendance expressed concerns that language under proposed Section 2-4-7.040 could adversely impact future development at Southshore. This section of the code prohibits residential, commercial, or industrial buildings from being constructed on beaches, active or conditionally stable foredunes, and interdune areas (deflation plains) that are subject to ocean flooding.

The Section 2-4-7.040 language implements, and is almost identical to, Policy 2, Goal 2 of the Natural Features Chapter of the Newport Comprehensive Plan. This policy was in effect and was addressed when the Southshore development was approved in the early 1990's. A geologic report prepared by Doug Gless, CEG, an ocean flooding report by David Simpson, PE, and various wetland reports were commissioned by the developer to establish that the Southshore development is not within the prohibition area identified in this policy. Those reports were accepted in written findings by the Newport Planning Commission and City Council.

Codifying the Comprehensive Plan policy into the Newport Zoning Ordinance, which is what is proposed in Section 2-4-7.040, does not supersede prior decisions involving the Southshore development. If geologic conditions along the coastline are consistent with what is documented in past reports, then those reports can be relied upon to show that new development is outside the prohibition area. If geologic conditions along the coastline change from what is documented in the reports then Section 2-4-7.040 would apply to persons proposing new development.

I hope this clarifies the issue. Should anyone have questions about the Southshore development, its prior approvals, or the Geologic Hazards code update they can contact our office and we would be happy to assist them.

Sincerely,

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626

xc: File

## Derrick Tokos

**From:** George Watson [georgew@exchange.asu.edu]
**Sent:** Monday, March 07, 2011 8:47 AM
**To:** Derrick Tokos
**Subject:** Letter and Query

**Follow Up Flag:** Follow up
**Flag Status:** Flagged

Hi Derrick,

I cannot find that I sent you a response to your draft letter regarding Southshore and especially section 7.040 of the hazards draft proposal. If not, let me thank you for it and let you know that it has the approval of our SOA. The only thing we ask when you take it out of draft form is that you send copies to the City Council members and the city attorney.

On another item, Ed Colton mentioned to me last week that you two had a chance encounter at which the topic of short-term rentals came up. Ed indicated that you agreed that short-term rentals, i.e., rentals of less than 30 days, were permitted at Southshore, despite the August 1996 Amended and Restated Declaration which specifies no short-term rentals. If I understand Ed correctly, there may have been some previous documents that suggested otherwise and that the section in the CC&Rs that we have taken as gospel was put there in error.

Can you help me with this?

Thanks.

-- George

## Derrick Tokos

**From:** Derrick Tokos
**Sent:** Wednesday, February 16, 2011 3:48 PM
**To:** 'George Watson'
**Subject:** RE: Southshore Meeting
**Attachments:** 12-Z-09 Southshore_draft.pdf

Hi George,

Attached is a draft letter that I believe gets at what we discussed last night. Please feel free to distribute it and let know if you think it needs any clarification.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
fax: 541-574-0644
d.tokos@NewportOregon.gov

**From:** George Watson [mailto:georgew@exchange.asu.edu]
**Sent:** Monday, February 14, 2011 12:34 PM
**To:** Derrick Tokos
**Subject:** Southshore Meeting

Hi Derrick,

We're looking forward to your being here tomorrow (Tuesday) at 6:30 PM in our clubhouse. I presume you're still able to do this. I have received a copy of a letter from one of our residents, a former attorney who has a beach home here. He is urging our association to send this letter to the Council and below I have copies you a part of it here. This is one of the central concerns here at Southshore and you should be ready to have this brought up.

-- George

**********
George Watson
President - Southshore Owners Association
6038 SW Cupola Drive
South Beach, OR 97366
(541) 867-4251
g.watson@asu.edu
**********

Those interested in the Southshore Development ("SS") have endeavored to obtain from the City of Newport (the "City") assurances that the adoption of Section 2-4-7.040 ("Section 7.040") in its present form, will have no adverse affect on the development of SS that was approved by the City in 1995.

To date, the City and its appropriate Officials and Departments, including its Planning Commission and its Director, its Mayor and its City Council, have taken no action in the furtherance of that endeavor. They basically have all ignored the issue.

SS has also questioned why Section 7.040 is even necessary, and if necessary, why maps showing the areas affected by that section would not be appropriate.

The City's response to these questions does not appear to be accurate according to information that SS has developed. Very few of the

coastal communities in Oregon have the language of Section 7.040 in their zoning ordinances; and the communities of Cannon Beach, Waldport, Bandon and Depoe Bay do in fact utilize maps to show the areas affected by their respective Shoreline Overlay provisions.

Therefore, SS requests that the City take the following action with respect to Section 7.040 in conjunction with the adoption of any zoning amendments:

1. Delete Section 7.040 and treat its subject matter and that of other existing zoning sections covering some of the same subject matter under a revised Shoreline Overlay; or

2. Amend Section 7.040 by adding a provision stating the it will have no affect on the development of SS already approved by the City; or

3. Adopt reference maps as a part of any amendments of the zoning ordinance showing that Section 7.040 does not affect SS and what areas in Newport it does affect; or

4. Give the Southshore Owner Association (the "SOA") a letter stating that Section 7.040, if adopted in its present form, will have no adverse affect on any development of SS that has been approved by the City.

The SS owners and the SOA believe that the foregoing request is reasonable under the facts and circumstances. It makes no sense for Newport to adopt an ordinance which may impede or be in conflict with development that Newport has previously approved.

Please be advised that if this request is not met, or other satisfactory arrangements are not made, upon the adoption of Section 7.040 in its present form, with no other action being taken by the City, SOA or other interested parties may file a declaratory judgment action in the Lincoln County Circuit Court for a determination that Section 7.040 has no affect on the development of SS that has already been approved, that such section is void due to vagueness and for injunctive relief against the enforcement of that section prohibiting any City approved SS development.

Obviously, it is hoped that such action can be avoided. All of this could be alleviated by your simply sending the SOA the requested letter.

CITY OF NEWPORT
169 SW COAST HWY
NEWPORT, OREGON 97365

COAST GUARD CITY, USA

NEWPORT
OREGON

phone: 541.574.0629
fax: 541.574.0644
thecityofnewport.net

mombetsu, japan, sister city

February 16, 2011

George Watson, President
Southshore Owners Association
6038 SW Cupola Drive
South Beach, OR 97366

Dear Mr. Watson,

Thank you for the opportunity last night to discuss the status of the Geologic Hazards code update with you and other residents of the Southshore development. Several individuals in attendance expressed concerns that language under proposed Section 2-4-7.040 could adversely impact future development at Southshore. This section of the code prohibits residential, commercial, or industrial buildings from being constructed on beaches, active or conditionally stable foredunes, and interdune areas (deflation plains) that are subject to ocean flooding.

The Section 2-4-7.040 language implements, and is almost identical to, Policy 2, Goal 2 of the Natural Features Chapter of the Newport Comprehensive Plan. This policy was in effect and was addressed when the Southshore development was approved in the early 1990's. A geologic report prepared by Doug Gless, CEG, an ocean flooding report by David Simpson, PE, and various wetland reports were commissioned by the developer to establish that the Southshore development is not within the prohibition area identified in this policy. Those reports were accepted in written findings by the Newport Planning Commission and City Council.

Codifying the Comprehensive Plan policy into the Newport Zoning Ordinance, which is what is proposed in Section 2-4-7.040, does not supersede prior decisions involving the Southshore development. If geologic conditions along the coastline are consistent with what is documented in past reports, then those reports can be relied upon to show that new development is outside the prohibition area. If geologic conditions along the coastline change from what is documented in the reports then Section 2-4-7.040 would apply to persons proposing new development.

I hope this clarifies the issue. Should anyone have questions about the Southshore development, its prior approvals, or the Geologic Hazards code update they can contact our office and we would be happy to assist them.

Sincerely,

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626

xc: File

EST. 1882

Dennis L. Bartoldus
Attorney at Law

DENNIS L. BARTOLDUS
Of Counsel
CLIFFORD G. COLLARD

380 S.W. 2nd Street
P.O. Box 1510
Newport, Oregon 97365
Telephone 541-265-5400
Fax 541-265-7633
e-mail – landlaw@charter.net
collardlaw@charter.net

May 24, 2011

Newport City Council
Newport City Hall
169 SW Coast Hwy.
Newport, OR 97365

RE: Comments on Proposed Geotech Ordinance

Dear Mayor and Councilors;

This letter is submitted on behalf of the Central Coast Home & Business Owners Association. This association is comprised of a number of home, business and land owners in the Newport community who are very concerned about the impact of the proposed Geotech Ordinance on their property and the impact of the ordinance on the community at large.

There have been many positive changes that have been incorporated into the current draft of the proposal. We thank the Planning Commission and the City Council for listening carefully to all the testimony that has been presented on this matter. We believe the proposed ordinance is vastly improved. The purpose of this letter is to address a concern that lingers with some of the members of the group I represent.

The concern is requiring geotech reports in split designated areas such as those where a portion of the property may be in a high risk zone and a portion of the property in a moderate risk zone. My clients believe that if the development site is in a moderate risk zone, no geotech report should be required. As it appears the Council is may be leaning toward a proposal that would not require geotech reports in moderate zones, it makes sense not to require the report on split designate property if the improvement will be built in a moderate zone. The dividing line should be the actual geotechnical designation, not an artificial line drawn on a tax assessor's map. Deed lines do not follow geologic fault zones. It is completely possible that a house built on an adjoining lot in a moderate zone where lots are small would be closer to a high risk hazard area on a neighboring lot than a house built in a moderately designated area but on a larger lot.

