

Note: New code language 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 AREAS OVERLAY*

2-4-7.005. Purpose. The purpose of this section is to promote the public health, safety, and general welfare by minimize 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. and threats to life and property by regulating building, grading, clearing, and other human activities in areas of known landslides, weak foundation soils, and other hazards identified by the City of Newport or any other agency. It is also the intent of this Ordinance to protect life and property by reducing building density in these areas, by requiring special construction techniques, and by requiring the study of such areas by an Oregon registered engineering geologist prior to any activity.

Staff: Amendments eliminate the reference to landslides in favor of earth movement, which is a more general term. The focus is also shifted from protecting life and property to minimizing public and private loss. This frames what the code can accomplish in more realistic terms. The reference to reducing density is eliminated, given that the related section is being deleted. Since geotechnical reporting requirements are addressed in the code, there is no need to address them in the purpose section. New language cross references to the Statewide Planning Goals and Comprehensive Plan from which this code section draws its authority.

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

- A. Any area within the geologic setback area as herein defined. Bluff or dune backed shoreline areas within low, medium, high or active hazard zones identified in the Department of Geology and Mineral Industries (DOGAMI) Open File Report O-04-09 Evaluation of Coastal Erosion Hazard Zones along Dune and Bluff Backed Shorelines in Lincoln County, Oregon: Cascade Head to Seal Rock, Technical Report to Lincoln County, dated 2004.
- B. Areas that are defined as geologically hazardous in the document entitled Environmental Geology of Lincoln County, Oregon, prepared by the Oregon Department of Geology and Mineral Industries. Active or potential landslide areas, prehistoric landslides, or other landslide areas identified in the DOGAMI Open File Report O-04-09.
- C. Areas identified by the Soils Conservation Service as having weak foundation soils.
- DC. Any other documented geologic hazard area on file in the office of the City of Newport Building Official.

Staff: Language is updated to reference the 2004 DOGAMI maps, which are the most current coastal hazard maps available. The reference to Soil Conservation Service weak foundation soils is deleted because it is ambiguous, and has been determined by the courts to be unenforceable.

At its December 14, 2009 work session, the Commission requested that a slope percentage be incorporated into the code and a 25% threshold for triggering geologic review was placed in the draft. The language has

since been removed based upon follow-up discussions with the Commission at its January 11, 2010 where the members agreed to hold off on adopting a slope percentage until it has improved mapping and a better sense of an appropriate, scientifically based threshold to use. The language was inadvertently left in the draft available at the public workshop. It is deleted in this draft.

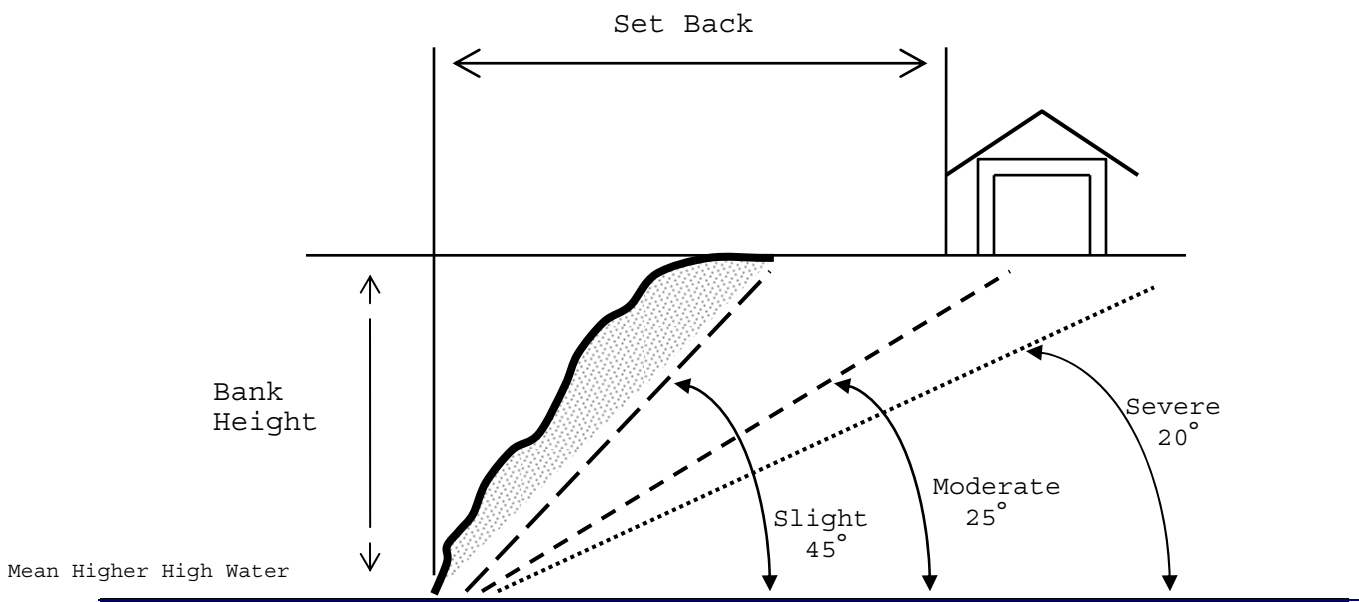
~~2-4-7.015. **Geologic Setback Area.** The following categories of coastal erosion are recognized (coastal erosion rates and the methodology used are outlined in the document entitled "Geologic Hazards Associated With Lincoln County Coastal Shorelines," prepared by CH2M HILL, Inc., and RKNR Associates, 1977):~~

