CITY OF JOHN DAY

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Permit for Development within the Geological Hazard Overlay
(Type III) GH-21-01

STAFF REPORT

Date Submitted: May 13th, 2021

Agenda Date Requested: May 20th, 2021

To: John Day Planning Commission

From: Daisy Goebel
Associate City Planner

Subject: Geohazard Development (Type III Quasi-Judicial)

Location: 124 SE Elm St. John Day, OR
Map: 13S31E26BA Tax Lot: 10800

Type of Action Requested:

[ ]	**Resolution**	[ ]	**Ordinance**
[X]	**Formal Action**	[ ]	**Report Only**

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1. BACKGROUND

Russel Young, the owner of 124 SE Elm St. in John Day (Map: 13S31E26BA Tax Lot: 10800,) has requested a permit to preform grading and development activities at the subject property which is within the City of John Day Geological Hazard overlay. The scope of the project will include reconstructing the existing rockery walls to stabilize the site, properly compacting the fill, improving the cut slopes, and seeding/mulching the slopes to stabilize the site in preparation for future development of the lot. The property is in the General Commercial (GC) zone. Geological Reconnaissance has been performed at the site and erosion control measures will be utilized throughout the project. Future development of the lot is subject to additional geological hazard assessment. Construction of residential development is subject to the site being re-zoned residential rather than commercial.

2. APPLICABLE CRITERIA

The City of John Day Development Code (the Code) Chapter 5-2.6 governs the procedure for reviewing Development within the Geological Hazard (GH) overlay. The requirements and standards of Chapter 5-2.6 apply in addition to those of the underlying zone. The purpose of the GH overlay zone is to promote the public safety and welfare by preventing certain types of development in those areas which natural hazards of other factors pose threats to human occupancy safety. All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in Chapter 5-4 of the Code. The procedure "type" assigned to each application governs the decision-making process for that permit or approval.

Development within the GH overlay is only permitted if the work is determined to be reasonably safe from geological hazards. GH permits shall be processed as type III procedures in the same manner as conditional use permits, per Section 5-2.6.050 of the Code. The application shall meet submission requirements in Section 5-2.6.060, and the approval criteria contained in Section 5-4.4.040.

Staff has reviewed the application pursuant to the Code and the requirements for a Geohazard Development Permit. The application was deemed technically complete (ready for review) on April 14th, 2021. The City must make a final decision, including a final city council decision on any appeal, within 120 days, or by August 12, 2021.

3. PUBLIC NOTIFICATION

The City of John Day mailed public hearing notices to the applicant and property owners within 100-feet of the subject site on April 27, 2021. Notice of the hearing was printed in The Blue Mountain Eagle on May 5, 2021.

4. BURDEN OF PROOF

The applicant has the burden of demonstrating that the proposal meets all applicable Code requirements. The applicant is also responsible for complying with building code requirements and applicable state or federal requirements. It is the Planning Commission's responsibility to interpret the Code based on findings of fact.

5. PLANNING COMMISSION CONSIDERATIONS

The Planning Commission's review must focus on the relevant code criteria and follow the public hearing requirements for a Type III procedure under section 5-4.1.040.

6. STAFF RECOMMENDATION

Staff recommends that the Planning Commission make a determination as to whether the proposed work will be reasonably safe from geological hazard based on evidence submitted by the applicant. If the below criteria are met, staff recommends the Planning Commission approve **the request for Geological Hazard Area Development Permit GH-21-01 [with conditions, if applicable].** It is the applicant's responsibility to demonstrate compliance with the conditions of approval.

7. APPROVAL CRITERIA AND FINDINGS

John Day Development Code Section 5-2.6—Geological Hazard (GH) Overlay contains the applicable approval criteria for the GH permit application. The Planning Commission's evaluation of the project must focus on the relevant code criteria under that section and follow the public hearing procedures for Type III (quasi-judicial) review under Section 5-4.1.040.

The applicable code criteria are provided below in *italics* typeface; staff's findings follow each code provision in regular typeface. The findings, which are based on information submitted by the applicant, are preliminary. The plans, exhibits, and narrative submitted by the applicant and used in making the findings are attached to this report and include:

- Application (Exhibit A)
- Site Plan and Grading Details (Exhibit B)
- Geotechnical Site Report- June 4, 2020 (Exhibit C)
- Site Cross Section (Exhibit D)

All of the above documents are hereby incorporated and made part of the public record.

The application and staff report findings may be modified based on factual information entered into the public hearing record before the close of the record. Members of the public who have questions about the proposal or who would like to submit oral or written testimony are encouraged to appear at the public hearing or provide written testimony before the close of the hearing. Testimony should respond directly to the following criteria.

