



PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, October 08, 2018 - 7:00 PM
City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

The meeting location is accessible to persons with disabilities. A request for an interpreter for the DEAF AND HARD OF HEARING, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF MINUTES

2.A Approval of the Planning Commission Work Session Meeting Minutes of September 24, 2018

[Draft PC Work Session 9-24-18.pdf](#)

2.B Approval of the Planning Commission Regular Session Meeting Minutes of September 24, 2018

[Draft PC Minutes 9-24-18.pdf](#)

3. CITIZENS/PUBLIC COMMENT

A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

4. ACTION ITEMS

4.A Interpretation of Scope of Approval for Final Order 1 -CUP-17, Authorizing Modifications to the Historic Sylvia Beach Hotel

[File 1-CUP-17 Modifications.pdf](#)

4.B 1-SUB-18 / 2-VAR-18 / 3-GP-18: Fisherman's Wharf Estates Tentative Subdivision.

[File 1-SUB-18 -- 2-VAR-18 -- 3-GP-18.pdf](#)

5. PUBLIC HEARINGS

5.A File 1-GP-18-A (Continued): Appeal of Geologic Permit (File 1-GP-18) West of NW Spring St (Lincoln County Assessor's Tax Map 11-11-05-BC, Tax Lots 1800, 1900 & 1903)

[File 1-GP-18.pdf](#)

6. NEW BUSINESS

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

9. ADJOURNMENT

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
September 24, 2018
6:00 p.m.

Planning Commissioners Present: Lee Hardy, Jim Patrick, Mike Franklin, Jim Hanselman, and Rod Croteau.

Planning Commissioners Present: Bob Berman, and Bill Branigan (*all excused*).

PC Citizens Advisory Committee Members Absent: Dustin Capri (*excused*).

City Staff Present: Community Development Director (CDD) Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:03 p.m.
2. **Unfinished Business.**
3. **New Business.**
- A. **Process for Considering Vacation Rental Dwelling Policy Alternatives Recommended by the Ad-Hoc Work Group.** Tokos noted that the PC was sent the draft code that was given to the Vacation Rental Advisory Committee (AC). He reviewed the legislative process and dates of hearings for the PC and City Council (CC). Croteau thought it was a good timeline. Hanselman questioned if one hour for the PC to come up with a recommendation was enough time. He thought the options on more delicate aspects of the ordinance such as caps and limits could take more time to consider. He suggested more than one work session to consider.

Tokos noted that there were areas where there weren't consensus with the AC. Because of this, there would be alternatives given to the PC for their consideration. Patrick reminded that the work session was to go over what they got from the AC, then the public hearing would be where the PC would make decisions. He thought there might need to be different sections for the hearing. Hanselman said having a sign up by topic would help give people testimony. Croteau liked the idea to put consensus items first for the hearing. Patrick thought it was great to get testimony on all aspects and would use the testimony as a resource. Tokos noted that the public would be testifying on things they cared about. He thought they could ask the public to speak on the alternatives and what they liked. Hanselman thought they should identify the things that were most contentious, and distribute them over two meetings. Tokos said the work session meeting was where the PC would decide if the draft was ready for consideration. If there was additional consideration needed, it should be done before the hearings. Croteau said they wouldn't know until they saw the draft. Hanselman thought that if the AC needed to do another meeting, it may extend the timeframe as well. Tokos said he framed it to the AC that their major work was to develop policy options and the code would be simply gelling it together. He said they wouldn't be nitpicking things, they would be reviewing to make sure anything wasn't missing. Tokos said to keep in mind that now wasn't the time to talk about the details of the decision. The PC would come up with recommendations to the CC by whittling things down a little bit more. Until they decided on the alternatives, they wouldn't know what the roll out plan would be.

Tokos explained the process for going to recommendation to the CC. Hanselman noted the areas where there were many things that came into play to make the decisions. A discussion ensued regarding implementation options.

Croteau asked if the CC could set a cap as part of an initial process. Tokos said the question would be if there was a cap that was put in place but the CC and we got more VRDs in afterwards, what would we do with those when we were over the cap. Croteau asked if the CC could effectively put the brakes on the process until they had it figured out. Tokos said there was different ways to do this by it depended on what piece the PC ended up recommending. Staff would work with the CC on what steps needed to be taken based on the recommended package.

Tokos said there would be a work session on October 8th to take a look at what the AC was forwarding and decide if good for the legislative process. He said he didn't think the CC would do a lot with it because of the dynamic of a new CC. Patrick suggested having time limits for public testimony. Tokos said he didn't see people coming out of the woodwork to testify that weren't already a part of the process. Croteau reminded the PC that people had been giving testimony all along the way.

- B. Updated Tentative Planning Commission Work Program.** Tokos reviewed the updated work program with the PC. He noted the joint meeting with the CC on November 12, 2018 to review the Park System Master Plan preferred alternatives.
- C. Resignation of Karmen Vanderbeck.** Tokos noted that the PC hadn't had a chance to talk about Vanderbeck's resignation. She sent a letter that noted that she wanted to spend her time on other city committees. Tokos asked if the PC wanted to get someone to replace her seat on the advisory committee. Croteau liked the idea of an advisory committee. With all the other committees, he felt the more input they got the better off they were. It gave more legitimacy of the PC for being inclusive with the public. Hanselman thought having more ideas brought to the table, and fresh eyes and voices was a good idea. Tokos thought as the committees got pulled together for projects the PC should make a more concerted effort to have these advisory committee members consider the PC Advisory Committee. Hanselman agreed and said it gave them a greater role to make them feel they were a trusted part of the Commission.
- Hardy asked if they would advertise . Tokos said yes and would sending the advertisement to the PC to pass it on. Croteau thought there had been enough happening in the community the last year that it was important and there was a lot of interest. Tokos to advertise the vacancies.
- 4. Director's Comments.** Tokos asked how many PC members would be attending the LCSD meeting on October 1st. Hanselman was considering going. Croteau asked if there were issues the PC needed to consider he would go. Tokos said it was only to show off their new facility.
- 5. Adjournment.** Having no further discussion, the meeting adjourned at 6:41 p.m.

Respectfully submitted,

Sherrri Marineau,
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
September 24, 2018

Planning Commissioners Present: Lee Hardy, Jim Patrick, Mike Franklin, Jim Hanselman, and Rod Croteau.

Planning Commissioners Present: Bob Berman, and Bill Branigan (*all excused*).

City Staff Present: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order & Roll Call.** Commissioner Branigan called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners Hardy, Berman, Franklin, and Branigan were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission work session meeting minutes of September 10, 2018.

MOTION was made by Commissioner Franklin, seconded by Commissioner Hardy to approve the Planning Commission work session meeting minutes of September 10, 2018 as presented. The motion carried unanimously in a voice vote.

B. Approval of the Planning Commission regular session meeting minutes of September 10, 2018.

MOTION was made by Commissioner Franklin, seconded by Commissioner Hardy to approve the Planning Commission regular session meeting minutes of September 10, 2018 as presented. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** No public comments.

4. **Action Items.** No Action Items.

5. **Unfinished Business.** No Unfinished Business.

6. **Public Notices.** At 7:02 p.m. Chair Patrick opened the public hearing portion of the meeting.

A. **File No. 3-Z-18.**

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Franklin noted a potential conflict of interest. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard. Patrick gave a statement for public testimony and criteria for continuation of public hearing.

Tokos reviewed his staff report and noted the letter from Pacific Seafood that was distributed to the PC in advance of the hearing. He said that he discussed with the applicant the idea of putting in clarification language in respect to vacation rentals and Bed and Breakfast facilities to clarify that a non-transient hotel/motel use was not multi-family. Multi-family was different because they were permitted in R-3 and R-4 zones but not in a commercial zone. He said the code was clear and there was no reference for multi-family being permissible other than over retail in the C-1, C-2 and C-3 zones.

Patrick asked if it would be a change in use to change from a hotel to a hotel non-transient. Tokos said yes. Hardy asked since it would become non-transient, did landlord tenant legislation pertain. Tokos said he wasn't familiar with landlord tenant laws and couldn't answer. Hardy said if they were using it for non-transient residency and not calling it multi-family, the purpose of the landlord tenant laws was to protect the tenant and the landlord. She thought this should be addressed to make sure the rights were passed on to the non-transient individual staying in such a facility.

Tokos said this was not something that was typically dealt with as part of a land use context and not enforced by the city. Hardy thought it would be worth asking the applicant to clarify this.

Hanselman asked if the non-transient hotels that had 50 percent or more rooms that could be offered for longer stays would be prohibited to rent the 50 percent out from short term stays. Tokos said a portion of it could be used this way. He said that if anyone was looking to build a non-transient hotel, the city would be looking for cooking facilities to be built in to have these amenities available for extended stay. Hanselman said Pacific Seafood would need extended stay five to seven months per year which meant these establishments would not have demand for their rental units for the other months. Tokos said Pacific Seafood would speak to this specifically. He noted the land use parameters were general to cover both.

Proponents: Michael Robinson, Attorney, addressed the PC and introduced Mike MiLiucci, who was present to speak for the applicant. MiLiucci addressed the PC and explained the issues Pacific Seafoods had finding workforce housing. There was a need to house 180 staff members longer than 30 days but they were at a cross roads on how to house their workforce. MiLiucci said they were asking for the text amendment to allow for workforce housing. He said they were open to other solutions if the City had any ideas. MiLiucci said to answer Hardy and Hanselman's questions, Pacific Seafood was still exploring how to do this model and noted they were also looking at nonprofits managing.

Robinson said that Tokos suggestion to add a statement to say that these units were not multi-family dwellings wasn't necessary to add because the code distinguished between multi-family and residential. He said that they agreed to the changes that Tokos made on the text amendments made after the PC work session. Robinson said the text amendment they submitted addressed all standards. He noted the Department of Land Use Conservation hadn't commented and thought this said they didn't have concerns. Robinson felt there was sufficient legal basis to find the criteria had been met and recommended that the text amendment be adopted. He said there may be other solutions for affordable housing but they were comfortable with the text amendments.

Opponents: None heard.

Hearing closed at 7:29 p.m.

Hardy said there had been a seasonal housing shortage for decades and this was nothing new. Affordability was a term that had a lot of ramification and noted there was a lot of rent gouging happening. She didn't have a problem with a concept of employer provided housing. Structuring the agreement and the enforcement of the agreements was something she would be curious about. She thought having them managed by a nonprofit would be a good idea. Croteau said the housing shortage for seasonal workers would continue and he was in favor. Franklin thought this would free up hotels for tourists. Hanselman said the applicants had touched on a few points that were valuable and the PC had spent a lot of time trying to bring more housing to the community. He was supportive but said there were more than just fish processors that needed housing. He hoped that the applicant could reach out to other industries to find a solution. Patrick agreed and thought it was a good idea. He liked realigning the percentage figures for hotels and motels so they were both the same. He had no objections to doing a non-transient hotel/motel and said it covered his concerns about when a change in use occurred they would have bring things up to current standards. He felt as long as that was done, this was a useful solution.

MOTION was made by Commissioner Croteau, seconded by Commissioner Hardy to approve File 3-Z-18: Zoning Text Amendments to NMC 14.01.020 and 14.03.060 Related to Extended Stay Motels. The motion carried unanimously in a voice vote.

B. File No. 1-SUB-18/2-VAR-18/3-GP-18.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Franklin and Patrick noted drive-bys and site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard. Patrick gave a statement for public testimony and criteria for continuation of public hearing.

Tokos gave a staff report and noted the additional information that had submitted to the PC for review.

Proponents: Joe Kunkel, addressed the PC and introduced Matt Brown. He noted that at the last meeting the focus was on the wall sign and thought it didn't seem unusual. Brown addressed the PC and handed out a document to give

the PC an idea of scale and placement of signs. He noted the height of the sign on the building and the visibility of the signs from Highway 101. Brown noted that Pages 7-10 were photo images to represent how the signs would look on the building.

Franklin thought their diagram was wrong on Page 6 that illustrated where the signage was from Highway 101. Brown said he was correct and the area of the building was to the south but noted the principle still applied for visibility. He said the photo images were the best way to see what the visibility would look like. Hanselman asked if it was illuminated. Brown confirmed that it was internally illuminated. He noted that the current sign on the Sam Fit building in Newport had letters that were 60 inches tall. What they were proposing for the hospital was text that was 42 inches tall. Brown covered the examples of projects that were similar in scale.

Brown reviewed the quantity of signs for the street frontage and noted the four signs shown on the handout given to the PC. Their intent was to have the campus as simple to navigate as possible. Franklin asked about Page 28 for an explanation of readability for a letter height of 30 inches. Brown said the intent behind it was to show in ideal conditions what size letters were needed at a minimum to be visible. Franklin said it was noted for “maximum impact” and asked if there would be less impact if they went to a larger letter. Brown said it would be more impact. Patrick asked how many square feet the sign was. Tokos said it was just under 300 square feet. Hanselman asked what the elevation of the bottom of the sign was. Kunkel said 36 feet. Franklin asked if the copy said they recommended the text to be between 10 inches and 300 inches, why would they need a sign that was 42 inches. Brown said it wasn't on direct view and was a distance that under normal circumstances you wouldn't view from the highway. Franklin didn't think spelling out the hospital name was necessary. Kunkel noted that the Sam Fit sign was on a smaller building and visitors didn't always know there was a hospital in Newport.

Patrick said he didn't see how the applicant was faced with something beyond their control. Kunkel said if the sign was put below the threshold it wouldn't serve the purpose and it seemed natural to do a variance. Patrick didn't think they had met the criteria. He thought it was a practical argument to have the sign where it was needed, but not the size. Tokos said that on Page 28 it talked about maximum readable distance and maximum readable distance for impact. He asked if 30 inches would work because of the table. Kunkel said they would have to take it back to the client to consider. Tokos said the PC could continue the hearing, approve it with an alternate height, or deny it.

Hanselman asked if the applicant would do some mock ups of a shorter name and smaller letters to get an idea of the balance of the sign on the building face. He asked for mock ups of different sizes. Franklin said this could be a waste of their time and if they took it to a text that was 30 inches high, the PC could approve. Tokos said they could approve saying the wall sign could not exceed 30 inches in height. Croteau wasn't opposed to what was presented. Hardy liked it as it was.

MOTION was made by Commissioner Croteau, seconded by Commissioner Hardy to approve File No. 1-SUB-18/2-VAR-18/3-GP-18 Sign Variance for Pacific Communities Health District as written. Patrick and Franklin were a nay. The motion carried with a majority vote.

C. File No. 1-GP-18-A.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Hardy, Croteau, Franklin, Patrick and Hanselman report site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard. Patrick gave a statement for public testimony and criteria for continuation of public hearing.

Tokos reviewed the staff report and noted the documents handed out to the PC that were submitted after the packets were posted.

Proponents: Bill Lund addressed the PC. He gave an overview of his history at the coast, purchase of the property, and his geological report. He noted that the County had reported that there was a 60 foot road parallel to Spring Street that was never confirmed. After working with the County they put together a site plan with a solution for building. After the County and City worked out an easement for a safe walking path, instead of the one across his property, Lund had agreed to give a portion of his property up to create a safe walking path. Lund noted that K&A Engineering were the geologists and K&D Engineering was a different firm. He stated that the two geologists were present for questions. Croteau asked if the county road was not in the title. Lund said no and the County hadn't determined that

the road did exist. He noted when it came time to build his home on the site, it would sit low and wouldn't be an obstruction.

Michael Rembolt, K&A Engineering, and Gary Sandstrom, K&D Engineering, addressed the PC. Rembolt explained the difference between a geotechnical engineer and civil engineering geologist. Rembolt said he was in support of the application. He noted the last report done was in 1991 by Hurbert Schlicker. He felt it was the best report on the site and agreed with Schlicker's findings. Rembolt noted the condition of the soil and the recommendations for the build. He said Lund would have to do more borings, but from a geotechnical standpoint they felt the site could be built on safely.

Hardy asked what happened to mudstone when you introduced a water channel to it. Rembolt said in this case the mudstone was hard and tough but could be penetrated. It would take a lot of energy to fracture. Croteau asked what the material was on top of the mudstone. Rembolt said this was the marine terrace and more like a lightly cemented sand. It can be porous and fragile. In this case there was a hazard and why they recommend the system of foundation. Franklin asked what portion of the property was most at risk or unstable. Rembolt said the portion right off of Spring St was the most hazardous. Franklin asked who would design the retaining wall. Rembolt said a civil engineer would do this but his firm would be a part of it. Hanselman noted that there had been fill placed on the property that had been compacted and would be removed. He was concerned that in the rainy season there would be more water traversing down the property and asked if that would affect the mudstone. Rembolt said part of the equation was understanding what they were dealing with. Controlling draining was important and a trench drain system would be utilized so it didn't cause problems for the house. It would be spread out so it wasn't concentrated. Hanselman asked if the review was done over a period of months. Rembolt said no and the evidence spoke to it not being a landslide zone.

Patrick asked about the objections raised to the slope and wanted clarification on what was referenced. Rembolt said that they found that it varied in slopes and when geologist's map they measure the dip angle. Sandstrom explained they were talking about the bedding plain, which was at an angle, and the shape of the slope or contact. The contact was rather flat and went up a little because of the waves eroding it and was why there were two different angles. Rembolt said that the bedding plain was the 15 degree angle. Franklin asked if the existing stone that had not slipped from Spring Street up the hill was at the 15 degrees. Sandstrom said he would assume it was the same. There was potential above Spring Street for sliding and noted areas that was sloped and degraded. Franklin asked how much risk they would be putting on the land when they cut in the slope before the engineered retaining wall went in. Sandstrom said there was already a cut put in for the road bed but felt it would support part of the geo tech they wanted to perform to prevent it from happening.

Patrick asked about their comments to do more tests for the houses. Rembolt said the first idea to put the houses was what the plan was for. The road right-of-way forced a move of the duplex to the west. Given the nature of the site, they thought it would be prudent to do more boring to confirm the mudstone contact where the houses were and give good design criteria on how deep they would have to go there. Rembolt noted there would be more work to be done on the building permits with the City as well.

Opponents: Chris Schneller addressed the PC. She read the letter she submitted to the PC for the record and asked that Ruth Wilmoth, who did the peer review, speak to some of the technical.

Ruth Wilmoth, Columbia Geotechnical, addressed the PC. Patrick asked her what the major objections were to the applicant's geological report. Wilmoth said the lack of data that showed that the ground was not currently moving. She said she couldn't see how the slope was moving without a monitor in place to look for movement. Wilmoth felt there needed to be in ground monitoring over a period of a year.

Mona Linstromberg addressed the PC and noted the work that the applicant had already done to the property. She asked the PC to consider what had happened at the Jump Off Joe location. She felt the property in question was in an active slide area and thought K&A had failed to meet the requirements of NMC 14.21. Linstromberg said the application must be denied. Since the notice was not correct, she requested the public hearing be continued to the October 8th PC meeting. If the PC didn't recommend a continuance, she requested the record be held open for one week.

Susan Cooper addressed the PC. She stated she wanted to see a new trail, wanted to see that the height of what would be built didn't impede the residents behind, and to keep things natural.

Betty Rufus addressed the PC and stated that she bought her house with the knowledge that there was beach access. She noted that vacation rentals in the area were advertising that there was beach access and hoped that the access would continue.

Ann Sigleo addressed the PC. She was concerned about the stability of the slopes in the area and failed to understand how the area could be stable. She submitted photos to the PC of the area for the record.

Grover Blackburn addressed the PC. He said he owned a lot close to Mr. Lund's property and had geological records that went back to the 1970's. Blackburn said there had been a report done in 2015 that said there had been minimum movement on this lot. He noted he would planned to build on his lot in the coming year. Blackburn said he built a house for someone 200 feet from Jump Off Joes and there hadn't been any record of movement. He said they had a geological report submitted for this build. It was done without borings and was a shallow foundation that hadn't had any problems. Blackburn said that his geological report stated it was okay to build on a shallow foundation on his lot as well. He said you could always find someone with another opinion. Whether there was ground movement or not, there were ways to maximize for safety. He was in favor of Lund's permit.

Conrad Willett addressed the PC. He was concerned for Spring Street is integrity when cutting a driveway and for having beach access.

Lisa Lund addressed the PC. She stated the property had been private property all these years. They had asked the person that owned it previously what would happen for liability if someone was hurt on the path. She said she was hearing from the public that they were losing public access but it had never been public access. The Lunds would be giving up a part of their land for the public to gain beach access. She said it wasn't fair to assume the public had access to the beach on private property.

Rob Earle addressed the PC. They have owned the property across from where the development would be. He had watched the erosion over the years and felt what the applicant would be doing would compromise the street. Earle felt the public should be able to use the old Jump Off Joe as their entrance.

Ruth Wilmoth addressed the PC again and said she wasn't for or against the application. She said it was complicated to understand what was happening without data. She explained how the surface was currently and how they didn't understand the slide plain and if it was feasible to do it. Wilmoth was concerned that she didn't even know if the boring would get down deep enough below where they needed to be. She thought the ground water, sliding, and mitigation were where they needed more data. Hanselman said that the City didn't establish what needed to come across on a geological study. He asked if geological surveys should have requirements place to asked for the reports to include a 6-9 month study to give proof of no movement. Wilmoth said it was customary of other jurisdictions to do monitoring.

Gail Willett addressed the PC. She noted that past plat maps showed a historic neighborhood beach access and asked to have that considered. She said she was also concerned about what would happen to Spring Street.

Kyle Luther addressed the PC. Was concerned about who would take responsibility if they developed the property and something happened to it. He asked if the geologist would take responsibility monetarily. Luther agreed that just because people used the path didn't mean it was the public's. He noted that Spring Street was a crowded street with vacation rentals. He was concerned about traffic on Spring Street and what the development meant to traffic.

Rebuttal: Bill Lund and Rembolt addressed the PC. Lund said that living at the coast was a risk. This was why they hired professional engineers that assume liability and could back up their reports. He noted that when they put in the road to do the geological report, the embankment hadn't changed since the road had been moved and he didn't see a lot of movement there. Lund noted he had done the erosion control that the city requested. He took photos over a period of time and didn't see any erosion. Lund noted the springs around the property didn't have much difference over the period of a given time. He noted that Spring Street had only 25 feet of asphalt and didn't fall on his property. Lund reiterated that he would be putting in a safe walking path for anyone in the area. The house he would be building wouldn't impede any other houses.

Rembolt addressed the PC. He said the Jump Off Joe slide was a classic case of sliding on mudstone. He noted that where Lund would be building had a terrace of mudstone that was mostly gone and wasn't the same conditions. Rembolt said the geology in the area was fairly simple and they probed down to the depth where they would have to

have enough information to do their slope stability analysis. They made an intelligent estimate of how far to go and didn't find any issues. Rembolt explained the monitoring that had been discussed were good for deep seeded failures. In this case there wasn't enough overburden that would initiate much of a movement in the slope. The movement on Lund's property was mostly surface movement. He felt the embankment along Spring St in its existing condition, without any help from Lund, didn't have the greatest stability. He felt in terms of utilities and street integrity, it was important to look at it and make sure this development didn't encroach on the street.

MOTION was made by Commissioner Franklin, seconded by Commissioner Hardy, to continue the public hearing for File 1-GP-18-A: Appeal of Geologic Permit (File 1-GP-18) to the October 8, 2018 Planning Commission meeting to allow an opportunity for those who didn't have a chance to give testimony as a result of the newspaper notice. The motion carried unanimously in a voice vote.

Hanselman asked about a similar situation on 46th Street and Cherokee where the homeowner was building a home and had shut off a historical beach access. He asked if the outcome to require the homeowner to provide access was based on a State law. Tokos didn't recall but said there was a separate proceeding the County initiated after finding the old Jump Off Joe right-of-way and it was a street vacation. Tokos said there was a statute that said that when vacating a right-of-way for beach access, they had to provide a replacement for the access. Lund is open to providing a replacement beach access. There had been a vacation proposal initiated by the County and the process would be moving forward on their own accord.

Croteau noted the Park System Master Plan designated beach access at that point. Tokos said the existing Comprehensive Plan designated beach access at that right-of-way location.

7. **New Business.** None were heard.

8. **Unfinished Business.** Tokos said the South Beach Urban Renewal Plan amendment was approved by the City Council and was now final.

9. **Director Comments.** None were heard.


10. **Adjournment.** Having no further business, the meeting adjourned at 8:42 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant

Memorandum

To: Planning Commission

From: Derrick I. Tokos, AICP, Community Development Director 

Date: October 4, 2018

Re: Interpretation of Scope of Approval for Final Order 1-CUP-17, Authorizing Modifications to the Historic Sylvia Beach Hotel

Luckini Construction, in a letter dated October 4, 2018, requests the Planning Commission find that the replacement of 7 additional windows is within the scope of the Commission's original approval. That approval was granted in April of 2017, with Final Order 1-CUP-17, permitting the replacement of decks and 5 windows. The approval required the replacement windows be the same size and style of the windows that were being replaced. The 7 additional windows adhere to those parameters.

If the Planning Commission believes that this change is within the scope of the original approval then staff will provide notice of that determination, with an opportunity to appeal, to surrounding property owners. On the other hand, if the Commission believes that the request is beyond what it can reasonably construe as being covered by the original approval, then Luckini Construction will need to submit a new conditional use application for Planning Commission consideration at a duly noticed public hearing.

The permit referenced in the Luckini letter is a building permit application to cover the additional work, and is not pertinent to the Commission's determination as to whether or not the additional improvements are in line with its 2017 decision that the historic integrity of the structure is being maintained.

There is reference on the building permit application to the replacement of 4 man doors. If they open to the exterior, then it would be relevant for the Commission to consider them as well.

Attachments

- Letter from Luckini Construction, dated 10/4/18
- Final Order and Findings for Case No. 1-CUP-17
- Architectural rendering of the Sylvia Beach Hotel (Attachment A-4, File 1-CUP-17)

LUCKINI CONSTRUCTION INC.

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Newport, OR 97365
541-272-1027 Office
541-272-7667 Cell
CCB # 200815

City of Newport
Community Development Dept.
169 SW Coast Highway
Newport, OR 97365

October 4, 2018

RE: Sylvia Beach Hotel
267 NW Cliff Street
Newport, OR 97365

In April of 2017 we proposed to remove and install 5 windows and the West facing decks on the Sylvia Beach Hotel. These items were approved on April 14, 2017 by the Historical Review Board. Since that date, the decks have been removed and rebuilt per code and inspections were approved. However, the original proposal for the windows were set back to October 1, 2018 due to inclement weather and customer's request for 'slow season' scheduling.

The new windows have been ordered to replicate the old-style windows to stay in the same original historical theme, though they have been upgraded for coastal conditions. Luckini Construction Inc. employees are also matching each windows' interior and exterior window casing and trim to match the original historical look and design.

I would like to ask for approval to install 12 windows instead of the original 5. Customer requested an additional 7 windows to be installed due to age and failure to keep the weather out.

I understand we have exceeded the original C.U.P. and understand that by proceeding with work this week of October 1st, 2018 before historical review, I am proceeding at my own risk before approval from the historical review board members.

We have started the replacement of the windows. At that time, I was unaware that there needed to be permits on a window replacement for this type of job. We have now filled out a permit for this project.

Please accept my apologies for not pulling a permit and getting approval in a timely fashion prior to work commencing. I ask for your approval on the permit so we can complete this job for our customer. We want to keep this historical building historical, and will do our best to keep it that way.

Thank you for your time.

Justin Luckini
Luckini Construction Inc.

(comdevsylviabch10.4.18)



CITY OF NEWPORT
 Community Development Dept.
 169 SW Coast Hwy
 Newport, OR 97365
 (541) 574-0629
 (541) 574-0644 Fax
 INSP: BuildingPermits.Oregon.gov
 or phone: 1-888-299-2821

Office Use Only **13**
 Permit #:

COMMERCIAL BUILDING PERMIT APPLICATION

Applications may be obtained online at:
www.newportoregon.gov/business/formsAppsPermits.asp

1. Job Information (where work is taking place)
 Job Site Address: 267 NW Cliff St. Newport

2. Owner's Name: Sally Ford
 Full Mailing Address: 267 NW Cliff St.
 City/State/Zip: Newport, OR 97365
 Phone #: 503-781-4266 Email: Sallymforde@yahoo.com

3. Applicant/Architect/Engineer (person responsible for plans)
 Mark if same as owner Mark if same as contractor

Name of Person: _____
 Full Mailing Address: _____
 City/State/Zip: _____
 Phone #: _____ Email: _____

4. Contractor Information (person/company performing the work)
 Name of Contractor: Luckini Const. inc.
 Full Mailing Address: P.O. Box 2313
 City/State/Zip: Newport, OR 97365
 Phone #: 541-272-7667 Email: LuckiniConstruction@gmail.com
 OR CCB # (Req'd): 200815
 City Business License # (Req'd): _____

5. Contact Person (receives building permit correspondence)
 same as: owner contractor applicant

Name of Contact: _____
 Full Mailing Address: _____
 City/State/Zip: _____
 Phone #: 272-7667 Email: _____

6. Project Description: Remove + Replace 12 windows and 4 man doors to match existing historical design

CATEGORY OF CONSTRUCTION	
<input checked="" type="checkbox"/> Commercial	<input type="checkbox"/> Multi-Family
TYPE OF WORK	
<input type="checkbox"/> New	<input checked="" type="checkbox"/> Alteration
<input type="checkbox"/> Addition	<input type="checkbox"/> Interior Alteration
<input type="checkbox"/> Accessory Structure	
Is this a Change in Occupancy? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
REQUIRED DATA	
Permit fees are based on the value of the work performed. SEE THE VALUATION CHART (SEPARATE WORKSHEET) TO CALCULATE THE PERMIT FEES.	
<u>28,500</u>	
Type of Construction:	
Occupancy Groups:	
Existing:	
New:	
Number of stories:	Bldg. Height:
Existing Bldg. area, sq. ft.:	
New Bldg. area, sq. ft.:	
Finished sq. ft.:	
Unfinished sq. ft.:	
NOTICE	
ASSOCIATED PERMITS: All commercial building permits that will require associated Plumbing, Mechanical, Electrical, Fire Sprinkler, Fire Alarm, and/or Fire Line permits are applied for separately.	
EXPIRATION OF APPLICATION: This application expires if a permit is not obtained within 180 days after it has been accepted as complete, and a permit becomes null & void if the authorized work is suspended for a period of 180 days at any time after work is commenced.	

I hereby certify that I have read & examined this application & know the same to be true & correct. All provisions of laws & ordinances governing this type of work will be complied with whether specified herein or not.

Copyright Release: I hereby grant permission to the City of Newport to replicate, scan and post to the internet, in whole or part, drawings and all other materials submitted by me, my agents, or representatives. This grant of permission extends to all copies needed for administration of the City's regulatory, administrative, and legal functions, including sharing of information with other governmental entities and members of the general public.

By attaching my signature below, I certify herein that I have read, understood, and confirm all the statements listed above & throughout the application form.

I agree ✓ Authorized Signature: [Signature]
 Print Name: Justin Luckini

Date: 10-4-18

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION)
FILE #1-CUP-17, APPLICATION FOR A)
CONDITIONAL USE PERMIT AS SUBMITTED BY) FINAL
LUCKINI CONSTRUCTION (SALLY FORD, MATEAM) ORDER
PARTNERSHIP, PROPERTY OWNER))**

ORDER APPROVING A CONDITIONAL USE PERMIT per Chapter 14.23 of the Newport Municipal Code relating to historic buildings and sites. The project includes the removal and replacement of four (4) west facing windows, one (1) north facing window and the north and west facing decks. The new windows will be the same size as the existing windows and the reconstructed decks will cover the same area as the existing decks. The subject property is located at 267 NW Cliff Street (Tax Lot 12200 of Lincoln County Assessor’s Map 11-11-08-BB (portion of Lot 3, Block 5, Nye and Thompson Addition to Newport).

WHEREAS:

- 1) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance; and
- 2) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on April 24, 2017.
- 3) At the public hearing on said application, the Planning Commission received testimony and evidence; and
- 4) At the conclusion of said public hearing, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.


THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit “A”) support the approval of the requested conditional use permit with the following condition(s):

- 1) Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to the Staff Report. No work shall occur under this permit other

than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.

BASED UPON THE ABOVE, The Planning Commission determines that the request for a Conditional Use Permit to remodel the exterior of the historic Sylvia Beach Hotel is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport, and the request is therefore granted.

Accepted and approved this 24th day of April, 2017.


James Patrick, Chair
Newport Planning Commission

Attest:



Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 1-CUP-17

FINDINGS OF FACT

1. Justin Luckini, Luckini Construction (Sally Ford, Mateam Partnership, owner), submitted an application on April 3, 2017, for approval of a Conditional Use Permit, per Chapter 14.23 of the Newport Municipal Code relating to historic buildings and sites. The project includes the removal and replacement of four (4) west facing windows, one (1) north facing window and the north and west facing decks. The new windows will be the same size as the existing windows and the reconstructed decks will cover the same area as the existing decks.

2. The subject property is located at 267 NW Cliff Street (Tax Lot 12200 of Lincoln County Assessor's Map 11-11-08-BB (portion of Lot 3, Block 5, Nye and Thompson Addition to Newport). The property is 0.13 acres in size.

3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: Commercial.

 - b. Zone Designation: C-2/"Tourist-Commercial".

 - c. Surrounding Land Uses: The Newport Visual Arts Center and Nye Beach Turnaround are to the north, tourist commercial businesses are to the east, and a mix of tourist commercial businesses and residential is to the south.

 - d. Topography and Vegetation: The hotel is constructed on a bluff overlooking the Pacific Ocean. The ground slopes moderately to the west. Vegetation is sparse, namely grasses.