- ~~— Less than 2.8 inches/year.....slight~~
- ~~— 2.8 to 11.3 inches/year.....moderate~~
- ~~— More that 11.3 inches/year.....severe~~

~~The following coastal setbacks are required for the categories listed above in order to limit the need for structural solutions to coastal erosion. All setbacks shall be measured from the Mean Higher High Water Line and/or the base of the bank, whichever requires the greater setback.~~

- ~~Slight Erosion — 1 foot of setback for each 1 foot of bank height~~
- ~~Moderate Erosion — 2.15 feet of setback for each 1 foot of bank height~~
- ~~Severe Erosion — 2.75 feet of setback for each 1 foot of bank height~~

Figure 1
Example of how to Determine Geologic Setback



Staff: The geologic setback section has been deleted as it is relevant to 1977 RKNR Associates maps that it identifies areas along the coastline that have exhibited slight, moderate, or severe erosion.

Those maps are so dated that the erosion areas depicted are no longer accurate. The 2004 DOGAMI maps do not contain information of this nature that can be used to develop a new setback requirement.

2-4-7.020015. Geologic Permit Required. ~~Prior to the issuance of any building permit, any mobile home siting permit, any grading permit, any removal of any vegetation, any excavation over 50 cubic yards, or any other human alteration~~ 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, ~~a shall obtain a geologic permit is required.~~ 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: The City does not issue grading permits, so that language is being deleted. Proposed changes clarify circumstances that warrant a geologic permit (e.g. existing language requiring a permit for the removal of any vegetation is overly broad).

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

- A. Maintenance and repair of existing structures, including alterations within the existing footprint that do not add habitable floor area;
- B. An excavation which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;
- C. Fill which does not exceed two feet in depth or twenty-five cubic yards in volume;
- D. Exploratory excavations under the direction of a registered engineering geologist or geotechnical engineer;
- ~~E. Structural alterations less than 500 square feet in size that are outside of active and high hazard zones and do not involve grading in excess of two feet in depth, or twenty-five cubic yards of volume;~~
- F. Detached accessory buildings less than 500 square feet in size that are outside of active and high hazard zones and do not involve grading in excess of two feet in depth, or twenty-five cubic yards of volume;
- G. Tree removal on slopes less than twenty-five percent;
- H. Tree removal on slopes greater than twenty-five percent where canopy area removal is less than twenty-five percent of the lot or parcel area;
- I. Forest practices as defined by ORS 527 (the State Forest Practices Act) and approved by the state Department of Forestry;

- J. Maintenance and reconstruction of public and private roads, streets, driveways, and utility lines, provided the work does not extend outside the previously disturbed area;
- K. Installation of utility lines in city rights-of-way or public easements, not including electric substations; and
- L. Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazard.

Staff: These are common exemptions found in geologic hazards codes that have been adopted by jurisdictions with the state. Most of the above are borrowed from codes adopted by the City of Salem, Multnomah County, and Oregon City.

