

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2017-XX

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING SITKA GENERAL CODE
TITLE 20 "MISCELLANEOUS PERMIT REGULATIONS" BY CHANGING THE NAME TO
"ENVIRONMENTALLY CRITICAL AREAS" AND ADDING A NEW CHAPTER 20.01 ENTITLED
"LANDSLIDE AREA MANAGEMENT"

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.
2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person and circumstances shall not be affected thereby.
3. **PURPOSE.** The purpose of this ordinance is to create within the Sitka General Code a specific section which will serve as the depository for environmentally critical areas code, and adding chapters which enable provisions deemed appropriate to safely develop land which is at heightened risk of affect from soil movement resulting from landslides, to include the authority to require a geotechnical evaluation and associated mitigation recommendations as well as creating an option to negotiate an exculpatory covenant with the City.
4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code Title 20 is amended by changing the name to "Environmentally Critical Areas" and adding new chapters 20.01 "Restricted Landslide Areas" (new language underlined; deleted language stricken):

Title 20

MISCELLANEOUS PERMIT REGULATIONS-ENVIRONMENTALLY CRITICAL AREAS

Chapters:

- 20.01 Landslide Area Management**
- 20.04 Floodplain Management**
- 20.05 Coastal Management**

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Chapter 20.01

Landslide Area Management

Sections:

- 20.01.010 Purpose**
- 20.01.020 Definitions**
- 20.01.030 Special Requirements and Limitations**
- 20.01.040 Waiver of Geotechnical Evaluation**

20.01.010 Purpose

A. The City has a fundamental public duty and desire to provide for and afford to its citizens the opportunity to develop and enjoy the limited land that is available to it. The City also recognizes that its desire to develop the available land is concurrent with the desires and expectations of its citizens.

B. Based on the immunity provided by Alaska Statute 09.65.070(d) and common law, the City has sufficient authority, and sufficient protection from liability, to adopt land

use regulations, and grant and deny permits, in a manner that supports the development of the various available lots in Sitka, while assuring maximum practicable safety for residents of those lots, given the unusual topographical characteristics and extreme meteorological conditions found throughout the borough.

C. To best balance the goals of public safety and the ability of its citizens to develop homes and livelihoods, the City requires property owners that are seeking to conduct any Major Construction Activities on any lot in a Restricted Landslide Area, to address that restriction pursuant to the provisions of this Chapter.

D. The requirements of this Chapter are in addition to, not in lieu of, any other requirements of the Sitka General Code.

20.01.020 Definitions

A. "Restricted Landslide Area" means:

1. Any portion of any lot which has been identified as a moderate or high risk zone in any City geotechnical risk mapping commissioned and received by the City.
2. For areas not mapped, properties damaged by previous landslides or within 150 ft. of locations damaged by previous landslides.

B. "Major Construction Activity" means:

1. Construction of infrastructure, grading, roadways, utility corridors,
2. Building construction, placement of a pre-manufactured structure, or any occupancy increase in an existing building,
3. The term Major Construction Activity does not include:

(a) Construction of Residential accessory buildings, such as a garage or shed, which is not occupied as a dwelling unit and is not attached to a principal structure.

(b) Any project or improvement of a structure to correct an existing violation of a state or local health, sanitary, or safety code regulation, where such violation has been previously identified by the Building Official and where such activity is the minimum necessary to achieve compliance and safety.

(c) An addition to structures which adds less than 120 square feet of new floor area or foundation footprint.

(d) A boundary lot line adjustment or other minor subdivision alterations, as approved by the Planning Director.

(e) Replacement or rehabilitation of existing publicly-owned infrastructure, public roadways, or utility corridors.

C. "High Occupancy Commercial Use" - Includes International Building Code occupancy classifications Group A, B, E, F (with employees), H, I, M, R-1, R-2, R-4, S (with employees), or U (with employees). It does not include occupancy classification R-3 (single family dwelling and duplex), except that a day-care facility with any number of children is considered a High Occupancy Commercial Use for the purposes of this Chapter.

D. "Geotechnical Evaluation" means a report completed by a licensed professional engineer specializing in geotechnical practice or a professional geologist with experience with

debris flows, assessing the geological hazards of a proposed activity and making recommendations for hazard mitigation. All designs, reports, and calculations associated with mitigation must be stamped by a Civil Engineer licensed in the State of Alaska.

Such an evaluation shall include, at a minimum:

1. A copy of the proposed site plan and proposed development plans,
2. The site's topography and the type and extent of geologic hazards,
3. A review of the site history of landslides and other significant soil movement,
4. Analysis of the project's relationship to the geologic hazards and its potential impacts upon the subject property and adjacent properties.
5. Recommendation for mitigation of hazards, including any no-disturbance buffer, building setbacks, siting requirements, erosion controls, and sewer and drainage restrictions, as well as recommendations for any protective improvements. The mitigation recommendations shall address how the activity maintains or reduces the pre-existing level of risk to the site and affected properties on a long-term basis.