 - e. Existing Structures: Sylvia Beach Hotel, previously known as the New Cliff House, constructed in 1913.

 - f. Utilities: All are available to the site.

 - g. Development Constraints: None known.

 - h. Past Land Use Actions: None known.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on April 3, 2017, to affected property owners required to receive such notice by the Newport Zoning Ordinance, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., April 24, 2017, or be submitted in person at the hearing. The notice was also published in the Newport News-Times on April 14, 2017. No comments were received regarding the application.

5. A public hearing was held on April 24, 2017. At the hearing, the Planning Commission received the staff report and heard testimony from the applicant and others in attendance who chose to comment on the proposal. Minutes from the April 24, 2017 hearing are hereby incorporated by reference. The Planning Staff Report with Attachments is also incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

- Attachment "A" – Application form
- Attachment "A-1" – Applicant's narrative
- Attachment "A-2" – Photographs of existing hotel
- Attachment "A-3" – Architectural rendering of the hotel (version 1)
- Attachment "A-4" – Architectural rendering of the hotel (version 2)
- Attachment "A-5" – Detail drawings by Cascade Design Group, dated March 2017
- Attachment "B" – Zoning Map of the Area
- Attachment "C" – History Element of the Comprehensive Plan
- Attachment "D" – Notice of Public Hearing

6. Newport Municipal Code (NMC) Chapter 14.23 sets out measures to protect historically significant buildings and structures within the City of Newport. Buildings and structures deemed to be historically significant resources are those inventoried in the History Element of the Newport Comprehensive Plan. The Sylvia Beach Hotel is such a resource. The applicant is planning to replace windows and exterior decks on the north and west facing elevations of the hotel (Attachment "A-1"). As part of the application, they submitted photographs of the hotel, architectural renderings showing what the building will look like after the work is completed, and detail drawings of the proposed changes (Attachments "A-2" to "A-5").

7. Section 14.23.030 notes that a public hearing before the Planning Commission is required before a structural change is made to the exterior of an historically significant building or structure. Changes to windows, doors, siding or roofing are specifically called out as structural in nature. The Planning Commission is charged with confirming that the proposed changes will not detract from or destroy historic buildings or the architectural features of a building determined to be of substantial and significant architectural importance (NMC 14.23.040). Policy 4 of the History Element of the Comprehensive Plan further notes that the Commission must (a) determine whether or not the proposed use or alteration is compatible with the historic nature of the structure and (b) whether or not the proposed alteration to the exterior of the structure will maintain its historic value.

8. The applicable criteria for this conditional use request are as follows:

a. **Hearing Required (Section 14.23.030):**

- (i) Any exterior alteration involving structural changes, or changes which would detract or destroy historic architectural features (such as changes in windows, doors, siding, or roofing) shall require a public hearing. Such hearing shall only be required for buildings or structures listed in the Comprehensive Plan as being significant historical resources which should be preserved. Painting of a structure or repair using materials which restore the building to its original character shall

not require a public hearing. Interior alterations shall not require a public hearing unless such changes would be evident on the exterior of the structure.

- (ii) Where such changes would have a negative effect on a significant historical resource, a delay of up to 60 days may be required by the Planning Commission so that alternative solutions may be examined.
- b. **Alterations Prohibited (Section 14.23.040):** No changes shall be made if the Planning Commission determines that such changes would detract from or destroy historic buildings or architectural features of a building determined to be of substantial and significant architectural importance. (See Chapter 2, Physical and Historical Characteristics, of the Comprehensive Plan.)
- c. **Policy 4, Chapter 2, Physical and Historical Characteristics, of the Comprehensive Plan (History Element)**
- (i) The City of Newport shall encourage property owners making alterations to identified historic structures to maintain their historic value. The Planning Commission shall review all proposals for modification or alteration to structures designated in the inventory as having historical significance. In determining whether or not the proposal complies with this policy, the following shall be considered by the Planning Commission in their review:
- Whether or not the proposed use or alteration is compatible with the historic nature of the structure.
 - Whether or not the proposed alteration to the exterior of the structure will maintain its historic value.

CONCLUSIONS

Regarding the applicable criteria for the conditional use request, the following conclusions can be made:

A. *Is the building or structure in question listed in the Comprehensive Plan as being an historically significant resource which should be preserved and, if so, is the work proposed by the applicant an exterior alteration that is structural in nature thus necessitating a public hearing (NMC 14.23.030).*

1. The structure is identified in the Comprehensive Plan as being historically significant. It is referenced as the New Cliff House (Site #13). The inventory notes that the hotel was constructed in 1913, is the last of the turn-of-the-century oceanfront resort hotels in Newport still standing, and has been completely restored as the current Sylvia Beach Hotel. The hotel is also featured on the cover of the design guidelines for the Historic Nye Beach Design Review District.

2. This project includes replacement of five (5) windows and decks on the north and west elevations of the building. These are the types of exterior alterations that could impact the architectural character of the building and are specifically called out as being structural in nature.
 3. Considering the above, the Planning Commission concludes that the Sylvia Beach Hotel is included on the City's inventory of historically significant resources and that replacement of the windows and decks in question are structural, necessitating a hearing before the Planning Commission to ensure that the improvements do not compromise the historic character of the building.
- B. *Will the changes proposed by the applicant detract from or destroy historic buildings or architectural features of a building determined to be of substantial and significant architectural importance? In making this determination, the Commission must establish that:*
- (i) *The proposed use or alteration is compatible with the historic nature of the structure, and*
 - (ii) *The proposed alteration to the exterior of the structure will maintain its historic value (NMC 14.23.040 and Policy 4, Chapter 2, Physical and Historical Characteristics, of the Comprehensive Plan.)*
1. Photographs of the existing hotel, architectural renderings of the planned improvements, and schematic drawings of the deck plans, submitted by the applicant, provide the Commission with a clear picture of the work that is to be performed. The applicant points out that the new windows will be the same size as the existing ones, will have a similar look (at least as close as possible given available products on the market), and will have trim that will be painted to match.
 2. Load bearing portions of the new decks will be constructed of pressure treated framing and outdoor decking materials, and will cover the same footprint as the existing decks. The renderings show that the decks will be painted to match. The appearance of the decks is slightly different than the existing, as there has been a clear effort by the owner and contractor to ensure that the structures compliment the historic features of the building. Railing on the new decks includes pickets, as opposed to the more contemporary mesh sheeting on the existing decks, and brackets supporting the new decks incorporate subtle embellishments.
 3. Given the above, the Planning Commission concludes that the changes to the windows and decks is compatible with the historic nature of the structure and will not detract from its historic value to the community.

OVERALL CONCLUSION

Based on the application material, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate compliance with the criteria for a conditional use permit found in Chapter 14.23 of

the Newport Municipal Code (NMC); and, therefore, the requested conditional use permit to remodel the exterior of the historic Sylvia Beach Hotel is approved with the imposition of the following conditions of approval:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.



Memorandum

To: Newport Planning Commission

From: Derrick Tokos, Community Development Director 

Date: September 17, 2018

Re: Supplemental Staff Report for Fisherman's Wharf Estates (Case File No. 1-SUB-18/2-VAR-18/3-GP-18)

Included with this report is the written testimony submitted during the open record period, along with the applicant's rebuttal and final argument contained in a single letter, dated October 1, 2018. This application is scheduled as an action item on the meeting agenda, as the public hearing is closed and the Planning Commission is at a point where it can deliberate and render a decision.

Testimony received during the open record period was consistent with commentary provided at the September 10, 2018 public hearing where individuals, many of which own property in the adjoining Harbor Crescent Subdivision, expressed concerns that the site development plans were not adequately assessed by the certified engineering geologist with Foundation Engineering. Concerns relate to whether or not structural solutions would be needed to shore up planned cut and fill slopes on the east and west sides of the subdivision, whether or not the full extent of unconsolidated fill would be removed, and a discrepancy between the grading plan and engineering geologist recommendation that unsupported finished grades be at or below a 2:1 slope. Articles were submitted related to the developers past business practices; however, such information is not relevant to the approval criteria and; therefore, cannot be factored into the decision.

The applicant provided a supplemental report from Foundation Engineering, Inc., dated September 13, 2018, confirming that they had reviewed the plans prepared by AKS Engineering and Forestry, and that they believe finish grades at or below a 2:1 slope can be achieved without the need for structural solutions. Additionally, Foundation Engineering concluded that, provided their recommendations are followed, site grading will not increase the risk of slope instability within or adjacent to the property. AKS Engineering and Forestry submitted a corrected grading plan (Sheet C8) to address the discrepancy noted in the public testimony. Lastly, with regard to fill, Foundation Engineering, Inc. provides specific recommendations for the removal and reprocessing of unconsolidated fill material. Conditions of approval contained in the planning staff report for the September 10, 2018 hearing require Foundation Engineering certify that site grading conformed to their recommendations. This is sufficient to address the concerns raised related to the finished slopes and fill.

Staff recommends the Planning Commission approve the subdivision, variance, and geologic permit applications, subject to the 15 conditions listed in the September 10, 2018 staff report with the following revisions:

Conditions No. 1 and No. 5 would require compliance with the September 13, 2018 supplemental report from Foundation Engineering, Inc., in addition to the June 12, 2018 and October 19, 2007 documents.

If the applications are approved, supporting findings will draw from the September 10, 2018 staff report, and would be updated to reference the September 13, 2018 Foundation Engineering, Inc. report and the grading sections that AKS Engineering and Forestry prepared, referenced as Sheet C8.

The following documents were submitted during the open record period and will be included as additional exhibits the Planning Commission decision.

Attachment	Description
E	Letter from William Chadwick, dated 9/16/18
F	Letter from Bernadette Solano, dated 9/17/18
G	Letter from Stan Shell, submitted 9/17/18
H	Letter and photographs from Eric Knutson, submitted 9/17/18
I	Letter from Laura Seager, dated 9/17/18
J	Letter and attached articles from Teresa Atwill, submitted 9/17/18
K	9/17/18 email from Curt Fisher, AKS Engineering and Forestry, with supplemental report from Foundation Engineering, Inc. dated 9/13/18 and grading section drawing sheet C8
L	Applicant's final argument from Curt Fisher and David Karr, PE, PLS dated 10/1/18

As noted in the September 10, 2018 staff report, the Planning Commission must approve the applications if it believes they satisfy the approval criteria or can satisfy them through the imposition of reasonable conditions. The Planning Commission must deny the applications if it believes the criteria have not been satisfied. If one or more of the applications is denied, the Commission must articulate the reasons why it believes the criteria cannot be met.

Additional testimony (dated September 16, 2018) for City of Newport Public Hearing, Planning Commission meeting on Sept 10, 2018, regarding File No. 1-SUB-18 / 2-VAR-18 / 3-GP-18 and requested approval of variances for Tax Lot 400 of Lincoln County Assessor's Tax Map 11-11-09-CB (1005 SE Bay Blvd), also known as the Fisherman's Wharf Estates subdivision.

Submitted by: William Chadwick, 872 SE Crescent Place, Newport, OR, 97365

This is an amendment to my previous testimony on September 10, within the extended open comment period.

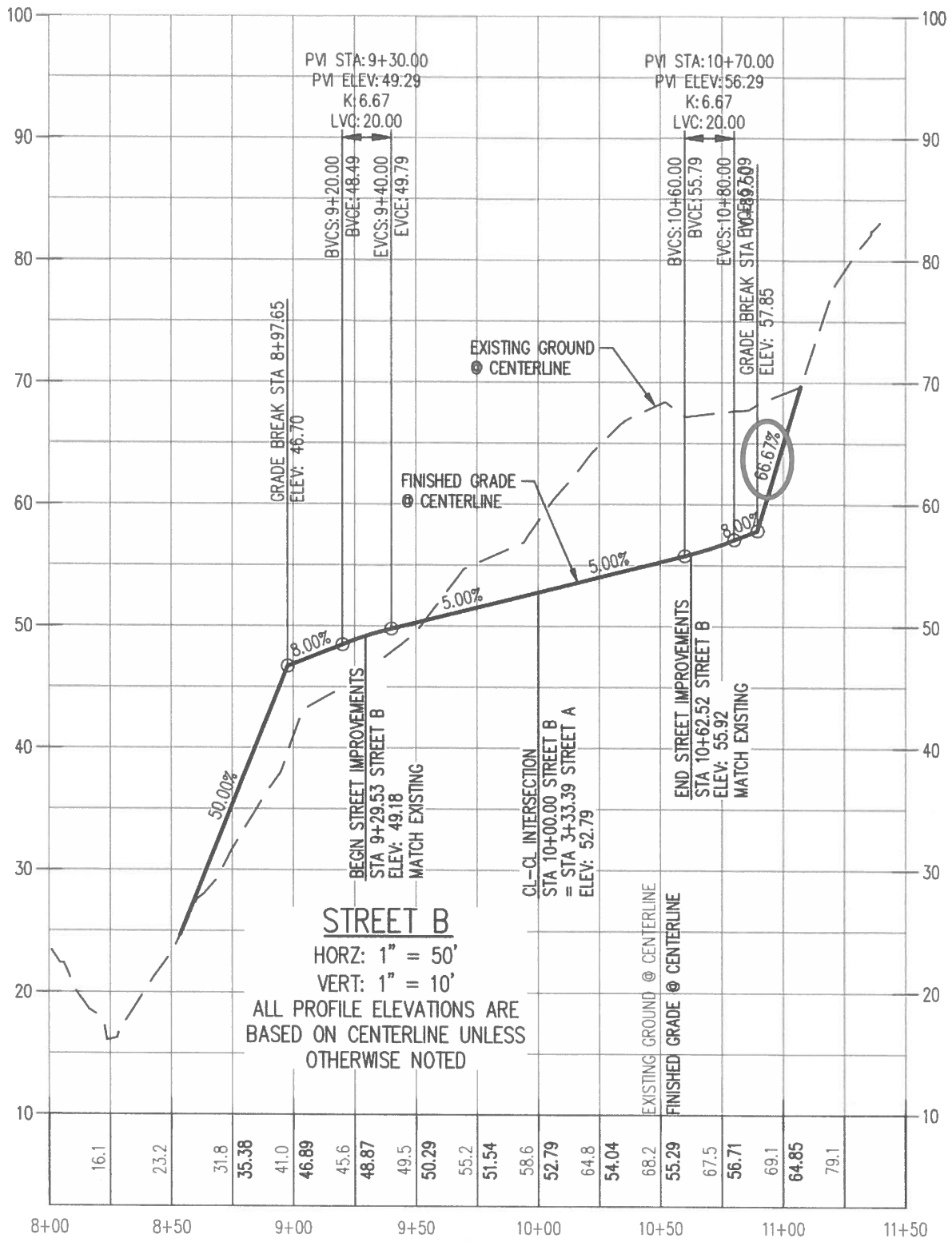
The Geotechnical Report submitted as part of the application inadequately addresses the issue of slope stability along the boundary with the neighboring properties for the following reasons:

On page 4 of the letter from Foundation Engineering dated **June 12, 2018**, which updates the previous Geotechnical Report written in 2007, the second sentence in the section titled "Lots 2 and 3" says, "*The new site grading plan was not available at the time this letter was prepared.*" Indeed, the drawings that describe the site grading plan submitted in the application (Sheets C3 through C6 in Exhibit B) are dated **July 23, 2018**. Foundation Engineering had not even seen these when they wrote their letter!

This to me is a fatal flaw in the Geotechnical Report! **How can the Geotechnical Report properly evaluate the development plan and assure the City of Newport that the grading plan will not lead to slope instability, if they have not even seen it?** This means the Geotechnical Report is inadequate, because it is the grading plan that raises red flags about slope stability along the edges of the property.

For example, on page 5 of the letter from Foundation Engineering dated June 12, 2018, one of the specific recommendations in the section titled "Erosion Control" regarding embankment construction is to "*Construct permanent cut and fill slopes no steeper than 2:1*", which is the ratio of horizontal to vertical distance on a **26°** angled slope. However, in the development application the elevation profile on the right side of Sheet C6 in Exhibit B (included below) has a slope of **66.67°** upslope of the hammerhead portion of the new street. The steepened slope is created by excavations and grading plan, which Foundation Engineering never saw.

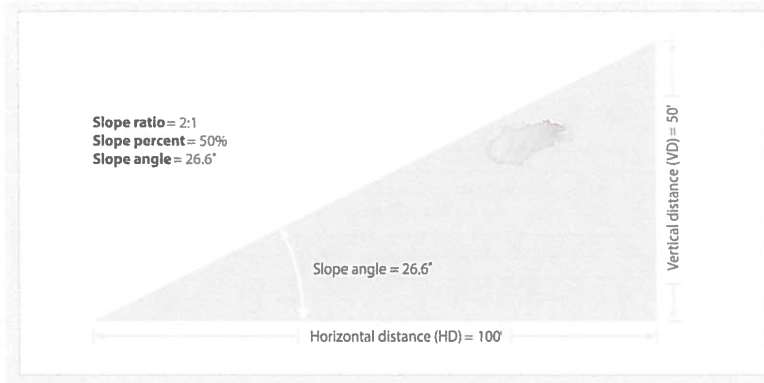
On page 6 of the letter from Foundation Engineering dated June 12, 2018, it says, "*we should be provided the opportunity to review all new drawings and specifications that pertain to site preparation, foundation construction, and pavements.*" This apparently was not done. At the minimum, Foundation Engineering should be asked to specifically evaluate the new drawings and the grading plan as it pertains to long-term slope stability along the edge of the property. The Geotechnical Report is inadequate because it was not written with the understanding that if this development plan is approved and the road is constructed, the lots with steepened slopes may lie vacant for years or even decades.



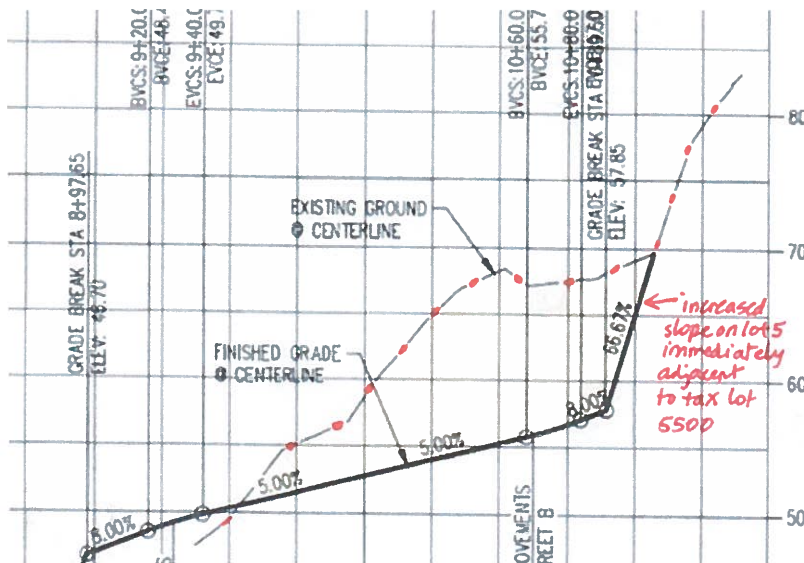
To: The Newport Planning Office and Planning Commission
From: Bernadette Solano, 836 SE Crescent Place, Newport (Tax lot 5500)
Re: Fisherman's Wharf Estates subdivision File No. 1-SUB-18 / 2-VAR-18 / 3-GP-18

I am requesting that the Planning Commission require an engineering plan that protects the adjacent Harbor Crescent property from risk of slippage due to the increased slope that will result from the cut and fill road and lot development. This plan should take into account the possibility that some Fisherman's Wharf lots may remain vacant for years to come.

On page 5 of the letter written by Foundation Engineering (June 12, 2018), one recommendation is to "construct permanent cut and fill slopes no steeper than 2:1" This represents a slope of 50% (diagram below).



Compare this to the diagram showing the cut and fill angle of the slope between Street B and the adjacent Harbor Crescent lot 5500. The grade shifts abruptly from an 8% slope to a 66.67% slope. This slope exceeds the maximum recommended slope.

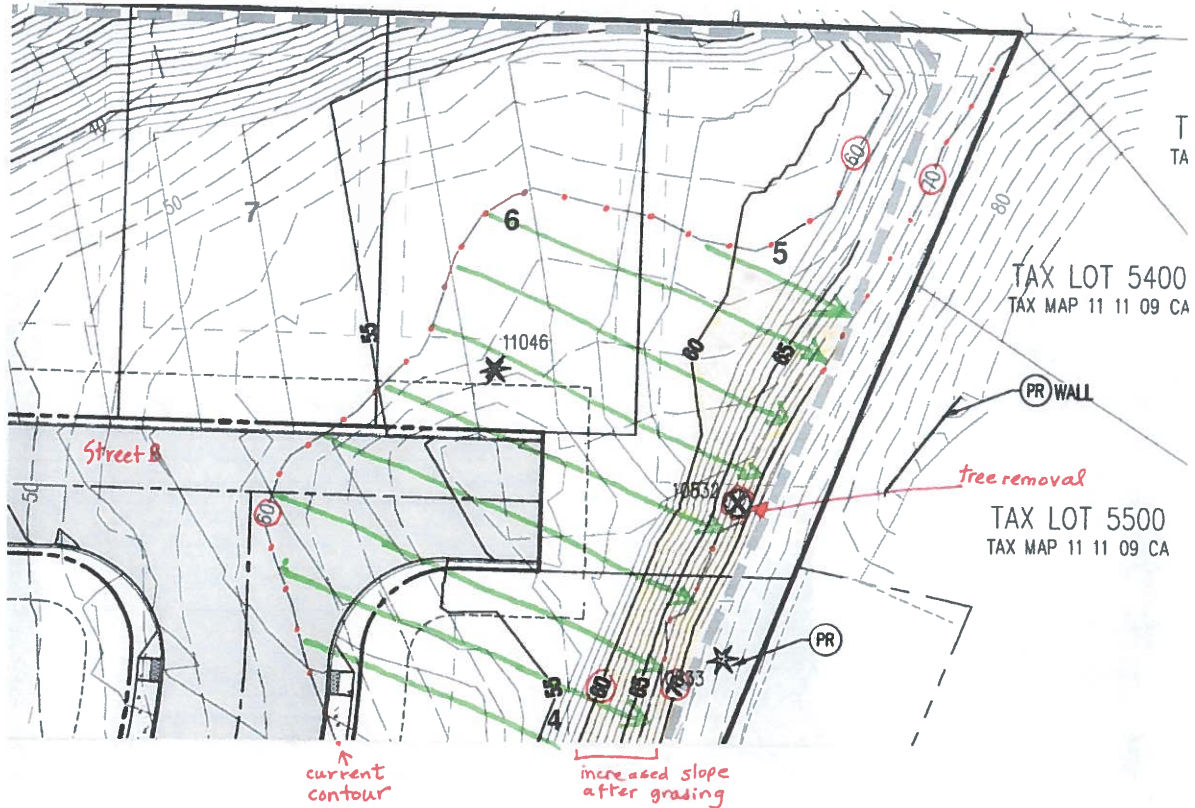


CITY OF NEWPORT

SEP 17 2018

RECEIVED

The diagram below shows how the cut and fill of the proposed development disrupts the current topography between a 60-foot and 70-foot elevation in the same area. The green arrows show the distance covered in the current topography from a 60-foot to 70-foot elevation (green arrows) and the proposed, greatly increased slope (within the yellow area).



Tax lot 5500 abuts the boundary above this steep slope that would be created on lot 5. It is quite likely that lot 5 will remain undeveloped for years to come. In the Harbor Crescent development, lots have been available for more than 30 years. The lots have better views than the new development lots will have. Nevertheless, 42% of the Harbor Crescent lots (13 out of 31) remain vacant. Lot 5 will be a challenging lot on which to build, and is likely to be one of the last lots to be developed.

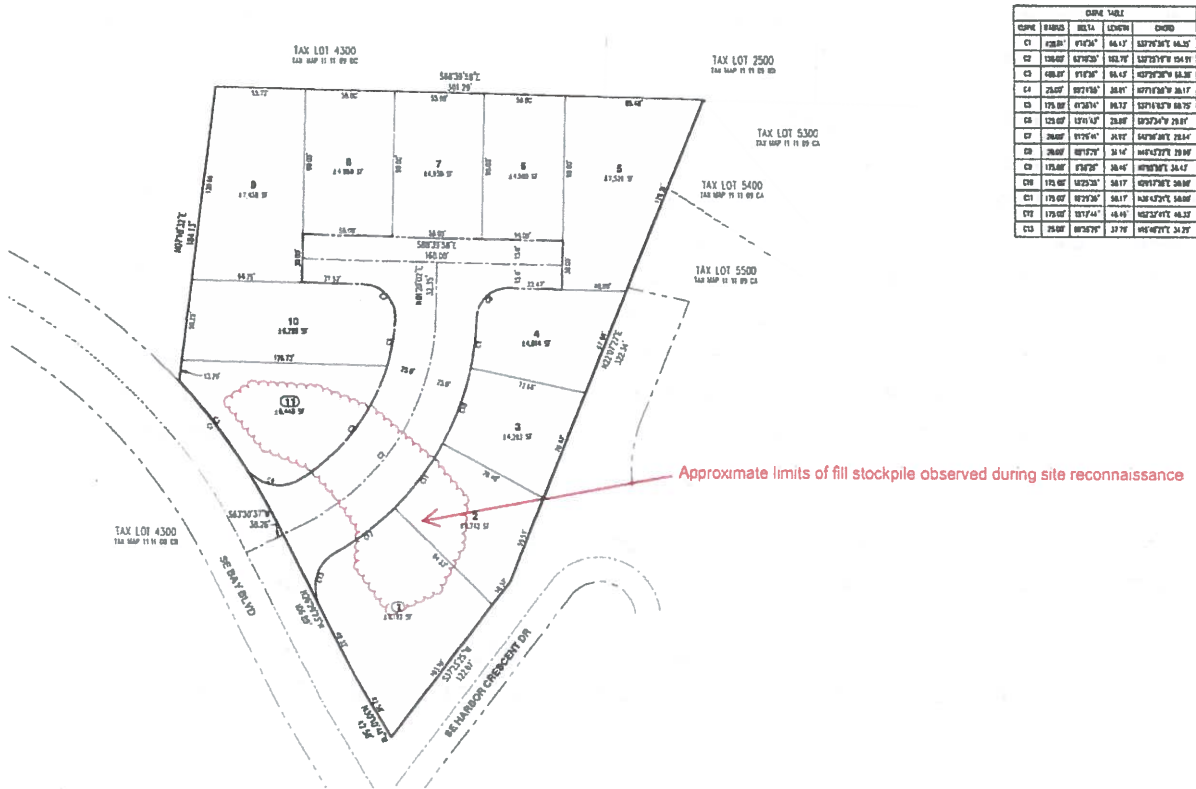
Being immediately adjacent to lot 5 puts lots 5400 and 5500 at additional risk. When making yard improvements, removal of surface vegetation required a retaining wall be placed on our property (shown in the diagram above), even though we did not alter the existing slope. The proposed cut and fill immediately below lot 5500 includes removal of vegetation (including a tree), and an increased slope beyond the recommended 50%.

Given these considerations, I urge the commission to require a plan that will ensure measures are taken to prevent the destabilization of the slopes abutting Harbor Crescent

Drive, especially those properties that are directly adjacent to the proposed development, and therefore more at risk. At a minimum, the grading plan should conform to the recommendations set forth in the Foundation Engineering letter. Ideally, retaining walls in the areas of highest risk would buttress against long-term slope instability.

Fill Concerns: The Engineering Foundation letter of June 18th included the following diagram showing “approximate limits” of fill that should be removed or reprocessed prior to development (page C2). On page 3 of the letter they state, “A portion of the fill was stockpiled prior to our 2007 investigation, and it appears more fill has been stockpiled since then. The fill appears to have been end-dumped from trucks and/or moved using a dozer, but not placed as engineered fill (i.e., compacted in documented lifts). The extent of the fill is difficult to measure because it is overgrown with brambles and other vegetation.” On page 4 of the letter, they state: “No building foundations or slabs, or roads and driveways should be constructed on undocumented fill.”

This recommendation cannot be followed or monitored unless accurate measurements are made to document more precisely the additional areas containing unsuitable fill. The additional fill (which residents observed being dumped in areas beyond the approximate limits shown below) has not been adequately measured or documented.



We urge the Newport Community Development Department and the Planning Commission do everything within their purview to ensure that a carefully planned and properly engineered development takes place on the proposed Fisherman's Wharf Estates subdivision. If that can happen, we would welcome such a development.

Thank you for your careful consideration of our concerns.

Bernadette Solano 


September 17, 2018

Cosigners:

Pat Knutson (840 SE Crescent Place)



Barbara Coyle (850 SE Crescent Place)



José Solano (836 SE Crescent Place)



To: Newport Planning Office and Planning Commission
Re: File No. 1SUB18
/ 2VAR18
/ 3GP18

16 Sep 2018

and requested approval of variances for Tax Lot 400 of
Lincoln County Assessor's Tax Map 111109CB
(1005 SE Bay Blvd), also known as the Fisherman's
Wharf Estates subdivision

CITY OF NEWPORT

SEP 17 2018

RECEIVED

Dear Members of the Planning Commission

Other individuals are presenting cogent requests based on flaws they feel have been made in the permitting applications for the Fisherman's Wharf development. I will limit my comments to a single factor- -that is the location of the landfill placed on this tract of land in the past 10 years or so and the potential of de-stabilizing the existing slopes surrounding the area.

I pass this lot being considered for development at least twice each day since I moved to my current residence on SE Crescent Place about 15 years ago. After the failure of the prior project on this land roughly a decade or so, I notice that the now-cleared land was being utilized for a dumping ground by various individuals. From my perspective, most if not all of the dumped material was clean dirt with little or no foreign material. However, I can absolutely testify that these multiple "dump jobs" were not restricted to the location indicated in the material provided by the City or Developer. In fact, at the time I noted with interest that some of this new land fill was located toward the back of the tract near the parking spur of the Harbor Crescent HOA.

While I am not qualified to address the complexities of fill dirt on or around construction projects, I do know it must be noted and allowed for. It seems obvious to me that the location of fill dirt on this property is unknown to all. Clearly, it seems to me that the City Planning Commission should not approve any road or domicile on this project until the land fill issue is resolved. To do otherwise, an access road could be constructed without the approximate location of the surrounding houses being known. And, that is exactly what cannot be known until the fill is removed and the build able sites are clearly located. Maybe some of the 11 lots initially indicated are not appropriate for residences as currently projected. Approving and building an access road as indicated in the plans locks in the position of these lots and would perhaps require variances before final building approval.

Fortunately, there may be a relatively inexpensive method to determine which areas of the project have fill dirt that needs to be addressed. It is coincidental that the Harbor Crescent HOA has investigated such a service for use on our own properties. GPRS Subsurface Scanning Solutions (www.gp-radar.com)

(Kasey Kearcher 503-502-4781) is a company that deploys a push device that utilizes ground penetrating radar to locate patches of "disturbed ground". This service, if utilized for a project by our HOA was to cost in the nature of \$1,500. Even if the cost to the developer is a little more than this sum, clearly it would be of benefit to all in the discussion of fill dirt and how it would affect the placement of roads and homes in this small piece of land. I respectfully request the Planning Commission delay any approval of this project at least until this issue is resolved and its results incorporated into its approval request.

Sincerely



Stan Shell
895 SE Crescent Place
Newport, Oregon

Testimony for City of Newport Public Hearing, Planning Commission meeting on Sept 10, 2018, regarding File No. 1-SUB-18 / 2-VAR-18 / 3-GP-18 and requested approval of variances for Tax Lot 400 of Lincoln County Assessor's Tax Map 11-11-09-CB (1005 SE Bay Blvd), also known as the Fisherman's Wharf Estates subdivision.

Submitted by: Eric Knutson, 840 SE Crescent Place, Newport, OR, 97365

I attended the Newport Planning Commission meeting that was held on September 10, 2018 and listened to the testimony by interested parties on the above named development proposal. I have two main concerns about this proposal.

The first concern is that the proposal and documents submitted by the developer do not adequately speak to any mitigation measures that might be necessary to stabilize the hillside after the proposed road grading is completed and the streets are installed. The potential for slope instability will be substantial once the excavations are completed due to the steepness of the resulting embankments, which are shown to be as much as 66.67 per cent in some of the submitted documents. Currently, the application is mainly focused on the road and the lot layout and not how the potential for slope slippage will be negated. The developer seems to feel that that issue is not his problem even though his own geology report states that "... slides have been documented in similar rock formations within the area; typically ... when lateral support is removed by either erosion or excavation". The excavation cuts necessary to build the road will change the topography dramatically and subsequent excavation needed to build homes will change the topography even more. The geology report only speaks to the temporary measures for control of erosion and run-off. It does not speak to the longer term hillside stability.

That brings me to my second concern: Who will be required to deal with these questions about hillside stability and the necessary mitigation measures should problems occur?

The developer has chosen not to include any specific measures or engineering solutions in his application. He bases his assumptions that "all is well" on the 10 year old geology report that, also, contains no specific solutions for this potential problem. It would appear that the developer thinks it is acceptable to put those concerns and risks on to the future lot owners and is perfectly happy with a "buyer beware" approach to developing this property, thereby saving himself the potential of significant cost. I would hope that one of the purposes of the Planning Commission would be to do all it could to ensure that approved developments would offer future lot owners some degree of protection against misinformation, potential fraud, and significant unforeseen "hidden" expense.

I request that the Planning Commission defer a decision on this application until it includes what permanent engineering solutions might be necessary to prevent slope instability and damage to adjacent properties after the subdivision is developed. In my view, an engineering plan should be required now, and solutions should be integrated into the overall development plan and should not be left to the individual lots owners to deal with later on a lot-by-lot basis.