The exemptions ease limitations contained in the existing Geologic Hazards code that require a geologic report for any activity that requires a building permit. The new language exempts maintenance and repair work that does not expand a structure or add habitable space. This addresses concerns raised by members of the public about being able to change the roof of an existing home or make similar changes without getting into a geologic report.

Exemptions also help to clarify vegetation removal that is actually subject to review. The existing Geologic Hazards code requires a permit for “any removal of vegetation,” whereas the proposed exemptions, in conjunction with other changes noted above, limit vegetation removal to “trees” and note that tree removal is only subject to review if it is not associated with a forest practice regulated by the State, is occurring on slopes greater than 25%, and involves the removal of 25% or more of the tree canopy on a lot.

Exemptions are added for modest additions or detached structures (500 square feet) in areas identified on the 2004 DOGAMI maps as moderate or low risk areas. Some of these areas are not subject to geologic review under the current code, and this type of exemption provides an allowance for modest development without geologic review recognizing the lower risk nature of these 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, the application shall include the following:

- A. A site plan that illustrates areas of disturbance, ground topography (contours), roads and driveways, an outline of wooded or naturally vegetated areas, watercourses, erosion control measures, and trees with a diameter of at least 8-inches dbh (diameter breast height) proposed for removal; and
- B. An estimate of depths and the extent of all proposed excavation and fill work; and
- C. Identification of the bluff or dune backed hazard zone (active, high, medium, or low) or landslide hazard zone (active, potential, prehistoric, etc.) within which development is to occur. In cases where properties are mapped with more than one hazard zone, a certified engineering geologist shall identify the zone most appropriate to the area proposed for development.
- D. A geologic report (Section 2-4-7.030), prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development; or

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

(1) If the Geologic Reconnaissance indicates a need for further investigation, or if the Community Development Director requires further study based upon information contained in the completed Reconnaissance form, a geologic report (Section 2-4-7.030) as specified by the Community Development Director shall be prepared and submitted.

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

Staff: The submittal requirements listed supplement what is required in Section 2-6-1.020 and ensure that the project is described in sufficient detail to understand its scope. This section also provides a Geologic Reconnaissance as an alternative to a full Geologic Report for Low and Medium Hazard areas, as discussed at the December 14, 2009 work session. A provision has also been added that has an applicant's certified engineering geologist establish the erosion or landslide risk zone applicable to the development where more than one zone applies to a property. This addresses questions that have been raised by the public as to how this would be sorted out. Some engineering geologists noted that registered professional geologists may not be qualified to prepare the reports. If a registered professional geologist is working in tandem with a licensed engineer then it appears doable, at least insofar as their analysis relates to the Reconnaissance Form.

2-4-7.025030. Geologic Report Guidelines. ~~In order to obtain a geologic permit, the applicant shall present to the City a geologic hazard report prepared by a registered engineering geologist. The report Reports~~ shall be prepared consistent with standard geologic practices and shall, at a minimum, contain the items outlined in the "Guidelines for Preparing Engineering Geologic Reports in Oregon," prepared by the Oregon State Board of Geologist Examiners, and address sub-sections 2-4-7.035 to 2-4-7.045, as applicable. For oceanfront property, reports shall also address the "Geological Report Guidelines for New Development on Oceanfront Properties," prepared by the Oregon Coastal Management Program of the Department of Land Conservation and Development. Such All geologic reports are valid as prima facie evidence of the information therein contained for a period of five (5) years ~~unless a longer period is determined and stated in the report.~~ 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.

~~In cases where structural shoreline protection (sea walls, revetments, riprap, etc.) is proposed, the geologic hazard report must document the historical extent of erosion in the area and must evaluate alternative methods of erosion control, including non-structural solutions.~~

Staff: Added a requirement that the Reports include analysis addressing construction limitations and erosion control measures. Requirements related to structural shoreline protections are being eliminated in that this type of construction is regulated by the Oregon Parks and Recreation Department, so there is no need for the City to impose similar regulations. Validity of reports is limited to five (5) years based on feedback from the professional community. Language requiring consideration of the publication "Geological Report Guidelines for New Development on Oceanfront Properties" when geologic reports are prepared for oceanfront properties, was added at the request of DLCD in the event that Development Limitations Option A is not selected.

