

CITY OF NEWPORT

ORDINANCE NO. 2017

ORDINANCE AMENDING CITY OF NEWPORT COMPREHENSIVE PLAN (ORDINANCE NO. 1621), SUBDIVISION ORDINANCE NO. 1990, AND ZONING ORDINANCE NO. 1308, TO UPDATE GEOLOGIC HAZARD AREAS PROVISIONS

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 to properly implement the Natural Features Chapter of the Newport Comprehensive Plan. 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, consistent with Goal 1, Policy 2 of the Natural Features Chapter, which requires the City to maintain and, where necessary, update ordinances that control development in environmentally hazardous areas.
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 nine separate work sessions from October of 2009 through January of 2011. 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. The Planning Commission also conducted an "on the record" review of the draft proposal, at the City Council's request, on February 14, 2011. 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, 2010, October 18, 2010, November 15, 2010, December 6, 2010 and June 14, 2011 regarding the question of the proposed

revisions, and voted in favor of their adoption with minor revisions after considering the recommendation of the Planning Commission, hearing testimony, and evidence in the record. Those revisions are as follows:

A. The Geologic Hazard Areas Section of the Zoning Ordinance has been revised to require a Geologic Permit only if development activities occur within a hazard area as defined in the draft amendments. The Council further accepts the Planning Commission's recommendation that the 60 to 100 year timeframe used to identify moderate risk areas in DOGAMI Open File Report OFR O-04-09 does not rise to the level of risk envisioned in the Newport Comprehensive Plan as necessitating a site evaluation.

B. Goal 1, Policy 3, of the Natural Features Chapter of the Newport Comprehensive Plan has been revised to reflect the Council's desire that procedures be put in place to address circumstances where a potential hazard may exist in areas that are not specifically identified on adopted maps. Such procedures are included in the amendments to the Geologic Hazard Areas Section of the Zoning Ordinance. This revision also clarifies that Policy 3 is intended to provide direction for how implementing land use regulations are to be crafted and not as a land use criterion unto itself.

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

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted as support for the Council's following amendments.

Section 2. The following definition is added to Section 2-1-1.101 of Ordinance No. 1308 (as amended), to be inserted in alphabetical order:

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

Section 4. Section 13.05.030 of Ordinance No. 1990 is hereby amended to add the following subsection H:

H. 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 5. Section 13.05.070(A)(10) of Ordinance No. 1990 is repealed in its entirety and replaced with the following language:

“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 is required and shall be provided in accordance with the requirements of Section 2-4-7 of the Zoning Ordinance. The report must clearly state what measures will be taken to safeguard against existing hazards.”

Section 6. The Shoreland Hazards Section of the Natural Features Chapter of Ordinance No. 1621 (as amended), is hereby amended as shown in Exhibit "B".

Section 7. Goal 1, Policy 3 of the Natural Features Chapter of Ordinance No. 1621 (as amended), is hereby amended as shown in Exhibit "C".

Section 8. This ordinance shall take effect 30 days after adoption.

Date adopted: July 18, 2011.

Signed by the Mayor on July 24, 2011.


Mark McConnell, Mayor

ATTEST:

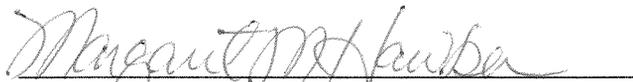

Margaret M. Hawker, City Recorder

Exhibit A to Ordinance No. 2017, 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 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 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 property owner establishes or a Geologic Report identifies that development, construction, or site clearing (including tree removal) will occur outside of a 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

Exhibit A to Ordinance No. 2017, Replacing Section 2-4-7 of the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) Relating to Geologic Hazards

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) 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. Construction of structures for which a building permit is not required;
- F. Removal of trees smaller than 8-inches dbh (diameter breast height);
- 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;
- H. Forest practices as defined by ORS 527 (the State Forest Practices Act) and approved by the state Department of Forestry;
- 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;
- J. Installation of utility lines not including electric substations; and
- K. Emergency response activities intended to reduce or eliminate an immediate danger to

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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 or landslide hazard zone 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.

2-4-7.030. Geologic Report Guidelines. 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. Construction Limitations within Geologic Hazard Areas.

- A. 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

Exhibit A to Ordinance No. 2017, Replacing Section 2-4-7 of the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) Relating to Geologic Hazards

buildings to be relocated or dismantled and removed from the site.

2-4-7.040. Prohibited Development on Beaches and Foredues. Construction of residential, commercial, or industrial buildings is prohibited on beaches, active foredues, other foredues 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 off-site 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,

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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

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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.

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

²¹ Federal Emergency Management Agency, letter to the City of Newport, 1987.

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.

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 are not specifically identified but a potential hazard may exist, the City should establish procedures within its land use regulations to require a site-specific analysis tool, such as a geologic report.