Thank you for your consideration. I plan to attend the June 14 meeting to briefly discuss this issue and would be glad to answer any questions at that time.

Very truly yours,

Dennis L. Bartoldus

DENNIS L. BARTOLDUS

DLB/pkh
cc: Client

DISCLAIMER
BY

## Derrick Tokos

**From:** Derrick Tokos
**Sent:** Tuesday, May 24, 2011 4:16 PM
**To:** 'Jenn'
**Cc:** curtis_athletics@yahoo.com
**Subject:** RE: Geologic hazard area map questions

Jen,

This proposal shouldn't impact you, as it only applies to new construction. Additionally, your property and all of the others along Running Springs have been in a geologic hazard zone for decades (at least since 1982). That won't change with this proposal.

The new code will make it easier for you to make modifications to your home without triggering a report requirement. That is, new construction within the footprint of the structure will be exempt as long as it doesn't alter the foundation. Currently that is not the case.

New construction that triggers a report under the new code will be subject to erosion control requirements and the geologist that prepared the report will be required to observe the work to ensure that their recommendations were followed. In that regard, it will be a little more involved if you ever do need to get a report in the future.

I hope that I have addressed your questions. Let me know if you would like to discuss any of this further.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
fax: 541-574-0644
d.tokos@NewportOregon.gov

---

**From:** Jenn [mailto:jenn911oregon@yahoo.com]
**Sent:** Sunday, May 22, 2011 8:43 PM
**To:** Derrick Tokos
**Cc:** curtis_athletics@yahoo.com
**Subject:** Geologic hazard area map questions

Hi Derrick,
I live at 555 S.E. Running Springs Drive, and our neighbor told us he recieved a card in the mail about a hearing for placing our homes in a geologic hazard zone. We live in the city, and spoke with one of the councilmen, Dean Sawyer. He referred me to you to determine if that decision would affect our address. If you could let me know if we are included in that, I would be very grateful.
Also, do you know if effects already built homes or just new construction?
Thank you very much for your assistance, I look forward to hearing from you.

Jen Landers

ATTACHMENTS: TO LETTER DATED MAY 15, 2011 TO CITY COUNCIL

LETTERS AND TESTAMONY FROM DIXIE ADAMS, JOHN COWDEN & ELLEN COWDEN, PROPERTY OWNERS AT 1034 NW COAST ST. UNIT A & B, NEWPORT, OREGON 97365 FOR COUNCIL REVIEW PRIOR TO JUNE 14, 2011 MEETING

MAY 15, 2011 LETTER TO THE CITY COUNCIL

FEBRUARY 18, 2010 LETTER TO THE PLANNING COMMISSION

MARCH 4, 2010 LETTER TO DERRICK TOKOS

MARCH 9, 2010 LETTER TO COMMUNITY DEVELOPMENT DIRECTOR

REPLY TO PLANNING COMMISSION MEETING APRIL 26, 2010
(TESTAMONY) JOHN COWDEN

TESTAMONY FOR APRIL 26, 2010 DIXIE ADAMS

JUNE 26, 2010 LETTER TO PLANNING COMMISSION

AUGUST 9, 2010 LETTER TO CITY COUNCIL

RECEIVED
MAY 24 2011
CITY OF NEWPORT

me

City Council of Newport, Oregon
169 SW Coast Hwy.,
Newport, Oregon 97365

Attention: Mayor Mark McConnell
City Council Members: Jeff Bertuleit, Sandra Roumagoux, David Allen, Richard Beemer, Lon Brusselback and Dean Sawyer

May 15, 2011

Attached you will find copies of our letters written, over the past 13 months to the Planning Commission and the City Council regarding the Red Zone issues. Some of these letters raised questions addressed directly to the Planning Commission that have yet to be answered. Many issues highlight our concerns about the devaluation of our property without an individual geological survey being completed.
We have attended every Public Meeting scheduled by the Planning Commission and the City Council over this period of time. We have testified, when Public input was asked, and yet have not had any response to any question poised to the Commission or Council during these sessions.
Again, we are asked to attend a Public Meeting on June 14, 2011 in order to acquaint the "new" Council Members with these same issues. Although no financial impact study has been forthcoming from the Planning Commission, the City Council continues to address budget issues using the Tax rolls that include "Red Zone" properties. Many of these properties have been devalued just by the identification "Red Zone" due to the information in newspapers, radio and television interviews across the State and across the country. But, we will be at the June Meeting and will continue to give our testimony because we believe that this issue is important to our city, county and above all to our family.

Sincerely,
John R Cowden Ellen Marie Cowden Dixie Adams
Dixie Adams, John Cowden & Ellen Cowden
Property Owners, 1034 NW Coast St., Unit A & B, Newport, Oregon 97365

Planning Commission
City of Newport
169 SW Coast Hwy
Newport, Oregon 97365

February 18, 2010

Planning Commission,

Please reconsider your agenda for the March 8, 2010 meeting and do not take any action on the proposed Geologic Hazards Code Updates until a full public hearing can be accommodated. The Public Workshop held on Wednesday, February 17th, 2010 left the attendees with many unanswered questions and confusion over the necessity of these proposed changes to the Geologic Hazards section of its Zoning Ordinance. It is vitally important that the property owners within the "proposed red, yellow and green zones" have a clear understanding of the options available to them. A public meeting with all concerned persons should be scheduled and should include a note taker or recording equipment so that all unanswered questions can be noted and feedback provided in a timely manner. The meeting last night was very casual and provided no means of feedback for our unanswered questions. Your interest in providing input from the public is appreciated and we would like to provide a meaningful dialogue with those involved with these decisions.

Sincerely,

John R. Cowden Ellen Marie Cowden
Dixie Adams

John Cowden
Ellen Cowden
Dixie Adams
Property Owners - 1034 NW Coast St., Units A & B, Newport, Or. 97365

Planning Commission
City of Newport
169 SW Coast Hwy
Newport, Oregon 97365

March 4, 2010

City of Newport Community Development Director Derrick Tokos,

Please provide us with the documentation that you used to determine that our individual property, located at 1034 NW Coast Street, Newport, OR. 97365 would be in violation of your proposed revision to the code standards for geological hazards. The particular reference, according to your public meeting held on February 17, 2010 places this property in the "proposed" Red Zone. According to your Map Revision this property would be rendered unsafe and would fall under guidelines restricting or prohibiting activities for the protection of public health and safety, [see ORS 195.305(5)(b)]. What public health and safety issues are associated with this property? What geological survey company completed a new review of our property and when was it taken? To our knowledge the geological survey completed at the time the structure was built met all Planning Commission standards. We don't think this survey has expired.

Thank you for a timely response,

Sincerely,

John R Cowden Ellen Marie Cowden

John Cowden, Ellen Cowden, Dixie Adams

Planning Commission
City of Newport
169 SW Coast Hwy
Newport, Oregon 97365
March 9, 2010

Attention: Jim Patrick, Melina Sarizan, Gary East, Mark Fister, John Rehfuss, Glen Small, Penelope McCarthy and City of Newport Community Development Director Derrick Tokos

This letter is written in response to the Public Forum held on March 8, 2010 regarding the proposed Geologic Hazards Code Updates.
In the mid eighties we purchased the land and now have a duplex located at 1034 NW Coast Street, Unit A & B, Newport, Oregon, 97365. In 1996/1997 we contracted for the building of our home and obtained the necessary permits and site specific geological survey. The building was completed July 1997 and we added two green houses on the North and South sides of the duplex in 2001. Again, we obtained the proper permits and approval required by the Nye Beach Overlay Committee. We were members of a neighborhood task force that contracted with the appropriate companies to have the electric and telephone lines placed underground from Spring Street to Coast Street between 11th and 10th. We, along with our neighbors, paid for these changes after obtaining the appropriate permits. We also, as part of the same neighborhood group, petitioned the City Council to close Coast Street between 10th and 11th to all through traffic, during the construction process for the Shoreline Ridge Condominium. This petition was granted. One of the main issues with this request was to prevent heavy trucks from hauling out dirt and rocks back to the site of the Shoreline Ridge Condominium building site to be pounded into the ground using a heavy duty compactor. At the suggestion of the Mayor we participated in a beautification project for the front of our property and we continue to maintain this area for the walking and bicycling public.

Our property was purchased from our Aunt who's Mother (family name Hubbard) bought the property in the 1970's and subsequently died in a house fire on the property. The property west of N. W. Coast Street has had a slippage problem beginning in the early 1940's (caused by a failed fault from a sewer line). A block of houses sloughed off South of the Jump Off Joe area. In the early 1980's a building permit was submitted to build a condominium at Jump Off Joes and some houses/cabins below to the South. The City granted the permit against the opposition of the residence, and building and grading of the lower area with the installation of a surface drainage system for the road drain on N. W. Coast St. and surface drainage from the condominiums was started. Mrs. Hubbard's Grandson, Stanley Foster, appeared before the City Council objecting to the construction of the condominiums and the grading of the sand below. The City allowed those permits and the construction continued until the building of the condominium was completed. Cracks appeared in the condominium when completed and the sand area below, to the South began to settle. After the City acknowledged that this problem existed they condemned the Jump Off Joe project and had the building demolished.
We have always assumed that this piece of property was owned by the City after default, but after many calls to the Police Department complaining about the illegal construction of a skate board park on that property we were informed that it was owned by the County. We believe that the City or County has some responsibility for the failed surface drainage system that caused part of this slippage problem that has taken place in the years from this failed construction. In addition the heavy foot traffic that goes from the

parking lot over the sand dune area down to the beach jeopardizes the hillside. The County removed the attempted skate park construction material, painted over the graffiti and posted a NO TRESPASSING sign. The graffiti has returned, I think the day after it was removed by the County.