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

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

OPTION A

A. For bluff or dune backed shoreline areas that are within active or high hazard zones, or areas impacted by active landslides, construction is limited to the recommendations, if any, contained in the geologic report and the following:

(1) Expansion of existing structures provided such expansion is limited to no more than a 10% increase in the total square footage of the building footprint as it existed on (effective date of ordinance):

(2) Relocation of existing structures on the same property:

(3) Manufactured dwellings provided such dwellings:

(a) Have a dimensional width of 28 feet or less; and

(b) Have access to and from the site of sufficient width and grade to permit the structure to be relocated;

(4) Single family residences, other than manufactured dwellings, provided such residences:

(a) Are single story structures with less than 1,500 square feet of total floor area; and

(b) Have a dimensional width of 28 feet or less; and

(c) Are placed on perimeter footing, piling, or other type of foundation that will render them readily movable. Slab on grade foundations do not meet this criterion; and

(d) Are composed of stud wall or similar frame type of construction that will render them readily movable. Walls that are constructed of masonry, including stone walls, concrete poured or concrete block walls and brick veneer walls do not meet this criterion; and

(e) Have access to and from the site of sufficient width and grade to permit the structure to be relocated;

(5) Single story non-residential buildings, provided such buildings:

(a) Have a dimensional width of 28 feet or less; and

(b) Are constructed upon a foundation that allows them to be readily moved; and

(c) Have access to and from the site of sufficient width and grade to permit the structure to be relocated;

(6) Detached accessory buildings less than 500 square feet in total floor area, which are bolted to a slab foundation and do not have plumbing or interior walls;

(7) Improvements for beach access;

(8) Shore front protective structures as otherwise determined eligible by the City and permitted by the Oregon Parks and Recreation Department;

(9) Accessory structures, other than buildings; and

(10) Public infrastructure and related improvements.

B. For bluff or dune backed shoreline areas that are within moderate hazard zones, construction is limited to the recommendations, if any, contained in the geologic report or Geologic Reconnaissance Form and the following:

(1) The building footprint shall be less than 2,500 square feet per structure with the total footprint for all buildings not exceeding 5,000 square feet.

C. For bluff or dune backed shoreline areas that are within low hazard zones, and potential, prehistoric, or other landslide/hazard areas construction is limited by the recommendations, if any, contained in the geologic report or Geologic Reconnaissance Form.

D. Construction limitations outlined in A-D above, do not apply to the area known as the Southshore Development (Newport File No. 1-PD-93). Construction within the Southshore Development is limited by the recommendations, if any, contained in the geologic report or Geologic Reconnaissance Form.

Staff: This option borrows from the DLCD model code, and provides a fixed size threshold to ensure that most types of construction are readily moveable in active and high hazard areas. The size of construction is also limited in moderate risk areas. The draft includes an allowance for non-residential buildings of modest size that is not included in the model code. The 28' width allows for double-wide modular or manufactured structures. An option for exempting the Southshore Development from the construction limitations, given that it is a more recent development and only partially built out, is provided as requested by the Planning Commission.

The draft language differs from earlier versions in that the options for development in active and high risk areas are the same, the limitation on expanding existing structures seaward has been removed, and a provision has been added for relocating a structure on the same property. Manufactured structures are no longer the only option in active hazard areas. With a stick built option, properties that lack vehicle access of sufficient width to situate a manufactured dwelling can still be developed. These changes have been made in response to public feedback. Language addressing shore front protective structures has been clarified based upon comments by DLCD.

This option provides the greatest assurance that new development in high risk areas will be of a type that can be readily removed in the event of slope failure; however, it also has the greatest impact on how landowners can use their property.

OPTION B

A. For bluff or dune backed shoreline areas that are within active or high hazard zones, or areas impacted by active landslides, new construction shall be limited to the recommendations, if any, contained in the geologic report and buildings **shall** be constructed in a manner that renders them readily moveable in the event they need to be relocated. Readily movable structures include:

(1) Manufactured dwellings and modular structures; or

(2) Conventional construction utilizing:

(a) Perimeter footing, piling, or similar foundations. Slab on grade foundations do not meet this criterion;

(b) Stud wall or similar frame construction. Walls that are constructed of masonry, including stone walls, concrete poured or concrete block walls, and brick veneer walls do not meet this criterion; or

(c) Other construction methods that a licensed architect or professional engineer establishes can be readily dismantled and removed from the property.

