

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2017-14

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**

48 **20.01.010 Purpose**

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

53
54 B. Based on the immunity provided by Alaska Statute 09.65.070(d) and common
55 law, the City has sufficient authority, and sufficient protection from liability, to
56 adopt land use regulations, and grant and deny permits, in a manner that supports the
57 development of the various available lots in Sitka, while assuring maximum practicable
58 safety for residents of those lots, given the unusual topographical characteristics and
59 extreme meteorological conditions found throughout the borough.

60
61 C. To best balance the goals of public safety and the ability of its citizens to develop
62 homes and livelihoods, the City requires property owners that are seeking to conduct
63 any Major Construction Activities on any lot in a Restricted Landslide Area, to address
64 that restriction pursuant to the provisions of this Chapter.

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

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69 **20.01.020 Definitions**

70 A. "Restricted Landslide Area" means:

- 71 1. Any portion of any lot which has been identified as a moderate or high risk
72 zone in any City geotechnical risk mapping commissioned and received by the
73 City.
74 2. For areas not mapped, properties damaged by previous landslides or within
75 150 ft. of locations damaged by previous landslides.

76
77 B. "Major Construction Activity" means:

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

83
84 (a) Construction of Residential accessory buildings, such as a garage or shed,
85 which is not occupied as a dwelling unit and is not attached to a principal
86 structure.

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

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

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

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

97
98 C. "High Occupancy Commercial Use" - Includes International Building Code
99 occupancy classifications Group A, B, E, F (with employees), H, I, M, R-1, R-2,
100 R-4, S (with employees), or U (with employees). It does not include occupancy
101 classification R-3 (single family dwelling and duplex), except that a day-care
102 facility with any number of children is considered a High Occupancy Commercial
103 Use for the purposes of this Chapter.

104
105 D. "Geotechnical Evaluation" means a report completed by a licensed professional
106 engineer specializing in geotechnical practice or a professional geologist with
107 experience with debris flows, assessing the geological hazards of a proposed
108 activity and making recommendations for hazard mitigation. All designs, reports,
109 and calculations associated with mitigation must be stamped by a Civil Engineer
110 licensed in the State of Alaska. Such an evaluation shall include, at a minimum:
111 1. A copy of the proposed site plan and proposed development plans,
112 2. The site's topography and the type and extent of geologic hazards,
113 3. A review of the site history of landslides and other significant soil
114 movement,
115 4. Analysis of the project's relationship to the geologic hazards and its
116 potential impacts upon the subject property and adjacent properties.
117 5. Recommendation for mitigation of hazards, including any no-disturbance
118 buffer, building setbacks, siting requirements, erosion controls, and sewer
119 and drainage restrictions, as well as recommendations for any protective
120 improvements. The mitigation recommendations shall address how the
121 activity maintains or reduces the pre-existing level of risk to the site and
122 affected properties on a long-term basis.

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124 **20.01.030 Special Requirements and Limitations**

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

- 128
129 1. Submission and City approval of a Geotechnical Evaluation, the cost of
130 which shall be borne by the applicant.
131 2. Where preliminary approval by the Planning Commission is necessary,
132 such Geotechnical Evaluation shall be submitted to the Planning
133 Department 30 days prior to submission to the Planning Commission.

134

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

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

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

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

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

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

169 **20.01.040 Waiver of Geotechnical Evaluation**

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

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

177

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

- 183 1. A legal description of the property;
- 184 2. A copy of any relevant geotechnical data;
- 185 3. A commitment by the owner(s) to maintain the site in such condition and
186 such manner as will prevent harm to the public, to residents of the
187 property, to nearby property, to streets, alleys and drainage facilities;
- 188 4. The application date, type, and number of the permit or approval for which
189 the covenant is required;
- 190 5. Acknowledgement that the owner(s) understand and assume the risk of
191 development and release the City from any claim for losses that are not
192 caused by the City's own negligence;
- 193 6. Indemnification of the City and its officers, employees, contractors, and
194 agents from any claims arising from landslide hazards or failure of the
195 owner(s) to comply with the covenant;
- 196 7. A waiver and release of any right of the owner(s), the owner's heirs,
197 successors and assigns to assert any claim against the City and its
198 officers, employees, contractors and agents by reason of or arising out of
199 issuance of the permit or approval by the City for the development on the
200 property, or arising out of any inspection, statement, assurance, delay, act
201 or omission by or on behalf of the City related to the permit or approval or
202 the work done thereunder, and agreeing to defend and indemnify the City
203 and its officers, employees, contractors and agents for any liability, claim
204 or demand arising out of any of the foregoing or out of work done or
205 omitted by or for the owner(s), except in each case only for such losses,
206 claims or demands that directly result from the sole negligence of the City;
207 and
- 208 8. By way of the land-use covenant, inform future purchasers and other
209 successors and assignees of the risks and of the advisability of obtaining
210 insurance in addition to standard homeowner's insurance to specifically
211 cover the risks posed by development in a Restricted Landslide Area,
212 including risk of damage from loss of use, personal injury and death
213 resulting from soil and water movement.

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

219 5. **EFFECTIVE DATE.** This ordinance shall become effective the day after the date of its
220 passage.

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222 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka,
223 Alaska this 27th day of June, 2017.

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Matthew Hunter, Mayor

228 ATTEST:

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230

231 Sara Peterson, CMC

232 Municipal Clerk

233

234 1st reading 6/13/17

235 2nd reading 6/27/17