The meeting on March 8th brought many good questions to the Planning Committee, for example, why was a financial impact report not completed prior to the recommended changes to the Code? Why were so many owners not notified of the code changes and meeting scheduled? What is the sudden hurry to complete these changes? The list goes on and on. Hopefully, the recorded notes and responses will be available to the public in a timely manner. The most important information provided at this meeting was the statement by the State Geologist that site specific Geological reports for additions or future buildings is necessary in these sensitive areas.

We believe the published information about the proposed changes to the Code (designating our home to be in a RED ZONE) has seriously damaged
Our ability to secure a refinance loan and of course jeopardizes any thought of selling this property.

We believe at this time it would be irresponsible to continue this update and the best action should be no further action to update this code.

Sincerely,

John R Cowden Ellen Marie Cowden

John Cowden
Ellen Cowden
Dixie Adams
Property Owners at 1034 NW Coast St., Newport, Oregon 97365

Reply FAQs on Geologic Hazards Code Updates to Planning Commission "Meeting of April 26, 2010"
Planning Commissioners: Melania Sarizin, Gary East, Mark Fister, Jim Patrick, John Rehfuss and Glen Sunall
Re: Penelope McCarthty City Attorney, Derrick Tokos City Community Development Director, and
City Recorder: Peggy Hawker
City Council: Bill Bain Mayor, Patricia Patrick Jolin, Richard Kilbride, Terry Obteshka, Mark Mcconnel, Jeff Bertuliet, Lon Brusselbeck
City Manager: Jim Voetberg

I want to thank the commission for this opportunity to voice my and my neighbor's opinions.

In this century global warming could raise the sea level 3 feet. (From the National Geographic)

The general fund for the current year is expected to fall about $750,000 short "for the city of Newport" of the $10.1 million projected in the budget, equivalent of about five full time positions being cut from the parks, recreation department, jobs in the administration office, the airport and a police position.

Newport reserves are down to $177,000 (Municipalities typically try to have a reserve fund of between 10 and 15% of expenditures, equal to about $1 million for Newport)

County sends layoff notices "Proposed 2010 - 11 budget eliminates 27 positions"

Newport Budget Committee members on Wed. April 21 faced the grim reality that the city's reserve funds have dwindled to dangerously low levels and draconian cuts may be needed to restore them.

Property taxes account for about 51% of general fund revenue, with the remaining amount coming from franchise fees (for utilities and services such as cable, telecommunication and sanitation). State revenue sharing and transfers from the room tax, water and waste funds.
(Excerpts from the News Times, April 16 and 23rd)

What are we doing discussing any thing, that's going to have a detrimental affect on these budget items.

For no other reason than the negative affect of the publicity these DOGAMI updates and changes to the city zoning ordinance have caused and will continue to cause on this city the coast and county.

None of these DOGAMI items or changes to the city zoning ordinance are going to help change any of the above items only negatively.
(This matter should be dropped) including all reference to updates on the DOGAMI maps.
Mr. Tokos is noted for saying, in a few of his interviews, "It is what it is".

The biggest cost to the City from failed ordinances is the legal fees. That was the case of the failed project at Jump Off Joes. That will be the case of these new items in the current proposal or for any future failures.

The existing codes have been in operation for many years, and most problems in hazard zones have been due to lax enforcement of existing codes. This has been repeated many times, someone with a dogged determination keeps moving on these items.

These DOGAMI map updates and proposed changes are being brought up at one of the worse times in are country's history, for real-estate and jobs. Ask any realtor in this assembly what has taken place and is taking place in the real estate market from the discussions and publicity alone.

Disregarding the protection to the city of Measure 49, the city and county will pay in lost revenues, and bad publicity.

All revenues for the city of Newport are related to real-estate and tourism.

These DOGAMI updates and resulting changes are having a detrimental effect on this city.
(This matter should be dropped).

John R. Cowden Ellen Marie Cowden

John R. and Ellen Cowden, P.O. 237, Newport Or. 97365, Dixie Adams, P.O. 2344 Newport, Or. 97365 - Physical location 1034 A&B N.W. Coast St.

The blocking of N.W. Coast Street and the activity and lighting from condominiums will help numbers 2, 3 and 5. Number 4 will become shoddier as individuals use the parking lot for the Shoreline Ridge Condominium and 11th street. The Street improvements down 11th and the paving of the parking area at N.W. Coast Street will encourage more traffic and day/night use.

We also take issue with the improvement of adjacent streets and accessories to make a pedestrian friendly path. In particular, improvement of south side of N.W. 11th, curb with a wheelchair ramp, and fencing or bollards items that the petitioners are asked to improve. We also think the barrier on the South end should be set by the desired location of the owner of the corner house. We would be agreeable to provide some funds for installation of road barriers including some plantings to retard erosion.

John R. and Ellen Cowden, P.O. 237, Newport Or. 97365, Dixie Adams, P.O. 2344 Newport, Or. 9736

John R Cowden Ellen Marie Cowden

MEMO FOR FILE - PLANNING MEETING - APRIL 26, 2010

MY NAME IS DIXIE ADAMS; I LIVE AT 1034 NW COAST STREET, UNIT B, NEWPORT, OREGON 97365.

THANK YOU FOR ALLOWING ME THIS TIME TO EXPRESS MY THOUGHTS AND CONCERNS REGARDING THE "PROPOSED" RED ZONE IDENTIFICATION MARKERS THAT MAY BE PLACED ON MY PROPERTY.

MOST RECENT NEWSPAPER/RADIO/TV SEGMENTS HAVE PORTRAYED THE PROPERTY OWNERS RESIDING IN THE PROPOSED RED ZONE, HERE IN NEWPORT, AS SELLERS WAITING AROUND FOR AN UNSUSPECTING BUYER TO COME FORTH SO WE CAN SELL THEM A PIECE OF PROPERTY THAT IS UNSTABLE AND SETTING ON A CLIFF READY TO CRASH INTO THE SEA. I, ALONG WITH MOST PROPERTY OWNERS ARE NOT GUILTY OF THESE ACCUSATIONS. I WILL TELL YOU WHAT WE ARE GUILTY OF: PURCHASING A PIECE OF PROPERTY IN THE 1980'S THAT WE HAVE PAID TAXES ON FOR OVER 25 YEARS. THESE TAXES HAVE SUPPORTED THE SCHOOLS, POLICE, FIRE, CITY SERVICES AND PAID SALARIES OF THE CITY AND COUNTY EMPLOYEES. WE ABIDE BY ALL OF THE RULES IN THE PRESENT BUILDING CODES WHEN BUILDING OUR HOMES, IN PARTICULAR THE SET BACK AND SAFETY RECOMMENDATIONS OF THE GEOLOGICAL SURVEYS. WE HAVE LISTENED TO THE RETERIC OF THE CITY STATING THEY HAVE BEEN SADDLED WITH THE EXPENSE OF CLEAN UP FROM HOMES THAT HAVE BEEN DESTROYED FROM LAND MOVEMENT WHEN THE OWNERS WALKED AWAY FROM IT. NOT GUILTY.....ONE CONDOMINUM DEVELOPMENT WAS DESTROYED DURING CONSTRUCTION AND THE OWNERS WERE FORCED TO DECLARE BANKRUPCY. THE PLANNING COMMISSION GRANTED A BUILDING PERMIT FOR THIS CONSTRUCTION EVEN AFTER SEVERAL LOCAL PROPERTY OWNERS SPOKE AT PUBLIC MEETINGS AGAINST THE PROJECT (JUMP OFF JOES - OVER 25 YEARS AGO). WE ARE CONCERNED CITIZENS TRYING TO PROTECT OUR HOMES, WE UNDERSTAND THE POTENTIAL HAZARD OF PROPERTY ALONG THE COAST (WHO DOESN'T?) AND WE ARE NOT LURKING AROUND WAITING FOR AN UNSUSPECTING POTENTIAL BUYER. WHEN THE CITY DECLARES "THESE CHANGES ARE NECESSARY FOR

THE HEALTH, WELFARE AND SAFETY OF THE CITIZENS OF NEWPORT I CAN ONLY SURMISE THAT IT DOES NOT INCLUDE THE PROPERTY OWNERS ADVERSLY AFFECTED BY THESE PROPOSED CHANGES.

I URGE YOU TO LEAVE THE CODE RULES AS THEY STAND AND CONTINUE TO REVIEW PROPOSED BUILDING REQUESTS ON A SITE SPECIFIC BASIS.

THANK YOU, AGAIN, FOR ALOWING ME TO SPEAK AND I HOPE YOU ARE LISTENING TO ALL OF US HERE TONIGHT.