B. Properties within bluff or dune backed shoreline areas that are within active or high hazard zones shall possess access of sufficient width and grade to permit new buildings to be relocated.

C. For bluff or dune backed shoreline areas that are within moderate or low hazard zones and potential, prehistoric, or other landslide/hazard areas, construction is limited to the recommendations, if any, contained in the geologic report or Geologic Reconnaissance Form.

Staff: This option requires use of construction techniques that render new buildings readily moveable in active and high hazard areas, but does limit their size. No limitations are included for existing structures. Construction methods identified in the DLCD model code as techniques that make it easier to move structures are listed. There is also an option for other appropriate construction methods, which would be documented by appropriate professionals. Evidence of suitable access is required.

This approach ensures that the potential removal of a building is considered at the time it is designed. Property owners are limited somewhat in terms of what they can develop, but not as severely as Option A.

OPTION C

A. For bluff or dune backed shoreline areas that are within active or high hazard zones, or areas impacted by active landslides, new construction shall be limited to the recommendations, if any, contained in the geologic report and buildings **should** be constructed in a manner that renders them readily moveable in the event they need to be relocated. Examples of readily movable structures include:

(1) Manufactured dwellings and modular structures; or

(2) Conventional construction utilizing:

(a) Perimeter footing, piling, or similar foundations. Slab on grade foundations are not readily removable;

(d) Stud wall or similar frame construction. Walls that are constructed of masonry, including stone walls, concrete poured or concrete block walls, and brick veneer walls are not readily removable.

B. Properties within bluff or dune backed shoreline areas that are within active or high hazard zones shall possess access of sufficient width and grade to permit new buildings to be relocated.

C. For bluff or dune backed shoreline areas that are within moderate or low hazard zones and potential, prehistoric, or other landslide/hazard areas, construction is limited to the recommendations, if any, contained in the geologic report or Geologic Reconnaissance Form.

Staff: This option suggests the use of construction techniques that render new buildings readily moveable in active and high hazard areas, but does not require that they be used. Construction methods listed are those identified in the DLCDD model code. Evidence of suitable access is required.

This approach puts property owners on notice that they should consider using construction techniques that will make it easier to relocate improvements but does not require they do so. This option should be selected if the Commission is uncertain as to whether or not the city should take proactive steps to minimize property loss in high risk areas with respect to the type of construction that occurs.

2-4-7.040. Prohibited Development on Beaches and Foredues. Construction of residential, commercial, or industrial buildings are 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 it is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; and is designed to minimize adverse environmental effects. Such a determination shall consider:

A. The type of use proposed and the adverse effects it might have on the site and adjacent areas;

B. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;

C. Methods for protecting the surrounding area from any adverse effects of the development; and

D. Hazards to life, public and private property, and the natural environment that may be caused by the proposed use.

Staff: This subsection implements existing Policy 2, Goal 2 of the Natural Resource Section of the Newport Comprehensive Plan and satisfies the minimum requirements of Statewide Planning Goal 18 for Beaches and Dunes. This existing code is non-compliant.

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

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

K. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.

Staff: Erosion control standards have been added, per a discussion with the Planning Commission at the December 14, 2009 work session. They are drafted such that the applicant's engineering geologist must address them. This ensures that the responses are consistent with the geologic analysis.

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.

Staff: This is an existing provision of the Geologic Hazards code proposed to be retained.

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

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

B. Locate all public infrastructure landward of active and high hazard zones.

Staff: This provision is taken from the DLCD Model code, and may in the end need to be added to the Subdivision Ordinance.