9-16-18

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SEP 17 2018

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Addendum:

I have one additional comment to make. I know that height requirements are not an issue for this application but I have some concerns that go back to the "fill" deposits on the property. Since those deposits have been entered into this discussion, I think it is relevant to mention my concern.

When I purchased in our lot in Harbor Crescent in 2003 I investigated the zoning and building requirements at that time to confirm the rules to which I would need to comply when I built my home. I also reviewed the requirements that pertained to the lot to the west of mine, the development mentioned above, to determine what might be built there in the future. The requirements for height for that lot, now Fisherman's Wharf, were 30 -35 feet above the existing grade. The existing grade did not include the "fill" that was added in 2007.

My feeling at the time that the fill was brought to the site, was that the developer was using that fill to circumvent the "existing grade" requirement by changing the grade to a new elevation that would be anywhere from 4 to 6 feet higher than the original grade (see attached photos). Changing the grade in that manner would allow the developer to offer the lots as "view" lots at a higher value than if they were built on the original grade, the result would be that his gain would significantly compromise the value of the property that I had already purchased.

I purchased my property in good faith in 2003 after reviewing the appropriate regulations in place at the time. I expect the developer to do the same. I would encourage the Planning Commission to require the developer to remove the foreign "fill" and re-draw the grading documents to comply with the original topography that was in place prior to the addition of the "fill". That redesign might also contribute to even greater instability to the hillside if further engineering solutions are not required.



8/07/07



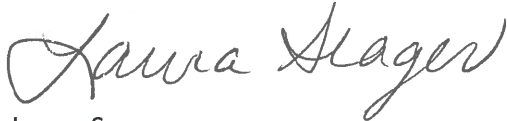
8/07/07

September 17, 2018

I'm writing to voice my extreme concern about the proposed Fisherman's Wharf subdivision. This proposal is in an area just below our houses on Harbor Crescent Dr. It has been noted that the excavation, and subsequent building, on the steep slope, will put our homes at risk for a landslide. It could put the entire hillside at risk. The developer is not clear as to how the slope will be graded, and what plans are in place if all, or some of, the lots are vacant over time.

I would plead with those considering issuing the high density building permits to consider the geologic impact to the hillside and the houses supported by this hillside.

Thank you for your consideration of this very important issue which could adversely impact many homes in our neighborhood.



Laura Seager
882 SE Crescent Place
Newport, Oregon 97365
541.574.0737

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September 16, 2018

To: Newport Planning Office and the Newport Planning Commission

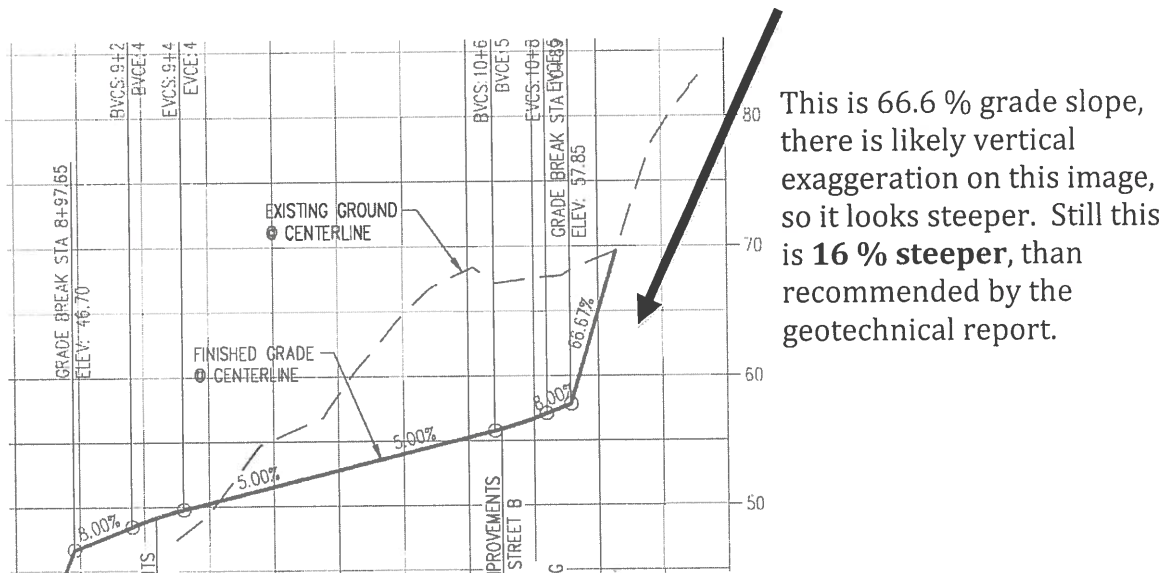
Re: Fisherman's Wharf Subdivision, Tax Lot 400

In addition to the earlier comments in my letter delivered to the planning office on September 10, 2018, after reviewing the staff report, there are some more issues that I feel need to be addressed regarding this subdivision plan.

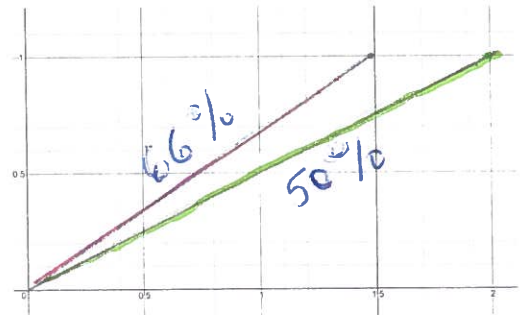
1. The geotechnical engineering letter from Foundation Engineering, dated June 12, 2018 **is inadequate** to cover the new subdivision plan created for Greyson Financial.
 - a. The most glaring error is that the geotechnical letter was **written before** the grading plans (C3 – preliminary grading and erosion control plan)(C4 – preliminary grading and erosion control plan) were created, July 23, 2018. So there is **no guarantee** that this geotechnical engineer had any knowledge about the steeper, longer slopes planned in the creation of this subdivision plan.
 - b. The geotechnical letter 2018, relies heavily on the work of the 2007 geotechnical report. That report was written when the developer (Willamette Development Services-WDS) planned on building houses right away as part of a planned unit development. Then the economic downturn happened and WDS had members investigated and convicted by the FBI. In 2007, the geologic engineers believed that any grading or slopes created would be built upon right away. They recommended slopes and building designs based on the PUD.
 - i. There is no guarantee that this is the case now. There are about a third of the lots in the Harbor Crescent HOA that are still vacant lots. Efforts have been made to sell the lots several times over the years, and some were purchased, but many have not been sold. These lots have remained undeveloped for about 40 years. **The geotechnical report does not address that these new steep slopes are being created and possibly left undeveloped for decades.** I ask that the planning commission and planning office require the report to address this.

- c. The slope steepness recommended in the geotechnical engineering letter, is **not** met by the developers design. In C6, the slope shows a 66% slope below Harbor Crescent Drive. This was designed after the geotechnical letter was written. But within the geotechnical letter it states on page 6, that, “*Specific recommendations were provided in the Recommendations section of the attached report for embankment construction, which include:*
- Construct **permanent** cut and fill slopes **no steeper** than 2:1(H:V).

The slope shown in this image (C6) is a permanent slope, in that it is not going to be built on immediately. The steep slope could be there for decades as potentially lots in the subdivision are left undeveloped.



- a. A slope of 2:1 (50%) is green, the slope in C6 (66%,(1.483:1)) is in purple. Does the geotechnical engineer feel this 66% grade slope is adequate protection to being left long term while we wait for these properties to be developed?



I am very concerned that this subdivision is not adequately planned with the required involvement and work of the geotechnical engineering firm. When Foundation Engineering wrote their 2018 letter, they apparently only had C2, which showed where the lots would be located available for their evaluation. The report does not mention or address the issues raised by C3, C4 or C6 or the adequacy of this plan for the long term stability of the slopes involved.

I request that the planning office and planning commission **not approve** this subdivision, until a **more complete geologic report** is included with the application. There are quality standards for geologic reports in the city zoning ordinances and the subdivision rules.

I am not opposed to a well planned development that ensures the slope stability of the area is not worsened by the work on this parcel.

Thank you for your time.

Teresa Atwill

BS Geology and Geophysics, University of Hawaii
 MA Geology, UC Santa Barbara
 Policy Working Group for Coastal Natural Hazards member
 Newport Planning Commission member 10 years ago
 Oregon Seismic Safety Policy Advisory Group to the governor and legislature,
 1990's.

A big plan 'all made sense . . . but it was all a lie'
By Jeff Manning

Friday, January 2, 2009

Edition: Sunrise, Section: Business, Page A04

Willamette Development Services' idea 'made sense . . . but it was all a lie' Joe LaCoste says he's the fall guy in the firm's failure to complete building projects A big plan 'all made sense . . . but it was all a lie'

Albany-based Willamette Development Services started small in 2006, but with a big idea: building homes and small commercial projects the length of the Willamette Valley.

With few resources of its own, the company used other people's money, raising \$6 million from about 40 investors. In 2006, at the height of Oregon's land rush, dozens of people jumped at the opportunity. Some said they took out second mortgages on their homes or borrowed on their credit cards to come up with the \$25,000 minimum investment.

The company's pedigree was modest. No history, no track record of success. It was the brainchild of Joe LaCoste, a former Oregon State University running back who left his high school teaching job in 1996 to enter the mortgage and real estate business.

He formed several companies, some of which earned the attention of state securities regulators. In one example of problems, regulators in 2006 entered a cease and desist order against one of those companies, **Lunceford & LaCoste**, for brokering mortgages without a license.

But with Willamette Development Services, LaCoste and the rest of his management team were convincing. Investors said they ere promised 13 percent interest annually.

"It all made sense," said Rebecca Lu, a Corvallis real estate agent who invested \$200,000 herself and persuaded her elderly parents to invest \$25,000. "They hired architects and engineers. But it was all a lie."

The company started 11 projects, including a residential subdivision in Santa Clara, near Eugene, and a minimart in McMinnville. It failed to complete even one.

"Our homes weren't getting built, we were spending too much money," LaCoste said. "I wasn't quite sure why all this was happening."

Investors stopped getting interest payments in November 2007.

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LaCoste's partners, led by his brother-in-law, Medford mortgage broker Craig Sweet, ousted him in January 2008. The company became inactive within a few months.

LaCoste blames Sweet and others in his management team, who he said failed to perform. Sweet declined to comment.

Investors have filed two lawsuits against the company, LaCoste and other partners. They claim the company lied to investors and used their money to pay off other investors --the classic definition of a Ponzi scheme.

Several investors told The Oregonian they had been interviewed by the FBI. LaCoste says he has not talked to anyone at the FBI, and no criminal charges have been filed. LaCoste said he's been made the fall guy for the failures of other partners and the downturn of the market.

"We were in a real tough real estate market," he said. "We were doing the wrong thing at the wrong time. So were about 10 million other developers around the country."

Some investors disagree.

"They couldn't build a single home in 18 months," said Jay Mutschler of Corvallis, who lost his \$50,000 investment. "WDS was so mismanaged, it's ridiculous. The question is: Was Joe just so inept that he couldn't manage it right, or was it a Ponzi scheme?"

LaCoste and his wife have formed a new consulting company, Witham Investments, which he said helps other real estate developers through financing and operational challenges. "Our company puts honesty, integrity and compassionate capitalism above all other business priorities," Witham's Web site says.

-- Jeff Manning

https://www.oregonlive.com/news/index.ssf/2009/01/quest_for_easy_money_magnified.html



Portland Division

Home • Portland • Press Releases • 2011 • Willamette Development Services Chief Financial Officer Pleads Guilty to Securities Fraud

Willamette Development Services Chief Financial Officer Pleads Guilty to Securities Fraud

U.S. Attorney's Office
February 08, 2011

District of Oregon
(503) 727-1000

EUGENE, OR—Anthony James Tuomi, former chief financial officer for Willamette Development Services (WDS), pleaded guilty today to conspiring to commit securities fraud. He is scheduled to be sentenced for sentencing on August 9, 2011 before U.S. District Judge Michael R. Hogan. Tuomi is 36 and resided in Albany, Oregon when he committed the offense. WDS was located at 110 3rd Avenue SE in Albany, Oregon.

The case arose in 2008 from an investigation into allegations of fraud involving the chief executive officer (CEO) of WDS. WDS was ostensibly operated to develop profitable real estate projects. The CEO was ousted by the WDS executive board in January of 2008 amidst allegations of financial improprieties. In pleading guilty, Tuomi admitted that helped facilitate the financial improprieties, and that in soliciting investors, a number of false statements were made which caused people to invest, and lose, over \$5,260,000 in WDS securities.

Tuomi admitted that, among other things, he facilitated misrepresentations about the financial condition of WDS. As an example, in January 2008, he prepared financial summaries of WDS projects which were sent to all investors. The summaries accompanied a letter written by the WDS CEO which claimed that all WDS investments were secure. The project summaries indicated substantial financial value in each project and substantial profits for WDS, even though Tuomi knew WDS was insolvent and that little financial value could be obtained from the projects. Prior to that time, since WDS had insufficient income to pay monthly obligations to its investors, new investor proceeds were used to satisfy existing investor obligations, creating the perception of a successful business. Private placement memoranda furthered this perception by falsely representing the experience of the CEO, as well as project business plans, financial practices, the frequency and accuracy of reports to investors, and compliance with fiduciary obligations. Tuomi admitted that, contrary to representations made to investors, investor proceeds were often diverted from their intended purposes without investor consent.

"Over the past few years, we've watched as the U.S. economy has faltered on false promises of financial success," said Arthur Balizan, Special Agent in Charge of the FBI in Oregon. "Enough is enough. Those who target investors through fraud and manipulation are going to find us knocking at their door."

"The loss of over \$5 million from this fraud shows how critical it is that statements made to potential investors be truthful," said Marcus Williams, the IRS Special Agent in Charge of the Pacific Northwest. "I look forward to the day when white collar criminals realize that law enforcement will always be there to hold them accountable for the suffering they cause."

WDS did business through various entities including 21st Avenue, LLC; 36th & Division, LLC; Blossom Crossings, LLC; CTJ, LLC; Elite Funding, LLC; Far Shore Enterprises LLC; Far Shore Imports, LLC; Fisherman's Wharf, LLC; Gibson Hill Estates, LLC; High Level Investments, LLC; Jasper Homes, LLC; Joe LaCoste, LLC; Joe's Run, LLC; LaCoste Enterprises, LLC; LaCoste Investments, LLC; Lebanon Airport Estates, LLC; Lincoln City Roads Ends, LLC; Lunceford and LaCoste Investments, LLC (subsequently renamed Greyson Financial, LLC); Martin Willamette, LLC; McCoy Acquisitions, LLC; McKenzie Aviation, LLC; McKenzie Construction, LLC; McMinnville Corners, LLC; Nuera; Nuera Realty; Newport Bridge View, LLC; North Albany Town Homes, LLC; North Point Estates, LLC; Pac First Financial, LLC; Pac First Mortgage; Property Options; Santa Clara Homes, LLC; Santiam Engineering, LLC; St. James, LLC; Strawberry Fields, LLC; Stoltz Hill Estates, LLC; Sunset Ridge, LLC; The Walston Building, LLC; Turner Road, LLC; Willamette Lee, LLC; Willamette Village Business Center, LLC; Willamette Wetlands, LLC; Wisteria Estates, LLC; Yates Estates, LLC; and www.wds-llc.com.

The maximum statutory penalty for conspiring to commit securities fraud is a five-year term of prison and a \$250,000 fine, followed by a three-year term of supervised release.

The case is being investigated by the Federal Bureau of Investigation, the Oregon Division of Finance and Corporate Securities, and the Internal Revenue Service Criminal Investigation Division. The case is being prosecuted by Assistant U.S. Attorney Sean B. Hoar.

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- What We Investigate
- Our Partnerships
- Portland History

Wanted by the FBI - Portland

FBI Jobs

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U.S. Attorney's Office
District of Oregon
(503) 727-1000

SEP 17 2013
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December 19, 2014

Albany, Oregon Man Sentenced to 60 Months in Federal Prison in \$5 Million Securities Fraud

EUGENE, OR—U.S. District Court Judge Ann Aiken sentenced Joseph Anthony LaCoste, 50, of Albany, Oregon, to 60 months in prison and ordered him to pay \$1.6 million in restitution for securities fraud violations. LaCoste, the former chief executive officer of Willamette Development Services (WDS), a real estate development company based in Albany, Oregon, had previously pleaded guilty to conspiracy to commit securities fraud for his conduct associated with WDS.

According to court documents, LaCoste, a former high school teacher and coach, lured individuals to invest with him and WDS by telling a series of lies: he lied about his educational background; he lied about the financial condition of WDS; he lied about the rate of return on the investments; and he lied about the nature and use of the investments. LaCoste also failed to inform his investors that he had been fired from U.S. Bank for dishonest and unethical conduct and that he had previously filed for bankruptcy. Based on his misrepresentations, LaCoste, between 2006 and 2008, duped more than 50 people to invest more than \$5.2 million with him and WDS.

In reality, WDS and its alleged real estate projects were undercapitalized, and the projects were not progressing. To avoid detection and to further the scheme, LaCoste and others commingled investor money and transferred investor money between various projects and businesses to make it appear as if the projects were on schedule and the company was profitable. In 2008, LaCoste's scheme collapsed. At that time, he had failed to complete a single project, and the investors lost their money.

After his WDS scheme collapsed, LaCoste engaged in a new scheme to induce four property owners in Washington to transfer ownership of their property to his control by falsely representing that he had the experience and skills to develop their property into a profitable real estate venture. Similar to his WDS investors, LaCoste falsely promised these property owners a

huge return and failed to tell them that he had been fired from U.S. Bank for dishonest ⁴⁴ unethical conduct and that he had previously filed for bankruptcy. In the end, this scheme also collapsed, and the property owners lost more than \$150,000.

LaCoste's codefendants, Angela McCoy and Anthony Tuomi, are scheduled to be sentenced on January 28, 2015, at 1:30 p.m. before the Honorable Thomas M. Coffin.

This case was investigated by the Federal Bureau of Investigation, the Internal Revenue Service Criminal Investigation, and the Oregon Division of Finance and Corporate Securities.

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Derrick Tokos

From: Curtis Fisher <fisherc@aks-eng.com>
Sent: Monday, September 17, 2018 11:19 AM
To: Derrick Tokos
Cc: David Karr
Subject: Open Record File 1-SUB-18/2-VAR-18/3-GP-18
Attachments: Fishermans Wharf - Foundation Engr Plan Review (9-13-18).pdf; 5691 20180913 PC Supplement C8.pdf

Dear Mr. Tokos:

Foundation Engineering conducted a review of our preliminary subdivision plans. Their initial conclusions are summarized in the attached letter. We also prepared a supplemental grading exhibit with additional details on the planned grading for the site. Please include these documents in the record for the above referenced case file.

Thank you again for reviewing our application and let me know if you have any questions.

Kindest regards,

Curt Fisher

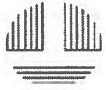
Land Use Planner

AKS ENGINEERING & FORESTRY, LLC

Tualatin: 503.563.6151 | Keizer: 503.400.6028

F: 503.563.6152 | www.aks-eng.com | fisherc@aks-eng.com

Offices in: Bend, OR | Keizer, OR | Tualatin, OR | Vancouver, WA



Foundation Engineering, Inc.

Professional Geotechnical Services

Attn: Tim Lunceford
 Greyson Financial Services, Inc.
 440 1st Avenue SE, #3
 Albany, Oregon 97321

September 13, 2018

**Tax Lot 400 (Fisherman's Wharf Estates)
 Geotechnical Consultation and Review
 Newport, Oregon**

Project 2181053

Dear Mr. Lunceford:

This letter documents our review of the Preliminary Subdivision Plans prepared by AKS Engineering & Forestry, Inc. (AKS) for the above-referenced project in Newport, Oregon.

BACKGROUND

Fisherman's Wharf Estates is a planned 11-lot residential subdivision located northwest of the intersection of SE Bay Boulevard and SE Harbor Crest Drive in Newport. Greyson Financial Services, Inc. (Greyson) is the owner and AKS is the civil designer.

Foundation Engineering was retained as the geotechnical consultant. We previously completed a geotechnical investigation for the site, the results of which are summarized in a report dated October 19, 2007. More recently, we provided additional consultation, which included a site reconnaissance and review of our previous work. That consultation is detailed in a letter dated June 12, 2018. The intent of our work is to develop recommendations and otherwise provide guidance to the project owner and design team for the project to be completed in conformance with Chapter 14.21 of the Newport Municipal Code (NMC).

DOCUMENT REVIEW

Description

At the request of AKS, we reviewed plan sheets titled Fisherman's Wharf Estates: Preliminary Subdivision Plans (Job Number 5691). There are eight sheets numbered Sheet C0 through C7. The plans provided to us are attached. Our review focused primarily on the proposed grading and erosion control summarized in Sheets C3 and C4. The current plans do not include details for final buildout (i.e., structures and foundations) for the residential subdivision. These will be reviewed with the building permit for future homes built on the individual lots.

Based on a review of the plans and discussion with AKS representatives, we understand the proposed site grading will include cuts as deep as ± 10 feet and fills up to ± 5 to 7 feet to help level portions of the property. Furthermore, we understand finished slopes will be graded at a maximum of 2:1 (H:V). Cuts and fills will be approximately balanced, and onsite materials will be used for grading. Most of the

excavation will be completed in the area to the north of the planned hammerhead on the future Lot 7. Fill areas will be located primarily around the perimeter, where the existing terrain is steeper. No retaining walls or similar engineered structures are planned.

To meet required erosion control measures outlined in NMC 14.21.090, the erosion control plan indicates seeding and mulching will be used in the flatter portions of the site after grading. The fill areas graded at 2:1 will be covered with slope matting.

Conclusions

The preliminary site grading plan conforms with the recommendations provided in our geotechnical report, including maximum cut and fill slopes of 2:1 (H:V). Therefore, it is our opinion the grading plan is suitable for site development. Based on final slope configurations, we do not anticipate the need for retaining walls or similar structures.

The existing slopes in portions of the property, particularly along the west to northwest boundaries, are steeper than 2:1 (H:V) in their present configuration. In addition, mass excavations to remove on-site soils (and/or natural buttresses) are not planned. Therefore, provided the site grading and fill placement is completed as recommended in the geotechnical report, we believe the completed fill slopes and general site grading will not increase the risk of slope instability within or adjacent to the property. The geologic setting and documented hazards for the entire area are discussed in more detail in the above-referenced geotechnical report.

ADDITIONAL REVIEW AND CONSULTATION

The grading work proposed in the preliminary site grading plan should be completed in conformance with all recommendations in our geotechnical report. This includes proper stripping, removal or reprocessing of existing undocumented fill, stabilization (if necessary), benching, and compaction. As noted in our report, our recommendations assume we will have the opportunity to review final drawings and be present during construction to confirm site conditions.

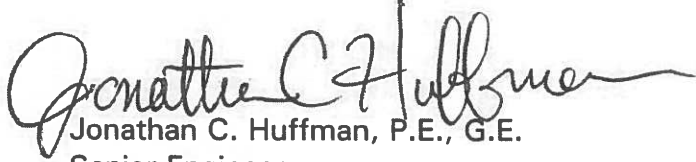
NMC 14.21.130 requires written statement that all performance, mitigation, and monitoring measures contained in the geotechnical report have been satisfied. Therefore, a representative of Foundation Engineering will be present during construction to periodically observe and document the earthwork. We will also review testing reports pertaining to compaction of on-site soils. The schedule for field observations can be established with the design and construction team when the earthwork schedule is prepared.

Foundation Engineering has completed several projects within the City of Newport, both for City or municipal entities and for private developers. Our work has included both engineering design and construction monitoring. Our observations completed during construction are typically documented in field notes provided to the design team and jurisdictional review (if requested). For this project, we will also provide a summary letter following construction to meet the requirements of NMC 14.21.130.

We anticipate this review meets your present needs. Please do not hesitate to call if you have any questions or require further assistance.

Sincerely,

FOUNDATION ENGINEERING, INC.

A handwritten signature in black ink that reads "Jonathan C. Huffman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

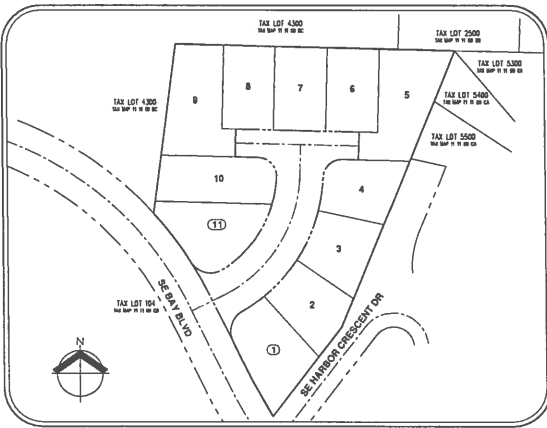
Jonathan C. Huffman, P.E., G.E.
Senior Engineer

Attachment

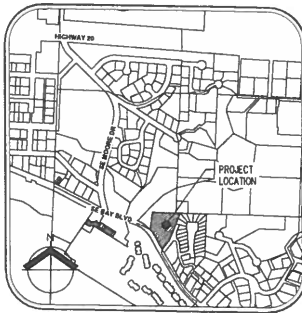
Document reviewed by
Foundation Engineering, Inc.
9-13-2018

FISHERMAN'S WHARF ESTATES

PRELIMINARY SUBDIVISION PLANS



SITE MAP
1" = 50'



VICINITY MAP
1" = 250'

APPLICANT OWNER
GREYSON FINANCIAL SERVICES, INC.
440 151 AVENUE E, #3
ALBANY, OR 97321

PROPERTY OWNER
WILLIAM EKMAN
200 FERRY STREET SW
ALBANY, OR 97321

PROPERTY DESCRIPTION:
1005 SE BAY BOULEVARD
NEWPORT, OREGON 97365
TAX LOT 400, LINCOLN COUNTY
ASSESSOR'S MAP 11 11 09 CB

**PLANNING/
CIVIL ENGINEERING /
SURVEYING FIRM**
AKS ENGINEERING & FORESTRY, LLC
PLANNER: CURT FISHER
ENGINEER: DAVID KARR, PE, PLS
4300 CHERRY AVE NE
KEIZER, OR 97303
PH: 503-400-9028
FAX: 503-400-7722

VERTICAL DATUM
VERTICAL DATUM: ELEVATIONS ARE BASED ON MGS BENCHMARK
NO. V 711, LOCATED AT THE NE QUADRANT OF THE 3RD ST AND
NE EADS ST. ELEVATION = 171.77 FEET (NAVD 88).

PROJECT LOCATION
EAST OF SE MOORE DRIVE, NORTH OF
SE HARBOR CRESCENT DRIVE AND SE
BAY BLVD.

EXISTING LAND USE
VACANT

PROJECT DESCRIPTION:
11 LOT SUBDIVISION FOR FUTURE
SINGLE-FAMILY HOMES AND/OR DUPLEXES

SHEET INDEX

- C0 COVER SHEET
- C1 EXISTING CONDITIONS
- C2 PRELIMINARY PLAT
- C3 PRELIMINARY DEMOLITION AND TREE PRESERVATION PLAN
- C4 PRELIMINARY GRADING AND EROSION CONTROL PLAN
- C5 PRELIMINARY STREET PLAN AND TYPICAL SECTIONS
- C6 PRELIMINARY STREET PROFILES
- C7 PRELIMINARY COMPOSITE UTILITY PLAN

		EXISTING		PROPOSED	
DECIDUOUS TREE	○	○	○	○	○
CONIFEROUS TREE	⊗	⊗	⊗	⊗	⊗
FIRE HYDRANT	⊕	⊕	⊕	⊕	⊕
WATER BURNOUT	⊖	⊖	⊖	⊖	⊖
WATER METER	⊘	⊘	⊘	⊘	⊘
WATER VALVE	⊙	⊙	⊙	⊙	⊙
DOUBLE CHECK VALVE	⊚	⊚	⊚	⊚	⊚
AIR RELEASE VALVE	⊛	⊛	⊛	⊛	⊛
SANITARY SENSER CLEAN OUT	⊜	⊜	⊜	⊜	⊜
SANITARY SENSER WASHLINE	⊝	⊝	⊝	⊝	⊝
SMV	⊞	⊞	⊞	⊞	⊞
STREET LIGHT	⊟	⊟	⊟	⊟	⊟
WALBOG	⊠	⊠	⊠	⊠	⊠
ROD-DIP-BIT LINE	---	---	---	---	---
BOUNDARY LINE	---	---	---	---	---
PROPERTY LINE	---	---	---	---	---
CENTERLINE	---	---	---	---	---
UTILITY	---	---	---	---	---
CURB	---	---	---	---	---
EDGE OF PAVEMENT	---	---	---	---	---
EASEMENT	---	---	---	---	---
FACE LINE	---	---	---	---	---
BRIDGE, EASE	---	---	---	---	---
POWER LINE	---	---	---	---	---
OVERHEAD WIRE	---	---	---	---	---
COMMUNICATIONS LINE	---	---	---	---	---
FIBER OPTIC LINE	---	---	---	---	---
GAS LINE	---	---	---	---	---
STORM SENSER LINE	---	---	---	---	---
SANITARY SENSER LINE	---	---	---	---	---
WATER LINE	---	---	---	---	---

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 www.aks-engineer.com

FISHERMAN'S WHARF ESTATES SUBDIVISION
 NEWPORT, OR

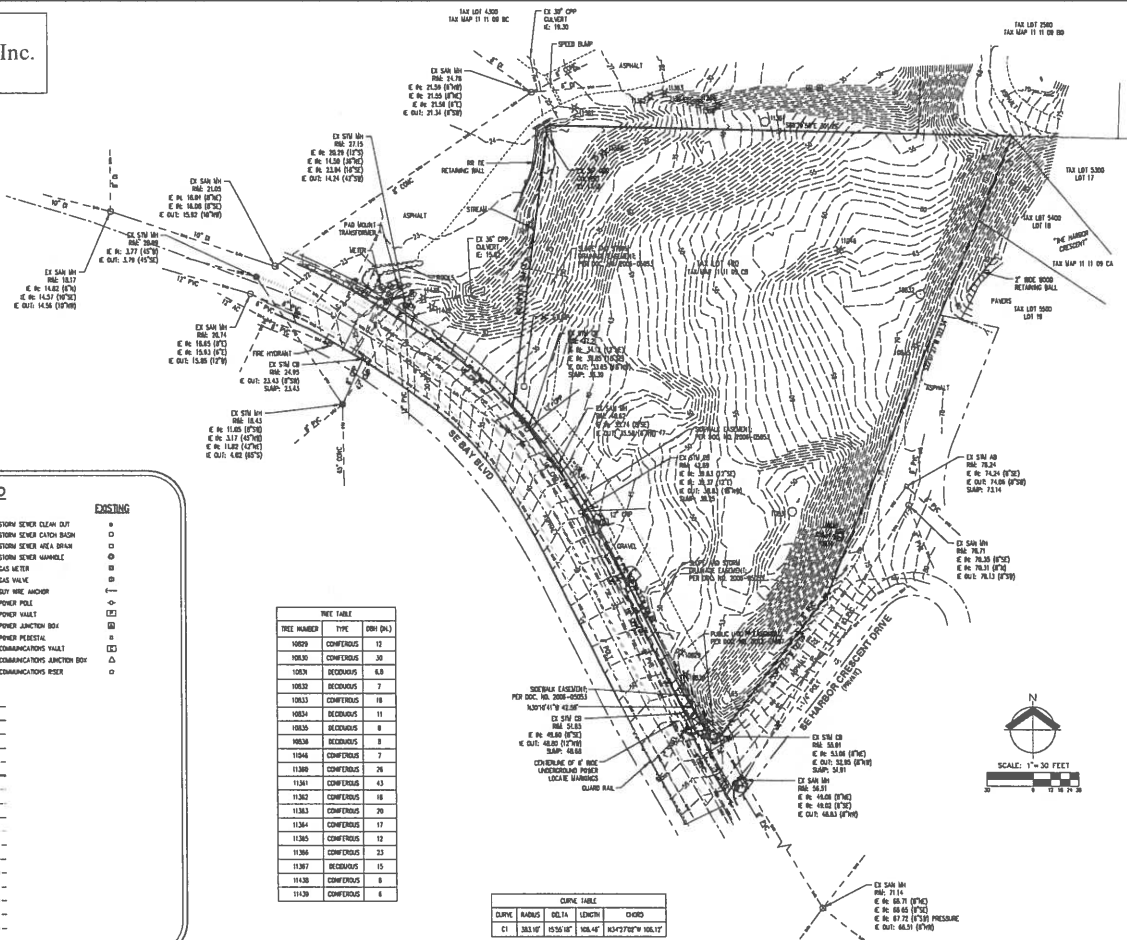
COVER SHEET

DRAWN BY: JTB
 CHECKED BY: JTB
 DATE: 8/13/2018
 SCALE: AS SHOWN
 PROJECT NO.: 5691
 SHEET NO.: C0

AKS ENGINEERING & FORESTRY, LLC

Document reviewed by
 Foundation Engineering, Inc.
 9-13-2018

- NOTES:**
1. UTILITIES SHOWN ARE BASED ON UNDERGROUND UTILITY LOCATE MAP FOR UTILITY LOCATE TICKET NUMBERS SHOWN AND INSURE THE UNDERGROUND LOCATES REPRESENT THE ONLY UTILITIES IN THE AREA VERIFYING ALL LOCATING CONDITIONS PRIOR TO BEGINNING CONSTRUCTION.
 2. FIELD WORK WAS CONDUCTED APRIL 3-4, 2018.
 3. VERTICAL DATUM: ELEVATIONS ARE BASED ON NAD 83 BENCHMARK NO. 1 AC 3RD ST AND MC LABS ST. ELEVATION = 171.77 FEET (6440.85).
 4. THIS MAP DOES NOT CONSTITUTE A PROPERTY BOUNDARY SURVEY.
 5. SURVEY IS ONLY YALD WITH SURVEYOR'S STAMP AND SIGNATURE.
 6. CONTOUR INTERVAL IS 1 FOOT.
 7. TREES WITH DIAMETER OF 4" AND GREATER ARE SHOWN TREE DIAMETER INSPECTOR TREE INFORMATION IS SUBJECT TO CHANGE UPON AIR