DIXIE ADAMS

Planning Commission
City of Newport
169 SW Coast Hwy
Newport, Oregon 97365

June 26, 2010

Attention: Jim Patrick, Melina Sarizan, Gary East, Mark Fister, John Rehfuss, Glen Small, Penelope McCarthy and City of Newport Community Development Director Derrick Tokos

This letter is written in objection to the proposed Liability Waiver Disclosure form. Many local property owners gave testimony at the last public hearing in objection to the form wordage that contained the following statement

1. I (we) agree to indemnify, defend and hold the City harmless from any damage, loss, claim or liability arising in any manner for damages that may occur to the property or buildings on the real property or other property or on public rights-of-way due to Hazards affecting the real property, and I (we) further agree to release the City from any claims, damages, lawsuits, or liability arising therefore. I (we) assume all risk arising out of the real property.

Attorney Dennis Bartoldus explained in his letter to the Commission:
"One general issue I have with the indemnification agreement is the fact that the agreement may often survive the life of any particular owner. For example, how does an owner indemnify and hold the City harmless 20-25 years from now if something happens at that point in time and the owner is no longer living and any estate has been closed? How do a seller and buyer negotiate the transfer of indemnification from one owner to the next? Does the City claim to have a right against all the owners of the property since the geologic hazard statement was signed or does the City only have a right of action against the current owner of the property when any slide occurs? In short, the City must realize that the actions it is taking do have an impact on the marketability of the property. This brings us full circle to the point originally made that the geologic hazard statement should not be required as part of the ordinance."

Please reconsider and exclude this proposed form in the recommended changes of the Geological Hazard Zone update.

Sincerely,

John R Cowden Ellen Marie Cowden

John Cowden, Ellen Cowden and Dixie Adams
Property Owners at 1034 NW Coast St., Newport, 97365

Newport City Council
Newport City Hall
169 SW Coast Hwy.
Newport, OR 97365

August 9, 2010

RE: Proposed Newport Geotech Ordinance

Dear Councilors:

This memo is written in support of Attorney Dennis L. Bartoldus letter (attached) to the Council regarding the position and concerns of the Central Coast Home and Business Owners Association.

We hope that the Council will take a serious look at the Planning Commissions recommendations in those areas that have been identified by Mr. Bartoldus. We hope that you can make a decision that the City of Newport and the Home Owners in the affected areas can understand and support.

Sincerely,

John R Cowden Ellen Marie Cowden

John and Ellen Cowden

Dixie Adams

Dixie Adams
1034 NW Coast St.
Newport, OR. 97365

May 9, 2011

Newport City Council
City Hall
169 SW Coast Hwy.
Newport, OR 97365

Dear Councilors:

As you well know, the Newport Planning Commission has been dealing with the Geologic Hazards Overlay for over a year now, driven largely by the rationale to update the existing ordinance based on the most recent DOGAMI maps. As a result of public testimony and Commission deliberation, the proposed ordinance was substantially improved over the original version prepared by staff, and I believe it is also an improvement over the code as currently written. In their most recent action, the Planning Commission was asked by the City Council for an on the record review of the need for full geologic reporting for moderate hazard zone properties (in lieu of the decision to eliminate "reconnaissance form reporting" for moderate hazard zones).

Subsequently, it was the unanimous decision by the Planning Commission to exclude properties in the moderate zone from mandatory geologic reporting for both new construction and casualty loss replacement. The Planning Commission also dealt with the issue of properties split between zones containing high and moderate hazard designations. There was not unanimous agreement of this issue, with one group asserting that ANY portion of a property in the high hazard zone was sufficient to trigger the requirement for reporting, and the other group arguing that, if construction was carried out entirely in a "moderate" area of a mixed zone property, then there should be no geologic reporting requirement.

All can appreciate that, at some level, a high hazard zone designation should necessarily trigger the requirement for geologic reporting; however, I would propose that if a mixed-zoned property contains sufficient area (i.e., of buildable lot size) entirely within the moderate hazard zone, within which the entire new or replacement construction takes place, then geologic reporting should not be mandated in these cases. I hope that the Council will consider this proposed alternative to the present wording of the ordinance with respect to split-zoned properties of sufficient size.

Sincerely,

Rodney Croteau
5524 NW Pinery St
Newport, OR 97365

RECEIVED
MAY 12 2011
CITY OF NEWPORT

## Derrick Tokos

**From:** Derrick Tokos
**Sent:** Friday, May 06, 2011 8:22 AM
**To:** 'Lou Tauber'
**Subject:** RE: Newport Geologic Hazards Code

Mr. Tauber,

Your property will not be impacted by these updates as it is outside of the Newport city limits and urban growth boundary.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
fax: 541-574-0644
d.tokos@NewportOregon.gov

-----Original Message-----
From: Lou Tauber [mailto:ecar@comcast.net]
Sent: Thursday, May 05, 2011 5:13 PM
To: Derrick Tokos
Subject: Newport Geologic Hazards Code

Mr. Tokos -
I recently received a letter on the Proposed Updates to Newport Geologic Hazards Guide. Looking through the information, it is unclear if there is anything that is being considered that would affect my property at Beverly Beach. My address is: 11755 NE Avery Street, and I face the ocean. My house is the first house SOuth of the A-Frame. Could you tell me if there are any actions that will affect my home please?
Thanks for your help.
Lou Tauber

## Derrick Tokos

**From:** Derrick Tokos
**Sent:** Thursday, May 05, 2011 2:21 PM
**To:** 'Silva Gerry'
**Subject:** RE: Not able to locate info. On web site
**Attachments:** PC-Recom_ModerateZones.pdf; 12-Z-09_MarkupAmend_Recom-PC.pdf; 12-Z-09 _CompPlan-Amend_Exhibit-B.pdf

Hi Geraldine,

Attached is a copy of the Planning Commission's final recommendation letter and a draft of the code amendments. Please don't hesitate to contact me if you have any questions.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
fax: 541-574-0644
d.tokos@NewportOregon.gov

---

**From:** Silva Gerry [mailto:gem6430@bendbroadband.com]
**Sent:** Tuesday, May 03, 2011 12:52 PM
**To:** Derrick Tokos
**Subject:** Not able to locate info. On web site

5/3/11

Dear Derrick,

I received the Notice of Public Hearing – Proposed Updates to Newport Geological Hazards Code. I am a homeowner at 616 NW 54th Ct. In the Notice you mention that draft amendments are available for review on the city website. After reviewing the newportoregon.gov website, I am unable to access the information under the Latest News link. Would it be possible for you to send me the draft amendments you are referencing via email @ gem6430@bendbroadband.com?

Thank you for your assistance.

Geraldine Silva

## Derrick Tokos

**From:** Derrick Tokos
**Sent:** Thursday, May 05, 2011 2:35 PM
**To:** 'Jeff Demers'
**Subject:** RE: Geologic Hazards Code Changes

Hi Jeff,

These properties are outside of the City and its urban growth boundary, so they will not be impacted by the proposal.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
fax: 541-574-0644
d.tokos@NewportOregon.gov

---

**From:** Jeff Demers [mailto:jeffd@frllc.com]
**Sent:** Tuesday, May 03, 2011 11:22 AM
**To:** Derrick Tokos
**Subject:** Geologic Hazards Code Changes

Dear Mr. Tokos,

We are the owners of property in the Newport area, and have received your notice of public hearing regarding proposed amendments to the City Comp Plan and Zoning ordinance.

From reviewing the documents on your website, it is unclear to us if our property is affected by the proposed changes. Our four parcels are:
11-11-14-00-01300
11-11-15-00-0050
11-11-15-00-00504
11-11-15-00-00505

I would appreciate a response from you if these parcels are in an area that would be affected by the proposed changes, if at all possible.

Thank you very much,

Jeff Demers
Greg Demers
541-935-3626

## Derrick Tokos

**From:** Derrick Tokos
**Sent:** Tuesday, May 03, 2011 9:14 AM
**To:** 'DR FRANK BENISON'
**Subject:** RE: Proposed Updates to Newport Geologic Hazards Code

Mr. Benison,

The code that is being amended applies to new construction. It doesn't impact existing structures, such as the condo that you own. Should significant new construction ever be proposed at this location then the proposed amendments would require that the developer hire an engineering geologist to ensure that the project and construction techniques are suitable for the area given that it has been mapped by the State as being at high risk of bluff erosion.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
fax: 541-574-0644
d.tokos@NewportOregon.gov

---

**From:** DR FRANK BENISON [mailto:rruummi@gmail.com]
**Sent:** Monday, May 02, 2011 9:03 PM
**To:** Derrick Tokos
**Subject:** Proposed Updates to Newport Geologic Hazards Code

Derrick,

I am curious as to how the proposed update affects my condo (#5) in The Lighthouse Lodges Condominiums, 757 NW Coast? I have owned this condo for over 25 years.
Please contact me at this email address.

Thank you,
Dr. Frank Benison

2140 Messina Place
Monterey, CA 93940
May 2, 2011

TO: The Newport City Council

FROM: Tom and Beryl Czuleger

We own the house located at 967 S.W. Mark Street in Newport. We are protesting the 12-2-09 Code amendments. The high hazard zone would include the front portion of our property. I understand that this would cause us to be treated as if we are wholly within the red zone. Please change the proposed ordinance.