~~**2-4-7.030060. Notice of Intent to Build in a Geologic Hazardous Area Approval Authority.** An application shall be processed and authorized using a Type I decision making procedure. Upon for a geologic permit, the applicant shall file with the Building Official a "Notice of Intent to Build in a Geologic Hazard Area." Such notice shall contain the reports set forth in Section 2-4-7.025, above. The notice of intent may be filed at any time prior to or in conjunction with the filing of a building permit, geologic permit, or any other permit required by the City. The geologic permit shall not be issued until all requirements of this section have been complied with.~~

~~Once a notice of intent is filed, the Building Official shall within five (5) calendar days forward a copy of each notice to the City Planner. The City Planner shall cause a description of the property for which such geologic permit is sought to be published in a Newport newspaper of general circulation at least five (5) days prior to the expiration of the appeal period as hereinafter defined. The applicant shall bear the cost of this publication.~~

~~In addition to the notice in the newspaper, the Building Official shall within five (5) calendar days post the subject property with a sign. The sign shall be placed in a visible place on the property and shall contain the following information:~~

- A. ~~The type of permit, if any, being applied for.~~
- B. ~~The owner of the property.~~
- C. ~~The date the notice was posted.~~
- D. ~~The last date of appeal.~~
- E. ~~A brief description of the proposed project.~~
- F. ~~The Building Official's address and telephone number.~~

Staff: The changes tie to the city's new procedures section. A Type I process requires notice of the City decision to surrounding property owners with an opportunity to appeal. It also meets statutory requirements for issuing discretionary land use decisions whereas the current process does not. The newspaper publication and posting requirements are proposed to be deleted. The process can be readily altered to a Type II review with advance notice to neighboring property owners if that is the Planning Commission's preference.

2-4-7.03565. Appeal. Appeals may be filed within 15 calendar days of the date the City issues a final order as provided by Section 2-6-1.050. Appellants challenging substantive elements of a Geologic Reconnaissance Form or geologic report are encouraged to submit their own analysis prepared by a certified engineering geologist. Within 15 days after the date the notice is posted on the site as required in Section 2-4-7.030, any person may file a written objection to the Notice of Intent to Build in a Geologic Hazard Area. The objection shall be submitted to the Building Official.

~~Any appeal to the issuance of a geologic permit must contain the name and address of the appellant, a phone number at which the appellant may be reached during business hours, and the reasons relied upon for such appeal. The appeal shall be accompanied by a fee to be determined by the City Council.~~

~~Within 30 days after the filing of an appeal, the appellant shall file a report by a registered engineering geologist declaring that the geologist has examined the subject property and is of the opinion that the applicant's geologic report, in whole or in part, does not adequately evaluate the cause, extent, and potential hazards on the site, or that the applicant's engineering solutions to potential geologic hazards are inadequate.~~

~~Any conflict between the applicant's and appellant's reports shall be submitted to a panel of engineering geologists for review. The panel shall be composed of three registered engineering geologists. The panel's makeup shall consist of the following:~~

- A. ~~One member selected by the applicant.~~
- B. ~~One member selected by the appellant.~~
- C. ~~One member selected by the applicant's and appellant's engineering geologist.~~

~~The panel shall examine the geologic hazards present on the subject property and the applicant's report addressing the nature and extent of the hazard and any engineered solution. After review, the panel shall prepare a report consistent with the requirements of Section 2-4-7.025. The decision of the panel shall be by majority and is final.~~

~~D.A. The cost of the panel and subsequent report shall be borne one half by the applicant and one half by the appellant. The City Manager may require a deposit to cover the cost of the geologic panel. Failure to pay the required fee or post the deposit (if required) within the time set by the City Manager shall be deemed a withdrawal of the application or appeal.~~

Staff: Adjusted to use the City's appeals process for land use decisions. Language is added to encourage appellants to submit evidence prepared by qualified technical experts when challenging the substance of a geologic report or Geotechnical Reconnaissance Form. This ensures decision makers have substantial evidence upon which to base a decision.

~~**2-4-7.040. Slope Density Guidelines.** In reviewing applications for partitioning, subdivisions, planned or clustered developments, or multi-family dwellings, the City Planner shall employ the following density guidelines for the property based on the average slope of the site as determined from the City contour maps or a contour map presented by the applicant:~~

~~A. 0 to 12% slope: Density is limited only by the underlying zone in which the parcel is located.~~

~~B. Greater than 12% slope: A site study by a certified engineering geologist or professional engineer is required prior to construction or excavation. The requirements of Chapter 70, as amended by the City of Newport, of the Uniform Building Code shall be followed.~~

~~On slopes greater than 12%, density shall be established after deliberation of the Planning Commission. The Planning Commission shall consider testimony from the Building Official, the City Engineer, and the engineering geologist. The Planning Commission shall determine if a lesser density than the density otherwise allowed in that zone is warranted. Plans for the streets, storm drainage, excavation, and vegetation removal shall be reviewed and approved by the City Engineer prior to any work being done on the subject property.~~

Staff: This section is proposed for deletion as discussed at the December 14, 2009 Planning Commission work session. At that meeting, Commission members expressed a preference to defer to the recommendations in a Geologic Report rather than developing standards for the Commission to determine appropriate densities.