LEGEND

EXISTING		EXISTING	
DECIDUOUS TREE	○	STORM SEWER CLEAN OUT	○
CONTOUR TREE	⊗	STORM SEWER CLEAN BRAN	○
FIRE HYDRANT	⊕	STORM SEWER MANHOLE	⊙
WATER BURNOFF	⊖	GAS METER	⊖
WATER METER	⊕	GAS VALVE	⊖
WATER VALVE	⊖	GUY WIRE ANCHOR	⊖
DOUBLE CHECK VALVE	⊖	POWER POLE	⊖
AIR RELEASE VALVE	⊖	POWER VALVE	⊖
SANITARY SEWER CLEAN OUT	⊖	POWER JUNCTION BOX	⊖
SANITARY SEWER MANHOLE	⊖	POWER PIERCE/ST	⊖
BOX	⊖	COMMUNICATIONS TUB	⊖
STREET LIGHT	⊖	COMMUNICATIONS JUNCTION BOX	⊖
WALDOB	⊖	COMMUNICATIONS RESE	⊖

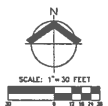
EXISTING	
RIGHT-OF-WAY LINE	---
BOUNDARY LINE	---
PROPERTY LINE	---
CENTERLINE	---
BTCH	---
CLUB	---
EDGE OF PAVEMENT	---
ELEVATION	---
FENCE LINE	---
GRAVEL EDGE	---
POWER LINE	---
DIG/HEAD WIRE	---
COMMUNICATIONS LINE	---
FIBER OPTIC LINE	---
GAS LINE	---
STORM SEWER LINE	---
SANITARY SEWER LINE	---
WATER LINE	---

TREE TABLE

TREE NUMBER	TYPE	DBH (IN)
10829	CONIFEROUS	12
10830	CONIFEROUS	30
10828	DECIDUOUS	6.8
10832	DECIDUOUS	7
10833	CONIFEROUS	18
10834	DECIDUOUS	11
10835	DECIDUOUS	8
10836	DECIDUOUS	9
11046	CONIFEROUS	7
11380	CONIFEROUS	26
11381	CONIFEROUS	43
11382	CONIFEROUS	18
11383	CONIFEROUS	29
11384	CONIFEROUS	17
11385	CONIFEROUS	17
11386	CONIFEROUS	33
11387	DECIDUOUS	15
11438	CONIFEROUS	8
11439	CONIFEROUS	6

CHORD TABLE

CHORD	BEGINNING	END	LENGTH	CHORD
C1	383.47'	535.07'	151.60'	104°37'07" W 101.17'



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 LAND SURVEYING & GEOTECHNICAL, LLC
 1000 N. GARDNER ST., SUITE 100
 PORTLAND, OREGON 97227
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 FAX: 503.253.8889
 WWW.AKSLANDSURVEYING.COM

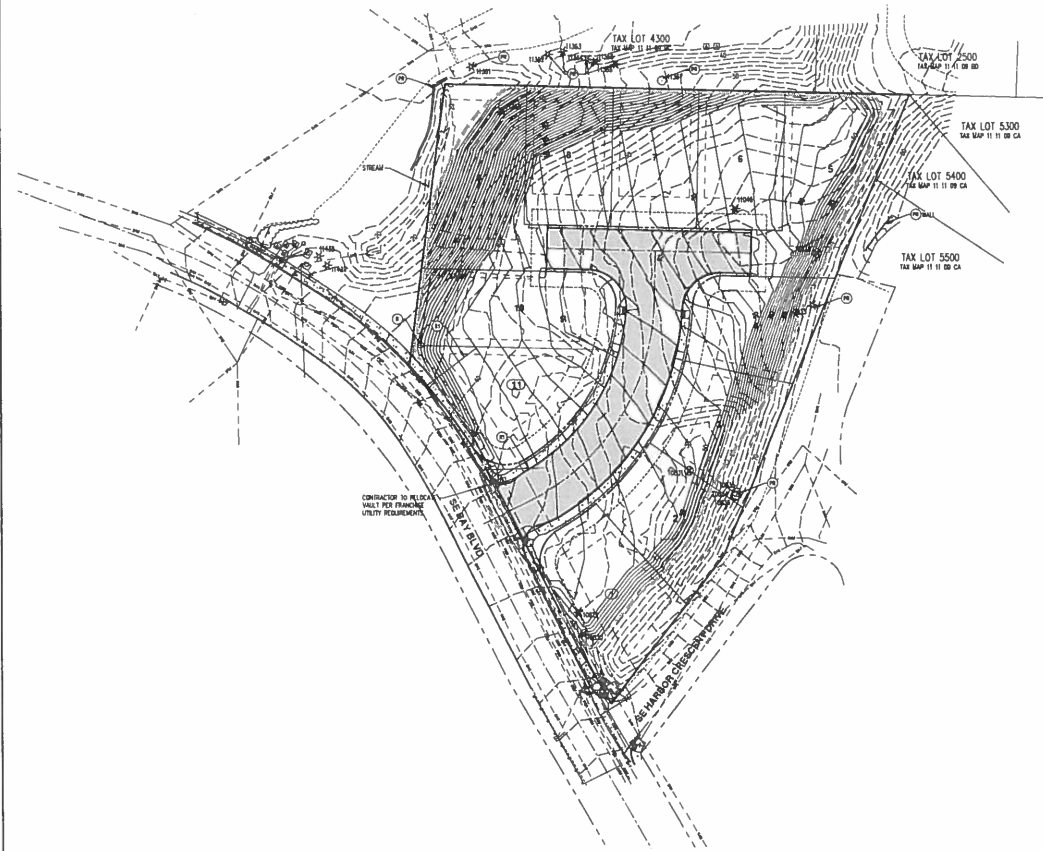
**FISHERMAN'S WHARF
 ESTATES SUBDIVISION
 NEWPORT**

EXISTING CONDITIONS

APPROVED BY: _____
 DESIGNER: _____
 DATE: 05/28/18
 SCALE: AS SHOWN
 REGISTERED PROFESSIONAL LAND SURVEYOR
 Carl A. Cooper
 LICENSE NO. 1217719
 EXPIRES 12/31/19

JOB NUMBER: 5691
 SHEET: C1

Document reviewed by
 Foundation Engineering, Inc.
 9-13-2018



KEYED DEMOLITION NOTES

- A PLUS, ABANDON AND/OR REMOVE EXISTING UTILITY LINES PER CITY AND/OR UTILITY CO. STANDARDS.
- B CONTRACTOR TO REMOVE AND PAUL OFF SITE FOR DISPOSAL.
- B1 EXISTING UTILITY TO BE ABANDONED AND REMOVED PER CITY STANDARDS.
- PH PROTECT

LEGEND

- EXISTING GRADE CONTOUR (5 FT) ————
 - EXISTING GRADE CONTOUR (5 FT) ————
 - FINISHED SHADE CONTOUR (5 FT) ————
 - FINISHED GRADE CONTOUR (5 FT) ————
 - CLEARING LIMITS ————
 - EXISTING CONIFEROUS TREE
 - EXISTING DECIDUOUS TREE
 - TREE REMOVAL
- NOTE: SEE COVER SHEET FOR GENERAL PLAN LEGEND

TREE NUMBER	TYPE	DBH (IN)	STATUS
10820	CONIFEROUS	12	REMOVE
10830	CONIFEROUS	30	REMOVE
10831	CONIFEROUS	12	REMOVE
10832	CONIFEROUS	18	PRESERVE
10833	CONIFEROUS	18	PRESERVE
10834	CONIFEROUS	11	PRESERVE
10835	CONIFEROUS	8	PRESERVE
10836	CONIFEROUS	8	PRESERVE
10837	CONIFEROUS	7	REMOVE
10838	CONIFEROUS	28	REMOVE
10839	CONIFEROUS	43	PRESERVE
10840	CONIFEROUS	18	PRESERVE
10841	CONIFEROUS	28	PRESERVE
10842	CONIFEROUS	17	PRESERVE
10843	CONIFEROUS	12	PRESERVE
10844	CONIFEROUS	23	PRESERVE
10845	CONIFEROUS	15	PRESERVE
10846	CONIFEROUS	8	PRESERVE
10847	CONIFEROUS	8	PRESERVE

AKS
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 1000 W. 10TH AVENUE, SUITE 100
 DENVER, CO 80202
 TEL: 303.733.8888
 WWW.AKSLLC.COM

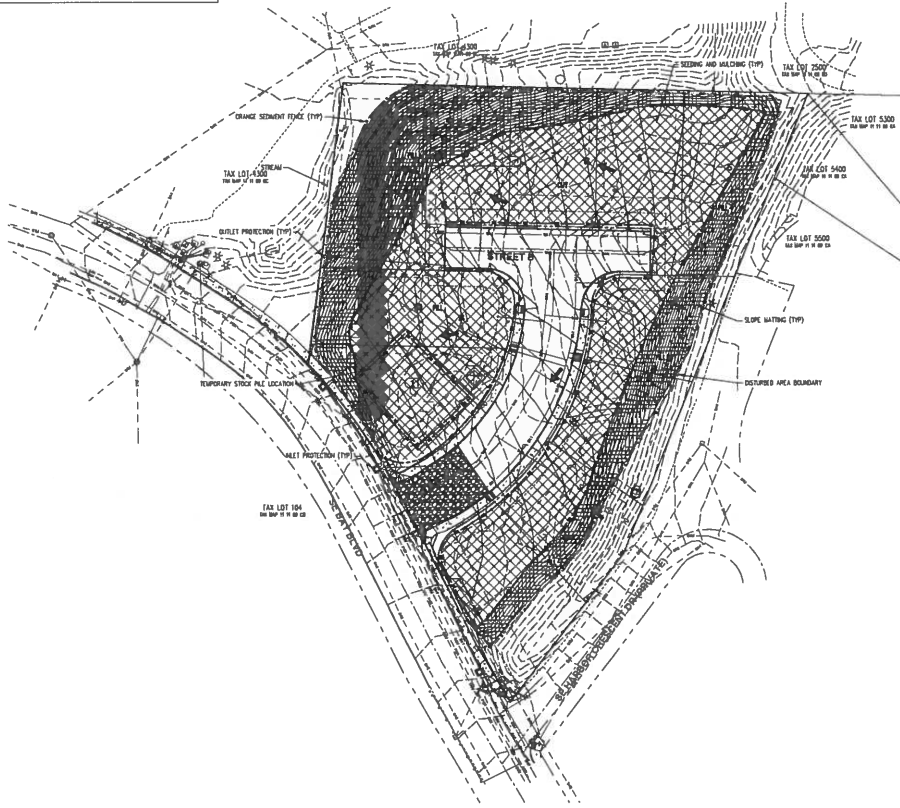
ENGINEERING - SURVEYING - NATURAL RESOURCES
 FORESTRY - PLANNING - LANDSCAPE ARCHITECTURE

**FISHERMAN'S WHARF
 ESTATES SUBDIVISION
 PRELIMINARY DEMOLITION
 AND TREE PRESERVATION
 PLAN**

OR
 NEWPORT
 TAX LOT 001
 TAX LOT 002

DATE: 07/21/2018
 NOT FOR CONSTRUCTION
 SCALE: 1" = 30' FEET
 SHEET
C3

Document reviewed by
Foundation Engineering, Inc.
9-13-2018



LEGEND

- EXISTING GROUND CONTOUR (1' TO 17') [Symbol]
- FINISHED GRADE CONTOUR (1' TO 17') [Symbol]
- SEDIMENT FENCE (TO BE INSTALLED PRIOR TO GRADING) [Symbol]
- AREA DRAIN PROTECTION (TYP) PER CATCH BASIN INSET BASE DETAIL [Symbol]
- CURB INLET PROTECTION (TYP) PER COMBINATION DETAIL [Symbol]
- OUTLET PROTECTION (TYP) [Symbol]
- CONCRETE WASHOUT AREA [Symbol]
- DRAINAGE FLOW DIRECTION [Symbol]
- GRAVEL CONSTRUCTION ENTRANCE [Symbol]
- SLOPE MATTING [Symbol]
- CLEARING LIMITS [Symbol]

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**FISHERMAN'S WHARF
ESTATES SUBDIVISION
NEWPORT**

**PRELIMINARY GRADING
AND EROSION CONTROL
PLAN**

DATE: 07/11/2018
SCALE: 1" = 30' FEET
JOB NUMBER: 5691
SHEET: C4

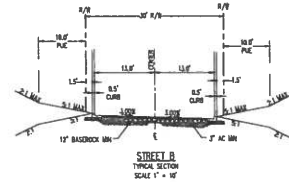
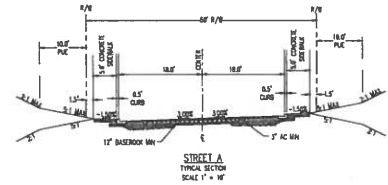
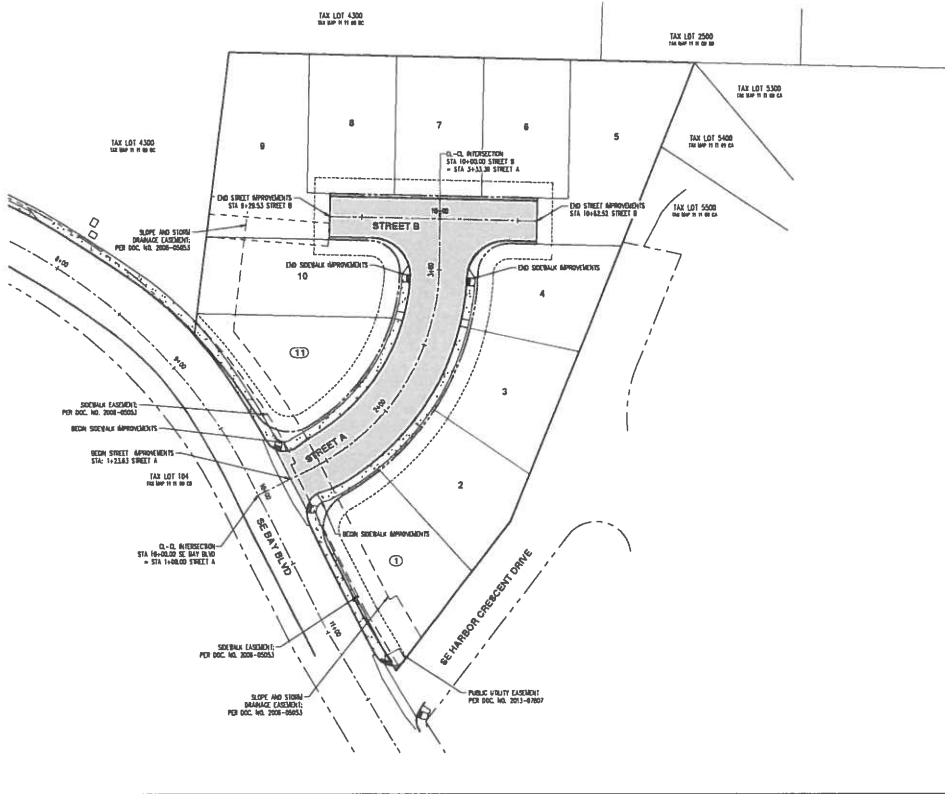
AKS ENGINEERING & ARCHITECT, LLC
1000 N. 10TH AVE., SUITE 100
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AKS ENGINEERING, LLC - PRELIMINARY GRADING AND EROSION CONTROL PLAN - 11/15/2018

Document reviewed by
Foundation Engineering, Inc.
9-13-2018

LEGEND

-  NEW CONCRETE SIDEWALK BY HOMEOWNER
-  NEW AC PAVEMENT
-  NEW ADA RAMP CONSTRUCTED BY CONTRACTOR



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**FISHERMAN'S WHARF
ESTATES SUBDIVISION
OR
NEWPORT**

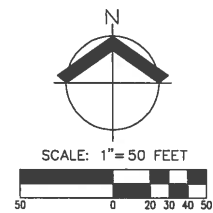
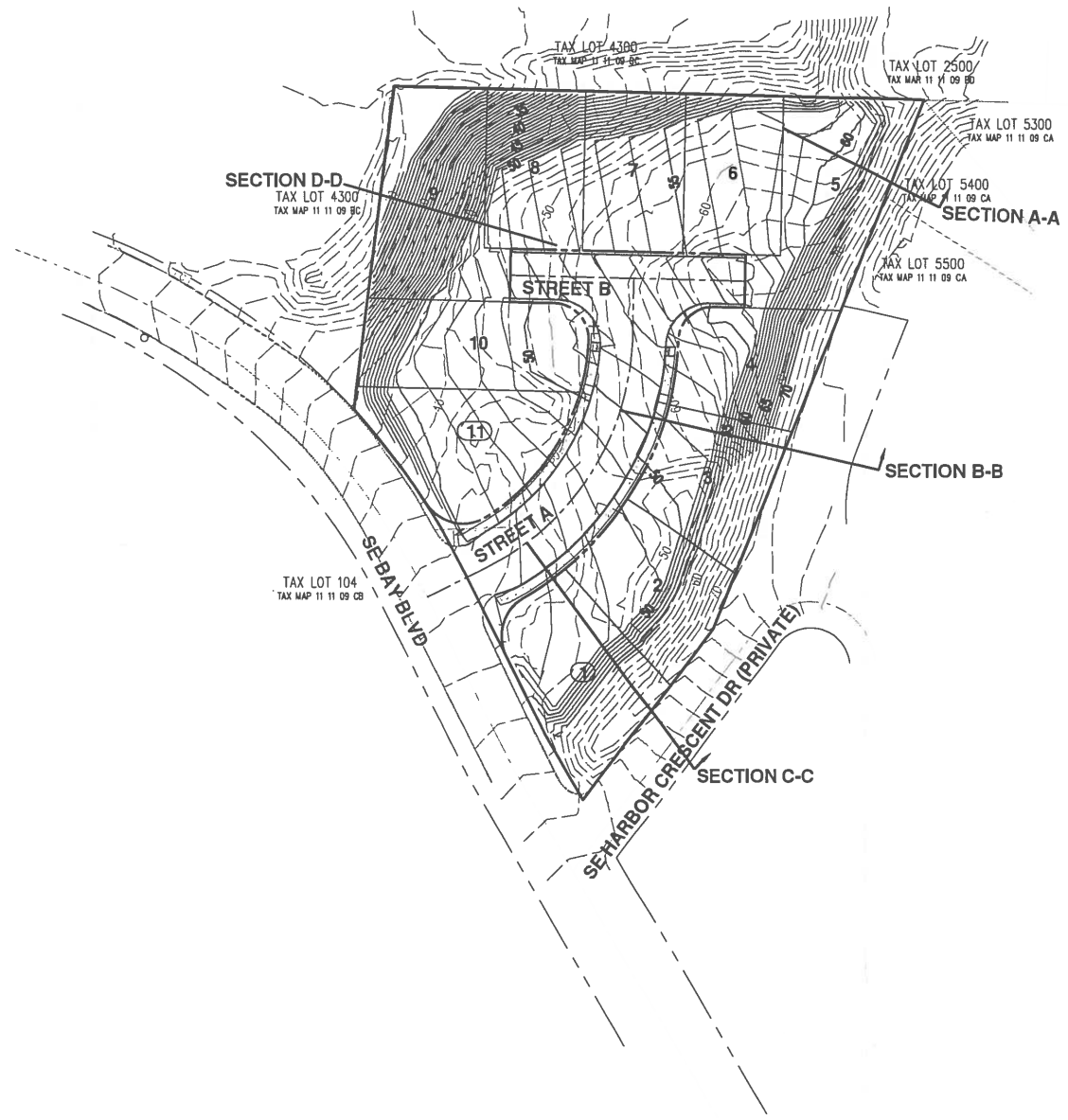
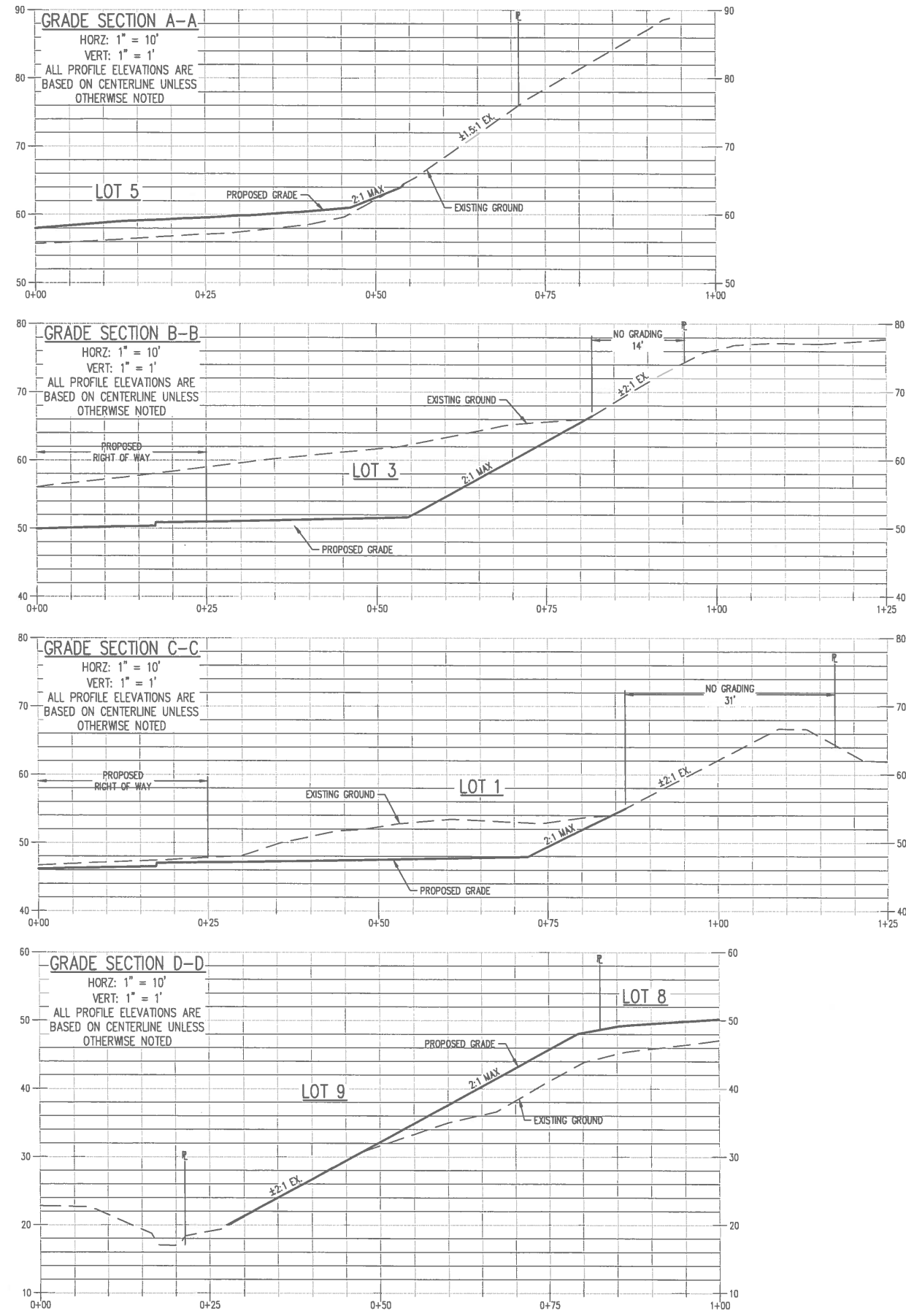
**PRELIMINARY STREET PLAN
AND TYPICAL SECTIONS**

DATE: 8/15/2018
SCALE: AS SHOWN
JOB NUMBER: 5691
SHEET: C5

NOT FOR CONSTRUCTION

SCALE: 1" = 10 FEET

AKS ENGINEERING & ARCHITECTURE, LLC



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**FISHERMAN'S WHARF
ESTATES SUBDIVISION**

NEWPORT

OR
LINCOLN COUNTY TAX MAP 11 11 09 CB

GRADING SECTIONS

DESIGNED BY:	MTA
DRAWN BY:	JWB
CHECKED BY:	DMK
SCALE:	AS NOTED
DATE:	9/13/2018
<p>PRELIMINARY NOT FOR CONSTRUCTION</p>	
REVISIONS	
JOB NUMBER	
5691	
SHEET	
C8	



October 1, 2018

Derrick Tokos, Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365

**RE: Fisherman's Wharf Estates Subdivision, Variance, and Geologic Permit
(Case File #1-SUB-18/2-VAR-18/3-GP-18) Concluding Testimony**

Dear Mr. Tokos:

Thank you for reviewing the above referenced application. This letter and the materials submitted on September 17th respond to the comments received from the public and members of the Newport Planning Commission at the September 10th public hearing and during the subsequent open record period. Previously submitted materials included a letter from Foundation Engineering summarizing their initial review of the preliminary plans and a revised grading sections exhibit to help illustrate finished grades for the property. The comments are directed toward the approval criteria for the Geologic Permit and primarily related to perceived impacts to the Harbor Crescent subdivision to the east of the subject property. A brief summary of the comments are shown in italics, with the response provided directly below.

The Geotechnical Report does not adequately address the risk of slope instability to SE Harbor Crescent Road and the Harbor Crescent subdivision.

Response: The Geotechnical Investigation dated October 19th, 2007 and the supplemental report dated June 12th, 2018 provided by Foundation Engineering both discuss slope stability issues on the site and in the surrounding area. These reports were prepared by a registered professional geotechnical engineer and are included in Exhibit G of the application. The 2007 report concludes that there is low potential for landslides or instability on the site with existing slope conditions (page 5), and the 2018 supplemental report affirms this conclusion based on recent observations (page 3). The report makes a number of recommendations to minimize the risk of slope instability, including constructing cut and fill slopes less than 2:1 (horizontal distance: vertical distance). Foundation Engineering also conducted a review of the preliminary plans and concluded that the planned grading is generally consistent with those recommendations and will not increase the risk of unstable slopes when compared to existing conditions. See the letter submitted for the record on September 17th for more information.

Sheet C3 of the Preliminary Plans illustrates disturbance areas and where grading is planned. Grading or other ground disturbance is not planned within 10 feet of the eastern property line abutting the Harbor Crescent subdivision.

A Grading Sections exhibit (Sheet C8) was submitted on September 17th to help illustrate the planned grading of the property in the areas subject to the most discussion. This includes grading sections for Lot 1 adjacent to SE Harbor Crescent Drive, Lot 3 adjacent

to Harbor Crescent Place, and Lot 4 adjacent to Tax Lots 5300, 5400, and 5500. The grade sections show that grading is not planned resulting in slopes that are in excess of 2:1, that the planned grading does not increase the steepness of existing slopes on the site, and that cuts into the existing 2:1 slopes are not planned.

The Geotechnical Report is inadequate because it did not evaluate the grading plan and the geotechnical engineer has not the opportunity to review the new drawings.

Response: The purpose of the Geotechnical Report is stated in the introductory pages of the report. The purpose of the report is to document the site and subsurface conditions and provide geotechnical design and construction recommendations for the project. It is not a specific requirement of NMC 14.21.050 (Application Submittal Requirements) that the Geotechnical Report include an evaluation of preliminary plans prior to submittal. Nevertheless, Foundation Engineering conducted a review of the Preliminary Plans and concluded that the planned grading is consistent with the recommendations in the report and planned subdivision will not increase the risk of unstable slopes when compared to existing conditions. See the letter submitted for the record on September 17th for more information. This letter also describes the role the geotechnical engineer will have in reviewing final plans and monitoring final construction to verify that the recommendations in the report are followed.

Sheet C6 of the application appears to show a finished grade over 2:1.

Response: Preliminary finished grades are shown on the Grading Sections exhibit on Sheet C8 that was entered into the record on September 17th, 2018. Final plans will be submitted, reviewed, and approved prior to construction of the planned improvements and finished grading. As required under NMC 14.21.130 and reflected in Conditions 1 and 2 in the staff report, the geotechnical engineer will review and approve the final plans to verify they are consistent with recommendations in the report prior to final approval.

Additional fill has been deposited on site after the original Geotechnical Report.

Response: This topic is addressed on Pages 3 and 4 of the supplemental report from Foundation Engineering dated June 12th, 2018. A drawing is included with the report showing the approximate location and extent of this material and made recommendations on how this material should be treated. The Applicant intends to comply with the recommendation.

The Geotechnical Report and the Application do not include specific engineering solutions (i.e. retaining walls) to mitigate risks of slope instability.

Response: The Preliminary Plans and specific grading sections were prepared by a registered civil engineer in accordance with standard engineering practices and recommendations provided by the geotechnical engineer (in the Geotechnical Report). Foundation Engineering has reviewed the preliminary plans does not anticipate that engineered structures such as retaining walls will be needed for the planned slope configurations. Final plans will be submitted, reviewed, and approved prior to construction of the planned improvements and finished grading, as is customary and appropriate.

Thank you for the opportunity to enter additional material into the record and respond to the comments raised during the public hearing and open record period. As documented in the staff report, the application complies or can comply with all applicable criteria and the evidence in the record provided overwhelmingly supports approval.

Sincerely,
AKS ENGINEERING & FORESTRY, LLC




Curt Fisher
Land Use Planner
503.400.6028 | FisherC@aks-eng.com



David Karr, PE, PLS
Registered Civil Engineer
503.400.6028 | DavidK@aks-eng.com

Memorandum

To: Newport Planning Commission

From: Derrick Tokos, Community Development Director 

Date: October 4, 2018

Re: Supplemental Hearing Memo for Appeal of Geologic Permit (File No. 1-GP-18)

Included with this memo is written testimony and other relevant information submitted into the record after the staff report was prepared for the September 24, 2018 hearing. As previously noted, appellants have challenged substantive elements of the applicant's June 29, 2018 geologic report by K&A Engineering that concluded the applicant's property is suitable for the development of three home sites. Appellant's retained the services of Columbia Geotechnical to peer review K&A Engineering's work, and the results of the peer review are summarized in an August 15, 2018 report. Both K&A Engineering and Columbia Geotechnical provided supplemental testimony at the September 24, 2018 hearing and additional written testimony after the hearing. New public testimony has been submitted as well. The subject site is situated on the west side of NW Spring Street, and is identified by the County Assessor as tax lots 1800, 1900, and 1903 of map 11-11-05-BC.

The hearing on Monday is a continuance of a hearing that was held on September 24, 2018. A script will be prepared for the Planning Commission Chair addressing the conduct and order of the proceedings in a manner consistent with the City of Newport's adopted procedures (NMC 14.52.080). Signup sheets will be provided for those wishing to speak at the hearing. The sheets will include a statement asking that persons identify the criteria they believe the applicant has or has not satisfied before they provide their testimony.

Prior to the conclusion of the hearing, any participant may request an opportunity to present additional evidence, arguments or testimony. If such a request is made, the Commission must, at a minimum, leave the record open for receipt of written materials for a period of 7 days. Unless waived, the City must also afford the applicant at least 7 days after the record is closed to all other parties to submit final written argument in support of the application.

Once the record is closed, the Planning Commission will need to render a decision. If the Commission agrees with K&A Engineering, then it must affirm the Director's decision as written, or with modifications it believes are needed to ensure K&A Engineering's recommendations are followed and the provisions of NMC Chapter 14.21 are met. Alternatively, if the Commission finds all, or a portion of, the peer review by Columbia Geotechnical to be compelling, then it must determine whether or not the issues raised by Columbia Geotechnical can be reasonably addressed through the imposition of conditions of approval, or require that the application be denied. The Commission may rely upon other testimony provided it relates to the approval criteria and does not contradict comments made by licensed experts, where the Municipal Code requires the expert testimony be treated as compelling. A

final order and findings in support of the Planning Commission's decision will be presented for approval 2-weeks after the Commission renders its verbal decision.