Sincerely,

Tom and Beryl Czuleger

TOM AND BERYL CZULEGER

RECEIVED
CITY OF NEWPORT

April 26, 2011

Please see that a copy of our letter is distributed to the Mayor and each council members. This letter is directed to the recently opened public commentary dealing with hazard zones. We are both residents of Newport. Thank you.

Sincerely,

James Hanselman
Joann Ronzio

James Hanselman
Joann Ronzio

April 26, 2011

Mr. Mayor and all City Council members,

Currently, there are two issues on your agenda currently that go hand in hand. The first is the effort of the City and Council to create hazard zones and place an unfair burden on property ownrers living within these areas. One proposed change is that a moderate lot that has ANY high or active area ( as little as one or two feet) would need to complete a far more involved and expensive study than if the lot were entirely moderate. If there is room to build within the "moderate" area on the lot then the land owner should not be forced to qualify beyond the requirements of a lot that is entirely moderate.

Dogami geologists have created this new map and insist that it is accurate. If Mr. Tokos, the Planning Commission and the Council so value these geologists' opinions then all the work for landowners and the City has been done. We simply refer to the map and land owners build on low and moderate risk areas. No geological study of any kind should be required. Remember, you've accepted the Dogami geologists' work and word or their work would not be the foundation of the City's plan.

The second issue that you are dealing with is our well documented runoff problems. Poor and aging infrastructure, lack of a comprehensive plan for runoff, a hodgepodge of codes, and continued building with little regard to runoff and of course promises and plans that were never implemented. The current acknowlegdement of the problem by Council gives me a bit of hope. However, recently Council and the Mayor agreed to a two year waiting period to establish a commitment to funding solutions. The likelihood of slow action on developing a fee structure for residents to finance solutions is NOT comforting.

The Nye Beach area of town clearly needs relief sooner than two years. How much damage is the City willing to inflict on local, small businesses? The addtional runoff from the WalMart property and the Maritage condo project has increased the runoff into Big and Little Creeks. This runoff is not insignificant. Along with other factors this addtional runoff has resulted in joining the two creeks, directing their path to the north and against the bluff that runs parallel to the beach. The past two winters have seen 30 feet of dune removal along the bluff's face. The creeks now travel more than a mile to the north before turning to the sea. Big Creek and Little Creek now flow north all the way to the beach walkway at The Gap. Both of these streams formerly ran west to the ocean once they reached the beach . The streams did not pose a risk to the many homes along Agate beach as they do now.

So, why are these two issues related? The Dogami geologists that the City is consulting and believing also said in recorded testimony at the Planning Comission meetings that 90% of the threat to coastal properties and those in all their designated hazard zones are DUE TO RUNOFF MISMANAGEMENT. My point is if you embrace their map and pitch as gospel then you need to accept all their gospel. Since the City is unable to do anything about the disasterous flooding and erosion at this time with no promise that it will ever get done, I find it preposterous that you hold tax paying property owners to their risks while you postpone implementing solutions for the risk that is your duty. I can build as permitted in the hazard area correctly but I would still be at a great risk due to the City's failure to

manage runoff.

Why not work on a comphrensive runoff management plan, a fee structure and new code before you start placing restrictions on landowners who continue to suffer damage from current runoff and will suffer more damage from ongoing and future construction from others while waiting for the City to get it together.

Sincerely,

James Hanselman
Joann Ronzio

## Derrick Tokos

**From:** Derrick Tokos
**Sent:** Monday, May 02, 2011 8:46 AM
**To:** 'donaldbrownell@live.com'
**Subject:** RE: Contact Us - Web Form

Mr. Brownell,

The Planning Commission's recommendation has to do with how the City goes about identifying when a site specific geologic investigation is required to ensure that a site is suitable for new construction. In the case of this parcel, an investigation would be required under our existing code and the proposed code, so there is no real change in that regard.

The only way you wouldn't be able to build on the lot is if the engineering geologist you hire couldn't find a way to make the site suitable (as is the case with the current code).

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
fax: 541-574-0644
d.tokos@NewportOregon.gov

-----Original Message-----
From: donaldbrownell@live.com [mailto:donaldbrownell@live.com]
Sent: Saturday, April 30, 2011 3:44 PM
Subject: Contact Us - Web Form

Contact Us - Web Form
The following information was submitted on 4/30/2011 at 3:43:47 PM

---

To: Derrick Tokos
Name: Don Brownell
Email: donaldbrownell@live.com
Subject: Tax Lot 1803, Map 11-11 05BC

---

Message: Derrick,

RE: File #12-Z-09

If the Planning Commission's recommendations are accepted, will that mean I can NOT build a home on my lot?

Thank you,
Don Brownell

April 11, 2011

RECEIVED
CITY OF NEWPORT

Mayor and Council
City of Newport
City Hall
Newport, OR 97365

RE: Changes to Geologic Hazard Ordinance

Dear Mayor and Council,

I am very concerned about the proposed changes to the Geologic Hazard Ordinance, which treat a property with any part of the property in the high hazard zone as if the entire property in the high hazard zone. I understand you are reopening the hearings for further public input and I would ask you to reconsider this proposal.

My property is located at 465 NW 57th Street, one lot east of NW Meander on the south side of the street. The property was purchased in 2004 and a Geological Report was done and used to secure a building permit to place a manufactured home on the property. I have lived in the property since December 2004. A small portion of the northwest corner of my lot is now in the new high hazard zone, but the vast majority of the lot and the entire home itself is situated in the moderate hazard zone. However, if my home were to be destroyed by a fire, I could not replace it without getting another Geologic report if I understand the proposed changes to the ordinance. I believe I should be allowed to take the associated risks without the additional burden of the costs of another report.

I would ask that you change the proposal so that I could replace my home on the moderate zone part of my lot and not have the added need of another Geologic report and the additional burden of the costs involved.

Sincerely Yours,

Drew M. Johnson

Mayor and Council
City of Newport
City Hall
Newport
Oregon 97365

RECEIVED
APR 13 2011
CITY OF NEWPORT

5631 NW Meander Street
Newport
Oregon 97365

April 10, 2011

Dear Mayor and Council,

Re: Changes to Geologic Hazard Ordinance

I am concerned about the latest proposed changes to the Geologic Hazard Ordinance, which treat properties containing any part of a high hazard zone as if they were completely within the high hazard zone. I understand you are re-opening the hearings for further public input, and would ask you to re-consider this proposal.

I have a double lot on the corner of NW Rhododendron and NW 57th Street, and my family has lived here for over 40 years. As you might know, this section of NW 57th Street fell away in 1965, and the cliff continues to erode. After the street fell away, we moved our single wide manufactured home back from the edge, and later swapped it for a double wide.

My two properties sit across the high hazard and moderate hazard zones, but there is enough room in the moderate area to move the house further back if the cliff erodes too much, or to replace it there in the event that my home burns down.

However, as I understand it, in either case I would have to pay for a geologic report for each lot and then have to implement all the recommendations. These could be very costly, if they are intended to slow down Mother Nature, and I believe I should be allowed to take the associated risks without the burden of these extra costs. I would probably get another geologic report anyway, but I don't want to be bound by its recommendations, which might be uneconomic. It is bad enough that the proposed ordinance is already pulling down the cost of my home and property.

Please change the proposals so that if there is room to rebuild on the moderate zone part of my property, I can do so without the need for a geologic report, and certainly without being bound by all its recommendations.

Yours Sincerely,

Dolores Bennett

Dolores Bennett

Mayor and Council
City of Newport
City Hall
Newport
Oregon 97365

525 NW 57th Street
Newport
Oregon 97365

April 10, 2011

Dear Mayor and Council,

Re: Changes to Geologic Hazard Ordinance

I am concerned about the latest proposed changes to the Geologic Hazard Ordinance, which treat properties containing any part of a high hazard zone as if they were completely within the high hazard zone. I understand you are re-opening the hearings for further public input, and would ask you to re-consider this proposal.

My property sits on the block of NW 57th Street that sloughed away in 1996, and the front portion of my lot is in the new high hazard zone, but a little over half the lot is in the moderate hazard zone.

However, if my home were to burn down, as the proposed ordinance is currently written, I could not replace it without getting a geologic report and would then have to implement all the recommendations, whether or not they made economic sense. This could be very expensive, and would probably make the replacement of my home financially unviable . I believe I should be allowed to take the associated risks without the burden of these extra costs. I would probably get another geologic report anyway, but I don't want to be bound by its recommendations, which might be uneconomic.

Incidentally, although City Staff keep saying that geological reports only cost about $2,500 there has been no evidence put into the public record, as far as I can remember to support this. The only geologic reports that have formed part of the public hearings are the five submitted to the City Council by Lloyd Hill on September 7, and the cost of these averaged more than $10,000 according to Mr. Hill. These geological reports were not reviewed by the Planning Commission in their so-called "on the record review" although they were pertinent.

Please change the proposals so that if there is room to rebuild on the moderate zone part of my property, I can do so without the need for a geologic report, and without being bound by all its recommendations.

When the Commissioners passed their recommendations for the Geologic Hazards Ordinance last July, their position on construction within Moderate Hazard zones was clear: for new construction a Geologic Reconnaissance Form, cheaper and simpler than a full Report, was required. For homes being replaced because of casualty loss, no form of geological report was required.