5-2.6.050 Permit for Use or Development

No person shall construct, reconstruct, or install a development, install a mobile home, or divide land in a GH zone unless a permit has been received for the work, except for those uses permitted by 5-2.6.040 of this Chapter.

Finding: The uses permitted outright in section 5-2.6.040 are as follows:

A. *Agricultural use conducted without locating a structure in the zone, except for a boundary fence, and shall be restricted to prevent destruction of vegetation sufficient to cause erosion.*
B. *Industrial or commercial use that does not require a structure other than surfacing at ground level such as for a loading area, parking area, or that requires only temporary structures that will not necessitate ground excavation placement.*
C. *Recreational use that requires no structures, alteration of the natural geology or vegetation removal without immediate replacement.*

The proposed development does not fall into any of the above categories and therefore requires a GH permit, subject to Chapter 5-2.6 and the provisions of the primary zone.

Except for improvement of an existing structure which is less than substantial as determined by a certified building official or the City upon appeal, no permit shall be issued unless the work will be reasonably safe from geological hazard and otherwise comply with this Chapter and this Title, and other applicable regulations. Said permits shall be processed in the same manner as a Conditional Use Permit under this Title and set forth in Chapter 5-4.4 of this Title.

Finding: The necessity for this permit arises from historical development on the property which was unpermitted and judged by a Geotechnical Firm to be insufficient (Exhibit C). Observations from the June 4, 2020 Geotechnical Report determined that while indicators of instability of the retaining wall were not apparent, evidence of erosion on the cut slope was present and insurance of the long-term performance of the retaining wall could not be determined from visual inspection alone. The report noted that the probable outcome of further analysis would be that stability factors would likely be below industry standards. The work covered by this proposed permit would include the removal of the existing wall and un-compacted fill and reconstruction of both following industry standards for construction of the wall and structural fill.

5-2.6.060 Application Requirements for Use

An application for a use or development in a GH overlay zone shall be accompanied by the following:

A. *Site Investigation Report: An application for a use or development in a GH overlay zone requires a site investigation report for the subject area. The site investigation report shall provide information on the site of the development and adjacent land that is likely to be affected by a proposed development. Unless the City determines specific terms are not required, the report shall include the information described in this Section together with appropriate identification of information sources and the date of the information. Before a development permit can be issued, the site investigation report must be approved as part of the development permit approval process. The approved site investigation report shall be referred to in the deed and other documents of sale and shall be recorded with the record of deeds.*

Finding: See Exhibit C: Carlson Geotechnical Field Observation Report- June 4, 2020

B. *Background Data in Report: The site investigation report shall contain the following background information:*
   1. *A general analysis of the local and regional topography and geology including the faults folds, geologic and engineering geologic units and any soil, rock and structural details important to engineering or geologic interpretations and their relative activity.*
   2. *A history of problems on land adjacent to the site, which may be derived from discussions with local residents and officials and the study of old photographs, reports and newspaper files.*
   3. *The extent of the surface soil formation and its relationship to the vegetation of the site, the activity of the land form, and the location of the site.*
   4. *The following ground photographs of the site with information showing the scale and date of the photographs and their relationship to the topographic map and profiles:*
      a. *A view of the general area.*
      b. *The site of the proposed development.*
      c. *Any features which are important to the interpretation of the hazard potential of the site, including all sites of erosion and accretion.*

Finding: See Exhibit C: Carlson Geotechnical Field Observation Report- June 4, 2020

C. *Topography Map: A topography base map of one hundred feet to one inch (100' = 1") scale and with a contour interval of two feet (2") shall be prepared identifying the following features and shall be accompanied by references to the source and date of information used:*
   1. *The position of the lot line.*
   2. *The boundaries of the property*
   3. *Each geological feature classification type.*
   4. *Areas of open ground and the boundaries and species identification of major plan communities.*
   5. *Any springs, streams, marshy areas, standing bodies of water or intermittent waterways.*
   6. *Cut terraces, erosion scarps and areas exhibiting significant surface erosion due to improper drainage and runoff concentration.*
   7. *Geological information, including lithological and structural details important to engineering and geologic interpretation.*

Finding: Exhibit B- Site Diagram includes items 1-7, above. The property boundary shown on the map based on tax lot map dimensions and overlay of the aerial photo from 5-2016 on Google Earth. Approximate areas of cut slopes as they are today, are roughly drawn in on the map. Current fill and rockery areas are not shown, only the proposed re-built rockery walls and proposed compacted fill is shown on the site cross section [Exhibit D].