20.01.030 Special Requirements and Limitations

A. Prior to issuance of any City permit, approval, or certificate of occupancy for any Major Construction Activity within a Restricted Landslide Area, the following requirements must be met:

1. Submission and City approval of a Geotechnical Evaluation, the cost of which shall be borne by the applicant.
2. Where preliminary approval by the Planning Commission is necessary, such Geotechnical Evaluation shall be submitted to the Planning Department 30 days prior to submission to the Planning Commission.

B. Prior to the start of any Major Construction Activity within a Restricted Landslide Area, construction of all protective improvements must be completed and approved by the City. Also, an as-built construction report must be approved by the professional designer of record for the applicant and stamped by a Civil Engineer licensed in the State of Alaska.

C. All design principles and standards for subdivisions as outlined in SGC 21.40.010 shall also apply. In addition, there shall be a plat note stating that approved subdivisions have submitted a Geotechnical Evaluation and completed all associated mitigation requirements under this section.

D. The Restricted Landslide Area designation may be removed from a lot or a portion of a lot if the owner(s) submits to the City a geotechnical evaluation which demonstrates to the satisfaction of the Municipal Administrator that such property is not subject to a moderate or high risk from landslide or other significant soil movement.

Removal of the Restricted Landslide Area designation does not mean that the given land is not at risk for landslide-related damage. Removal recognizes there is sufficient analysis and/or mitigation to allow lifting the special requirements and limitations of this Chapter.

E. A Geotechnical Evaluation shall not be required for a Commercial Use project where major foundation construction work, properly permitted, had begun on the site prior to the site being designated to be in a Restricted Landslide Area, provided,

1. Such major foundation's construction was essential to the project's structural integrity,
2. Designation of the site as within a Restricted Landslide Area was based solely on City geotechnical risk mapping under section 20.01.020(A)(1), of this ordinance and,
3. A Certificate of Occupancy for the project is issued within two years of initial foundation permit approval.

20.01.040 Waiver of Geotechnical Evaluation

A. Owner(s) or property located in a Restricted Landslide Area will be eligible for waiver of the requirement for a Geotechnical Evaluation under this chapter. A waiver approved by the City under this section requires execution of a land-use covenant as provided in this section.

B. High Occupancy Commercial Use projects shall not be eligible for a waiver of the requirement for a Geotechnical Evaluation.

C. A land-use covenant required under this section shall be executed prior to the commencement of construction or site alteration, shall be signed by the owner(s) of the property, shall be notarized, and shall be a covenant running with the land. The terms of the covenant shall be tailored to reflect specific site conditions, project features, and commitments, but shall include at least the following:

1. A legal description of the property;
2. A copy of any relevant geotechnical data;
3. A commitment by the owner(s) to maintain the site in such condition and such manner as will prevent harm to the public, to residents of the property, to nearby property, to streets, alleys and drainage facilities;
4. The application date, type, and number of the permit or approval for which the covenant is required;
5. Acknowledgement that the owner(s) understand and assume the risk of development and release the City from any claim for losses that are not caused by the City's own negligence;
6. Indemnification of the City and its officers, employees, contractors, and agents from any claims arising from landslide hazards or failure of the owner(s) to comply with the covenant;
7. A waiver and release of any right of the owner(s), the owner's heirs, successors and assigns to assert any claim against the City and its officers, employees, contractors and agents by reason of or arising out of issuance of the permit or approval by the City for the development on the property, or arising out of any inspection, statement, assurance, delay, act or omission by or on behalf of the City related to the permit or approval or the work done thereunder, and agreeing to defend and indemnify the City and its officers, employees, contractors and agents for any liability, claim or demand arising out of any of the foregoing or out of work

197 done or omitted by or for the owner(s), except in each case only for such losses,
198 claims or demands that directly result from the sole negligence of the City; and
199 8. By way of the land-use covenant, inform future purchasers and other successors
200 and assignees of the risks and of the advisability of obtaining insurance in addition
201 to standard homeowner's insurance to specifically cover the risks posed by
202 development in a Restricted Landslide Area, including risk of damage from loss of
203 use, personal injury and death resulting from soil and water movement.

204 D. The land-use covenant shall be recorded by the City at the State Recorder's Office within
205 the Department of Natural Resources for the Sitka Recording District, at the expense of the
206 owner(s), so as to become part of the State of Alaska's real property records.

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208 5. **EFFECTIVE DATE.** Ordinance 2017-XX shall become effective on the day after the date of its
209 passage.

210 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this
211 ____ day of _____, 2017.

215 _____
216 Matthew Hunter, Mayor

217 ATTEST:

218 _____
219 Sara Peterson, CMC
220 Municipal Clerk
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