The State Board of Geologist Examiners found the Reconnaissance Form inappropriate, so the Council remanded the issue back to the Commission. Staff recommended that construction in Moderate zones require a full Geological Report, but the Commissioners voted to require no Geologic Reports for construction in Moderate Zones. However, they were guided through a discussion about the requirement for properties that straddle the High/Moderate zones, and agreed that these should

require Geologic Report. This now applies to both new construction and casualty replacement, overturning the earlier ruling that the actual location of a replacement structure on the property would determine whether the high hazard or moderate hazard zone rules would apply.

There are some 300 properties that straddle the high/moderate zone, including my own. The effect of the proposed amendments is to change, dramatically in some cases, the value of property and the economics of being able to replace a home that was perfectly fine until it had the misfortune to burn down.

During their review, the Planning Commissioners were told that the extent of the red zone on the DOGAMI maps represented a best case scenario, but this is not always the case, even though it does say this in the report. It is not the case when default zone widths are assumed in areas where there is minimal erosion, or no measured erosion.

To illustrate this, I would point to the basalt area of Yaquina Head, where the rate of erosion is very low. The minimum retreat for (erosion rate) for basalt in the DOGAMI report is 0.1 ft/year, (see table 19, attached), which would give erosion of 6 feet over 60 years, which would be the "best case scenario". However, the minimum fault width for the high hazard zone is 20 feet, and this is what is shown on the maps. This represents not 60 years of erosion, but 200 years and is clearly NOT a "best case scenario."

One area where a default is similarly used and where the width of the high hazard zone is similarly overstated is along SW Mark Street. What was previously classed as a "prehistoric landslide that had stabilized" eroding at a rate of 0.87 ft/year to the west of Mark Street, was re-classified in the 2004 DOGAMI report to an "active hazard zone". I have no argument with this, but as part of the methodology, the area adjacent and inland to this was classed as a high hazard zone. I looked at aerial photographs from 1952 to the present, and concluded that the edge of the landslide had moved hardly at all in that time. However, DOGAMI applied their minimum 20 feet width, indicating that Mark Street and the first ten feet or so of the properties on its east side will probably erode away in the next 60 years. This is simply not substantiated by any measurements and calculations, which was confirmed in an e-mail to me from George Priest of DOGAMI. These properties are over 400 feet away from the foot of the bluff at the west side of the landslide, where Mr. Priest had previously calculated the erosion rate at ).87 feet per year. At that rate, it would take over 400 years to reach these properties. The width of the red zone in this area is clearly not a "best case scenario". However, because the red zone extends into these properties on the east side of Mark Street, they will be treated under the current proposals as if they were completely in the red zone, and will require geologic reports for casualty replacement structures, with a requirement to implement any and all requirements. All of the actual buildings on these properties are wholly within the moderate zone on the DOGAMI maps, and there is room in most cases to build further back.

This is just not reasonable and fair for these property owners. It is unsafe to apply the red-zone rules to these properties, and therefore to all properties that straddle the red and moderate zones, without further detailed study.

There are lots of other examples. There is a home at 328 NW 60th where the red zone encroaches on the property by only one or two foot, but that entire property is now treated as if it were entirely in the red zone. The beautiful homes on NW 54 Court are not even within a hazard zone, but because the extreme areas of their substantial lots are, they are now treated as if they were completely in the red, so to speak. The Sylvia Beach Hotel is mentioned in the report as sitting on a bluff that has not eroded at all in over 100 years, yet a tiny part of the property is now within the red zone, so the whole property is treated as if it were in the red zone, with all the adverse implications and cost.

The Planning Commission did a great job in rescuing this City from the disastrous effects that the ordinance would have brought in its original form, but the replacement of homes lost to fire or other disasters on lots that straddle the high/moderate boundary should be re-examined by the City Council.

Please amend the current proposals.

Thank you for considering this request.

Yours Sincerely,

Bob Ward

Table 19. Minimum, mean, and maximum lateral distances of bluff top retreat should erosion continue for 60-100 years. These distances define the landward boundaries of the high-, moderate-, and low-risk hazard zones, respectively, when added to the lateral distance of the projected angle of repose for talus of each bluff. Table illustrates the uncertainty of predicting future bluff retreat from erosion rate and maximum block failure width. Values in parentheses are actual mapped widths, taking into account the limitations of the digital base maps, topographic data, and drawing accuracy. "Fine-grained interbeds" in the table refers to interbeds of siltstone, mudstone, or silty fine-grained sandstone with low resistance to shearing forces and consequent slope failure.

| Bluff Rock Type and Height | Minimum Retreat | Mean Retreat | Maximum Retreat |
|---|---|---|---|
| | High-Risk Hazard Zone (ft) | Moderate-Risk Hazard Zone (ft) | Low-Risk Hazard Zone (ft) |
| Basalt subject mostly to rock falls and topples in bluffs <100 feet high. | 6 (20) | 19 (40) | 28 (60) |
| Basalt subject mostly to rock falls and topples in bluffs ≥100 feet high. | 6 (20) | 38 (45) | 67 (70) |
| Resistant sandstone bluffs 80-160 feet high. | 6 (20) | 34 (40) | 62 (60) |
| Seaward-dipping Tertiary sedimentary rock with fine grained interbeds on bluffs <60 feet high (5-59 feet bluffs). | 18 (20) | 28-50 (40-50) | 44-87 (60-90) |
| Seaward-dipping Tertiary sedimentary rock with fine grained interbeds on bluffs at Beverly Beach littoral cell; bluffs 60-200 feet high with>15 feet of bluff base composed of this rock. | 30 (30) | 225 (225) | 420 (420) |
| Seaward-dipping Tertiary sedimentary rock with fine grained interbeds on bluffs at all other areas 60-200 feet high with >15 feet of bluff base composed of this rock. | 18 (20) | 198 (200) | 385 (390) |
| At Beverly Beach littoral cell, Tertiary sedimentary rocks with fine grained interbeds and with angle between bluff trend and bedding strike >18° (bedding dipping significantly away from the bluff face); bluffs 60-200 feet high. | 30 (30) | 125-140 (125-140) | 220-250 (220-250) |
| At all other areas, Tertiary sedimentary rocks with fine grained interbeds and with angle between bluff trend and bedding strike >18° (bedding dipping away from the bluff face); bluffs 60-200 feet high. | 18 (20) | 101-116 (103-118) | 185-215 (185-215) |
| Pleistocene marine terrace sand bluffs ≥40 feet high at Gleneden and Lincoln Beach. | 18 (20) | 50 (60) | 99 (100) |
| Pleistocene marine terrace sand bluffs ≥40 feet high all other areas. | 18 (20) | 50 (51) | 82 (82) |

