

JUNE 21, 2010 MARKUP COPY – PROPOSED AMENDMENTS TO SECTION 2-4-7 OF THE NEWPORT ZONING ORDINANCE

Note: Code language added since the June 14, 2010 hearing double underlined, deleted in ~~strikeout~~. Staff comments following each subsection are preceded by the notation “staff” and are in *italics*.

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.

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.

Staff: This definition will be included in Section 2-1-1.101 and borrows from the definition provided in ORS 516.010, which charges DOGAMI with the responsibility of identifying and mapping geologic hazards.

On June 14, 2010, Chris Minor, attorney, on behalf of John Clark and the Whaler Motel, Inc. submitted a letter suggesting that the term “potential” be replaced with “probable” and that the reference to “earthquakes” should be removed. The term potential is used in the supporting Comprehensive Plan policies (ref: Natural Features chapter), the 2004 DOGAMI report, and elsewhere in this draft. Given this, it is the most appropriate term to use. DOGAMI factored in a Cascadia subduction zone quake for its modeling of low risk dune backed erosion areas and earthquakes are a landslide risk factor that must be specifically addressed by Engineering Geologists under the Guidelines for Preparing Engineering Geologic Reports.” For these reasons, it is important that the term remain in the definition.

Dietmar Goebel noted at the June 14, 2010 hearing that the definition is too broad. A definition of this nature should be expansive enough to capture factors that contribute to earth movement. This definition does so in an appropriate manner.

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 ~~this section~~Section 2-4-7:

- (1) Bluff or dune backed shoreline areas within low, medium, high or active hazard zones identified in the Department of Geology and Mineral Industries (DOGAMI) Open File Report O-04-09 Evaluation of Coastal Erosion Hazard Zones along Dune and Bluff Backed Shorelines in Lincoln County, Oregon: Cascade Head to Seal Rock, Technical Report to Lincoln County, dated 2004.
- (2) Active or potential landslide areas, prehistoric landslides, or other landslide areas identified in the DOGAMI Open File Report O-04-09.

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- (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. DOGAMI Open File Report O-04-09 is used to identify when a site specific geologic investigation is needed prior to development. It is not intended as a site specific analysis tool. Site specific investigations required in this section 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 any given property.
- C. In circumstances where a site specific geologic investigation 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~~[Section 2-4-7](#).
- D. If the results of a site specific geologic investigation 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 (DLC&D). The agencies will have at least 15 days to provide comments and the city shall consider agency comments and determine whether or not it is appropriate to issue a permit.

Staff: In his June 14, 2010 letter, Chris Minor suggests that the term potential be replaced with probable. Mr. Goebel expressed similar concerns with the use of the term “potential” at the June 14, 2010 hearing. Staff believes that the term potential is most appropriate for the reasons noted above. A reference to the specific section number has been added as requested by Mr. Minor. Mr. Minor expressed a preference that the code consistently refer to “geologic hazards” rather than “documented geologic hazard area.” The latter was offered by Robert Glenn in his May 26th comments as a way of putting definition to situations where the City is relying upon information other than the DOGAMI report to require a site specific geologic review. Staff believes this is helpful. Mr. Minor inquired as to how an applicant can contest a City staff determination that they are within a “documented geologic hazard area.” This would be done as an application for code interpretation, with a decision by the Planning Commission (NZO 2-6-1.015). Contesting how the city handles DOGAMI comments, if provided under 2-4-7.010(D), would be through an appeal (another question posed by Mr. Minor).

Doug Gless, CEG, in a letter dated June 10, 2010, notes that the City should put “documented geologic hazards areas” in a GIS system and make it available to the public. This is something the City can explore in terms of its feasibility.

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.

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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 does not exceed two feet in depth or twenty-five cubic yards in volume;
- D. Exploratory excavations under the direction of a registered engineering geologist or geotechnical engineer;
- E. Structural alterations less than 500 square feet in size that are outside of active and high hazard zones and active landslide areas that do not involve grading in excess of two feet in depth, or twenty-five cubic yards of volume;
- F. Detached accessory buildings less than 500 square feet in size that are outside of active and high hazard zones and active landslide areas that do not involve grading in excess of two feet in depth, or twenty-five cubic yards of volume;
- 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 in city rights-of-way or public/private easements, 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.