Exhibits

The case record is organized chronologically, with the most recently submitted information listed first. Documents submitted after the date of this memo will be distributed to Commission members at the hearing. The following materials were submitted after the staff report was prepared for the September 24, 2018 hearing:

Exhibit #	Description
F-1	Letter from Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., with K&A Engineering, dated 10/4/18, responding to testimony submitted on or after the 9/24/18 hearing
F-2	Letter from Elaine and Robin Karnes, submitted by email on 10/2/18, expressing concerns with the K&A Engineering analysis
F-3	Email from Bill Lund, dated 10/1/18, arguing that there has been no recent erosion or slope movement on the property, with attached photographs
F-4	Letter from Ruth Wilmoth to Mona Lindstromberg, dated 9/11/18, stating reasons why she believes the report wasn't prepared in accordance with "Guidelines for Preparing Engineering Reports in Oregon"
F-5	"Guidelines for Preparing Engineering Geologic Reports in Oregon," adopted by the Oregon State Board of Geologist Examiners, dated 5/30/14
F-6	Public notice of the October 8, 2018 hearing, published in the News-Times on 9/28/18
F-7	Letter from Lisa Thomas, dated 9/26/18, requesting the Commission carefully evaluate Mr. Lund's plans and potentially bring in outside help from Oregon State University
F-8	Email from Tim Roth, dated 9/25/18, outlining reasons why he believes the approval of Mr. Lund's geologic permit should be approved
F-9	Email submitted by Mona Linstromberg at the 9/24/18 hearing. The email. From 9/19/18 notes a deficiency in the newspaper notice for the 9/24/18 hearing
F-10	Photographs of the beach in the vicinity of the subject property, submitted at the 9/24/18 hearing
F-11	Email and letter from the Oregon Shores Conservation Coalition, dated 9/21/18, explaining why they believe the application should be denied
F-12	Email from Elaine Karnes, dated 9/19/18, with attached News-Times newspaper article from 6/16/93 related to what at that time was a proposed development in the vicinity of Jump-off Joe



October 4, 2018

Project: 17056

Bill Lund
P. O. Box 22
Seal Rock, OR 97376

Subject: Response to Supplemental Written Opposition Testimony
Proposed Residential Development
Tax Lots 1800, 1900, 1903; Tax Map 11-11-05-BC;
NW Spring St., Newport, Oregon

PURPOSE AND SCOPE

After the initial public hearing for the application for geologic permit on September 24, 2018 for the subject proposed project, additional written testimony was submitted to the planning commission in opposition to the geologic permit. This testimony consists of:

- An informal letter from Elaine and Robin Karns (Karns), and
- A formal letter from Oregon Shores Conservation Coalition (Oregon Shores).

At your request we are responding to the claims in these letters.

RESPONSE

KARNS TESTIMONY

We will respond to the issues by summarizing the issue and providing a response.

- **Page 1 Paragraph 1 - Borings in Right-of-Way.** The borings were made prior to any knowledge of the existence of the old road right-of-way. Borings are routinely made in public rights-of-way (with permission) and we know of no precedent that would invalidate borings based on whose land the borings were made. There is no reason for denial based on the right-of-way issue.
- **Page 1 Paragraph 1 - Geologic Engineer.** Wilmoth is not licensed to practice geotechnical engineering in Oregon. She is a licensed professional civil engineer and a Certified Engineering Geologist. Wilmoth's testimony should be excluded where it opines on geotechnical engineering issues.
- **Page 1 Paragraph 2 – Marine Terrace.** The steep slope is the embankment that descends from Spring Street. This is likely the remnant scarp face of the ancient slope movement that occurred on this property. I am not sure but my guess is that it's on the road right-of-way. My comment was made to alert the City of Newport regarding this hazard. The development proposed by Mr. Lund's proposal does not modify or change this condition and is not affected by this condition.
- **Page 1 Paragraph 3 – Spring Street Stability.** The drill access did not significantly impact the portion of the slope descending from NW Spring Street – the access terminated at a flat landing



area south of the property in question. We agree with portions of this testimony – The City of Newport is responsible for stability within the rights-of-way of Newport. Based on our field surveying, most of this steep slope is ON the NW Spring Street right-of-way and, as such, is probably the responsibility of the City of Newport. However, the geotechnical report highlights the nature of stability of this area and made recommendations to NOT build in this area (we specified a “No-Build Zone” extending 20’ west of the road rights-of-way). We would like to see the City of Newport look into the stability of the slope descending from the west side of Spring Street and buttress this area. This condition is clearly NOT a reason to deny the Geological Permit for this project.

- **Page 2 Paragraph 1 – Previous Geologic Report for Tax Lot 1800.** We have no idea of any report for this property.
- **Page 2 Paragraph 1 – Up-to-Date Geologic Report.** In our opinion, the 1991 H. G. Schlicker Report BEST matches conditions observed by us in the field. There is not an expiration date on the quality or applicability of a professional report such as this. Conditions have NOT changed significantly at this side since the issuance of the 1991 report. Older reports are not a reason to deny any geologic permit.
- **Page 2 Paragraph 2 – Apparent Discrepancies – Springs.** Springs on this project site are expressed at the ground surface due to confinement of groundwater at the surface of the underlying shallow mudstone. We characterized this condition at the area of interest and it is not necessary to inventory every spring on the property to adequately evaluate the nature of stability and subsurface conditions for the proposal. The existence of springs confirms our interpretation of subsurface conditions. Because we did not inventory all the springs is NOT a reason to deny the geologic permit.
- **Page 3 Paragraph 1 – Apparent Discrepancies – Location on Tax Lot 1800.** A study of the proposed preliminary conceptual site plan reveals that the proposed residence location on tax lot 1800 is far from the beach. We fail to see how this could in any way be a reason to deny the geologic permit.
- **Page 3 Paragraph 1 – Apparent Discrepancies – Duplexes.** We were unaware of the nature of the proposed structures at the time of our Geotechnical Report. This make virtually NO difference to the outcome or recommendations and is NOT a reason to deny the geologic permit.
- **Page 3 Paragraph 1 – Apparent Discrepancies – Vicinity.** It would have been a better choice of words to use “footprint” instead of “vicinity.” Regardless, the proposed development calls for raising the house above flood elevation. This is not a reason to deny the geologic permit.

OREGON SHORES

We note that the Oregon Shores letter is not much more than rehashed issues that have already been presented to the planning commission and to which we have already responded – most notably in our response to the Columbia Geotechnical Peer Review dated September 11, 2018. The Oregon Shores letter restates many of these issues in a rather length, embellished style.

Response – Opposition Testimony

NW Spring St. Development – Lund Development – Newport, Oregon

October 4, 2018 · K & A Engineering, Inc. · Project No.: 17056



-
- **Page 2– Item 2 – “Fails to Demonstrate Compliance...”**
 - **Wilmoth:** Wilmoth is not licensed as a professional Geotechnical Engineer in the State of Oregon and, as such, is not qualified for Peer Review of our Geotechnical Report. Furthermore, we have really no idea of Wilmoth’s actual experience or qualifications other than a statement that she has “decades” of experience. In contrast, Remboldt is a licensed Geotechnical Engineer, has a M.S.C.E. in Soil Mechanics from the University of Washington, has served over 38-years as a geotechnical engineer in challenging steep mountainous and coastal terrain in the intermountain west (Oregon, Washington, Idaho, Montana, Wyoming, Utah, and California) evaluating slope stability and developing stabilization measures and mitigation. Remboldt is a co-editor and contributor of a 3-volume Slope Stability Reference Guide for National Forests in the United States.¹ Remboldt is an expert in evaluating the probability of slope movement for large landscapes.² K & A Engineering, Inc. has provided landslide evaluation and designed stability measures for numerous rural and urban landslides in Oregon. Our experience in evaluating actual landslides and monitoring the success of the constructed stabilization that we designed, provides invaluable experience, and uniquely qualifies us to make the recommendations that were made on behalf of Mr. Lund. We see no evidence that this is a reason to deny the geologic permit.
 - **Cross:** We have no idea of Cross’ experience in characterizing slopes, subsurface conditions, and modeling slope stability. Being experienced in stratigraphy, sedimentology, and tectonics does not alone qualify one to be an expert in slope stability. We see no evidence that this is a reason to deny the geologic permit.
 - **General Remarks:** The recommendations of this section that the approval of the design proposal was “unjustified and inadequately supported because of significant inaccuracies and omissions...” is simply a huge empty statement lacking any substantial documentation and actual site investigation. *This, unfortunately, is the general tenor of the Oregon Shores testimony and is, quite frankly, an embarrassment.*
 - **Page 3 and 4 – item a – Geology.** The letter waxes eloquent and long on the subsurface conditions *with no cited references and no actual site exploration.* Oregon Shores demonstrates that they know little about actual site conditions and, as such, their claims have little credibility. The style and length of the testimony is designed to impress the reader with an appearance of knowledge (where really little exists) and to intimidate. This testimony is disingenuous and should not be the basis for denial of the geologic permit.
 - **Page 4 and 5 – Item b – Law and Purpose of Code.** I fail to see the relevancy or the necessity of Oregon Shores to lecture the planning commission on their City’s own Code.

¹ United States Department of Agriculture, Forest Service. Engineering Staff, Washington D.C. Publication EM-7170-13. August 1994.

² Michael Remboldt, Level I Stability Analysis of the 1994 Forest Fire Landscapes, Payette National Forest. Paper presented at the 76th Annual Meeting of the Transportation Research Board, National Research Council – Reliability-Based Design in Geotechnical Engineering. January 1997.

Response – Oppostion Testimony

NW Spring St. Development – Lund Development – Newport, Oregon

October 4, 2018 · K & A Engineering, Inc. · Project No.: 17056



- **Page 6 – Item c – Spring Street Landslide.** The geotechnical report and geologic hazard report extensively discussed the mapped landslide complex that exists all along this stretch of beach. *Saying we omitted this is simply a falsehood.* Moreover, Oregon Shores states that our geotechnical report “does not disclose evidence of recent slope movement...” is another falsehood. This testimony should be excluded because of outright false statements.
- **Page 7 – Item c – paragraph 1 – Peer Review.** The only “fallen blocks” we observed were on adjacent properties (tax lot 1902). Most of Wilmoth’s statements are not based on actual site investigation. *What we found really exists on the site is remnant landslide debris, dune sands, and undocumented FILL resting over mudstone.* The project site is NOT actively sliding. We also have difficulty understanding why Wilmoth and Oregon Shores is so willing to make unanchored conclusions that the underpinning of adjacent house foundations is such concrete evidence of slope movement. To our knowledge, they have no actual reports of investigations to determine the cause of foundation settlement. The distress and required underpinning could just as easily been caused by settlement of soils underneath the foundation due to a variety of reasons – we just don’t know, and we find it disturbing that any professional would make this jump to conclude that the damage was caused by slope movement. *This statement alone is reason to reconsider the credibility of the testimony of both Wilmoth and Oregon Shores.*
- **Page 8 – Item d – Erosion.** Erosion evident at the site has two components – natural (pre-disturbance) and disturbance-related to recent drill access construction. Most of the sediment transported recently was due to storm runoff over disturbed areas of the recently-constructed drill access. Erosion mitigation was applied and has been effective. We are unaware of erosion on the “step slide scarp” which was undisturbed by drilling activities.
- **Page 9 – Item e – Monitoring.** *Long term monitoring of precipitation is simply ridiculous and unprecedented for this project site.* To my knowledge, unless a site is on an active landslide, long-term monitoring with slope inclinometers is not common practice. Furthermore, in this case, slope indicator casing would not provide any data worth considering because of the very loose and shallow nature of the sandy landslide debris and undocumented FILL over mudstone and the fact that the only real transport mechanism at the site is by wind or water erosion, not slope movement. We observed no cracks, scarps, or depositional formations that suggest current, active, on-going mass slope movement at the site in question. Wilmoth or Oregon Shores have presented absolutely NO compelling, or even mildly interesting evidence that any slope movement is actually occurring on adjacent sites. Finally, due to other reasons (earthquake loads), our report recommends foundations supported by deep foundation elements embedded into mudstone, which would preclude the entire issue of shallow slope movement in the first place.
- **Page 10 – Item f.** As we replied to the Wilmoth “Peer Review” including hundreds of pages of thousands of calculations would serve no purpose. Any geotechnical engineer qualified to review our work would simply model site conditions and make their own analysis, which is standard practice. This is another indicator that neither Wilmoth or Oregon Shores is qualified to make these statements with any credibility.

Response – Opposition Testimony
 NW Spring St. Development – Lund Development – Newport, Oregon
 October 4, 2018 · K & A Engineering, Inc. · Project No.: 17056



- **Page 11 – Item g.** Cross’ testimony regarding the bedding of mudstone has already been refuted in prior testimony. Cross has no idea of modeling slope stability and the bedding angle of mudstone is not consistent or uniform even if it did have applicability to the analysis of slope stability in this case. There is no “error” in “structural dip.” Yes, mudstone is a sedimentary rock and bedding is apparent in some outcrops, and not apparent at all in others. We probed extensively into the mudstone and found no evidence of consistent softer zones that would imply interbedded weak zones oriented with a specific bedding plane. Furthermore, what few measurements of strike and dip of the Nye mudstone that exist on geologic maps vary quite widely in direction and dip angle. The top of mudstone is NOT necessarily the bedding angle but is more likely due to past wave and landslide erosional processes. Bedrock surface slope is seldom consistent with bedding plane geometry. *This is another indicator of lack of knowledge of basic geology.* We have seen none of Cross’ supposed modified cross sections. Finally, we do NOT “input” dip into SLIDE (the slope stability software)... how does he come up with these things? Cross has a complete lack of understanding of limit equilibrium analysis.
- **Page 13 – Item h.** As already discussed in prior testimony, our investigation and report substantiated the recommendations of the 1991 H. G. Schlicker Report. *The statement that “The K & A Report does not substantiate the findings of available site-specific geologic reports” is an outright falsehood.*
- **Page 15 – Item I – Conclusion.** Oregon Shores has not concluded anything, other than they have made a host of unanchored, unsupported, unsubstantiated, baseless, and false claims – in a most exhausting style. The entire testimony is of no value and should in no manner be the basis for denying the geologic permit.

Sincerely,

Michael Remboldt, P.E., G.E.
 K & A Engineering, Inc.



EXPIRES: DECEMBER 31, 2018





Derrick Tokos

From: Elaine Karnes <karnese@peak.org>
Sent: Tuesday, October 02, 2018 2:29 PM
To: Derrick Tokos
Cc: Ruth Wilmoth; Phillip Johnson, Oregon Shores/CoastWatch; Mona Linstromberg; Rob & Teresa; Matt and Lisa Thomas; Chris; Sean Malone; Cameron La Follette
Subject: 1-GP-18 Appeal testimony
Attachments: APPEAL 1-GP-18 Karnes.rtf

Please enter the attached into the record (Appeal Geologic Permit 1-GP-18 A) and please acknowledge receipt.

-- Elaine Karnes

Thank you Chairperson Patrick and members of the Planning Commission for your time and attention to the issues regarding the geologic permit appeal for the proposed Spring Street development. After listening to the record of the September 24, 2018 hearing, we have even more concerns with this permit and the proposed development.

Mr. Lund's geotechnical engineer (Michael Remboldt) stated the following at the September 24, 2018 hearing: "We didn't go down to where he's (Lund) proposing these home sites now. We've been clear with Mr. Lund he's going to have to do some more borings to confirm the geology in that area" (9/24/2018 Hearing video, time 1:25). And again, later during Remboldt's statement, he said: "We really think, though we're reasonably confident that we're not going to find any big surprises, we think it would be prudent to do more borings " (time 1:42:32). He continues: "There's still some issues to be worked out. It's really a work in progress" (time 1:43:11). All of the borings that were done are on the City or County right-of-ways, not on Mr. Lund's property (Exhibit A-6, Appendix A, Maps, Drawing 2/3, Geotechnical Site Plan). If additional testing (including more borings) is necessary, as recommended by both Mr. Lund's own engineer and by geologic engineer, Ruth Wilmoth, this permit should be denied.

Mr Remboldt described Mr. Lund's property as "reasonably stable" but then, when describing the adjacent geology stated: "There is a section along Spring Street where we still have a kind of cliff, a steep slope, which is fairly fragile. It is what we call a marine terrace" (time 1:24:27). He repeated this concern: "The most unstable portion is right off Spring Street... that's the most hazardous area in terms of possible slope movement" (time 1:29:59). When questioned about the mudstone and slope stability above Spring Street, K&A geologic engineer, Gary Sandstrom said: "There is that potential above Spring Street" (time 1:40:12). And during Mr. Remboldt's rebuttal, when asked about the stability of Spring Street, Remboldt stated: "There is the concern about the bank along the street and that is a concern. I was alarmed that there are a couple of scarfs that go diagonally across that street... I think that the embankment along Spring Street, it's stability, is not the greatest. I think Newport would be well served to take a look at that."

The Newport Municipal Code states: *"The purpose of this section [Chapter 14.21 Geologic Hazards Overlay] 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." Spring Street has been relatively stable over recent years, but that was before Mr. Lund's crew moved in with heavy equipment and cleared the land, numerous large trees, bushes and dense vegetation from the area nearest the street. Mr. Remboldt stated during his testimony that "where Bill plans to develop, the terrace is gone" (time 2:23) as an apparent indication of stability. What he doesn't make clear is that Spring Street and the homes to the east are situated on the marine terrace where the geology is potentially even less stable. The City's responsibility is not limited to Mr. Lund's property, but includes the street and adjoining homes.

There are other issues in Mr. Remboldt's testimony that were equally concerning. Remboldt referenced a report written by H.G. Schlicker and Associates as: "The most prominent report that we found was done in 1991, was done by Herb Schlicker... I felt it was one of the best reports we found on that particular site. And we agree with his findings." However, J. Douglas Gless (current President/Principal Engineering Geologist, H.G. Schlicker & Associates, Inc) wrote in an email dated 7/25/18 to Mona (Linstromberg) and Bill (Lund) and c.c.'d to D. Tokos: "The 1991 report ... should be considered greatly out of date and I cannot agree with the conclusions drawn in it relative to the statement, 'the landslide rests on a nearly level surface and is not capable of further sliding' " (Exhibit B-9). Furthermore, Mr. Gless identifies his firm's April 14, 2016 report pertaining to TL 1800 (prepared for the previous owner, from whom Mr. Lund purchased the property) as the "most up to date". In his conclusion in that report he states: "*The site lies on an ancient landslide that is mapped as a deep-seated active slide block. The headscarp of this active landslide, named the Spring Street landslide, is located along the eastern property boundary of the site (Figure 4). Nearby areas north and south of the site show signs of continued slow movement, and we expect the subject site to experience ongoing movement under existing conditions.*" (Please see Exhibit B-9 for the complete report.)

K&A's geologic report (dated June 29, 2018) contains a number of apparent discrepancies. To mention just a few: Sandstrom in his report identifies only one surface spring, when in fact there are two (even during the summer).

Remboldt identifies the site as including the "east half of lot 1800" though in the site plan submitted to the City, the house is located on the western half of lot 1800, practically on the beach. Remboldt describes the development as "one or more conventional single-family residences", though the referenced plan includes two additional duplexes. Mr. Sandstrom's statement: "the Flood Hazard zone for ocean flooding extends into the western margin of Lot 1800, but not the proposed home site vicinity" is not consistent with the current science reflected in the FEMA 2016 maps and flood insurance study. If K&A's report has these apparent errors or is otherwise incomplete, how can it be approved?

We in the Spring Street neighborhood expect the Planning Commission to enforce the Newport Municipal Code. Please, read and consider carefully the written testimony from all of the geologists; the concerned, informed and knowledgeable neighbors; as well as the non-profit organization Oregon Shores Conservation Coalition (representing more than 45 years of experience with coastal issues). Again, thank you for your attention to this issue.

Sincerely, Elaine and Robin Karnes

**Derrick Tokos**

From: Bill Lund <wlund_albany@yahoo.com>
Sent: Monday, October 01, 2018 4:03 PM
To: Derrick Tokos; P.E. Michael Remboldt
Subject: Spring st 85 degree and NO erosion
Attachments: Power Point of 10_1_2018 current pics.pdf

Hi Derrick,

Can you please enter this PDF into the record and see that the Planning Commission get this of Spring St sloped road with NO erosion, NO spring since June and NO erosion on Fill for new driveway.

Have you heard anything more in opposition or appellants saying anything about the Planning Commission meeting since the meeting last Monday?

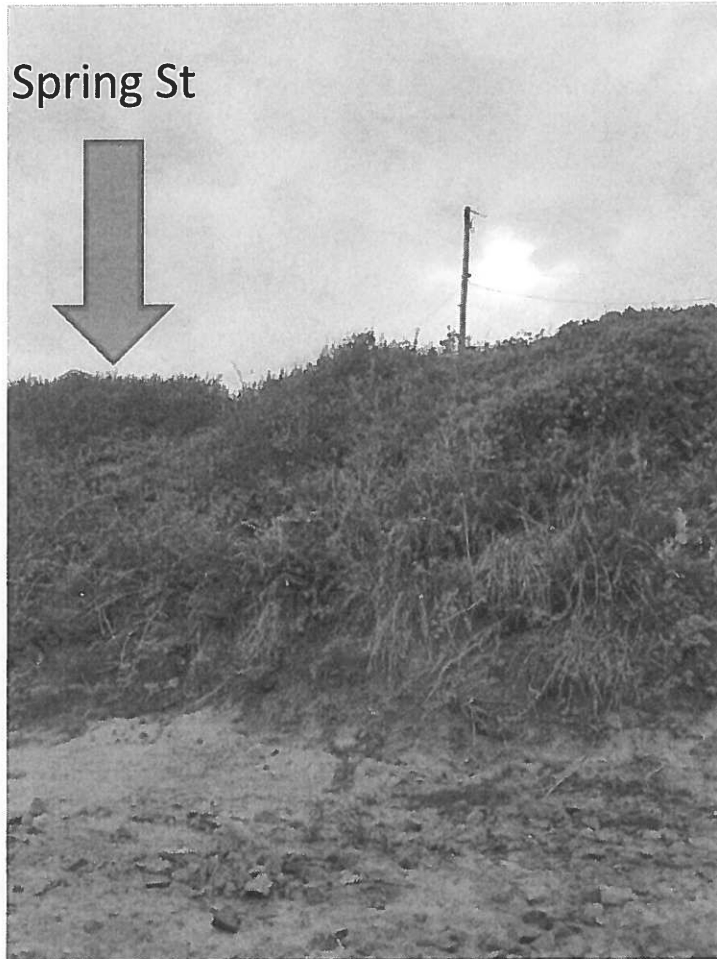
Also can I bring a few large pictures of the sloped Spring st road showing NO erosion since Road installed many many years ago so that the Planning Commission and really grasp that this property and surrounding area has NOT moved or eroded as the Appellant folks are leading the Planning Commission to believe.

Thanks,

Bill Lund

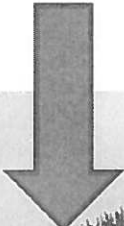
10-1-2018

West Slope Spring St. 85 degree slope



No Erosion or movement on this very steep slope since Spring St installed

Spring St



10-1-2018

No Spring since June 1st

Trickling Spring
only in Winter



10-1-2018

Fill for new driveway with NO erosion over the Winter, native plants growing rapidly

10-1-2018



September 28, 2018

CG18-1311

Mona Lindstromberg
831 East Buck Creek Road
Tidewater, OR 97390



Addendum to the 8/15/18 Geotechnical Peer Review
Report by K & A Engineering, Inc.
Geotechnical Engineering Report and Geologic Hazard Assessment
Tax Lots 1800, 1900, 1903
Newport, Oregon 97365

This Addendum was prepared to supplement our previous review, as requested.

As for my qualifications, I feel that I am adequately and suitably qualified to review both the Geologic Hazard Assessment and the Geotechnical Engineering Report since I have both engineering geology and civil engineering licenses in Oregon. The intent of the geotechnical engineer license within the civil engineering branch in Oregon is to recognize the specialty expertise, earned either by past experience during the initial grandfathering period roughly 10 years ago or by testing; it was not the intent of the geotechnical engineer license to exclude review by qualified civil engineers.

To assess whether the K & A reports adequately satisfy the Newport Municipal Code (14.21.060 Geologic Report Guidelines), I recently reviewed the State "Guidelines for Preparing Engineering Geologic Reports in Oregon", although the guidelines do rely on the professionals to deem what is appropriate content for each report based on the details of the project. Based on my limited review, areas of the K & A reports that are lacking for this project include the following, though this list is not meant to include all lacking aspects or details: 1) In the Site Description, there was not discussion of the evidence of past or current geologic processes and hazards and the known hazards zones were not identified; 2) In the Site Investigation, there was no boring data in the locations of the actual planned engineered structures and there was no installation and monitoring of in situ instrumentation such as slope inclinometers, piezometers, extensometers and settlement devices, and borehole accelerometers, nor was there any attempt to use geophysical surveys to better define the geologic, landslide, and groundwater contacts at depth on the property; 3) In the Analytical Analyses and Computer Modeling, the assumptions behind the method being utilized should be described along with the required data and the limitations of the results; and 4) Site map lacks accurate details on topography, planned cuts, planned fills, planned drainage, etc.

Please feel free to contact me with any questions you may have regarding this addendum or my previous review.

Sincerely,

Columbia Geotechnical, Inc.

By Ruth A. Wilmoth
Ruth A. Wilmoth, C.E.G., P.E.

Oregon State Board of Geologist Examiners



Guideline for Preparing Engineering Geologic Reports



Second Edition
May 30, 2014

Disclaimer

This guidance document is intended to provide general information about the Oregon State Board of Geologist Examiners (Board) and its regulation of the public practice of geology in Oregon. This guidance document does not replace, supersede, or otherwise override statutes, rules, orders, or formal policies pertaining to the public practice of geology. The information herein does not and is not intended to make or create any new standard, requirement, or procedure for which rulemaking or other legal process is required. This guidance document is not intended to address every possible situation or question regarding the Board's regulation of the public practice of geology. This document is updated and revised at the Board's discretion. This document does not and is not intended to provide legal advice. No rights, duties, or benefits, substantive or procedural, are created or implied by this guidance document. The information in this guidance document is not enforceable by any person or entity against the Board. In no event shall the Board, or any employee or representative thereof, be liable for any damages whatsoever resulting from the dissemination or use of any information in this guidance document.

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You may also contact the Board at:

Email Address:	osbge.info@state.or.us
Physical/Mailing Address:	707 13 th St. SE, Suite 114 Salem, OR 97301
Telephone:	503-566-2837

I. BACKGROUND ON THE BOARD & PURPOSE FOR GUIDELINE

A. BOARD MISSION & AUTHORITY

The Oregon Board of Geologist Examiners (OSBGE, or the Board) was created in 1977 to oversee the registration (licensing) of persons who engage in the public practice of geology in the State of Oregon.

The mission of the Board is to help assure the health, safety, and welfare of Oregonians with regard to the public practice of geology through:

1. Licensing of those engaged in the public practice of geology;
2. Response to complaints from the public and members of the profession;
3. Public education directed at appropriate regulatory communities;
4. Cooperation with closely related boards and commissions;
5. Attention to ethics; and
6. Systematic outreach to counties, cities, and registrants

The Board is authorized under Oregon Revised Statute (ORS) 672.515, and operates in accordance with Oregon Administrative Rules (OAR) Division 809. The Board's responsibility is to govern the practice of geology and to insure that ORS 672.505 to ORS 672.705, ORS 672.991 and (OAR) Division 809 are administered fairly and effectively throughout the state. The Board is a semi-independent state agency subject to ORS 182.454 to ORS 182.472.

ORS 672.505 defines geology as:

- That science that treats of the earth in general;
- Investigation of the earth's crust and the rocks and other materials that compose it; and
- The applied science of utilizing knowledge of the earth and its constituent rocks, minerals, liquids, gases and other materials for the benefit of humanity.

The Board regulates the public practice of geology, including engineering geology as a specialty certification. The laws require those who publically practice geology to be registered with the Board unless specifically exempted. A "Geologist" means a person engaged in the practice of geology, and an "Engineering Geologist" means a person who applies geologic data, principles and interpretation to naturally occurring materials so that geologic factors affecting planning, design, construction and maintenance of civil engineering works are properly recognized and utilized.¹ No person, other than a Registered Geologist (RG) or a Certified Engineering Geologist (CEG) shall provide or prepare for the public practice of geology any geologic maps, plans, reports, or documents except as specifically exempted in ORS 672.535. The Board maintains a list of geologists currently registered to legally engage in the public practice geology in the State of Oregon, as well as a sub-list of CEG's who can engage in the practice of engineering geology.

¹ ORS 672.505(3) and (4)

B. PURPOSE FOR GUIDELINE

The following guideline is intended to encourage best practices in the field of engineering geology in Oregon. Such best practices optimize and support protection of Oregonians and their interests. To this end, the guideline is intended as a tool for the preparation, use and review of engineering geologic reports and geotechnical reports prepared by engineering geologists licensed in the State of Oregon. These reports should include sufficient data, analysis, and interpretation regarding geologic materials, structure, processes, and history to support conclusions, identify potential risks, and establish recommendations regarding the proposed activity, design, modification, or use of the site. This guideline proposes recommended contents and suggested formats for reports and attempts to incorporate the major topics normally encountered in such studies. This guidance does not include a theoretical or technical background to each area of engineering geology addressed. Possession of the technical proficiencies required to prepare such reports is the responsibility of the CEG author. The actual scope of services documented in an engineering geologic report or a geotechnical report will vary depending on the level of detail, accuracy, and complexity needed for the intended application.

The term “geotechnical” as used in this guideline is a term for applied scientific work involving soil and rock mechanics, geology, geophysics, hydrology or related sciences as applied to the solution of civil works problems. The field of geotechnics is practiced by both engineering geologists and geotechnical engineers. A few examples of geotechnics work are the prediction, prevention or mitigation of natural hazards such as landslides and rockslides and the application of soil, rock and groundwater mechanics to the design of earthen or other man-made structures. This guideline does not address geotechnics work by professional engineers as the Board does not regulate the practice of engineering. This guideline focuses on engineering geology work by CEGs.

A CEG produces reports that are sometimes interchangeably called engineering geologic reports and geotechnical reports. A CEG also provides the engineering geology content of a geotechnical engineering report. A report containing engineering geologic interpretation must be signed and stamped by a CEG pursuant to OAR 809 Divisions 020 and 050. A report containing work by a CEG and geotechnical engineer should be signed and stamped by both professionals and include a description of individual responsibilities for the work addressed in the report. From here on out, the guideline uses the terminology of engineering geology report to refer to any report involving engineering geology work that is prepared by a CEG.

Considering that a CEG must become a RG first, the CEG may also work in areas of geology beyond engineering geology and contribute to or prepare other types of geologic reports, such as hydrogeologic reports and mineral resource evaluation reports. Such geologic work is not addressed in this guideline. See the Board’s separate guidelines on geologic reports and hydrogeologic reports.

1. Registrants

This guideline provides a general list of items that could be included in an engineering geologic report. All elements of this guideline should be considered during the preparation and review of reports prepared by engineering geologists. The guideline does not include systematic descriptions of all available techniques or topics, nor is it suggested that all techniques or topics necessarily be applied to every project. Because of the wide variation in size and complexity of projects and scope of work, this guideline is intended to be flexible, and the CEG's report should always be tailored to the specific project. For example, not all topics covered in this guideline would be applicable to small projects or low-risk sites.

2. Report End Users and Reviewers

End users and reviewers of engineering geologic reports can use this guideline in their reading, review, and utilization of a particular report for their proposed project. However, this guideline is not intended as a "checklist" for the contents of any particular engineering geologic report. The actual scope of services and topics presented in a particular engineering geologic report will vary depending on the level of detail, accuracy, and complexity needed for the intended project. Each report should include sufficient data, analyses, and interpretation regarding geologic materials, structure, processes, and history to support conclusions regarding potential risks, considerations, and recommendations regarding the proposed activity, modification, or use of the site.

C. ACKNOWLEDGEMENTS

This guidance document was prepared for the Board by Stephen P. Palmer, RG, CEG (E2155) under the auspices of LEI Engineering and Surveying, LLC. The second edition has been substantially updated compared to the 1990 first edition based on input from Board members, Board registrants, Board staff, and other public participants. In addition, this guideline has been prepared after review of other guidelines and recommendations for geologic and engineering geologic reports developed by other state and provincial agencies, registration and licensing authorities, and professional organizations. A list of these publications is presented in the reference section of this document.

Palmer worked with a peer review panel of Oregon CEGs in crafting the document: Susan Bednarz (E1681), Charles Clough (E1865), Curtis Ehlers (E1610), Thomas Horning (E1131), and Christopher Humphrey (E1692). Palmer also assisted the Board with revisions in response to public comments received on a draft posted for public review. The Board recognizes the contributions of Palmer, the review panel CEGs and all Oregon RGs and others who took the time to weigh in on this guideline. Through comments and recommendations, these individuals made a significant contribution to development of this guideline. Board Member Peter Stroud (E0975) assisted with editing.

II. REPORT CONTENT AND PREPARATION

A. CONTENT OF AN ENGINEERING GEOLOGIC REPORT

The following topics are provided as a guide for the content of an engineering geologic report and should be considered and addressed in detail where essential to support interpretations, analyses, designs, conclusions, and recommendations. A CEG may not need to address all of these topics in a particular report, as there is a wide range in the level of detail, accuracy, and complexity needed in reports depending on the intended application.

1. Introduction

Each report should include an introductory section containing adequate background information to inform the reader of the purpose for the engineering geologic work and report. Specific items that should be addressed in the introduction include:

- The purpose and objectives of the engineering geologic investigation and report, including the level of the study (i.e., feasibility, reconnaissance, preliminary, final.);
- The client or party that commissioned the report.
- The time period over which the investigation was performed;
- The location of the site with specific reference to a map included within the report that shows the site in context of known geographic features such as roads and water bodies;
- A description of the proposed land use or development activities needing an engineering geologic study, including the regulatory framework and requirements that are addressed by the report;
- The defined scope of work for the engineering geologic investigation and report, including specific tasks that were performed as part of the work;
- A description of prior work on the site or in the immediate area that has been reviewed or relied upon in the geologic investigation and preparation of the engineering geologic report.

2. Physiographic Setting and Regional Geology

A description of the physiographic setting of the site and regional geology provides a framework for the evaluation of site specific conditions. The discussion of physiographic setting may include:

- Physical characteristics such as topography, climatic conditions, vegetative characteristics, latitude and longitude, township-range-section, landmarks, political boundaries, geomorphic features of the province, faults and seismicity, natural resources, water bodies, drainage patterns, and other physical features of the site and surrounding area;
- Anthropomorphic data, such as land use(s), community development, and effects of human activity.