~~**2-4-7.045. Erosion and Sedimentation Discharge.** No property owner or other person in charge of property shall cause or permit to be caused the discharge of erosion and sedimentation materials onto adjoining property or the public right-of-way.~~

~~The following measures are suggested as possible means to prevent the discharge of erosion and sedimentation:~~

- ~~1.) Minimal removal of vegetative cover, particularly trees.~~
- ~~2.) Temporary measures for controlling runoff, such as berms or holding ponds, particularly on slopes of 12% or greater.~~
- ~~3.) The planting of permanent vegetative cover as soon as possible after construction.~~

~~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 drainage with adequate capacity so as not to flood adjacent or downstream property.~~

~~In all areas of the City, the Building Official or City Engineer may require adequate culverts or other drainage facilities to be installed as a condition of a building permit.~~

Staff: This subsection has been revised in its entirety under new subsection 2-4-7.045 above.

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

Staff: This provision is in keeping with a suggestion made by George Priest, DOGAMI, during his November 9, 2009 presentation to the Planning Commission. It ensures that work is completed in accordance with the recommendations contained in the reports.

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

Staff: This provision has been added to make clear that it is the party undertaking the development project that is responsible for addressing any sediment discharge that occurs onto neighboring properties. It replaces existing language that says they are to never occur (which doesn't provide guidance in the event discharges do happen).

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

Staff: This subsection allows a structure destroyed as a result of casualty loss to be replaced "in-kind". This would be an alternative to obtaining a geologic hazards permit; however, a geologic report would be required for the replacement structure in active or high risk areas. The earlier draft has been revised, so that the replacement structure need not conform to the full set of geologic hazards rules. If the Commission elects not to go with Construction Limitations Option A then this provision may not be needed. Concerns were raised about the insurability of nonconforming structures. Provided they can be replaced in-kind, as provided in this section, then that should not be an issue.

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

A. A statement that the property is subject to chronic natural hazards and that development thereon is subject to risk of damage from such hazards;

- B. A statement that the property owner has commissioned a geologic report, a copy of which is on file with the City, has reviewed the document and has thus been informed and is aware of the type and extent of hazards present and the risks associated with development of the subject property;
- C. A statement that the property owner has disclosed all known geologic reports completed prior to the preparation of a geologic report for the subject development and that copies are on file with the City. If a previous report is known to have been completed but cannot be obtained, a written explanation and documentation of due diligence has been filed by the property owner with the City.
- D. A statement acknowledging that the property owner assumes all risks of damage from natural hazards associated with the development of the subject property; and
- E. A statement releasing the City of Newport, its agents and employees, from any and all claims which may arise as a result of damages, losses or injuries sustained by the property owner and his/her heirs, successors and assigns, from natural hazards.

Staff: This language is taken from the DLCD model ordinance. It requires owners acknowledge that their development is at risk of damage from geologic hazards, that they disclose that geologic reports have been prepared so that future owners may pick up on them, and that they release the city from any claims arising from damage resulting from natural hazards. In response to public feedback, the language has been adjusted to require the statement be recorded in active and high risk areas and other properties where a geologic report has been prepared for a development. The statement would not be required in moderate and low risk areas where a report was not prepared.

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

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

Staff: This language is proposed in response to public feedback and further discussions with DOGAMI regarding the relative accuracy of the maps. It is most relevant to Development Limitations Option A and provides an option for certified engineering geologists to make corrections based upon site specific conditions or remediation that is proposed that change the characteristics of the property such that an alternative hazard zone designation is appropriate (e.g. slope stabilization measures are proposed such that an active slide or erosion hazard area is more appropriately characterized as a high risk area). Notification of state agencies was suggested by DLCD.