Staff: Mr. Minor expressed a preference for language stating “that do not alter the footprint of the building foundation” as an alternative to the language in 2-4-7.020(A) above. Such a change would conceivably allow changes to foundations without review which is a more expansive exemption than what is proposed. Staff believes that the existing language is clear. The two foot in depth or twenty-

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five cubic yards of volume verbiage is also clear, in that both conditions must be fulfilled to qualify for exemption (a concern raised by Mr. Minor). Installation of utilities in private easements has been added at Mr. Minor's request. Private easements are more likely to be outside of existing disturbed rights-of-way but the exemption addresses minor utility work that may exceed the grading thresholds.

At the June 14th hearing, Bob Berman noted that the tree removal exemption (see 2-4-7.020(I)) should have a timeframe associated with it. A one year timeframe has been added.

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, medium, or low) or landslide hazard zone (active, potential, prehistoric, etc.) within which development is to occur. In cases where properties are mapped with more than one hazard zone, a certified engineering geologist shall identify the zone most appropriate to the area proposed for development; and
- D. For any property located within an active landslide area or within an active or high hazard zone within a bluff or dune backed shoreline area, a written Statement signed by the owner of such property in the form and manner set forth in Appendix A to Section 2-4-7; and
- E. A Geologic Report (Sub-section 2-4-7.030), prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development; or

In Low or Moderate Hazard zones, a City of Newport Geologic Reconnaissance Form, completed by a certified engineering geologist, or registered professional geologist in consultation with a licensed engineer, with his/her stamp and signature affixed, indicating that the site is suitable for the proposed development.

If a Geologic Reconnaissance form indicates a need for further investigation, or if the Community Development Director requires further study based upon information contained in a Geologic Reconnaissance form, the Community Development Director may require that a Geologic Report (Section 2-4-7.030) be prepared and submitted to the City; and

- F. An engineering report, prepared by a ~~registered 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: A number of comments were received regarding 2-4-7.025(D) above, and in particular the indemnification language. The proposed code refers to Appendix A for specifics, and a copy of a

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revised Appendix A is being posted that responds to comments received at the June 14, 2010 hearing. It is staff's view that Appendix A strikes an appropriate balance between interests of affected property owners and the public at large. Should the Commission disagree, it can forward a recommendation to the Council that portions of Appendix A (or all of it) should be amended or dropped. A memo from the City Attorney, addressing the entirety of the Appendix A, is forthcoming and will be distributed as soon as it is available.

Mr. Minor commented that the term "suitable" in 2-4-7.025(E) could be further defined. Doug Gless provided a similar comment. Staff does not believe that an attempt to further define the term would be helpful. Geologic reports vary with respect to the language that is used, and it is the City's responsibility, when evaluating permit applications, to determine if the report establishes that the site is suitable. This is one reason why a discretionary land use process is necessary, with an appeals process.

Doug Gless provided comment that the Geologic Reconnaissance Form is essentially a geologic report and that a "registered professional geologist in consultation with a licensed engineer" cannot complete such a review without violating state statute. Mr. Gless also expressed concern about the use of a Reconnaissance as an alternative to a report. The Oregon State Board of Geologist Examiners provided similar comments in a June 14, 2010 letter.

Staff is concerned that the position the Oregon State Board of Geologist Examiners has taken will make it difficult for applicants to find qualified individuals to complete the Reconnaissance Form (meaning a full report would be the fallback), and is working to better understand their concerns and how the Form might be adjusted to address them. This may not be resolved when the Planning Commission takes up deliberation on July 12th, 2010. The Commission can forward a recommendation to the City Council as to its preference regarding the use of the Form. If the Commission does not want to proceed with the Form, then requiring a full geologic report in all circumstances is an alternative and the Commission may want to consider whether or not low risk dune and bluff hazard areas, identified in the DOGAMI report, warrant review under this approach.

Doug Gless requested clarification that certified engineering geologists are qualified to undertake some types of engineering remediation and at the June 14th hearing Mr. Goebel requested clarification as to the types of engineers who can prepare these reports. Appropriate language has been added addressing these concerns.

