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October 8, 2018

Via Hand Delivery

City of Newport
Planning Commission
169 SW Coast Hwy
Newport OR 97365
(541) 574-0629

Re: Testimony in Support of Appeal of Geologic Permit (File No. 1-GP-18) (Lund) and in Opposition to the Application, Continued Hearing

On behalf of Mona Linstromberg, Elaine Karnes, Teresa Amen, and Robert Earle, please accept this testimony regarding the appeal of Geologic Permit, File No. 1-GP-18. For the following reason, the appeal should be granted and the application denied.

The applicant proposes to develop three homesites (one single-family dwelling and two duplexes) on a vacant plot of land located north of 1245 NW Spring St., adjacent to the Jump-Off Joe outstanding natural area boundary, and within the City's Geologic Hazards Overlay. It is difficult to imagine a more irresponsible place to develop three homesites, and the geologic reports in the record are evidence of that reality. Beyond that, the application fails to comply with the standard practices of the preparation of geologic reports, as outlined by the "Guidelines for Preparing Engineering Geologic Reports in Oregon" and fails to satisfy other applicable criteria.

I. The application is inconsistent with the purpose of the Geologic Hazards Overlay Zone (NMC 14.21.010)

The purpose of the Geologic Hazards Overlay zone 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 Goal 7 and 18, and the Natural Features Section of the Newport Comprehensive Plan." NMC 14.21.010.

As noted below, the application does not promote public safety or welfare by minimizing public and private losses due to earth movement hazards and limiting erosion and related environmental damage. Moreover, the application is inconsistent with Statewide Planning Goals 7. Statewide Planning Goal 7 requires – under implementation element B.4 – that:

> "[w]hen reviewing development requests in high hazard areas, local governments should require site-specific reports, appropriate for the level and type of hazard (e.g., hydrologic reports, geotechnical reports or other scientific or engineering reports) prepared by a licensed professional. Such reports should evaluate the risk to the site as well as the risk the proposed development may pose to other properties."

As noted below, the applicant has avoided analysis of the risks that the proposed development may have on adjacent properties, and even ignores the existing geologic issues that exist on adjacent properties. The applicant's refusal to address those issues is evident in the applicant's conjecture at the reasons for foundation issues that are occurring on adjacent properties. Moreover, given that the springs are occurring in the vicinity of the proposal, a hydrologic report is necessary. The springs undoubtedly affect the geologic conditions on the site and within the site's vicinity. Problematic is the concession by the applicant that misunderstands the number of springs in the area – assuming only one when there is at least two. State law does not permit the City to interpret its provisions that implement Statewide Planning Goals inconsistent with the goals themselves. Here, without a hydrologic report of the active springs – especially in conjunction with the active landslide – and an analysis of the impacts to adjacent properties, the City would be acting inconsistently with Statewide Planning Goal 7.

II. <u>The application is inconsistent with NMC 14.21.060</u>

NMC 14.060 requires as follows:

> "Geologic Reports shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles and 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. Such reports shall address subsections 14.21.070 to 14.21.090, as applicable. For oceanfront property, reports shall also

> address the "Geological Report Guidelines for New Development on Oceanfront Properties," prepared by the Oregon Coastal Management Program of the Department of Land Conservation and Development, in use as of the effective date of this section. All Geologic Reports are valid as prima facie evidence of the information therein contained for a period of five (5) years. They are only valid for the development plan addressed in the report. The city assumes no responsibility for the quality or accuracy of such reports."

Thus, geologic reports must be consistent with "standard geologic practices employing generally accepted scientific and engineering principles" and address the criteria contained in "Guidelines for Preparing Engineering Geologic Reports in Oregon." In addition, NMC 14.21.070 through .090 must also be addressed. Each tax lot at issue here must address the foregoing. If there is oceanfront property, "Geological Report Guidelines for New Development on Oceanfront Properties" must also be addressed. Here, tax lot 1800 is oceanfront property, and, therefore, the aforementioned guidelines must be addressed for tax lot 1800.

First, because tax lot 1800 is oceanfront property, the applicant was required to submit a report consistent with "Geological Report Guidelines for New Development on Oceanfront Properties." The record does not contain such a report, and, therefore, the application is not consistent with NMC 14.21.060.