The discussion of regional geology may include:

- Nature and source of available published geologic reports or maps;
- Stratigraphy and lithology of regional formations or geologic map units;
- Geologic structure, including folding, faulting, and discontinuity or fracture characteristics;
- Historical seismicity;
- Surface water features and regional drainage patterns;
- Groundwater conditions, including aquifer systems and aquitard units;
- Geomorphology and surficial processes;
- Regional geologic hazard identification and mapping.

3. Site Characterization

Site characterization is intended to provide adequate and accurate information to support the interpretations, analyses, designs, conclusions, and recommendations addressing the scope and objectives of the engineering geologic report. Site characterization is at the heart of the engineering geologic study and is a crucial part of the geologic investigation and report. The focus of the engineering geologic report is the potential effects and impacts of geologic conditions on the proposed civil development. The following items provide an example of a comprehensive scope for the site characterization section of an engineering geologic report.

3.1 Site Description

A description of the project site is crucial in providing the report reader with an understanding of the conditions that influence the proposed activity addressed by the engineering geologic study. A detailed map (or maps) of the site should be used as reference for the site description section. The site description should include:

- Topographic and geomorphic conditions of the site and vicinity, including minimum and maximum elevations, total relief, slope grade, form, and aspect;
- Vegetation, including ground and tree cover, density, etc.;
- Surface water features, including existing drainage pattern, streams, ponds, seeps and springs, areas of wet or soft ground, etc.;
- Existing development such as buildings, structures, roadways, and utilities and evidence of past development activities like areas of cut or fill or abandoned foundations;
- Previous site uses that could impact the proposed uses of the site;
- Evidence of past or current geologic processes and hazards, such as soil creep, landsliding, soil erosion, settlement, channel avulsion and migration, and flooding;
- Known or suspected engineering geologic conditions and geologic and seismic hazards that could impact the proposed land use or development activities, including a statement regarding past performance of existing facilities in the immediate vicinity;
- Photographs showing relevant site features;
- Known or suspected soil or groundwater contamination.

3.2 *Site Investigation*

A wide range of methods may be employed in characterization of the site, and the following topics are not intended as a comprehensive listing. Other appropriate methods or approaches should be utilized if appropriate.

- Remote sensing, including aerial photographic interpretation, time sequential photographs, lidar data, infrared imagery, and other available data;
- Field reconnaissance and geologic mapping, with discussions of results referencing previous mapping of the site, if available;
- Subsurface investigation, including hand auger, test pit, trench, and drilling explorations, with locations of subsurface explorations shown on a detailed site map and complete logs of the explorations provided with the report, along with a key to interpretation of the logs;
- Installation and monitoring of in situ instrumentation such as slope inclinometers, piezometers, extensometers and settlement devices, and borehole accelerometers;
- Measurements performed during field reconnaissance and subsurface exploration, and laboratory testing of collected samples;
- Geophysical surveys such as by seismic refraction/reflection, electrical resistivity, ground penetrating radar, or magnetometer.

3.2.1 *Remote Sensing*

The report should include the source and date of any remote sensing data utilized by the CEG in preparation of the report. Interpretations and analyses of remote sensing data should be described in the report text and presented on detailed maps of the site.

3.2.2 *Field Reconnaissance, Geologic Mapping, and Subsurface Investigation*

The CEG should describe all field mapping, subsurface exploration, and field and laboratory testing procedures including but not necessarily limited to surface geologic reconnaissance, drilling, trenching, and geophysical survey. Results of the field reconnaissance and geologic mapping of the site area should be done at a scale that shows sufficient detail to adequately define the existing geologic conditions. Mapping should be done on a suitable topographic base or aerial photograph, at an appropriate scale with satisfactory horizontal and vertical control. The date and source of the base map should be included on each map or photo. For many purposes, available published geologic maps are unsuitable to provide a basis for understanding the site conditions, and independent geologic mapping will be necessary. If published geologic maps are used to portray site conditions, they must be updated to reflect geologic or topographic changes that have occurred since map publication. It may be necessary for the engineering geologist to extend mapping into adjacent areas to adequately define significant geologic conditions.

The nature of bedrock and surficial materials, the structural features and relationships, and the three-dimensional distribution of earth materials, including groundwater, exposed and inferred within the area should be discussed in the report with reference to appropriate figures presenting these data and interpretations. These reference figures could include but not necessarily be limited to detailed site maps, cross-sections, and fence diagrams. The report should typically include one or more appropriately positioned and scaled cross-sections to show subsurface

relationships. A clear distinction should be made between observed and inferred features and relationships.

3.2.3 Geologic Descriptions

The report should contain brief but complete descriptions of all geologic rock, soil units, any fill, and structural features recognized or inferred within the subject area. Where interpretations are added to the recording of direct observations, the basis for such interpretations should be clearly stated. In providing descriptions and characterization of rock and soil units and the mapping of this data, the CEG should consider using the following standardized methodologies:

- The Unified Soil Classification System (USCS) is a standard procedure for classification of soil material in engineering studies (ASTM, 2009, 2011, or the current revision);
- The Unified Rock Classification System (URCS) provides a systematic and reproducible method of describing rock weathering, strength, discontinuities, and density applicable in engineering studies (Williamson, 1984; ASTM, 2008, or the current revision);
- The International Society for Rock Mechanics (ISRM) Basic Geotechnical Description of Rock Masses provides a standard method to communicate an overall assessment of rock masses, particularly with regard to its anticipated mechanical behavior (ISRM, 1981, or the current revision).
- Engineering geology mapping can be done using the Genesis-Lithology-Qualifier (GLQ) system (Keaton, 1984), rather than the conventional Time-Rock system commonly used in geologic mapping. The GLQ system promotes communication of geology information to non-geologists;
- Systems for mapping landslide deposits are described by Wieczorek (1984), McCalpin (1984), and Resource Inventory Committee, (1996).

The engineering geologic report should include documentation of laboratory and field testing including any geophysical surveys with reference to standard testing procedures. Test or survey procedures, data, and analytical results should be presented in report appendices. Subcontractors responsible for the field and laboratory testing, data processing, and data interpretation should be identified in the report.

The following items may be useful as a general, though not necessarily complete, guide for geologic rock and soil unit descriptions.

Rock Units

- Identification and classification of rock types, using either published classification systems (e.g., URCS or ISRM) or with documentation of other classification procedures used;
- Relative and/or absolute age and, where possible, correlation with named formations and other stratigraphic units;
- Surface and subsurface expression, areal distribution, and thickness;
- Pertinent physical characteristics such as color, grain size, mineralogy, nature of stratification, strength, and variability;
- Distribution and extent of zones of weathering; significant differences between fresh and weathered rock;

- Structural features and their characteristics, including stratification, jointing and fractures, foliation, schistosity, faults, and folds;
- Geomorphic expression of bedrock lithologies and structural features;
- Other significant engineering geologic characteristics or concerns.

Soil Units

- Identification and classification of soil material, using either published classification systems (e.g., USCS) or with documentation of other classification procedures used ;
- Distribution, dimensional characteristics, variations in thickness, degree of soil development, soil genesis, evidence of past disturbance and fill placement, and surface expression;
- Pertinent physical and engineering characteristics such as color, grain size, grain lithology, density/consistency, cementation, structure, strength, thickness, and variability;
- Special physical or chemical features, which could include indications of volume change or instability, such as expansive clays or peat, corrosivity, or the presence of contamination;
- Other significant engineering geologic characteristics or concerns.

3.2.4 Surface and Groundwater Occurrence

- Distribution, occurrence, and variation in surface waters such as drainage courses, ponds, swamps, springs, seeps, and aquifers;
- Identification and characterization of aquifers; depth to groundwater and seasonal fluctuations, perching condition, aquicludes and aquitards, flow direction, gradient, recharge and discharge areas;
- Relationship of surface and groundwater to topographic and geologic features;
- Evidence for past occurrence of water at localities now dry including vegetation, mineral deposits, erosional and depositional features from flash flooding, or historical records;
- Seasonal or long-term variations in surface and groundwater, including fluctuations in groundwater elevation, recharge and discharge of surface water features, response of surface and groundwater due to variations in precipitation, temperature, or other factors;
- Potential impacts of existing or future surface water or shallow groundwater conditions ;
- Riverine or coastal flood potential, including 100-year and 500-year flood elevations, mean high water, and other pertinent data;
- Potential for channel migration or avulsion;
- Other significant engineering geologic characteristics or concerns.

3.2.5 Seismicity and Earthquake Occurrence

- Description of the seismotectonic setting of the site area, including size, frequency, and location of historic earthquakes, and understanding of prehistoric earthquake activity;
- Potential for site to be affected by surface rupture, including sense and amount of displacement, and width of surface deformation zone;
- Potential for area to be affected by regional tectonic deformation;
- Estimated bedrock ground motion, either probabilistic and/or deterministic, as appropriate, and site class modification of bedrock ground motion;
- Potential for tsunami and seiche flooding, including estimated tsunami inundation area, water elevation, and velocities as applicable;

- Potential for area to be affected by earthquake-induced ground failures, including duration of shaking, soft soils, liquefaction, cyclic soil strength reduction, lateral spreading, settlement, and landslides;
- Special engineering geologic characteristics or concerns affecting proposed land use and development activities.

3.2.6 Mass Wasting and Erosional Occurrence

- Review of State guidelines and local ordinance requirements regarding mass wasting hazards and grading;
- Review of available information on mass wasting and soil erosion, including landslide hazard mapping, geologic maps, and National Resource Conservation Service soil mapping;
- Review of remote sensing data as described in Section 3.2 of this guideline;
- Review of current site conditions relevant to mass wasting and soil erosion, including detailed descriptions of landslides or areas of soil erosion affecting the site; Description of geomorphic features indicative of mass wasting and soil erosion, including anomalous landforms, vegetative indicators, and distress to existing structures and utilities;
- Review of surface mapping and subsurface investigation results of mass wasting features, including earth materials, groundwater conditions, extent and rates of movement, etc.;
- Potential for coastal erosion or riverine bank erosion to affect long-term slope stability;
- Other significant engineering geologic characteristics or concerns identified during site investigation.

4. Assessment of Engineering Geological Conditions and Factors

Assessment of existing engineering geological conditions, processes, and hazards, and their related risks and impacts with respect to the intended use of the site constitutes the principal contribution of the report. The engineering geologic assessment includes evaluation of the effects of these geologic features upon the proposed development activity within the site and adjacent area, and consideration of the effects of these proposed modifications upon future geologic conditions, processes, and hazards. The assessment should cover with equal importance the possible onsite and offsite effects of the proposed development based on the engineering geology evaluation.

This section of the engineering geologic report is the synthesis of existing geologic data and the information obtained during site characterization as it relates to the proposed land use or development activities. The synthesis includes interpretation of the geologic information and appropriate analyses of site-specific data necessary to support the report conclusions and recommendations.

4.1 Engineering Geological Interpretation

Interpretation of the information gathering during background research and site characterization is a necessary part of the overall engineering geological assessment. The engineering geologic report should clearly identify areas of data interpretation and factual information. Often the

available data is insufficient to allow an unequivocal interpretation, and the concept of multiple working hypotheses should be utilized. Reasonable alternate interpretations of the available data should be discussed in the report, particularly if these alternative interpretations have significant consequences regarding the proposed development activities. In such instances, recommendations for additional data collection should be considered in order to resolve alternative interpretations.

4.2 *Engineering Properties of Soil and Rock*

A summary of the engineering properties of the soil and rock material encountered in the investigation should be included in the engineering geologic report. This summary should provide the basis for subsequent analyses. The engineering properties may be determined by analytical testing, or be estimated by correlation with index tests performed during the investigation, and should be documented in the engineering geologic report.

4.3 *Analytical Analyses and Computer Modeling*

Analytical methods for evaluation of slope stability or soil erosion should be appropriately used to support the conclusions and recommendations presented in the engineering geologic report. Analytical analyses can range from simple calculation based on a set of discrete equations to sophisticated computer modeling. Regardless of the form of the computations, the assumptions behind the analytical method being utilized should be described along with the required data and the limitations of the analytical results.

Generally, the results of an analytical computation or computer model are single valued such as a factor of safety or sediment yield and reflect the uncertainty of the input data. In many geological applications there may be a range of valid data values resulting from the accuracy of the data measurement techniques, as well as the inherent variability of geologic properties. Also in many instances, data input values may be based on interpretation of geologic conditions or may be based on generic information obtained from published literature. Consequently, analytical results that are critical to evaluation of site impacts should include a sensitivity analysis based on reasonable ranges of input data.

5. Conclusions and Recommendations

These sections of the engineering geologic report present the outcome of the study, based on the background research, site characterization, and data analyses and interpretations conducted as part of the scope of work.

5.1 *Conclusions*

The Conclusions section should be focused on the geologic constraints for the proposed land use or development activity of the site. This section should include a discussion of the results of the site characterization, data analyses and interpretations, including the uncertainties or ambiguities of this work. Special engineering geologic characteristics or concerns affecting proposed land use and development activities should be clearly presented in this section. Also, the potential

impacts of the development activities on geological conditions and processes, both onsite and offsite, should be addressed in this section. Limitations and potential risks related to the layout and construction of the proposed development such as location of roads and utilities, staging of grading and filling operations should be discussed in this section and cross-referenced in the recommendations section of the report.

5.2 Recommendations

The Recommendations section should provide specific items regarding site use and development and project designs that are the outcome of the site study, and the recommendations should be consistent with the report conclusions. Recommendations for mitigation approaches that address the limitations and potential risks associated with site development may be proposed as appropriate. This section may include recommendations regarding additional work needed to supplement the report, including but not limited to monitoring of geological conditions (i.e., groundwater, slope movement, settlement), review of plans and specifications, and construction monitoring.

B. PREPARATION OF AN ENGINEERING GEOLOGIC REPORT

The following topics are provided as a guide in the preparation of an engineering geologic report. Not all of these topics may need to be included in a particular report depending on the scope of the report and its intended application.

1. Report Format

The body of the engineering geologic report should include the items discussed above in the Content of an Engineering Geologic Report, as appropriate to the specific geologic study, and the date the report was submitted to the client. The engineering geologic report must address all of the requirements of the regulatory agency or agencies that will receive the report as part of their licensing or permitting process. For example, a local government may have specific requirements that must be addressed in an engineering geologic report that supports a land use application. A recommended practice is for the CEG to have qualified individuals review the report for technical content and editorial consistency before the report is finalized.

1.1 Illustrations

An engineering geologic report typically will include maps, annotated photographs, cross-sections, logs of subsurface explorations, field test results, geophysical test results, remotely sensed imagery, and laboratory test data. A vicinity location map identifies the project site in relation to known or familiar locations, and is important for report end-users in easily identifying the site locale. A detailed site map should show the existing and proposed site development, topographic contours and additional important information such as property boundaries, easements, etc.. The site map may be modified for use as a template for additional figures showing geologic features and conditions, locations of subsurface explorations and cross-sections, areas potentially affected by geologic hazards design drawings, or other pertinent data. The source date and origin of the information used in developing the report illustrations should

be referenced on the illustrations. Maps need to include North arrows and bar scales or other methods of dimensioning.

1.2 Appendices

Large bodies of data, such as laboratory test results, exploration logs, or the results of geophysical surveys, and explanatory keys should be presented in appendices to the report, and should be cross referenced in the body of the report. The results of data analyses, in particular computer model output, should also be presented in appendices. Large engineering geologic reports containing numerous illustrations and appendices should include a table of contents.

1.3 Report References

All published or other information not developed as part of the site characterization that is used in the report should be listed using standard bibliographic citations. Such information could include:

- Literature, maps, and records cited and reviewed;
- Aerial photographs or images interpreted, listing the type, scale, source, and index numbers etc.;
- Other sources of information, including well records, personal communications, or other data sources.

1.4 Report Limitations

The limitations section should briefly restate the location, intended purpose, intended audience of the report, and what tasks were accomplished in meeting these ends. The report limitations should include a statement regarding the limits of the intended use of the report, including scope and extent, and should restate any additional needs beyond the stated scope of work.

1.5 Signature and Seal

All final reports or other documents must be signed and stamped by the CEG who prepared and was in responsible charge of the engineering geology study and report, as required by ORS 672.605 and OAR 809 Divisions 20 and 50.

REFERENCES

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- California Geological Survey, 2007, Guidelines for reviewing geological reports: CGS Note 41, originally published by the State Mining and Geology Board, 1996. Accessed at: http://www.conservation.ca.gov/cgs/information/publications/cgs_notes/note_41/Pages/Index.aspx
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Washington State Geologist Licensing Board, 2006, Guidelines for preparing engineering geology reports in Washington: Washington State Geologist Licensing Board, Department of Licensing, 15p.

Wieczorek, G.F., 1984, Preparing a detailed landslide-inventory map for hazard evaluation and reduction: Bulletin of the Association of Engineering Geologists, v. 21, no. 3, p. 337–342.

Williamson, D.A., 1984, Unified rock classification system: Bulletin of the Association of Engineering Geologists, v. 21, no. 3, p. 345–354.

**CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING**



The Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, October 8, 2018 at 7:00 p.m. in the City Hall Council Chambers. Testimony was taken during the September 24, 2018 hearing date, however, due to issues with the newspaper notice for the hearing the Planning Commission will hold a second hearing on October 8, 2018. The purpose of the hearing is to consider an appeal of an administrative decision approving a Geological Permit Application (#1-GP-18) submitted by Mona Linstromberg, Elaine Karnes, Christine Schneller, Robert Earle, Teresa Amen & Pat Linstromberg (Power of Attorney, Leslie Hogan)(Sean Malone, Attorney, Authorized Agent) for an appeal challenging the substantive elements of the applicant's June 29, 2018 geologic report, prepared by K&A Engineering, Inc., that concluded the site is suitable for the development of three home sites. Such report was the basis of the approved Geologic Permit. A peer review report, by Columbia Geotechnical, dated August 15, 2018, was submitted in support of the appeal. The property is located West of NW Spring St (Lincoln County Assessor's Tax Map 11-11-05-BC, Tax Lots 1800, 1900 & 1903). City of Newport regulations for development within mapped geologic hazards areas are contained in Chapter 14.21 of the Newport Municipal Code (NMC), and all standards listed in this chapter are relevant to the permit application on appeal. Pursuant to NMC Chapter 14.21.050(D), an application for a geologic permit must include a geologic report, prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development. Further, an engineering report, prepared by a 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 (NMC 14.21.050(E)). Guidelines for the preparation of Geologic Reports are set forth in NMC 14.21.060 and require that reports be consistent with generally accepted scientific and engineering principals, including minimum standards identified in cited documents published by the Oregon State Board of Geologist Examiners and the Department of Land Conservation and Development. Appellants challenging substantive elements of a geologic report are required to submit their own analysis, prepared by a certified engineering geologist (NMC 14.21.120). Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record is left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department seven days prior to the hearing. The application materials, the applicable criteria, and other file materials are available for inspection at no cost; or copies may be purchased for reasonable cost at the above address. Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (mailing address above).

FOR PUBLICATION ONCE ON FRIDAY, September 28, 2018

All You Want

After 2pm

Good Through October 31st, 2018

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PUBLIC NOTICES

LEGAL DEADLINES:

WEDNESDAY EDITION:
5:00pm Thursday
FRIDAY EDITION:
5:00pm Tuesday

NOTICE OF SHERIFF'S SALE #18-1517

On October 23, 2018, at the hour of 10:00a.m., at the Lincoln county Sheriff's office, 225 W Olive St., Rm 203, in the city of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 3174 NE Johns Loop, Neotsu, OR 97364. The court case number is 17CV46345, Nacionstar Mortgage LLC D/B/A Mr. Coop, plaintiff(s) vs. James A. Fossum, Patricia Ann Fossum; Wells Fargo Bank, N.A.; Occupants of the Property defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details to go <http://www.oregon-sheriffssales.org/county/lincoln/> S-14, S-21, S-28, O-05 (18-05)

NOTICE

The following unit(s) will be sold at Public Auction on October 3, 2018, at 2PM for non-payment of rent and other fees. Auction to be pursuant to Auction rules and Procedures of Lincoln Storage. Rules are available upon inquire.
Unit # 515 - Amy Church
Unit # 253 - Lillian Gustafson
Unit #281 - Fernando Vera-Simmons
Unit # 551 - Kyrie Benson
Unit # 400 - Courtney Prozninski-Penilla
Unit #524 - Howie Bingham
S-21, S-28 (25-28).

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

The Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, October 8, 2018 at 7:00 p.m. in the City Hall Council Chambers. Testimony was taken during the September 24, 2018 hearing date, however, due to issues with the newspaper notice for the hearing the Planning Commission will hold a second hearing on October 8, 2018. The purpose of the hearing is to consider an appeal of an administrative decision approving a Geologic Permit Application (#1-GP-18) submitted by Mona Lin-

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implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record is left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department seven days prior to the hearing. The application materials, the applicable criteria, and other file materials are available for inspection at no cost; or copies may be purchased for reasonable cost at the above address. Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (mailing address above). S-28 (30-28).

STORAGE AUCTION SATURDAY OCTOBER 6TH 12:00 NOON

Large 14'x40' storage unit up for Auction! Seen from the doorway is a Drill Press, old wood boat, nice extension ladder, toys and lots of boxes full of stuff. Please join us at The Storage Place: 4822 S. Coast Hwy, South Beach, OR 97366 Saturday, October 6th at 12 noon to bid on this unit. For questions, call 541-867-3208. S-28, O-05 (31-05).

ROUND UP

Continued from page 1

be against Yamhill-Carlton on Monday, Oct. 1

TAFT STREAK HITS DOUBLE DIGITS

The Taft volleyball team is now on the wrong side of a 10-game streak. After losing in straight sets to Willamina (25-9, 25-17 and 25-13), the Tigers dropped their 10th straight game of the season.

After a pair of road games, the Tigers will host Clatskanie on Thursday, Oct. 4, a team that they went five sets within their earlier matchup.

CUBS WIN STREAK COME TO AN END



Winners of two straight (and three of four) games, the

Newport volleyball team couldn't stand up to Oregon West Conference leader, Sweet Home, falling in straight sets 25-12, 25-10, 25-13.

NEWPORT BACK IN THE WINNER'S CIRCLE

With a 5-0 win over Sweet Home on Tuesday, Sept. 25, the Newport soccer put an end to the two-game losing streak and back to .500 record at 4-4. As the team begins the second half of its schedule, the Cubs are still in contention for one of the top three spots in the conference standings training Woodburn, Stayton and Philomath.

EAGLES FALL TO MAPLETON



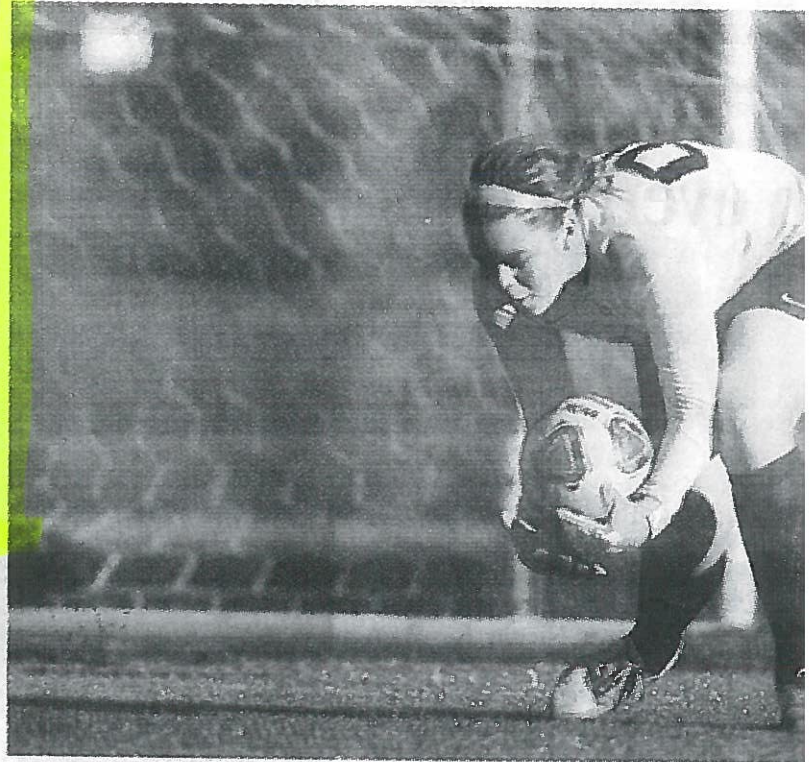
The Ed-dyville volleyball team lost its 10th

consecutive year, losing 23.

ALSEA



Volleyball day, Sep convincing the V and 25- will take Tuesday



Top: Keera Harmon attempts to hit the ball over the net in Taft's 3-0 Tuesday, Sept. 25. Above: Tristan Bradley makes a save during Taft's 1-1 Tuesday, Sept. 25. (Photos courtesy of Lon Frensch)

9/28/18



September 26, 2018

City of Newport Planning Commission
c/o Community Development Director Derrick Tokos
Via Email to: D.Tokos@NewportOregon.gov

Re: File No. 1-GP-18-A, Lund Geologic Permit Application: Comments from Lisa Thomas, 1437
NW Thompson St. Newport, OR, 97365

Dear Chair Patrick and Planning Commission members;

I attended the Newport Planning Commission meeting on September 24, but did not speak. It seemed most important to give the geologic experts from both K & A Engineering and Columbia Geotechnical a chance to explain their differing assessments, and for the members of the planning commission to ask the questions that will help you reach a decision. Unfortunately, I don't think there was sufficient discussion for you to determine precisely where the differences lay, or how to resolve what additional assessment or monitoring could be conducted to better understand the inherent risk of the proposed project.

I have no expertise in geology. But as a retired National Park Service scientist, I sometimes worked with park superintendents in public planning settings, where there were differing expert opinions on the impact or outcome of a land management decision. A couple of reactions during the Planning Commission meeting on Monday night sounded very familiar to me because I'd heard them before during these NPS planning meetings. One of the commission members asked, "How am I, as a layman, supposed to evaluate differing expert opinions"? And I believe Mr. Lund said something like, "You can monitor something forever, but what good is it going to do; at some point you have to act."

These reactions are very understandable, but in a case such as this, where science is needed to inform a public decision, it's important to 1) use the best available information and 2) to bring in additional expertise if it's needed to evaluate the completeness and accuracy of the evidence provided.

We are fortunate that there has been considerable study of this particular piece of shoreland, so at least there is information available. Please take note of the recommendation of Doug Gless, Principal Engineering Geologist with H.G. Schlicker and Associates (Exhibit B-5) to use Schlicker's 2016 report pertaining to Tax Lot 1800, rather than the 1991 report cited by K & A Engineering. Doug Gless felt the 2016 report was the most up to date of the three reports prepared by his firm.

I hope you will consider, given the strong neighborhood worries that have been voiced regarding the risk to coastline stability, Spring Street, city infrastructure, and private property, that it might be very productive to call upon an impartial geologist – one familiar with central Oregon coast stratigraphy, hydrogeology, and hazards, to evaluate the evidence provided thus far. They could also provide a second opinion on whether monitoring, such as that proposed by Ruth Wilmoth, Engineering Geologist with Columbia Geotechnical, would further inform the Planning Commission’s decision. Newport is fortunate to have a strong relationship with Oregon State University; perhaps someone from the OSU Geology Department could assist with a site visit and document review.

In closing, I will say that on several occasions I saw a third-party approach such as this work well for the National Park Service. When differences were explored with an eye toward improving our scientific understanding, the resulting management recommendation was stronger, and generally had broader public support. I’ve also seen the opposite outcome, where frustration with a slow process resulted in a spur-of-the-moment ‘gut-decision’ that came back to haunt its authors. During the September 24 meeting, you heard from an additional Spring St. landowner who stated his intent to file a similar permit to Mr. Lund’s. So obviously the Planning Commission will be revisiting these issues again. We would all sleep better if you have complete and accurate information on which to base your decisions.

Thank you for the opportunity to comment.

Sincerely,

Lisa Thomas
1437 NW Thompson St., Newport, OR 97365



From: Tim Roth <timr@jtrothinc.com>
Sent: Tuesday, September 25, 2018 5:22 PM
To: Derrick Tokos
Cc: Wlund_albany@yahoo.com; groverb@peak.org; michael@kaengineers.com; garysandstrom@comcast.net
Subject: Geological Permit Application (#1-GP-18) - Appeal

Planning Commission (Chair-Jim Patrick, Commissioners- James Hanselman, Mike Franklin, Rod Croteau, Lee Hardy)
Community Development (Planning) Director - Derrick Tokos

Reflecting on last night's public hearing, where a continuance was granted to allow additional comments. I would like to offer this email as my written testimony and to be included in the record.

The public hearing was to address an appeal that was filed to challenge the substantive elements of the geologic report prepared by K&A Engineering and submitted by Mr. Lund.

As described in the "Notice of a Public Hearing" for the appeal of the Geological Permit Application (#1-GP-18) the said Notice is clear to state; *"Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances"*.

And, whereas the "Applicable Criteria" is specifically defined as *"City of Newport regulations for development within mapped geologic hazards areas are contained in Chapter 14.21 of the Newport Municipal Code"*, *"an application for a geologic permit must include a geologic report, prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development"*, and *"Appellants challenging substantive elements of a geologic report are required to submit their own analysis, prepared by a certified engineering geologist (NMC 14.21.120)"*.

Testimony

1. The majority of the testimony given by the attending public (neighbors) addressed concerns relating to the pedestrian path from Spring Street to the beach that apparently was established several years ago through the private property currently owned by Mr. Lund. And through Mr. Lund's effort to improve his property the neighbors raised concerns that this path, that they have enjoyed over the years, would be eliminated.
 - What I heard, in fact, from Mr. Lund, on several occasions, was that he has worked closely with the County through his efforts of eliminating an existing County (paper) Road that crosses his property and has agreed to dedicating a portion of his property as public right-of way and to approve this dedicated parcel with a pedestrian path to

replace the older un-improved path. Where this seems to resolve those concerns expressed by the neighbors they apparently did not hear that message and continued to raise the issue throughout the night.

- I question this concern having any relevance to the Land Use Application (Geological Engineering Review) submitted by Mr. Lund and appealed by several of the neighbors. This argument raised by the "appellants" did not address any of the "applicable criteria" or the substantive elements of the geologic report, as described above. I also question why the Planning Commission did not conduct the hearing with stricter limitations as to what is in fact relevant testimony. As to not cloud the real issue that is being challenged I believe this testimony should be discarded and not considered by the Planning Commission in the deliberation of their decision.
 - I heard testimony given by the attending public (neighbors) expressing concerns about the condition of Spring Street and the ever increasing car traffic. I trust that these same neighbors have thought this through? The addition of a "public" access, that Mr. Lund has agreed to provide, will in fact serve to benefit all of the public, and not just the neighbors of Spring Street. As this public access is discovered by more and more of the public there will be more cars parking along the stretch of Spring Street that fronts this access. Be careful of what you wish for?
2. I heard testimony that expressed concerns about the possibility of failure to the structure(s) that Mr. Lund proposes to build.
- Over the years the City has adopted improved systems to govern their building codes, and these improved systems require substantial engineering designs with enhanced foundation anchors to secure the structure, based on the existing soil conditions that have been determined on Mr. Lund's property. The bigger concern should be for all of the existing (older) structures that are currently owned and occupied by the neighbors raising the issues. The same catastrophic event that may be a cause of damage to Mr. Lund's structure(s) will in fact impose much greater damage to those structures that are much older and constructed without the current engineering designs required by the existing building codes.
 - How can an argument be raised about the structural integrity of a building before the structural engineering is even completed?
 - Again, this argument is not germane to addressing the "applicable criteria" or the substantive elements of the geologic report and should be discarded and not considered by the Planning Commission in the deliberation of their decision.

3. I heard testimony given by Ms. Ruth Wilmoth w/Columbia Geotechnical, Inc. with concerns relating to insufficient data or testing by the primary Geotech Engineer, Mr. Michael Remboldt. Ms. Wilmoth completed the Geotechnical Peer Review document that was submitted as a part of the appeal challenging the "substantive elements" of Mr. Remboldt's report. A response to that Peer Review was delivered by Mr. Remboldt and offered at this hearing.
- I do not remember specific testimony by Ms. Wilmoth as it related to the Peer Review comments that she offered in her report. I absence of extensive testimony rebutting the Geotech Report issued by Mr. Remboldt would raise the doubt and certainly concerns about the validity of her review.
 - I do however remember Ms. Wilmoth challenging the quantity and quality of the testing of the site by Mr. Remboldt. Ms. Wilmoth made it a point to suggest that testing of property, such as Mr. Lund's, should include some form of seismic or lateral monitoring with sensors over an extended period of time? I heard Ms. Wilmoth state that several Cities have adopted this monitoring system as a form of predevelopment testing, namely the City of Portland. I personally have been a developer/builder in the Portland Metropolitan area for over 36 years and I have never heard of such a requirement for pretesting the building site, nor have any of my colleges shared this requirement with me. I have been active in our local Home Builder's Association for over 20 years and it has never been discussed within the association of builders. I can only believe that she might be referring to the large high-rise buildings that are constructed in the waterfront area of downtown Portland but certainly not on single family residential properties. I would certainly challenge her on this statement and her unsupported recommendation.

I do remember her saying that even if you did perform this monitoring for a 6 to 12 month period with no results that a single catastrophic event could occur on the 13th month and all the pre-monitoring would not have provided support data that this event was going to occur (paraphrased). I am not a Geotech Engineer however I find no logical or common sense to support the requirement of this monitoring that she repeatedly recommended.

The real monitoring of this subject property and other properties in the Newport area that has been suggested by Ms. Wilmoth already exists and additional sensors installed for a 6 month period will not provide any data of value. There are constructed homes along this beach frontage that have been constructed for years, any land movement that would raise concerns about the stability of the soils would be evident from a simple inspection of these homes.