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 [current version of the "Guidelines for Preparing Engineering Geologic Reports in Oregon,"](#) prepared by the Oregon State Board of Geologist Examiners, [that are in effect when a study is completed.](#) ~~Such reports shall and~~ address sub-sections 2-4-7.035 to 2-4-7.055, as applicable. For oceanfront property, reports shall also address the "Geological Report Guidelines for New Development on Oceanfront Properties," prepared by the Oregon Coastal Management Program of the Department of Land Conservation and Development. All Geologic Reports are valid as prima facie evidence of the information therein contained for a period of five (5) years. They are only valid for the development plan addressed in the report. The city assumes no responsibility for the quality or accuracy of such reports.

Staff: The “current version” language has been added at the request of the Oregon State Board of Geologist Examiners. Doug Gless takes issue with the statement that “the city assumes no responsibility for the quality or accuracy of such reports.” The City does not have engineering geologists on staff to gauge the quality and accuracy of a report preparer’s work. Therefore, it is important to include this type of statement in the code.

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

- 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.

Staff: Mr. Minor expressed concern with the reference to “should” since it is a suggestion and not an explicit requirement. The Planning Commission considered this concern at prior work sessions and decided to keep the language.

2-4-7.040. Prohibited Development on Beaches and Foredunes. 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.

Staff: Mr. Minor expressed concerns with language that certified engineering geologists determine development is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves. This language is verbatim from the Comprehensive Plan and Statewide Planning Goal 18. Staff is reluctant to try to provide further direction as to what constitutes “adequate protection” in the code. As drafted, it would be an issue that is sorted out through the permit review where an applicant or other parties would have an opportunity to appeal.

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

- A. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;
- B. Development plans shall minimize cut or fill operations so as to ~~limit and~~ prevent offsite impacts;
- C. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;
- D. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;
- E. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;
- F. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;
- G. All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty year frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure.
- H. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;
- I. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:
 - (1) Energy absorbing devices to reduce runoff water velocity;
 - (2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;
 - (3) Dispersal of water runoff from developed areas over large undisturbed areas;
- J. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or

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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: Doug Gless provided comments that the City's existing storm system is inadequate in some areas to manage run-off attributed to a 20 year design storm (see 2-4-7.045(G) above). This may be a limiting factor for new development seeking to discharge into the city system. At the June 14, 2010 hearing, Mr. Goebel noted that under 2-4-7.045(B) off-site impacts should be limited or prevented not both. This has been clarified.

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.

Land Divisions within Geologic Hazard Areas. New land divisions within geologic hazard areas shall:

- A. Include ~~within~~ for each new undeveloped lot or parcel a minimum 1000 square foot building footprint within which a structure could be constructed and which is located landward of active and high hazard zones; and
- B. Locate all public infrastructure landward of active and high hazard zones.

Staff: At its May 24th 2010 work session the Planning Commission expressed a preference for having this language incorporated into Chapter 13 of the Newport Municipal Code, which outlines requirements for land divisions. Provisions in the land division code requiring geologic reports on slopes that exceed 12% is being deleted to align with changes that are being made with this update.

Language has been added, as requested by Mr. Minor, to clarify that a footprint in this context is an area within which a structure could be constructed. In the land division code, public infrastructure includes sewer, water, streets, and storm water facilities that the public is responsible for maintaining (a question posed by Mr. Minor).

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

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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 Reconnaissance Form or 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 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.

Staff: Mr. Minor asked as to whether or not “final approval” should be defined. The form of final approval will vary depending upon the nature of the project, and whether or not structures are involved. It also differs between land divisions and construction projects. For this reason, it is probably best to keep the language “as is.”

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. Provisions of the nonconforming use section of the zoning code that are applicable within geologic hazard areas are those that apply to alteration, expansion, or replacement due to casualty loss or health, safety and related standards. A Geologic Report is required in active or high hazard zones. A pre-existing Geologic Report may be used in circumstances where a Geologic Report was prepared within five (5) years of the date an application is made for a replacement structure and the new construction is consistent with the recommendations, if any, contained in that report. In the event a Geologic Report is required for an application to alter, expand, or replace a nonconforming use or structure due to casualty loss, such application may be filed within 18 months of the date the casualty loss occurred, notwithstanding the 12 month limitation contained in the nonconforming use section of the zoning code.

Staff: Mr. Minor commented that replacement of casualty loss structures should not be subject to any kind of geologic review. The Planning Commission specifically discussed this issue at work sessions following earlier hearings and determined that a review is appropriate (note: some types of casualty loss work could qualify under the exemptions).