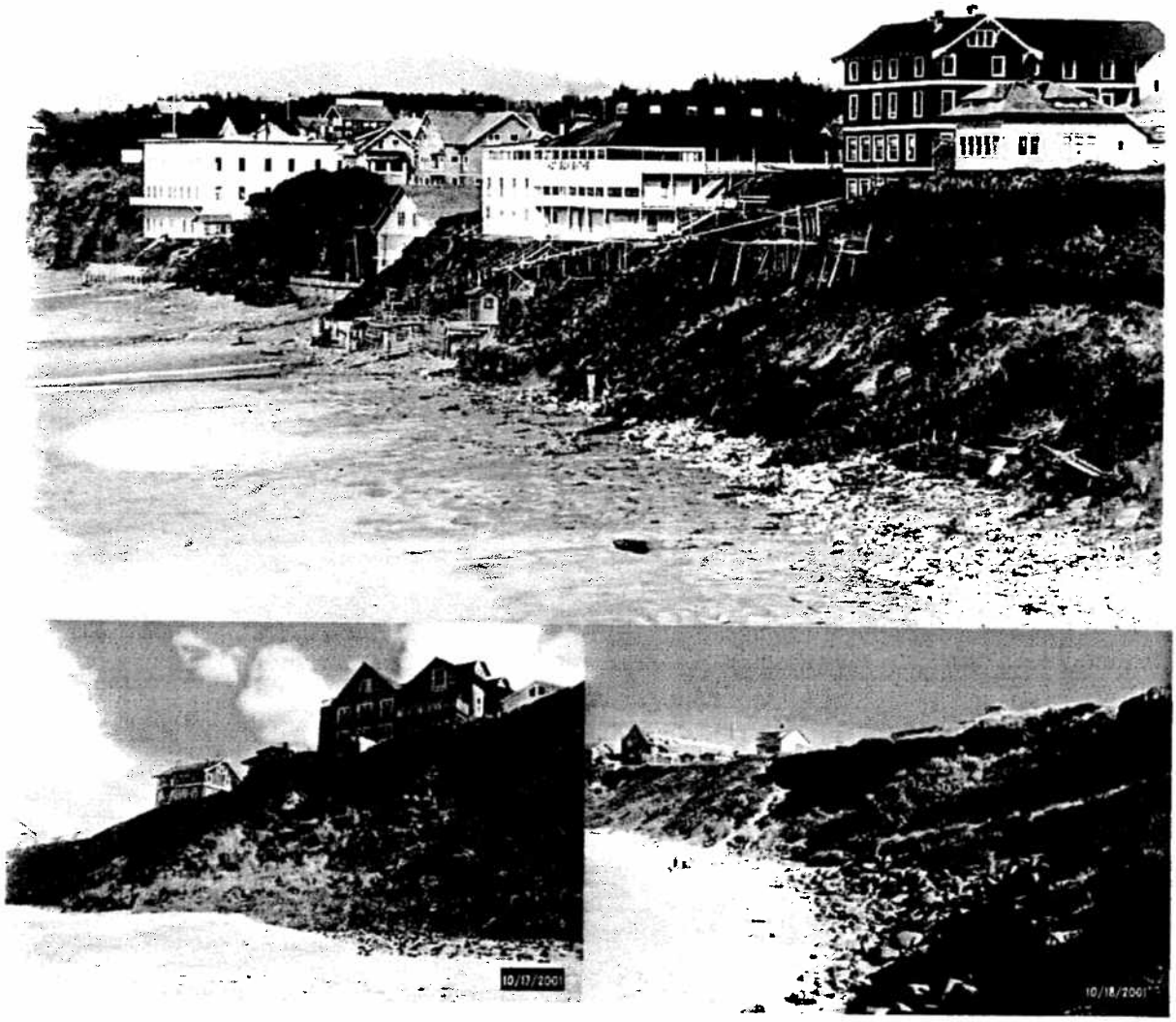



**Figure 10. Nye Beach view of stable ~1.5:1 (horizontal : vertical) slopes (measured from LIDAR elevation data) of vegetated talus developed on Pleistocene paleosols (lower half of bluff) overlain by Pleistocene marine terrace sands (upper half of bluff). Upper picture was taken sometime before ~1917-1920; left picture is a 2001 close up of the north end of the bluff in the right hand picture. Note the historic Sylvia Beach Hotel in the upper picture appears on the left side of both lower pictures. It is clear that this hotel has been about the same distance back from the bluff edge for ~100 years, so bluff top retreat in front of the hotel has been near zero. Hence, once talus cover prevents further erosion by cantilevered block fall, gradual erosion at the angle of repose is near zero. An extreme rainfall event caused a small debris flow that stripped talus from the bluff where the small group of people are standing in lower right hand photo. Rejuvenated stress-release fracturing and block falls are continuing to erode the top of the bluff from this point south.**

# CITY OF NEWPORT

## ORDINANCE NO. _____

## ORDINANCE AMENDING THE MUNICIPAL CODE, ORDINANCE NO. 1621 (AS AMENDED), AND ORDINANCE NO. 1308 (AS AMENDED) OF THE CITY OF NEWPORT, OREGON, TO AMEND GEOLOGIC HAZARD AREAS PROVISIONS OF THE COMPREHENSIVE PLAN, SUBDIVISION AND ZONING ORDINANCE

**Findings:**

1. The City of Newport Zoning Ordinance (No. 1308, as amended) requires that persons interested in developing property within geologically hazardous areas retain a certified engineering geologist to evaluate the site and building plans prior to city review and approval of a proposed development. Such evaluations are reviewed and approved by the City under a Geologic Permit.

2. The City of Newport Planning Commission and its Citizens Advisory Committee completed a comprehensive review of the Geologic Hazard Areas Section of the Zoning Ordinance (Section 2-4-7) and determined that changes are needed. The changes include updates to the maps used to identify when site specific geologic evaluations are needed; replacement of certain provisions that are vague or overly strict with respect to when Geologic Permits are required; new standards for erosion control during construction; a requirement that engineering geologists perform post-construction certification that development was undertaken in accordance with their recommendations; and a requirement that undeveloped lots in land divisions must include buildable sites outside of active or high risk areas.

3. The Newport Planning Commission and Planning Commission Citizens Advisory Committee evaluated the Shoreland Hazards Section of the Natural Features Chapter of the Newport Comprehensive Plan and determined that the Plan's description of landslide and coastal erosion areas in Newport needs to be updated to correspond with new mapping.

4. The Newport Planning Commission and Planning Commission Citizens Advisory Committee reviewed the above referenced changes to the Comprehensive Plan and Zoning Ordinance, including related land division provisions in the Municipal Code, at eight separate work sessions from October of 2009 through May of 2010. A public workshop was held by staff on February 17, 2010 and public hearings before the Planning Commission were conducted on March 8, April 26, June 14, and July 12, 2010. Affected property owners received direct mail notice of the workshop and initial hearing. At the July 12, 2010 public hearing, the Planning Commission voted to recommend adoption of the proposed amendments (Newport File No. 12-Z-09).

5. The City Council held public hearings on September 7, October 18, November 15, and December 6, 2010 regarding the question of the proposed revisions, and voted in favor of their adoption after considering the recommendation of the Planning Commission, hearing testimony, and evidence in the record.

6. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for the Planning Commission and City Council public hearings.

Based on these findings,

**THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

**Section 1.** The following definition is added to Section 2-1-1.101 of Ordinance No. 1308 (as amended),

Geologic Hazards. A geologic condition that is a potential danger to life and property which includes but is not limited to earthquakes, landslides, erosion, expansive soils, fault displacement, and subsidence.

**Section 2.** Section 2-4-7 of Ordinance No. 1308 (as amended), Geologic Hazards Areas, is repealed in its entirety and replaced with a new Section as shown in Exhibit "A".

**Section 3.** Section 13.05.030 of the Newport Municipal Code is amended to include the following:

Lots and Parcels within Geologic Hazard Areas. Each new undeveloped lot or parcel shall include a minimum 1000 square foot building footprint within which a structure could be constructed and which is located outside of active and high hazard zones and active landslide areas (See Section 2-4-7 of the Zoning Ordinance for an explanation of hazard zones). New public infrastructure serving a lot or parcel shall similarly be located outside of active and high hazard zones and active landslide areas.

**Section 4.** Section 13.05.070(A)(10) of the Newport Municipal Code is repealed in its entirety and replaced with the following:

Where geologic hazards are known to exist on part or all of the property in question based on adopted maps of the City of Newport, a geologic hazard report shall be required (See Section 2-4-7 of the Zoning Ordinance for report requirements.) The report must clearly state what measures will be taken to safeguard against existing hazards.

**Section 5.** The Shoreland Hazards Section of the Natural Features Chapter of Ordinance No. 1621 (as amended), is repealed in its entirety and replaced with a new Section as shown in Exhibit "B".

**Section 6.** This ordinance shall take effect 30 days after passage.

Date adopted: _____.

Signed by the Mayor on _____.

_____

William D. Bain, Mayor

ATTEST:

_____

Margaret M. Hawker, City Recorder

## 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. Applicability of Geologic Hazards Regulations.**

A. The following are areas of known geologic hazards or are potentially hazardous and are therefore subject to the requirements of Section 2-4-7:

(1) Bluff or dune backed shoreline areas within moderate, 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.

(2) Active or potential landslide areas, prehistoric landslides, or other landslide areas identified in the DOGAMI Open File Report O-04-09.

(3) Any other documented geologic hazard area on file, at the time of inquiry, in the office of the City of Newport Community Development Department.

A "documented geologic hazard area" means a unit of land, which is shown by reasonable written evidence to contain geological characteristics/conditions which are hazardous or potentially hazardous for the improvement thereof.

B. The DOGAMI Open File Report O-04-09 is not intended as a site specific analysis tool. The City will use DOGAMI Open File Report O-04-09 to identify when a Geologic Report is needed on property prior to development. A Geologic Report that applies to a specific property and that identifies a proposed development on the property in a different hazard zone than that identified in DOGAMI Open File Report O-04-09, shall control over DOGAMI Open File Report O-04-09 and shall establish the bluff or dune backed shoreline hazard zone (moderate, high, or active) or landslide risk area that applies to that specific property. The time restriction set forth in sub-section 2-4-7.030 shall not apply to such determinations.

C. In circumstances where a Geologic Report identifies that proposed development will not occur within a bluff or dune backed shoreline hazard zone or landslide risk area, as defined above, no further review is required under this Section 2-4-7.

D. If the results of a Geologic Report are substantially different than the hazard designations contained in DOGAMI Open File Report O-04-09 then 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 agency comments and determine whether or not it is appropriate to issue a Geologic Permit.

**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, grading 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, repair, or alterations to existing structures that do not alter the building footprint or foundation;

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 is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;

D. Exploratory excavations under the direction of a registered engineering geologist or geotechnical engineer;

E. Alteration (but not reconstruction) of a primary structure(s) that are outside of active and high hazard zones and active landslide areas;

F. Detached accessory buildings that are outside of active and high hazard zones and active landslide areas;

G. Construction of structures for which a building permit is not required;

H. Removal of trees smaller than 8-inches dbh (diameter breast height);

I. Removal of trees larger than 8-inches dbh (diameter breast height) provided the canopy area of the trees that are removed in any one year period is less than twenty-five percent of the lot or parcel area;

J. Forest practices as defined by ORS 527 (the State Forest Practices Act) and approved by the state Department of Forestry;

K. Maintenance and reconstruction of public and private roads, streets, parking lots, driveways, and utility lines, provided the work does not extend outside the previously disturbed area;

L. Installation of utility lines not including electric substations; and

M. 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, an application for a Geologic Permit 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, or moderate) 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 hazard zone(s) within which development is proposed; and

D. A Geologic Report prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development; and

E. An engineering report, prepared by a licensed civil engineer, geotechnical engineer, or certified engineering geologist (to the extent qualified), must be provided if engineering remediation is anticipated to make the site suitable for the proposed development.