D. *Subsurface Analysis: If upon initial investigation it appears there are critical areas where the establishment of geologic conditions at depth is required, a subsurface analysis*

obtained by drill holes, well logs and other geophysical techniques shall be conducted by the person responsible for the site investigation report to include the following data, as appropriate:

1. *The lithology and compaction of all subsurface horizons to bedrock.*
2. *The depth, width, slope and bearing of all horizons containing significant amounts of silt and clay*

Finding: The Carlson Geotechnical Report (Exhibit C) notes critical areas where subsurface analysis would be needed to determine the stability of the rockery wall and compaction of fill material. The developer is proposing to remove the rockery wall and un-compacted fill and reconstruct both following industry standards for construction of the rockery wall and structural fill.

E. *Development Proposals: The site investigation report shall include the following information on the proposed development as applicable:*
   1. *Plans and profiles showing the position and height of each structure, paved area and area where cut and fill is required for the construction.*
   2. *The percent and location of the surface of the site which will be covered by impermeable surfaces.*
   3. *A stabilization program for the development describing:*
      a. *How much of the site will be exposed during construction and what measures will be taken to reduce wind erosion and soil movement during construction*
      b. *A revegetation program designed to return open soil areas, both preexisting and newly created, to a stable condition as soon as possible following construction and the period of time during which revegetated areas will receive revegetation maintenance.*

Finding: This proposal only addresses pre-structural development activities. Future structures will need to be approved at a later date, subject to an additional geological hazard development permit. The building shown on the site plan is conceptual. The dimensions of the reference building are 70'x35'. The specific construction requirements will be addressed at the time of future development. The total area of uncompacted fill and rockery wall will be disturbed during development. The fill material will be kept moist for compaction purposes and wind erosion will be minimized with additional watering of disturbed areas as needed. Once construction is completed the site will be seeded and steep slopes will be seeded and mulched. If weather conditions are not ideal for establishment of vegetation the site will be re-seeded in the fall when moister conditions are ideal.

F. *Conclusions in the Site Investigation:*
   1. *The site investigation report shall contain conclusions stating the following:*
      a. *How the intended use of the land is compatible with the conditions.*
      b. *Any existing or potential hazards noted during the investigation.*
   2. *Mitigating recommendations for specific areas of concern shall be included.*
   3. *Conclusions shall be based on data included in the report, and the sources of information and facts shall be specifically referenced*

Finding: The site is currently in an extremely altered condition, the proposed grading and reconstruction of the rockery walls is to stabilize the site. A future single residence will only minimally impact the site, creating no more than 15% impervious surface coverage. Construction of residential development is conditional upon the property being rezoned to allow for residential uses.

The Carlson Geotechnical Report identifies the current hazards of the site including potentially uncompacted fills, unstable cut slopes, and issues with the rockery walls. These hazards are being addressed with the proposed reconstruction of the rockery walls, proper compaction of the fill, and improvements to the cut slopes with seeding and mulching to help stabilize the slopes. No mitigating recommendations were noted in the report. See Carlson Geotechnical Report (Exhibit C) for data, sources, and references.

5-2.6.70 Standards for Building Construction in GH Zone

A. Building construction shall only be approved under conditions that do not adversely affect geologically stability or vegetation. The grading of land and the orientation and design of a building shall avoid creating conditions that will cause erosion or accretion of soil. Where there is some risk of these conditions occurring, a "qualified geological expert" shall certify that the design and control measures will comply with this standard.

Finding: The developer will be following "Best Management Practices" (BPMs) for erosion control measures on the site. General Notes pertaining to erosion control are provided on the site development plans (Exhibit B). Measures will be installed and updated as need based on the site and weather conditions.

B. Construction work shall be scheduled and constructed to avoid erosion and temporary stabilization measures may be needed until permanent installations are accomplished.

Finding: The general schedule for the site development is to first do the bulk of the grading, fill compaction, cut slope correction, and rockery wall reconstruction as soon as it is allowed. Once this portion of the construction is completed the site will be seeded and steep slopes will be seeded and mulched. Future construction must be approved subject to the standards of the underlying zone and geological hazard development approval.

8. PLANNING COMMISSION MOTION

After hearing the applicant's presentation and any public testimony, the Planning Commission must allow the applicant an opportunity to rebut any opposing testimony. Then the Commission will close the hearing and deliberate. The following motion is suggested:

"I move to approve the Geological Hazard Development permit GH-21-01 based on the findings and subject to the conditions of approval contained in the staff report."

The staff report may be amended during the course of the hearing.

Respectfully submitted this 13th day of May, 2021

Daisy Goebel

Daisy Goebel, Associate Planner
City of John Day

Attachments:

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