- Ms. Wilmoth offered both written (Peer Review) as well as verbal testimony criticizing Mr. Remboldt for his lack of proper testing, however, there was not one piece of evidence that she offered that was supported by her own testing of the subject site. I just cannot see how her testimony can be received as valid if she does not practice her own preaching.
4. I respect the knowledge and the earned experience of Ms. Wilmoth as a seasoned engineering geologist however I did not feel that her comments and recommendations offered "substantive elements" to compel me to believe Mr. Remboldt's report was defective. Ms. Wilmoth has earned the right to her opinion, as has Mr. Remboldt and opinions of each can be challenged by yet a third Geotech Engineer. This would suggest that this is not an exact science.
 5. I heard various testimonies given as to the conditions of surrounding properties, as it relates to landslides or earth movements. Most of which were the extreme examples of events that have occurred over an extended period of time in the Newport area. It is reasonable to assume that the earth is moving throughout the Newport area almost daily, and not just on this site. The focus of this hearing needs to be site specific and not generalized across the ocean front properties.
 - The prime example is the references that were made to "Jump-Off-Joe". Mr. Remboldt offered a clear explanation to the event that occurred and the cause and how those same conditions do not exist on Mr. Lund's property.
 - From my years of building we have always started our projects with a site inspection by a certified Geotech Engineer. These inspections have always been site specific where the Geotech focuses the site investigation on the subject property(s) and does not write their report based on conditions of surrounding properties. That is no different in this case.
 - As a result of the geotech's findings the civil and/or structural engineer will design the foundation. Again, it is no different with Mr. Lund's property.
 6. One thing that I have observed overtime is that our earth experiences natural disasters based on its' evolutionary growth and there's no predicting and no preventing these events from occurring. The best we can do is anticipate to the extent of our available knowledge.
 - The building codes have recognized the possibility of these disasters occurring and have developed strict guidelines to minimize loss. There are no 100% guarantees.
 - Growth cannot occur if we are looking for such guarantees.

In closing, Mr. Tokos has received a land-use application from Mr. Lund for his review and approval of a *Geologic Report* issued by Mr. Remboldt. This report serves only to identify any soils conditions that might exist on a specific property (Lund's) and offers recommendations for a certified engineer to design a structural foundation to mitigate these conditions. The *Geologic Report* is only one of several steps that are taken in designing the residential structure. Mr. Remboldt's involvement in this process is not complete. His expertise will be extended through the structural engineering process and site visits throughout the construction of the home(s).

I am "pro" allowing a private property owner the right to development their property under the guidelines established by the local permitting jurisdiction. I would encourage the Planning Commission to approve the *Geologic Report* submitted by Mr. Remboldt, doing so does not give Mr. Lund the right to start building his home it only allows him the right to move forward with the next phase of designing his structural foundation to fit the conditions identified for this property.

Respectfully Submitted

Tim Roth

9/24/18

PLEASE ENTER IN THE RECORD

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MONA LINSTROMBERG



Mona Linstromberg

From: "Derrick Tokos" <D.Tokos@NewportOregon.gov>
Date: Wednesday, September 19, 2018 12:02 PM
To: "Mona Linstromberg" <lindym@peak.org>
Subject: RE: Defective notice 1-GP-18

Hi Mona... Thanks for bringing this to my attention. The mailed notice includes the time, date, and location of the hearing, as did the email that we sent out to stakeholders. I will advise that the Planning Commission conduct the public hearing on September 24th to take testimony from those in attendance and, when finished, that they continue the hearing to October 8th. That will allow time for a corrected notice to publish in the newspaper, and any persons relying upon such notice to attend.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

From: Mona Linstromberg [mailto:lindym@peak.org]
Sent: Wednesday, September 19, 2018 11:08 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: Defective notice 1-GP-18

Derrick, I have received several calls from confused neighbors about last Friday's notice in the newspaper with no corrected notice in today's paper. I reviewed the notice in the on-line file and now see that the date, time and location of the public hearing are all omitted in the published notice. This could be a significant procedural error for those that are unable to attend because the defective notice will prejudice the substantial rights of those unable to attend as a result of the error. Since this procedural error could result in a remand, it is in the best interest of the applicant to sign a waiver (is the deadline still Nov 2?) and the City to re-notice.

Could you please let me know how you intend to proceed as we are working with our geological engineer to either attend the public hearing or arrange a conference call so she can participate directly at the hearing. If a conference call is preferable to Ms Wilmoth and fits her schedule better, at some point we will need to know how to make that arrangement.

Thank you for your attention to these matters.

Mona Linstromberg

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9/24/2018

PERCIVAL DAYTONS, N. J.
EXHIBIT
F-10

VIEW fr 104
1541 NW SPRINGS



JUNE 1993



AUGUST 1995



AUGUST 1995

1541 NW SPRING ST
105



JUNE 1993



AUGUST 1995



AUGUST 1995

Sherri Marineau



106

From: Derrick Tokos
Sent: Friday, September 21, 2018 12:55 PM
To: Sherri Marineau
Subject: FW: Oregon Shores comment re: Lund Geologic Permit
Attachments: Oregon Shores comment re Lund Geologic Permit Applidation.pdf

Please see that this is distributed to the Commission members at the meeting.

Derrick

-----Original Message-----

From: Phillip Johnson, Oregon Shores/CoastWatch [mailto:orshores@teleport.com]
Sent: Friday, September 21, 2018 10:59 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: Oregon Shores comment re: Lund Geologic Permit

Dear Derrick Tokos,

Attached you will find a comment from the Oregon Shores Conservation Coalition in the matter of the Lund Geologic Permit Application, File No. 1-GP-18-A. We request that this attached comment be included in the file.

As also stated in the comment, we request notification of any decisions or subsequent hearings in this matter.

Thank you for your consideration.

Regards, Phillip Johnson, Executive Director Oregon Shores Conservation Coalition P.O. Box 33, Seal Rock, OR 97376
(503) 754-9303



OREGON SHORES CONSERVATION COALITION

Friday, September 21, 2018

City of Newport Planning Commission
c/o Community Development Director Derrick Tokos
Newport Community Development Department
169 SW Coast Hwy
Newport, Oregon 97365

Via Email to: D.Tokos@NewportOregon.gov

**Re: File No. 1-GP-18-A, Lund Geologic Permit Application
Comments of Oregon Shores Conservation Coalition**

Dear Chair Patrick and Planning Commission members:

Please accept these comments from the Oregon Shores Conservation Coalition and its members (collectively "Oregon Shores") to be included in the record on appeal of File No. 1-GP-18-A. Oregon Shores is a non-profit organization dedicated to protecting the natural communities, ecosystems, and landscapes of the Oregon coast while preserving the public's access to these priceless treasures in an ecologically responsible manner. Our mission is to assist local residents in land use matters and other regulatory processes affecting their coastal communities, and to engage Oregonians and visitors alike in a wide range of advocacy efforts and stewardship activities that serve to protect our state's celebrated public coastal heritage. For nearly half a century, Oregon Shores has been a key public interest participant in legislation, policy, and regulatory processes related to land use and shoreline management in the State of Oregon.

We previously offered comments on Mr. Bill Lund's application for a shorelands impact review (sent July 31, 2018, to be included in the record of File No. 1-SIR-18), which he submitted for the same proposed project site pursuant to Newport Municipal Code ("Code") Chapter 14.38. Please notify me of any further decisions related the geologic permit.

Oregon Shores Conservation Coalition
 Comment for Appeal of Lund Geologic Permit File No. 1-GP-18-A

1. Background

This past spring, Mr. Lund sought approval for development of three homesites on a vacant plot of land located immediately north of 1245 NW Spring St., within the city of Newport, Oregon. A single-family residence is planned for the northernmost lot, and duplexes are planned for the two southern lots. The proposed site is within the “Jump-Off Joe” landslide complex and adjacent to the Jump-Off Joe outstanding natural area boundary.¹ Mr. Lund secured the services of K & A Engineering, Inc. to provide a geotechnical engineering report and geologic hazard assessment for the site, which K & A subsequently presented to Mr. Lund on June 29, 2018. Mr. Lund included K & A’s Geotechnical Engineering Report and Geologic Hazard Assessment (hereinafter “K & A Report”) in his land use application for a Geologic Permit for the site. The decision at issue on appeal is the Newport City Development Director’s approval of Mr. Lund’s Geologic Permit Application. At issue for purposes of our comment is whether the City Development Director’s approval of Mr. Lund’s geologic permit application was proper (i.e. appropriate, informed, and supported) on the basis of the geologic report submitted by Mr. Lund.

Oregon Shores provides these comments in order to underscore the apparent deficiencies in the applicant’s geologic report and to emphasize the importance of a robust geologic review prior to development in the highly dynamic coastal environment—particularly on ocean-facing slopes with landslide histories. In doing so, we hope to lend our knowledge of and experience with coastal land use and development concerns to support an appropriate and informed decision on the pending appeal. Our comment supports the appellants’ view that, at the very minimum, more information is required before Mr. Lund’s geologic permit can properly be approved.

2. The Applicant’s Geologic Report Fails to Demonstrate Compliance with the Minimum Preparation Criteria Required Under the Code.

Mr. Lund is proposing construction on land that is subject to numerous known chronic coastal and geologic hazards. The site is within the area of “very high” (i.e. active) coastal erosion hazard and existing land sliding identified by Oregon’s Department of Geology and Mineral Industries (DOGAMI) erosion hazard and landslide mapping.² Hence, in preparation for submitting this comment, we began with an in-depth review of the investigations, findings, and appendices contained in the K & A Report. Next, we read two expert independent analyses of the Report. The first was a geotechnical peer review (hereinafter “Peer Review”) of the Report conducted by Columbia Geotechnical, a geotechnical engineering firm whose more than two decades of experience includes foundation and slope stability investigations, logging exploratory borings and providing interpretive geological maps and cross sections, monitoring groundwater evaluations, soil testing for geotechnical design, and site-specific seismic evaluations and liquefaction analyses. Ms. Ruth Wilmoth, a licensed practicing geologist and civil engineer, conducted the technical review of the Report on behalf of Columbia Geotechnical.³ The second evaluation we reviewed was a comment on K & A Engineering’s slope stability modeling

¹ George R. Priest and Jonathan C. Allan, Or. Dept. of Geology & Mineral Indus., OFR O-04-09, *Evaluation of Coastal Erosion Hazard Zones Along Dune and Bluff Backed Shorelines in Lincoln County, Oregon: Cascade Head to Seal Rock*, 30 (2004) (hereinafter “ORF O-04-09”).

² OFR O-04-09, App. A at 80, 104-05; *Id.*, App. B at 114-17, 154-56.

³ Peer Review at 6.

Oregon Shores Conservation Coalition
 Comment for Appeal of Lund Geologic Permit File No. 1-GP-18-A

authored by Timothy A. Cross, a neighboring homeowner and geologist/geological engineer with nearly 30 years of research experience in stratigraphy, sedimentology, and tectonics of western North America. Third, we read the testimony and evidence submitted in the record on appeal by Ms. Elaine Karnes, another neighboring homeowner who has personally observed the dynamism of the proposed project site and adjacent property for many years.⁴ All of these documents have been submitted to the record of this appeal. Finally, we reviewed the K & A Report for consistency with the Geologic Hazards Overlay criteria set forth in Chapter 14.21 of the Code, the findings of both the aforementioned expert independent analyses, and the publicly available, site-specific state and federal geologic literature referenced by these documents.

Based on the above review, we found that the Community Development Director's approval of Mr. Lund's current design proposal was unjustified and inadequately supported because of significant inaccuracies and omissions in the K & A Report relating to landslide hazards, erosion hazards relating to ground and surface water, coastal erosion hazards, and slope stability.

a. The Geology of the Bluff-Backed Shores of Nye Beach

The rocks, soils, and sands of the bluff-backed shores of Nye Beach tell a torturous tale of the consequences of coastal development, and further evidence the need for meticulous geotechnical investigation in accordance with the highest industry standards.

*"The Jump-Off Joe Fiasco"*⁵

Mr. Lund's proposed development is situated within the notorious Jump-Off Joe landslide complex.⁶ Jump-off Joe was a popular pre-WWI tourist destination, a limestone sea arch separating Nye Beach from Agate Beach State Park to the north.⁷ Natural forces separated it from the mainland in the 1890s, and its large arch collapsed in 1916.⁸ It crumbled between the 1920s and 1970s.⁹ This once prominent headland is barely visible today.¹⁰

Jump-Off Joe exemplifies the highly dynamic environment in which the proposed project site is located, and bears the scars of multiple failed coastal developments. It took less than a decade for a condominium development just south of the proposed development to crumble at the foundations—before construction could even come to fruition.¹¹ Ms. Karnes personally witnessed "erosion and slides along a section of Coast Street (just to the south of [the] failed Jump-Off Joe development), resulting in its closure."¹²

⁴ See Karnes Test., Sept. 17, 2018.

⁵ See Paul D. Komar, "The Pacific Northwest Coast: Living with the Shores of Oregon and Washington" 161 (Feb. 19, 1998)

⁶ See OFR O-04-09.

⁷ See Komar, *supra* note 5.

⁸ U.S. Geological Survey, "Erosion of a Sea Stack," available at <https://walrus.wr.usgs.gov/pubinfo/jump.html>

⁹ See Komar, *supra* note 5.

¹⁰ Newport Comprehensive Plan, "Natural Features," Ordinance No. 1621, § 3, 23 (1991).

¹¹ See Komar, *supra* note 5 at 166-173.

¹² Karnes Test., Sept. 17, 2018.

Oregon Shores Conservation Coalition
 Comment for Appeal of Lund Geologic Permit File No. 1-GP-18-A

The Surface Geology of Tax Lots 1800, 1900, and 1903

Mr. Lund's proposed development would be built on strata of soil and rock that are highly friable (i.e. prone to breaking under pressure or friction) and are as such inherently unstable. Tax lots 1800, 1900, and 1903 sit on the western face of a sea cliff composed of three main soil layers.¹³ The site's surface layer consists of Quaternary Coastal Terrace deposits.¹⁴ These deposits contain a varying mix of (1) semi-consolidated¹⁵ uplifted¹⁶ beach sand overlain locally by fine-grained dune deposits with occasional localized gravel lenses;¹⁷ and (2) unconsolidated to semi-consolidated gravel, beach, and dune sand. The coastal terrace deposits overlay early Miocene Nye Mudstone on most of the site. Nye Mudstone is the "foundational" layer of the construction site, and contains thick-bedded "clayey" marine siltstone¹⁸ embedded with sandstone interbeds that include chalky concretions.¹⁹ At the wave zone west of the site, a layer of Middle Miocene Astoria Formation deposits is sandwiched by the Coastal Terrace deposits and the Nye Mudstone.²⁰

Coastal terraces such as the proposed site location are continually receding, and are thus less suitable for development than they appear.²¹ As noted in the Newport Comprehensive Plan, Nye Mudstone is particularly vulnerable to interbedding failure.²² The slope surface at this particular site is vulnerable to slumping, which means home owners will likely be beset by chronic settlement problems, such as cracking walls, warped doors and windows, and water- and sewer-line difficulties.²³

b. Relevant Law and Purpose of Code

Mr. Lund's proposed construction project has implications for crucial state and City of Newport planning goals related to the public safety of all Oregonians and the environmental health of a coastline that is held in trust for the public. The Code contains the implementing measures required to promulgate the mandate of both the Oregon Statewide Planning Goals ("Goals") and the objectives of the Newport Comprehensive Plan ("Plan"). Significant among these implementing measures is Chapter 14.21, which contains the City of Newport's Geologic Hazards Overlay zoning ordinance.²⁴ The purpose of this chapter is to 1) minimize public and

¹³ See K&A at 6, fn. 3; DOGAMI Bulletin 81-3; OFR-O-04-09.

¹⁴ Also known as Marine Terrace Deposits.

¹⁵ **Unconsolidated sediments** are loose materials, ranging from clay to sand to gravel. Compare to **consolidated sediment**, which is essentially solid rock made from materials that have been metamorphosed or cemented together. **Semi-consolidated sediment** is material where the hardening process is incomplete.

¹⁶ **Uplift** in this context mean pushed up slope by plate tectonics or coastal erosion.

¹⁷ In geology, a **Lens** is a body of ore or rock that is thick in the middle and thin at the edges, resembling a convex lens in cross-section.

¹⁸ **Siltstone** is a sedimentary rock composed mainly of silt-sized particles. It forms where water, wind, or ice deposit silt, and the silt is then compacted and cemented into a rock.

¹⁹ A **concretion** is a hard, compact mass of matter formed by the precipitation of mineral cement within the spaces between particles, and is found in sedimentary rock or soil.

²⁰ See K&A at 6; DOGAMI Bulletin 81-3; OFR-O-04-09.

²¹ Newport Comprehensive Plan, "Natural Features," § 3, 30 (1991).

²² Newport Comprehensive Plan, §3 at 30.

²³ *Id.*

²⁴ Code Ch. 14.21.

Oregon Shores Conservation Coalition
 Comment for Appeal of Lund Geologic Permit File No. 1-GP-18-A

private losses due to earth movement hazards (such as landslides and soil expansion) and 2) limit erosion and related environmental damage to protect the public health, safety and general welfare, consistent with Goals 7 and 18 and the Natural Features Section of the Plan.²⁵

Goal 7 expresses Oregon's policies on land use planning in areas subject to natural hazards, with the object of protecting people and property from, amongst other things, coastal flooding, landslides, earthquakes and related hazards, tsunamis, and coastal erosion.²⁶ Goal 18 details land use policies related reducing danger to human life and property in coastal beach and dune areas, regardless of whether hazards in these areas arise from natural forces or human-induced actions.²⁷ Finally, the Natural Features Section of the Plan states that the prevention of loss of life and/or property must be a major consideration when analyzing environmental constraints to the development potential of land within the Newport area.²⁸ Protecting Newport's significant natural features is also an explicit point of concern. The Plan states that care must be taken when developing land on or near the sites of these natural features.²⁹

Geologic hazards which fall under the City of Newport's geologic hazards regulations include (1) bluff- or dune-backed shoreline areas within high or active hazard zones identified in DOGAMI Open File Report (OFR) O-04-09 and (2) active or potential landslide areas, prehistoric landslides, or other landslide risk areas identified in OFR O-04-09.³⁰ Although OFR O-04-09 is not intended as a site-specific analysis tool, its hazards mapping is used by the City "to identify when a Geologic Report is needed on property prior to development."³¹ Mr. Lund's unit of land sits within bluff- or dune-backed shoreline hazards zones and atop an active landslide area as identified by OFR O-04-09, triggering the requirement to prepare a Geologic Report.

In 2010, the City of Newport undertook a comprehensive update of the city code, which resulted in the geologic hazard zones requirements detailed in Code Chapter 14.21 in its present form.³² To contend with the active landslides documented along Newport's coastline, the updated code required property owners to obtain a geologic review prior to proposed development.³³ Significantly, new construction was to be limited "to the recommendations of a geologist" and constructed with sufficient access to permit new buildings to be removed, dismantled, or relocated from the site.³⁴ This makes ensuring the accuracy of geologic engineering reports and hazard assessments of vital importance.

²⁵ Code § 14.21.010.

²⁶ OAR 660-015-0000(7).

²⁷ OAR 660-015-0010(3).

²⁸ Newport Comprehensive Plan, § 3, 27.

²⁹ *Id.*

³⁰ Code § 14.21.020(A)(1)-(2).

³¹ Code § 14.21.020(B).

³² Lori Tobias, *Newport plan on geologic hazard zones outrages property owners*, The Oregonian (March 27, 2010) https://www.oregonlive.com/news/index.ssf/2010/03/newport_plan_on_hazard_areas_o.html.

³³ *Id.*

³⁴ *Id.*; See also Code § 14.21.070(A)(2).

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Under the Code, Geologic Reports shall be prepared “consistent with standard geologic practices employing generally accepted scientific and engineering principles.”³⁵ Significantly, such reports “shall, at a minimum, contain the items outlined in the Oregon State Board of Geologist Examiners ‘Guidelines for Preparing Engineering Geologic Reports in Oregon,’ in use on the effective date of this section.”³⁶ Geologic reports must also address the requirements of Code subsections relating to construction limitations within geologic hazard areas and erosion control measures.³⁷

c. The K & A Report’s hazard inventory omits relevant consideration of the mapped “Spring Street Landslide,” a Holocene Active Landslide with boundaries that encompass the proposed project site.

Per the Oregon State Board of Geologist Examiners’ “Guidelines for Preparing Engineering Geologic Reports in Oregon” (“Preparation Guidelines”), an engineering geologic report should disclose “known or suspected geologic hazards affecting the area, including a statement regarding past performance of existing facilities (such as buildings or utilities) in the immediate vicinity.”³⁸ In accordance with the Preparation Guidelines, delineating “pertinent hazard zones” is an explicit element of the Report’s scope of work.³⁹ Geologic literature focusing on Jump-Off Joe Landslide Complex and vicinity, much of which is referenced in the Report, demonstrates that one of most pertinent known hazards on this site is the very high risk of landslides and slope movement.⁴⁰

The Peer Review notes that the K & A Report failed to weigh “the mapped Spring Street Landslide” in its consideration of landslide hazard risk to the proposed development.⁴¹ The Spring Street Landslide is a Holocene Active Landslide.⁴² Curiously, K & A’s Geologic Assessment discloses the presence of an active slide “mapped extending generally along the west side of NW Spring Street between NW 14th Street and NW 11th Street” and corresponding “to the scarp observed on the eastern margin of the subject site.”⁴³ However, the only disclosure the K & A Report makes of this active landslide is a reference to “landslide debris extending to depths as much as approximately 16-feet below the ground surface” of Zone 2.⁴⁴ Apart from the acknowledgement of the active landslide, the Report does not disclose evidence of recent slope movement in site investigations.⁴⁵

³⁵ Code § 14.21.060.

³⁶ *Id.*

³⁷ *Id.*; see also 14.21.070, 14.21.090.

³⁸ “Guidelines for Preparing Engineering Geologic Reports in Oregon,” adopted by The Oregon State Board of Geologist Examiners, I.H.1 at 1 (hereinafter “Preparation Guidelines”).

³⁹ K & A at 2.

⁴⁰ OFR O-04-09.

⁴¹ Peer Review at 1-2.

⁴² OFR O-04-09.

⁴³ K & A, App. D, §5 at 3.

⁴⁴ K & A, § 2.3.3, 5. Zone 2 is an area that K & A Engineering defined in its survey of the proposed project site as the “[a] rolling mid-slope area extending from the toe of the steep embankment along the west edge of the roadway to a terminal siltstone ridge bordering the east edge of the beach.” K & A, §2.2 at 4. Slope gradients in Zone 2 range from “approximately 0 to 35-percent.” *Id.*

⁴⁵ K & A Report §2.2 at 4; App. D, §9.0, 5-6.

Oregon Shores Conservation Coalition
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An active landslide is defined as one that appears to be currently moving or has moved within the past 150 years.⁴⁶ Fresh cracks, disrupted vegetation, or displaced/damaged manmade features indicate recent activity, and should serve to heighten suspicion of active landslide hazard in the area observed.⁴⁷ In contrast to the K & A Report, the Peer Review found substantial evidence supporting active landslide mapping on the proposed site, including:

[D]isturbed terrain within the fallen landslide blocks indicative of recent slope movement; high contrast of lidar images that suggest landslide blocks that have had little time to erode since they last moved; tilted shore pine within the area of the planned new development; and historical distress to the two closest homes (roughly 15 ft north and 75 ft south of the project) on either side of the property caused by ground movement in the past 30 years or so.⁴⁸

Ms. Karnes' testimony corroborates the Peer Review's finding with regards to how ground movement in the area has significantly damaged the foundations of the homes immediately to the north and south of the proposed project site. Since each of the homes' construction in 1981, both have required extensive post-development repairs to maintain habitability. According to Ms. Karnes, the home located "roughly 15 ft north" of the subject site at 1409 NW Spring Street "required major work by 'Ram Jack' [a foundation repair contractor] during the summer of 2017."⁴⁹ Specifically, "[a] large section of the driveway was removed and a concrete pour was done to support anchors attached to the house."⁵⁰ Per the issued permit, these foundation repairs were valued at nearly \$30,000.⁵¹ In the photos appended by Ms. Karnes, the repaired driveway of 1409 NW Spring Street displays visible cracks.⁵² The nearest neighbor located to the south of the proposed project site at 1245 NW Spring St "required [replacement of] much of its foundation with a cantilever support construction" and the addition of a retaining wall to its west side.⁵³

K & A completed much of its site work in November of 2017, and it seems unlikely that such extreme indicators of landslides and slope movement suddenly appeared between K & A's site work and the Peer Review in August 2018. Furthermore, beyond reference to "some shallow subsidence of utility boxes on the east side of the road," K & A omitted any substantive discussion of the past performance of the homes neighboring the project site. The extensive repairs required to the structural foundations of those homes in the immediate vicinity of the proposed project site tend to show that the subject site may be far less stable than K & A's findings indicate. Given its obligations to disclose known or suspected geologic hazards under

⁴⁶ See DOGAMI Fact Sheet, "Understanding Landslide Deposit Maps" available at <https://www.oregongeology.org/pubs/fs/landslide-inv-factsheet.pdf>

⁴⁷ *Id.*

⁴⁸ Peer Review at 1.

⁴⁹ Karnes Test., Sept. 17, 2018. See also Newport Community Development Department, "Permits Issued: 8/1/2017-8/31/2017," 4, http://www.newportoregon.gov/dept/cdd/documents/August_2017_Building_Permits.pdf (last visited Sept. 18, 2018) (showing a building permit issued on Aug. 1, 2017 for "repair to exiting foundation" on parcel 11-11-05-BC-01802-00 at site address 1409 Spring St, Newport, OR).

⁵⁰ Karnes Test., Sept. 17, 2018, citing appended photos #4 and #5.

⁵¹ See Newport, OR, Community Development Department, "Permits Issued: 8/1/2017 – 8/31/2017," *supra* note 49.

⁵² See Karnes Test., Sept. 17, 2018, Photo #5.

⁵³ *Id.* citing Photos #1, #2, #3.

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the Preparation Guidelines, K & A should have weighed the explicit on-the-ground markers of the active “Spring Street Landslide” in their conclusions concerning the slope’s stability.

d. The Report fails to address evidence of substantial erosion related to active springs flowing on the subject property.

Per the Preparation Guidelines, a geologic report “should contain brief but complete descriptions of all natural materials and structural features recognized...within the subject area.”⁵⁴ Geologic reports should, at a minimum, describe all “[s]urface and shallow subsurface hydrologic conditions, including groundwater, springs, and streams and their possible effect on the site.”⁵⁵ K & A’s Geologic Assessment recognizes that “a spring is mapped (USGS 2014 Newport North Topographic Quadrangle Map) in Lot 1903,” and further notes as of June 13, 2018, it was “observed on the access road during the reconnaissance.”⁵⁶ Without explicitly referencing what impacts, if any, the spring’s presence has on the property, the K & A Report’s description of surface conditions on the proposed development site concludes that “[a]side from erosion due to disturbance on the few foot-trails that exist on the site, there is little evidence of on-going severe surface erosion or mass slope movement.”⁵⁷ The K & A Report further states that no indications of “slope movement in the roadway such as cracks with differential⁵⁸ movement” were observed.⁵⁹

Columbia Geotechnical conducted a site visit as a part of its independent professional review of K & A’s Report.⁶⁰ Although this reconnaissance did not include additional soil explorations or testing, it presented a starkly different picture of the mapped spring’s effects on the steep slide scarp contained in the lots proposed for the two duplexes (tax lots 1900 and 1903). In contrast to the K & A Report, the Peer Review notes that Columbia Geotechnical’s site visit found “deep erosion on and just downslope of the steep slide scarp (the steep slope immediately west of NW Spring Street)” and “in areas associated with both of the significant springs still flowing in August [2018] (roughly uphill of each of the planned new duplexes).”⁶¹ Again, it seems unlikely that such deep erosion on the steep slide scarp appeared in the two-month period that elapsed between the K & A Report’s geologic reconnaissance and the Peer Review’s site visit. Under the requirements of the Code and the Preparation Guidelines, the K & A Report should have more thoroughly and explicitly disclosed the present or possible future effects of this mapped spring on Mr. Lund’s proposed project site.

⁵⁴ Preparation Guidelines, III, at 2.

⁵⁵ *Id.* III.D., at 3.

⁵⁶ K & A Report, App. D §8.0, 5.

⁵⁷ Peer Review at 2.

⁵⁸ **Differential settlement** occurs when one portion of the soil beneath a structure expands, contracts or shifts away at a greater rate than the soil underlying the rest of the structure. It can be caused by factors such as poor drainage, frost, broken water lines, vibrations from nearby construction, or poorly compacted fill soil.

⁵⁹ Peer Review at 2.

⁶⁰ *Id.* at 1

⁶¹ *Id.* at 2.

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e. The K&A Report fails to use standard practices to monitor the effects of average and high rainfall seasons and groundwater pressure on slope stability.

In addition to accurately describing the effects of surface and shallow subsurface hydrologic conditions on a proposed site, the Preparation Guidelines require that a geologic report indicate how site conditions “may be affected by variations in precipitation, temperature, etc.”⁶² With respect to the effect of the mapped spring on the proposed site’s slope stability, the Peer Review provides the rationale for this requirement as follows: “Old landslide scarps and displaced material cannot effectively be judged to be stable based on isolated site observations alone, which represent just a snapshot in time even over the course of several months.”⁶³ To measure how site conditions may be affected by variations in weather conditions over time, the Peer Review states that the common practice is to “set up a comprehensive monitoring system that can provide data over the course of one or more wet seasons [on which] to base the opinion of current slope stability.”⁶⁴ For this type of development project, the Peer Review recommends a monitoring system that would include:

[A]t least two slope movement sensors (in-place inclinometers or other in-ground methods that extend at least 20 ft below the suspected slide interface to continuously measure changes in slope at several locations relative to NW Spring Street and other stationary points east of NW Spring Street), numerous surface monitoring points that are routinely surveyed, vibrating wire piezometers to continuously measure shallow and deep groundwater pressures, and a continuous rain gauge (if continuous local rainfall is not available). Since landslides are most active during high rainfall years, the goal would be to install the geotechnical instrumentation as soon as possible and monitor over a duration that includes at least one high-rainfall season, (which may take more than one year).⁶⁵

The Peer Review states that “[p]remature conclusions on stability can only be avoided by monitoring through a season that exceeds normal rainfall,” ideally “monitoring over a season of record rainfall.”⁶⁶ Ongoing monitoring to describe how variations in “precipitation, temperature, etc.” affect the site is especially important given that “[g]lobal climate change may provide record rainfall as soon as this year or next year.”⁶⁷ Given the Code’s requirement to prepare geologic reports consistent with “standard geologic practices” and the Preparation Guidelines’ requirement to indicate how variable weather conditions affect a site, K & A Engineering should have conducted some form of ongoing monitoring of weather conditions on the site and discussed their effects in the “Surface Conditions” sections of its Report and Assessment.

⁶² Preparation Guidelines, III.D., at 3.

⁶³ Peer Review at 2.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

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- f. The K & A Report’s Field Developed Cross Section and Slope Stability Analysis data each omit key pieces of general data and details that would allow technical reviewers to make comprehensive independent assessments regarding the reliability and interpretation of said items.**

The Preparation Guidelines state that an “engineering geologic report should include sufficient facts and interpretation regarding geologic materials, processes, and history to allow evaluation of the suitability of the site for the proposed use.”⁶⁸ The Guidelines go on to detail a number of general information items that should be addressed and requires that the “[l]ocations of test holes and excavations (drill holes, test pits, and trenches) [be] shown on maps and sections and described in the text of the report.”⁶⁹ Furthermore, the Preparation Guidelines state that the “actual data, or processed data upon which interpretations are base[d], should be included in the report to permit technical reviewers to make their own assessments regarding reliability and interpretation.”⁷⁰ The K & A Report includes the location of the probes and borings K & A Engineering made to estimate 1) subsurface boundaries and material properties and 2) groundwater levels, as well as a textual description of the slope stability modeling done based on those estimates derived from said probes and borings.⁷¹ However, the Peer Review found that K & A Engineering failed to include any of the “calculation sheets and assumptions” used in the final slope stability models in the relevant Report Appendix.⁷² Because the Preparation Guidelines require that both the actual and processed data on which interpretations like slope stability analyses are based be included in an engineering geologic report to permit proper independent technical review, the applicant should supplement the submitted K & A Report with the calculation sheets and assumptions underlying their final slope stability analysis.

The K & A Report includes a Field Developed Cross Section (“Original Cross Section”) as required by the Preparation Guidelines to show subsurface relationships significant to the stability of the slope on the project site.⁷³ However, the Peer Review, the Cross Comment, and our own inspection of the K & A Report’s Original Cross Section all highlight significant omissions that make the K & A Report incomplete per the Preparation Guidelines’ criteria. The Preparation Guidelines require that the “geologist doing the investigation and preparing the map should report the nature of bedrock and surficial materials, the structural features and relationships, and the three- dimensional distribution of earth materials exposed and inferred within the area.”⁷⁴ The Peer Review found that the Original Cross Section did not include estimates of “the contact between the disturbed and undisturbed siltstone” underlying the slope.⁷⁵ Further, the Peer Review, the Cross Comment, and our own visual inspection found that the Original Cross Section fails to properly illustrate the plotted structural dip of the slope.⁷⁶ Specifically, the Peer Review states that “the 15° dip of the underlying undisturbed siltstone and the estimated slide plane of the past land-sliding should be illustrated” in the Original Cross

⁶⁸ Preparation Guidelines, 1.