**2-4-7.030. <u>Geologic Report Guidelines</u>.** Geologic Reports shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles and shall, at a minimum, contain the items outlined in the Oregon State Board of Geologist Examiners "Guidelines for Preparing Engineering Geologic Reports in Oregon," in use on the effective date of this section . Such reports shall 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, in use as of the effective date of this section. 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. <u>Construction Limitations within Geologic Hazard Areas</u>.**

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

(1) Property owners should consider use of construction techniques that will render new buildings readily moveable in the event they need to be relocated; and

(2) Properties shall possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site.

**2-4-7.040. <u>Prohibited Development on Beaches and Foredunes</u>.** Construction of residential, commercial, or industrial buildings is 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 the development 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 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 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. Approval Authority.** An application shall be processed and authorized using a Type I decision making procedure.

**2-4-7.060. Appeals of Geologic Permits.** Any appeal from the issuance or denial of a Geologic Permit shall 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 Report shall submit their own analysis prepared by a certified engineering geologist. Such report shall be provided within 30 days of the date the appeal is filed. A failure to submit a report within this timeframe is grounds for dismissal of the appeal.

**2-4-7.065. Certification of Compliance.** No development requiring a Geologic Report shall receive final approval (e.g. certificate of occupancy, final inspection, etc.) 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.

**2-4-7.070. Removal of Sedimentation.** 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.

**2-4-7.075. Applicability of Nonconforming Use Provisions.**

A. A building or structure that is nonconforming under section 2-5-1 of the Zoning Ordinance that is destroyed by fire, other casualty or natural disaster shall be subject to the casualty loss provisions contained in section 2-5-1 of the Zoning Ordinance. Application of the provisions of this section to a property shall not have the effect of rendering it nonconforming.

B. A building or structure that conforms to the Zoning Ordinance that is destroyed by fire, other casualty or natural disaster may be replaced with a building or structure of up to the same size provided a Geologic Report is prepared by a certified engineering geologist. A Geologic Report prepared pursuant to this subsection shall adhere to the Geologic Report Guidelines outlined in subsection 2-4-7.030. All recommendations contained in the report shall be followed, however the report need not establish that the site is suitable for development as required in subsection 2-4-7.025(D). An application filed under this subsection shall be processed and authorized as a ministerial action by the Community Development Department.

**2-4-7.080. Sunset of Geologic Permit Requirements for Moderate Hazard Areas**. The requirement for obtaining a Geologic Permit in the moderate risk bluff or dune backed shoreline hazard zone shall sunset five (5) years from the effective date of this ordinance. The Newport Planning Commission and City Council shall conduct public hearings prior to the sunset date to evaluate Geologic Reports that have been submitted in moderate hazard areas to determine if the reports contain recommendations that improve the safety of new development such that the Geologic Permit requirement should be retained.

Updated language in the Shoreland Hazards Section of the Natural Features Chapter of the Newport Comprehensive Plan is shown with a double underline.

## Shoreland Hazards

### Ocean Flooding

Ocean flooding is the inundation of lowland areas along the coast by salt water due to tidal action, storm surge, or tsunamis (seismic sea waves). Landforms in Newport subject to ocean flooding include beaches, the bases of sea cliffs, marshes and low-lying interdune areas. All areas shown on the Flood Insurance Rate Map in Zone V and areas below the 10 foot elevation south of and adjacent to the south jetty are considered to be areas subject to ocean flooding.

The National Flood Insurance Program (FIA) requires that all living areas or residences built or rebuilt within the floodplain be built so that the lowest habitable floor is at least one foot above the base flood level. In addition, buildings, foundations, and other structures must be built so that flood problems are not worsened in other areas. The City of Newport flood plain management regulations for coastal high hazard zones have been recognized as appropriate by FEMA.[21]

### Shoreline Protection Measures

Ocean wave undercutting and consequent sea cliff erosion has been identified as a major source of beach sand. The following description of landslide areas also notes the role of ocean wave action. In an effort to protect property from cliff retreat, sand movement, and ocean flooding, several shoreline protection features have been built.

RNKR Associates mapped riprap armor along the shoreline in order to inventory these features. These are shown on the Ocean Shorelands map beginning on page 50. Control of shoreline protection features by local authorities is needed to prevent unexpected changes in beach equilibrium or aggravated erosion of adjacent lands. RNKR suggested several questions to be answered in the review of new shoreline protection structures which have been incorporated into ordinances controlling development along the shoreland.

In addition to city policies and regulations, beach areas within the vegetation line established by ORS 390 are under the jurisdiction of the Oregon State Parks and the Division of State Lands. A permit is required from those agencies prior to the construction of any beach front protective structures.

### Landslide and Coastal Erosion Areas

Landslide and Coastal Erosion areas were mapped within the Newport urban growth boundary in the 2004 document titled Evaluation of Coastal Erosion Hazard Zones Along Dune and Bluff Backed Shorelines In Lincoln County, Oregon: Cascade Head to Seal

Rock, by the Oregon Department of Geology and Mineral Industries (OFR O-04-09). The document and maps is included here by reference. The report describes several types of mass movement (mud flow, slump, soil creep, and debris avalanche) and defines the mapped landslide areas:

Prehistoric Mass Movements: Generally speaking, these are very large landslide and slide blocks that predate historical observations on the Oregon coast (about 150 years) and are deeply eroded with no evidence of recent slide activity.

Potentially Active Mass Movements: These are areas of mass movements that are currently stable (no bowed trees or cracked soil and pavement) but with evidence of recurrent movement in the last 150 years. Unlike the prehistoric slides, these features are generally not extensively eroded and have well preserved topography indicative of recent movement. Many show no evidence of movement since 1939 or 1967 aerial photography but are probably more likely to have movements than the prehistoric slide areas.

Active Mass Movements: These areas have evidence such as bowed trees and cracked soil or pavement that indicate ongoing down slope movement of large masses of soil or rock.

Quaternary Landslides: Quaternary landslides were mapped by Snavely and others (1976 and 1996). These landslides are shown in inland portions of the City and were not investigated in the 2004 DOGAMI report.

Landslide Terrain: Areas identified as landslide terrain were interpreted by Schlicker and others (1973) from aerial photos and reconnaissance-level fieldwork. The terrain may be landslide or just rolling topography similar to that produced by landslide processes and needs to be field checked.

Bluff and Dune Backed Shoreline Hazard Areas: Coastal bluff and dune backed shoreline areas characterized by existing, active erosion processes and three zones of potential future erosion (high, moderate, and low) that respectively depict decreasing risk of becoming active in the future as modeled in the DOGAMI report. The respective hazard zones are more particularly described as follows:

> *Active Erosion Hazard Zones* – For dune backed shorelines, the active hazard zone encompasses the active beach to the top of the first vegetated foredune, and includes those areas subject to large morphological changes adjacent to the mouths of bays due to inlet migration. On bluff backed shorelines the active hazard zone includes actively eroding coastal bluff escarpments and active or potentially active coastal landslides.
>
> *High Risk Erosion Hazard Zones* – For dune backed shorelines, the high risk scenario is based on a large storm wave event (wave heights 47.6 ft high) occurring over the cycle of an above average high tide, coincident with a 3.3 ft storm surge.

For bluff backed shoreline areas, the high risk zone portrays bluff retreat that would occur if only gradual erosion at a relatively low mean rate were to occur over a 60 year period after the slope reaches and maintains its ideal angle of repose(for talus of the bluff material).

*Moderate Risk Erosion Hazard Zones* – For dune backed shorelines, the moderate risk scenario is based on an extremely severe storm event (waves 52.5 ft high) coupled with a long term rise in sea level of 1.31 ft. For bluff backed shoreline areas, the moderate risk zone portrays an average amount of bluff retreat that would occur from the combined processes of block failures, retreat to an angle of repose, and erosion for 60 to 100 years.

*Low Risk Erosion Hazard Zones* – For dune backed shorelines, the low risk scenario is similar to the moderate risk approach but incorporates a 3.3 ft vertical lowering of the coast as a result of a Cascadia subduction zone earthquake. For bluff backed shoreline areas, the low risk zone illustrates a worst case for bluff retreat in 60-100 years considering maximum bluff slope failure, erosion back to an ideal angle of repose, and gradual bluff retreat for 100 years.

## Shoreland Resources

### Significant Habitats

Significant material regarding shoreland and wetland biological habitats and riparian vegetation along the ocean shoreline in Lincoln County were compiled by Dr. D.W. Thomas in September 1981.[22] Recent aerial photographs and additional information from the Nature Conservancy, Oregon Department of Fish and Wildlife (ODFW), the U.S. Army Corps of Engineers, OCC&DC, and the U.S. Fish and Wildlife Service National Wetlands Inventory were obtained during that study. In July 1983, the City of Newport, in coordination with Lincoln County and the Oregon Department of Fish and Wildlife, reexamined the Thomas Study in the South Beach dune complex. The Ocean Shorelands Map (beginning on page 50) was amended to include only those areas considered by ODFW to be significant shoreland and wetland biological habitat (see the description of South Beach's significant habitat areas on the next page).

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[22] D.W. Thomas, Significant Shoreland and Wetland Biological Habitat and Riparian Vegetation, 1981.