⁶⁹ *Id.* I.H.1., 1.

⁷⁰ *Id.* I.H.1., 1.

⁷¹ See K & A Report, App. C; K & A Report, §3.1.2, 9.

⁷² Peer Review at 5.

⁷³ K & A Report, App. A, Drawing 3; See Preparation Guidelines, II(C)-(D), 2.

⁷⁴ Preparation Guidelines, II.C., 2.

⁷⁵ Peer Review at 5 citing K&A App. A.

⁷⁶ *Id.*; see also Cross Comment.

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Section.⁷⁷ Per the Preparation Guidelines' requirements, K & A Engineering should amend their Original Cross Section with the aforementioned data on the contact between disturbed and undisturbed siltstone and the illustration of structural dip to enable a full independent technical review.

- g. The slope on Mr. Lund's property is less stable than represented by K&A's slope stability modeling, which restricts the City of Newport's ability to rely on K&A's engineering recommendations to remediate slope stability issues.**

The "assessment of existing geologic conditions and processes with respect to intended use of [a proposed project] site constitutes the principal contribution" of a geologic report.⁷⁸ This assessment involves "1) the effects of the geologic features upon the proposed grading, construction and land use, and 2) the effects of these proposed modifications upon future geologic conditions and processes in the area."⁷⁹ The Preparation Guidelines require that an assessment of "topography and slope" be included in a "[geologic report's] discussion, conclusions, and recommendations" with respect to "general suitability of proposed land use to geologic conditions."⁸⁰ The Preparation Guidelines reiterate that geologic reports must contain the "[i]dentification and extent of known or probable geologic conditions which may result in risk to the proposed land use," including land slides, subsidence, erosion, and deposition.⁸¹ The K & A Report does not contain discussions, conclusions, and recommendations to that effect.⁸² Mr. Cross' expert independent analysis of this information reveals that K & A's conclusion that the slope on subject property is "stable" and in a condition that is "generally acceptable for development" is based on erroneous ground surface boundary assumptions.⁸³ He discovered this error after conducting a review of K & A Engineering's Original Cross Section of the study site shown in Appendix A and the graphic summaries of said slope stability analyses contained in Appendix C. Per our interpretation of Mr. Cross' comment, this seriously constrains the extent to which the City of Newport should rely on K & A Engineering's presented modeling of the slope's stability.

The Nye Formation's Structural Dip: As plotted in the K & A's Field Developed Cross Section (FDCS) versus as modeled in the Report's Slope Stability Analysis.

Structural dip refers to the acute angle that a rock surface—in this case, the Nye Formation—makes with a horizontal plane. Correctly determining the angle of a bedrock's structural dip and accurately inputting that number into design models is crucial to determining the likelihood of whether any overlying structures or soil layers are at risk of mass movement. Mr. Cross recognized that K & A Engineering's Original Cross Section plots the surface elevation of the top of the Nye Formation in borings B-1 and B-3, and establishes the structural dip of the top of the Nye Formation at an acute angle range of 13° to 15° (the K&A Report states 11° to 15°) to

⁷⁷ Peer Review at 5.

⁷⁸ Preparation Guidelines, IV, 4.

⁷⁹ *Id.*

⁸⁰ *Id.*, IV.A.2., 4.

⁸¹ *Id.*, IV.B., 4.

⁸² K & A Report §2.4.1, 6-7; K & A Report, App. D, §4.0, 3.

⁸³ Cross Comment; K & A Report §2.4.1, 7; K & A Report, §3.1.2, 7-9; K & A Report, App. C.

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the west.⁸⁴ Per Mr. Cross review of available geologic literature, this determination accords with all other structural dip values and directions published on the 1976 geological map of the Newport region.⁸⁵ Our reading of the same geologic literature confirms Mr. Cross' review.

In assigning the boundary conditions for the computer model runs in their slope stability analysis, however, Mr. Cross found that K & A Engineering assumed that the structural dip of the Nye Formation was approximately 0° instead of 13° to 15° to the west.⁸⁶ This inaccurate assumption is represented in the Original Cross Section as the dashed line labeled "Assumed Surface of Siltstone," beginning at FC-1/B-1 and stretching westward to the extension of the siltstone ridge.⁸⁷ At borehole B-1, the dashed line indicating the location Nye Formation suddenly becomes sub-horizontal⁸⁸ (i.e. slightly angled instead of acutely angled).⁸⁹ Mr. Cross states that in his professional opinion, there is "absolutely no justification for this change in dip, and it seems unlikely that the dip would so drastically change exactly at the position of the B-1 borehole."⁹⁰

Effect of the discrepancy between the Structural Dip as plotted in the Report versus as presented in final slope stability model.

Inputting a 0° dip into the SLIDE modeling software instead of the 13°-15° dip plotted on top of the Nye formation results in a "huge change in the overburden (i.e. unconsolidated to semi-consolidated "marine terrace" plus dune sand) thickness"⁹¹ on the slope.⁹² As Mr. Cross explains, this essentially means that K & A Engineering's model significantly underestimates "the volume of material susceptible to mass movement" overlying the Nye Formation on the project site.⁹³

In the Original Cross Section, thin marine terrace sediments sit on a stable, solid, sub-horizontal platform of Nye Formation siltstone. Mr. Cross submitted a modified Field Developed Cross Section ("Modified Cross Section") that displays the Nye Formation's 13° structural dip. In the Modified Cross Section, Mr. Cross illustrates "a thick, westward-facing wedge of unconsolidated sediment"⁹⁴ sitting "on a westward-inclined surface formed by the top of the Nye Formation."⁹⁵ The Modified Cross Section shows a riskier picture of slip surfaces within the Nye Formation than the Original: "[a]lternations of more muddy and less muddy sand/silt layers within the Nye formation provide potential slip surfaces within the westward-dipping strata."⁹⁶

⁸⁴ Cross Testimony, ¶2.

⁸⁵ *Id.*

⁸⁶ *Id.*, ¶4.

⁸⁷ K & A Report, App. A, Drawing 3.

⁸⁸ **Sub-horizontal (geology)**: Not quite horizontal in position or orientation.

⁸⁹ Cross Testimony, ¶4.

⁹⁰ Cross Testimony, ¶2.

⁹¹ **Overburden Thickness** as used in reference to the geology of slopes references the entire thickness of soil or sedimentary rock material overlying rock or overlying a specific bearing stratum.

⁹² Cross Testimony, ¶4.

⁹³ [T.C. Testimony, ¶4 referencing K & A Report, App. A, Drawing 3]

⁹⁴ **Unconsolidated sediments** are loose materials, ranging from clay to sand to gravel. Compare to **consolidated sediments**, which is essentially solid rock made from materials that have been metamorphosed or cemented together.

⁹⁵ Cross Testimony, ¶4.

⁹⁶ *Id.*

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In Mr. Cross' expert opinion, "[s]lip along such surfaces could easily provoke instability and mass movement of overlying 'marine terrace' sediment."⁹⁷

The impact of groundwater on slope stability calculations.

This discrepancy in structural dip is especially significant given the presence of springs on the proposed project site. Mr. Cross points out that "the westward-dipping top of the Nye Formation is another potential surface for slippage and consequent mass movement of the overlying 'marine terrace' sediment."⁹⁸ In the Modified Cross Section, a thick, westward-facing wedge of unconsolidated sediment sits on a westward-inclined surface formed by the top of the Nye Formation. According to Mr. Cross, water bubbling through that "unconsolidated sediment will pond on top of the significantly less porous and permeable Nye Formation, and lubricate that surface."⁹⁹ In contrast to the calculations of the Original Cross Section, "the increased volume of unconsolidated sediment above the Nye Formation" will increase "the likelihood of mass slope failure should the toe-of-slope dune sand be removed or reduced by erosion."¹⁰⁰

K&A concluded that the slope is stable in its current static condition.¹⁰¹ However, the ability of data analysis to predict a realistic outcome is dependent on correct modeling assumptions and the input of accurate data. Any distortion of either parameter can lead to faulty predictions and unreliable models. Because K & A used incorrect ground surface boundary assumptions in their slope stability models, their recommendation that the Mr. Lund's property was stable enough for the proposed development is likely inaccurate.

h. The K & A Report does not substantiate the findings of available site-specific geologic reports.

The Preparation Guidelines require that engineering geologic reports address the "[n]ature and source of *available* subsurface information and geologic reports or maps."¹⁰² The Preparation Guidelines define "[s]uitable explanations of the available data" as those that "provide a technical reviewer with the means of evaluating the reliability."¹⁰³ Furthermore, "reference to cited works or field observations should be made, to substantiate opinions and conclusions."¹⁰⁴

A four-page summary of a geologic reconnaissance site visit conducted in 1991 by H.G. Schlicker (Schlicker Summary) is the only existing site-specific document relating to subsurface information and geology referenced and cited in the K & A Report.¹⁰⁵ As the Peer Review notes, "references to slope stability and recommendations for potential development in other published

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ K&A Report at 9.

¹⁰² Preparation Guidelines, I.G., 1.

¹⁰³ *Id.*

¹⁰⁴ Preparation Guidelines, I.G., 1 (emphasis added).

¹⁰⁵ Peer Review at 2-3.

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geologic reports were not provided” in the Report or Assessment.¹⁰⁶ Schlicker’s 1991 investigation involved no drilling or excavation work to assess subsurface conditions.¹⁰⁷ One of the Schlicker Summary’s primary recommendations, “given the sensitive nature” of the existing landslides and debris deposits on the site, was that a “geotechnical study be performed to determine the thickness and engineering characteristics of the material” on the slope.¹⁰⁸ In fact, the Schlicker Summary’s introduction section stresses that a “geotechnical report will be necessary” to establish the “geologic conditions [on the site] are reasonably favorable and mitigation costs will not exceed the final land value.”¹⁰⁹ The Schlicker Summary makes several observations in regards to existing active and historic landslides on and within the vicinity of the proposed project site. Regarding land sliding in the vicinity of the subject site, it notes that a “bowl-shaped area present *just east* of Spring Street is an older landslide that has apparently been stable for many years.”¹¹⁰ As for land sliding on the site itself, the Schlicker Summary goes on to state that “[t]he area west of Spring Street probably moved initially prior to the Jump Off Joe landslide that began about 1942 and continued until recently.”¹¹¹ While observations were made as to the likelihood of mass movement, the Schlicker Summary made *no concrete conclusions* with regards to slope stability.¹¹² Yet, the K & A Report states that Schlicker Summary “recommended” that the “old landslide area on the site is relatively stable” following the 1991 geologic reconnaissance the firm conducted on the site.¹¹³ K & A further claims that its geotechnical investigation “verifies Schlicker’s conclusions.”¹¹⁴

When examining the K & A Report’s citations to the 1991 Schlicker report, the Peer Review could not substantiate K & A’s statement that their 2018 geotechnical investigation “verified” the slope stability conclusions in the Schlicker Summary.¹¹⁵ First, the Peer Review points out that the Schlicker Summary does not state that the “old landslide area *on the site* is relatively stable,” as contended in the K & A Report.¹¹⁶ The Schlicker Summary, as mentioned above, made this reference in regards to an existing landslide *east* of the subject property.¹¹⁷ While the K & A Report accurately presents the Schlicker Summary’s findings, it nevertheless recommends, “continued translational movement of the landslide is relatively unlikely.”¹¹⁸ In Columbia Geotechnical’s expert independent opinion, nothing in the K & A Report itself supports such a recommendation.¹¹⁹ In fact, the Peer Review points out that most of the details, literature research, and site observations provided in the K & A Report tend to evidence the fact that the slope is not stable.¹²⁰ Second, the Peer Review discovered two of the Schlicker Summary’s recommendations—namely, that “at least two borings [be] drilled to at least 50 ft in

¹⁰⁶ *Id.*

¹⁰⁷ K & A Report, App. E at 1.

¹⁰⁸ *Id.*, App. E at 3

¹⁰⁹ *Id.*, App. E at 1.

¹¹⁰ *See id.* App. E at 3 (emphasis added)

¹¹¹ Peer Review at 2-3.

¹¹² K & A Report, Appendix E at 2-3.

¹¹³ Peer Review at 2-3.

¹¹⁴ K & A Report, §2.4.1, at 8; K & A Report, App. D, §6, 4.

¹¹⁵ Peer Review at 2-3.

¹¹⁶ Peer Review at 2-3 (emphasis added).

¹¹⁷ [*See* K & A Report, App. E at 3 (emphasis added)]

¹¹⁸ *See* K & A Report, App. D, §6, 4; Peer Review at 5.

¹¹⁹ Peer Review at 5.

¹²⁰ *Id.*

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depth” and that “laboratory tests [be conducted] to include direct shear on carefully obtained samples”—were not conducted as a part of K & A Engineering’s investigation. Finally, the Peer Review notes that the K & A Report excluded any consideration of a number of more recent geological reports.¹²¹ Specifically, the Peer Review found “[a] more recent report (i.e. 2016) on the adjacent property to the north by Schlicker that points out recent slope movements were not mentioned in the [Report].”¹²² As recognized by the Peer Review, “[r]eferencing a 1991 report when there are more recent and more thorough reports available does not provide enough basis to claim the slope is stable.”¹²³

As required by the Preparation Guidelines, the Report and Assessment both referred to the 1991 Schlicker Summary to address the nature and source of existing site-specific subsurface information. From our initial reading of the Report and Assessment, both seemed to imply that H.G. Schlicker’s reconnaissance found the slope stable in 1991, and that K & A’ Engineering’s investigation somehow merely confirmed that static state of stability in 2017. However, for the aforementioned reasons, Columbia Geotechnical’s expert independent review could not substantiate the Report’s assertion that it “verified” the Schlicker Summary’s “recommendation” that the project site’s slope was stable. This again restricts the City’s ability to rely on K & A Engineering’s recommendations to address slope stability issues.

i. Conclusion: The applicant has not demonstrated compliance with the Code.

Licensed practicing geologist and civil engineer Ruth Wilmoth summarized the grave concerns of building on this site without first properly and accurately demonstrating its stability:

Unless the ground can be proven to be stable and not at risk of causing or being affected by renewed land-sliding and/or episodic coastal erosion, with current, accurate, and defensible data ... areas of old landslides that are highly suspected of historic movement and areas with historic ocean erosion as severe as at this site should be avoided for future development.¹²⁴

Given the remote and more recent history of the visible impact of chronic coastal hazards on the proposed project site, Ms. Karnes expresses reasonable concern that “additional development could jeopardize the stability of Spring Street, the infrastructure (water lines, sewer lines, storm drain, and the buried utilities such as gas and electric), as well as existing homes in the area.”¹²⁵ From our own comparative review of the K & A Report against the expert, independent findings of Columbia Geotechnical and Mr. Cross as well as the ground-truth presented by Ms. Karnes, we concur with Ms. Wilmoth’s aforementioned professional opinion. Given the well-founded doubts about the K & A Report’s substantive compliance with the minimum criteria required by the existing Code § 14.21.060, the Planning Commission should reverse the Community Development Director’s decision to approve the applicant’s geologic permit at this time.

¹²¹ Peer Review at 2-3, 5.

¹²² *Id.*

¹²³ Peer Review at 5.

¹²⁴ *See id.*

¹²⁵ Karnes Test., Sept. 17, 2018.

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3. The City of Newport should improve its geologic hazards overlay zoning ordinance to provide the comprehensive, evidence-based compliance measures required to properly manage development in areas subject to risk from chronic coastal hazards.

The development pressure posed by proposed projects such as Mr. Lund's demonstrates the City of Newport's pressing need for a clearer and more robust Geologic Hazards Overlay framework with respect to 1) the minimum guidelines required for the preparation of geologic permits as they relate to sensitive coastal areas such as bluff-backed shorelines and 2) the process through which the City reviews land use applications for Geologic Permits for completeness and compliance. To enable the City to more effectively protect life, public safety, property, and key natural assets in the future, and strengthen its ability to reject applications for development in inappropriate hazard zones, we recommend that the City consider changes to its existing plan and ordinances.

In 2010, recognizing the critical threat chronic coastal hazards like landslides and erosion presented to the health and safety of residents and to the environment, the City of Newport undertook a comprehensive update to its municipal code. This resulted in the adoption of Newport's current coastal hazard maps indicating landslide-prone areas and the requirement that a geologic report be submitted to establish that a proposed site is suitable for development. Before this update, the City of Newport relied on 1970s geologic hazards maps to identify landslide, erosion, and earthquake risks pertinent to proposed development properties. The code in use before the 2010 update did not require land use applicants to obtain a geologic report prior to developing coastal properties. Given the threat of chronic coastal hazards and the ever-increasing impacts of climate change, we recognize the adoption of these geologic hazards overlay standards in 2010 as an important first step forward by the City of Newport to effectively manage the risks to life, property, and the environment inherent to coastal development.

Neskowin, an unincorporated community in Tillamook County located approximately 40 miles north of Newport, faces similar threats from landsliding and erosion associated with known chronic coastal hazards. Around the same time Newport began updating its geologic hazards zoning, Neskowin undertook a multi-year, grassroots effort, supported by a grant from the Department of Land Conservation and Development (DLCD), to improve their coastal hazards overlay zoning framework's ability to manage development in areas facing challenges presented by shoreline erosion, land sliding, and sea level rise. As a result of this coordinated effort, Tillamook County adopted the Neskowin Coastal Hazards Overlay Zone ("NESK-CH").

The purpose of the NESK-CH zone and applicable criteria is to manage development in areas subject to chronic coastal hazards:

"in a manner that reduces long term risks to life, property and the community by

- (a) Identifying areas that are subject to chronic coastal natural hazards including ocean flooding, beach and dune erosion, dune accretion, bluff recession, landslides, and inlet migration;

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(b) Assessing the potential risks to life and property posed by chronic coastal natural hazards; and

(c) Applying standards to the site selection and design of new development which minimize public and private risks to life and property from these chronic hazards; such measures may include hazard avoidance and other development limitations consistent with Statewide Planning Goals 7 and 18 as well as the Hazards Element and Beaches and Dunes Element of the Tillamook County Comprehensive Plan.”¹²⁶

In considering the challenges the City of Newport continues to face in determining how best to regulate development in these geologic hazard areas, we urge that the City consider the NESK-CH as an example of an effective land use code that has withstood legal challenges and produced an effective regulatory land use regime to manage the risks presented from chronic coastal hazards.

Clearer regulatory mandates and greater discretion to ensure compliance with the purpose of Code Chapter 14.21 will benefit the community. Residents need a more explicit understanding of the approval process for geologic permits to effectively participate in the land use decision-making process. Code Chapter 14.21, which contains the City of Newport’s Geologic Hazards Overlay, should be updated in order for the City of Newport to better meet its Statewide Planning and Comprehensive Plan obligations in both of those regards.

The City should adopt a defined standard of “acceptable level of risk” upon which to assess a geologic report.

Risk is ever-present in identified coastal hazard areas such as the Jump-Off Joe landslide complex and the bluff-backed shores of Nye Beach. Given that entirely eliminating such risk to life, property, and the environment in these types of settings is impracticable, coastal communities must define the maximum “acceptable level of risk” a property owner is required to bear for any proposed development (keeping in mind obligations to prevent substantial harm to life, property, and the environment).¹²⁷ According to FEMA, a geologic hazards overlay zoning ordinance should explicitly outline an evidence-based acceptable level of risk standard to ensure that any geologic report recommendation design or engineering remediation effectively protects life and property to the greatest practicable extent.¹²⁸ For the Oregon Coast, an evidence-based maximum acceptable level of risk standard for proposed developments subject to chronic coastal hazards is an assurance that life, safety and proposed structures will not be exposed to identified hazards, excluding a tsunami resulting from a Cascadia megathrust earthquake, for a period of 50-70 years considering site conditions and specified mitigation.¹²⁹

The absence of a defined minimum standard for “acceptable level of risk” (and, of course, a requirement that a geologic report subsequently meet that standard) essentially leaves residual

¹²⁶ NESK-CH §3.570(1)(a)-(c).

¹²⁷ NESK CH §3.570(1); FEMA Coast Construction Indep. Study III-19, III-20 (2013).

¹²⁸ FEMA Coast Construction Indep. Study III-19, III-20 (2013).

¹²⁹ NESK CH § 3.570(5)(d)(A)-(B). See “Model Coastal Hazards Overlay Zone” created by the Oregon Coastal Hazards Management Program.

Oregon Shores Conservation Coalition
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risk management determinations to the geologic engineer or similar professional engaged by the project applicant to prepare the required geologic report. This creates a likelihood that certain development proposals may fall short of being reasonably able to ensure that neither life and public safety nor proposed structures will be threatened by damage from natural hazards for the recommended period of 50-70 years while demonstrating compliance with the Code's Geologic Report Guidelines.

The City should adopt a moveable structure requirement and a safest site requirement for proposed developments in areas subject to chronic coastal hazards.

Erosion is a natural part of a coastal environment that should always be considered in making development decisions. The impacts of climate change are unfortunately increasing erosion rates that therefore changing how we can live on the shores of the Pacific Northwest. These types of risks to life, property, and ecology in a designated coastal hazards zone are primarily managed by protections provided by scientifically sound siting, design, construction, and maintenance.¹³⁰ It is vital that a coastal hazards regulatory framework explicitly incorporate best practices to effectively protect life, property, and the environment. A growing number of experts have come to the conclusion that moveable structures are the only true way to minimize the risk posed to life, property, and the environment by development in areas subject to the forces of coastal erosion.

The absence of explicit mandates relating to moveable structural design and safest site requirements in the Code allows for new development on Newport's coastline to comply with the geologic hazards overlay as currently written, while simultaneously failing to meet scientifically evidenced best practices for combating the risks posed by chronic coastal hazards in the near- and long-term.

The City should adopt code provisions that would enable the Community Development Director to seek additional review by an appropriately qualified professional or otherwise impose measures that would ensure compliance with the stated goals of the Natural Features Section of the NCP.

Given that assessment of the risks of proposed construction in coastal areas is limited to the recommendations of a geologist or similar professional procured by the applicant, the Community Development Director must be empowered to require additional review of a geologic report the he or she deems inconsistent with the purpose of the geologic hazards overlay. NESK CH 3.570(f) gives the planning department such discretion to require additional review at the applicant's expense. This approach effectively gives meaning to the geologic report requirement by allowing a local planning department to review and verify analysis even where that technical expertise may not exist within local planning staff members. In addition, this kind of provision has the potential to streamline Type I decision-making and reducing the likelihood of appeal of geologic permits by providing community members additional assurance that these important issues of life and safety have been independently evaluated by their local government.

¹³⁰ FEMA Coast Construction Indep. Study III-19, III-20 (2013).

Improving Informed Public Engagement Subsequent to the Approval of a Geologic Permit

Approval of a City of Newport land use application for a Geologic Permit requires that property owners within 200 feet of the subject property be notified of the decision and their right to appeal.¹³¹ This notice requirement generally implements Goal 1’s community involvement elements. However, the Code does not include a discrete section specifying the standards upon which a Geologic Permit must comply to be granted. “Average” residents (i.e., those without professional backgrounds in this field) are left to take on faith that any decision to approve a geologic permit by the Community Development Director would mean that an applicant demonstrated compliance with construction limitations within geologic hazards areas (Code 14.21.070) and prohibitions on development on beaches and foredunes (Code 14.21.080). Adding a section that sets out the findings of compliance the Development Director must make before approving a geologic permit would greatly improve subsequent public participation in land use decision-making related to geologic hazards, better implementing Goal 1 and increasing community understanding of how these decisions are made.

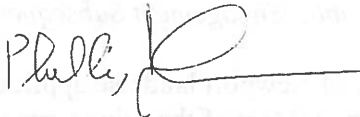
4. It is the best interest of the City of Newport and its residents to address climate today.

Most fundamentally, Oregon Shores believes that our communities, especially those along the Oregon coast, must begin to plan for climate change impacts immediately. Advance planning is critically important given two opposing forces likely to result from climate change. On the one hand, increased storm frequency and intensity, along with sea level rise and decreased summertime precipitation, will put coastal properties, infrastructure, natural areas, and water sources at risk. As storm surge increases and sea levels rise with climate change, we can expect to see more problems along the coast with homes being undercut by erosion along bluffs or dunes. On the other hand, Oregon’s coastal climate is likely to remain mild, with longer, warmer summers and more temperate winters. As a result, Oregon’s coastal communities may attract “climate refugees” and experience greater in-migration and associated pressures on land use and water resources. At the convergence of these two forces, Oregon’s coastal communities will likely see property disappearing, as beaches migrate inland, while human population growth increases the demand for land and resources. Given these increasing pressures, the need for climate change adaptive planning is critical. A concerted and systematic approach to the issue will require garnering public and political support for changes to raise the bar for construction and encourage property owners to pursue alternative methods of locating and protecting structures on coastal lands.

¹³¹ Code 14.21; 14.52.020.

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Sincerely,



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phillip@oregonshores.org

Derrick Tokos



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From: Elaine Karnes <karnese@peak.org>
Sent: Wednesday, September 19, 2018 12:59 PM
To: Derrick Tokos
Cc: Mona Linstromberg; Phillip Johnson, Oregon Shores/CoastWatch; Sean Malone
Subject: 1-GP-18 Appeal Evidence
Attachments: News-Times-June16 1993-JumpOff JoeA.pdf

Please include the attached document (News Times, June 16, 1993) in the record for the Spring Street geologic report appeal (1-GP-18 A).

Please confirm receipt.

--Elaine Karnes

News Times

Wednesday • June 16, 1993

Lincoln County's Leading Newspaper

112 years • Number 24 • 50¢

Georgia-Pacific may ace six-figure fine from OSHA

By Steve Card

OSHA has levied a \$100,000 fine on Georgia-Pacific Corp. for a safety violation at its Newport mill.

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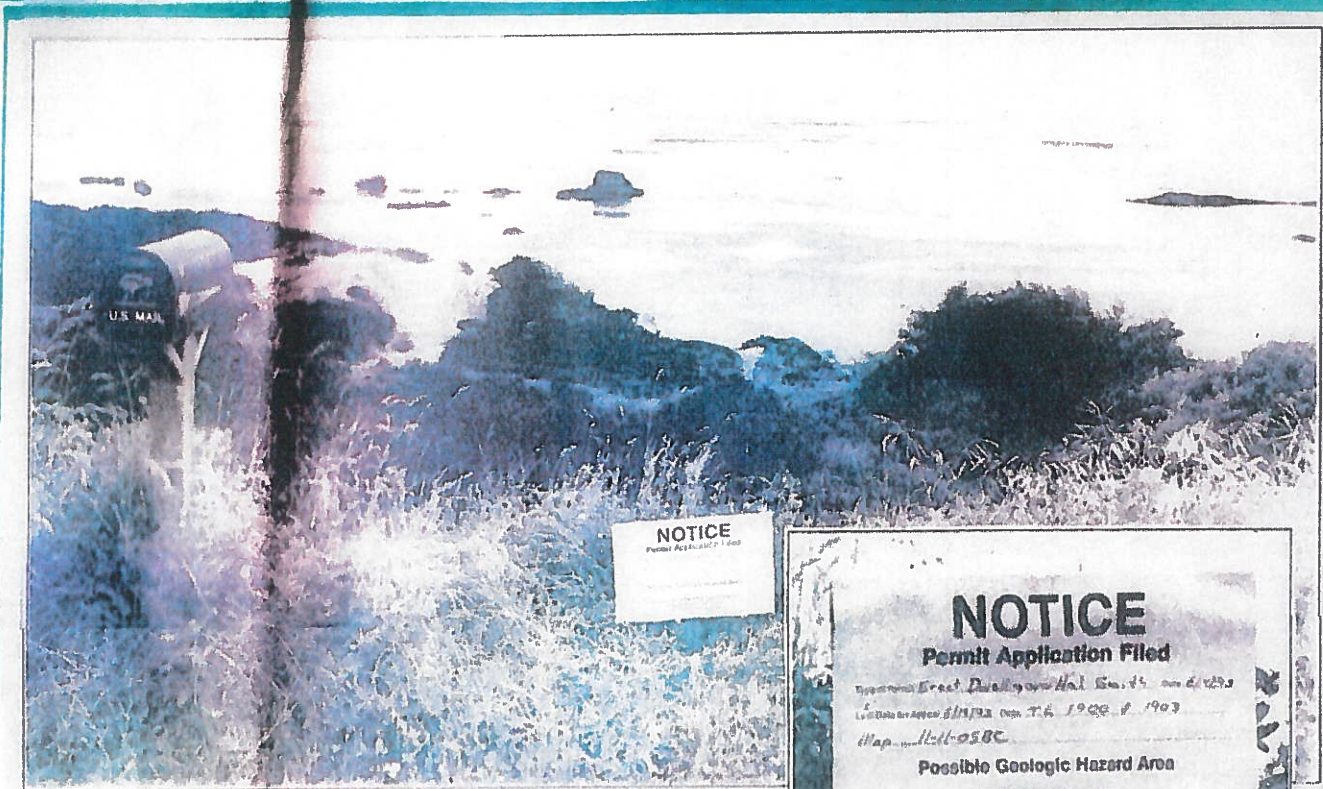
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This parcel of property, located north of Jump-off Joe and west of Spring Street in Newport, is being planned for development of several single family homes. Nearby residents are concerned that development in this geologically sensitive area could jeopardize surrounding property. (Photo by Steve Card)

NOTICE
Permit Application Filed

Department of Planning and Development
City of Newport, Oregon
Map No. 11-058C

Possible Geologic Hazard Area

For more information contact:
NEWPORT PLANNING DEPARTMENT
City Hall, 810 S.W. Alder
(503) 238-5391, Ext. 28

Jump-off Joe Continued from Page A1

between the subject property and the beach."

However, this landslide, according to the report, now rests on a nearly level surface and is not capable of further sliding. "Rather it acts as a buttress to the toe of the subject property," the report states. It further states that movement in the vicinity of the site is limited to small local slumps, since the driving force is no longer present to

In addition to recommending that a geotechnical study be performed, Schlicker & Associates suggest that:

- at least two test holes should be drilled approximately 50 feet in depth;
- laboratory tests include a direct shear being done;
- consideration be made for slope support, including crib walls;
- various foundation systems be considered if development of the

Neighbors concerned over proposed development near Jump-off Joe

Neighbors concerned over proposed development near Jump-off Joe

By Steve Card

A plan by a Newport property owner to build several houses on a bluff overlooking the ocean has raised concerns from neighbors in the area, who think the development could jeopardize their homes.

Hal Smith is planning to build on a known geologically sensitive area just north of Jump-off Joe and west of Spring Street. Smith filed an application for a building permit with the city on June 4, and a sign declaring Smith's intentions has been posted at the site.

Several neighbors in that area are afraid that Smith's development plans could further destabilize ground that has already been subject to sliding. And, in addition to posing a hazard to individual properties, they think future development could jeopardize city streets and utilities in that area.

"I'm one who's real concerned about this development down below Spring Street," said Dick Mason, who lives on Thompson Street, a block east of the proposed building site.

"Spring Street wasn't named Spring Street by mistake. There were springs, and there's still all kinds of underground springs along there. The whole area is a

trying to build down there is just horrible."

When an individual is contemplating building in a geologically sensitive area, the city requires a geologic report prior to the issuing of a building permit. That report has been submitted by Smith, and was prepared by H.G. Schlicker & Associates of Portland.

This preliminary investigation of the property was undertaken with the understanding that Smith plans to construct three or four single family homes in that area, according to the report. It states that no drilling or excavation was done for the preliminary study, and it further says that a geotechnical report will be necessary in order to define what needs to be done to safely develop the area.

Newport City Planner Mike Shoberg said on Tuesday that if the preliminary report indicates that further information is needed prior to developing the property, "we would require that before we issue the permit."

Shoberg added, however, that the city does not make the determination of whether the geologic study was adequately done. "We don't really determine the sufficiency," he said. "Basically, the city attorney has told us we aren't qualified to tell you what is sufficient, so it's dependent on geologists and the process we have set up."

non-expert has. If they want to bring in an expert, we have a process for them."

That process is to appeal the permit application, and in this case, the appeal period expires on Saturday. In addition to the \$150 cost of appeal, the appellants must bring in their own geologic report within 30 days. And this report must contradict, either in whole or in part, the original geologic report. "It's a major process," Shoberg acknowledged.

Tom Branford, who recently sold his home immediately south of the proposed development site, said, "I don't question the propriety of the procedure the city has. I understand it involves an expense, but it also involves an expense to the other party if the city says, 'no, you can't develop it,' and then they stand to lose their investment. It's a classic push and pull or tug of war over protecting existing development from being endangered by new development.

"So somebody stands to lose in a deal like this," Branford continued. "The question is, who's going to be the loser."

Personally, Branford agrees with the assessment that the property is unstable.

"We sold the house, (so) we're not trying to protect our investment or protect any view we have, that's not an issue," he said. "I recognize the right of people to develop property

just from walking down to the beach for the past 18 years through the property they're planning to develop...I believe that property is unstable."

Branford said that several years ago, in an area near the proposed development, "a chunk of ground about 130 feet long and 10 feet wide simply cracked off, and it has sunk about six feet since that time. One owner had to alter their foundation...another lost a 10-foot chunk that was the full width of their lot."

A path to the beach that winds its way through a portion of Smith's property has also dropped a couple of feet, Branford said.

"Look at Jump-off Joe now, and look at all the erosion down at the base of the cliff. There's probably nothing that could have been done to prevent that, no matter what happened on top," said Branford. "If that's the power of Mother Nature, wind and water, it doesn't just exist at Jump-off Joe. It exists a block and a half to the north."

The landslide area north of Jump-off Joe was acknowledged in Smith's geologic report. Schlicker & Associates stated that "the area from Jump-off Joe northward and from Spring Street west is old landslide. The slide debris appears to have