Second, the standard requires that all reports that are less than 5 years are valid as prima facie evidence of the information contained therein. This means that the 1991 Report by H. G. Schlicker (and relied upon by the applicant) is not considered prima facie valid because it is 27 years old. Beyond that, as noted below, even the office responsible for that report disowns the report. Indeed, the president and principal geologist and geotechnical engineer at H.G. Schlicker and Associates, Mr. J. Douglas Gless, states:

> "[W]e have identified the area as what appears to be active landslide, meaning that we have seen what appears to be evidence of the area having had movement of the ground within the last few decades. In the past couple of decades there has been a buildup of the dunes at the toe of the slope which has had a stabilizing influence on the site but we don't believe it would be prudent to rely on the assured continuation of this dune growth as these loose dune sands are highly susceptible to erosion by storm waves and rip currents. Any substantial erosion of the dunes would have a large impact on stability models that don't account for the eroded condition.
>
> Of the three reports, the 2016 report pertaining to TL 1800 should be considered the most up to date. That report basically concludes that the Spring Street Slide is

active as mapped by DOGAMI. The 1991 report prepared by Herbert Schlicker for Mr. Hal Smith 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.

It is important to understand that any landslide that toes out at beach level and is subject to erosion is typically at a greater risk than non-landslide oceanfront ground."

The statement by Mr. Gless cannot be overstated. It is directly contrary to what the applicant is disclosing and reveals what the applicant is apparently hiding. Given that Mr. Remboldt's recent attack on Ms. Wilmoth's qualifications, I have attached Mr. Gless' qualifications. It should also be noted that the 2016 report mentioned by Mr. Gless is less than 5 years old, and, therefore, under the City's criteria, that report is valid, prima facie evidence of the information contained therein. Even more astonishing is that Mr. Remboldt has stated that in relation to the "Previous Geologic Report for Tax Lot 1800" that "[w]e have no idea of any report for this property." 10.4.18, Remboldt Submission at Page 2. If Mr. Remboldt pleads ignorance of this report, then Mr. Remboldt has not actually reviewed the record before the Planning Commission, which is not surprising given the other omissions and failures by the applicant.

Third, as it relates to the requirement that geologic reports must be consistent standard geologic practices, guidelines for preparing engineering geologic reports, and NMC 14.21.070 and .090, the applicant has failed in numerous respects.

The application admittedly fails to include supporting data. Mr. Remboldt, in his 10.4.18 submission (Exhibit F-1), states that "including hundreds of pages of thousands of calculations would serve no purpose." This is an alarming statement because these pages and calculations are, in effect, the substance of the conclusions in the report. Failing to disclose the underlying data also serves to effectively prevent peer review. Apart from that practical purpose, the requirement to include analytic and computer modeling is found in the "Guidelines for Preparing Engineering Geologic Reports in Oregon." *See* Section 4.3 ("Analytical Analyses and 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."). The applicant's refusal to submit this information should be met with skepticism because it prevents peer review and is not consistent with the standard practices.

Evidence was submitted of significant geologic problems arising on the properties to the immediate north and south of the property, resulting in significant remedial work to those properties. For example, post-development repairs to homes to the north and south

resulted in the employment of a foundation repair contractor to the tune of almost $30,000. The geologic impacts on these properties have been ignored by the applicant. Instead of discerning the reason for these foundation issues, the applicant hides behind the following statement: "To our knowledge, they have not 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 …." 10.4.18 Remboldt Submission (underline in original). Mr. Remboldt, instead of investigating the issue, merely resigns himself to conjecture, which is inconsistent with standard practices for geologic reports. The problem with that position is that is not what is required of such geologic reports. According to "Guidelines for Preparing Engineering Geologic Reports in Oregon," adjacent properties must be addressed. *See* Section 3.2.2 ("Field Reconnaissance, Geologic Mapping, and Subsurface Investigation": "It may be necessary for the engineering geologist to extend mapping into adjacent areas to adequately define significant geologic conditions"); Section 4 ("Assessment of Engineering Geological Conditions and Factors: "The engineering geologic assessment includes evaluation of the effects [e.g., geologic conditions, processes, and hazards] 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.") (emphasis added).

Mr. Remboldt was apparently unaware – until recently – what land use was proposed for the subject property. Indeed, Mr. Remboldt acknowledges this, stating in his 10.4.18 submission that "We were unaware of the nature of the proposed structures at the time of our Geotechnical Report. This make [sic] virtually NO difference to the outcome or recommendations and is NOT a reason to deny the geologic permit." (emphasis in original). The notion that this is not a reason to reject the permit is misplaced. Indeed, the "Guideline for Preparing Engineering Geologic Reports" requires that "[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." Section 1, Fifth bullet point. *See* also Section 3.1 ("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."); Section 3.2.5 ("Special engineering geologic characteristics or concerns affecting proposed land use and development activities."); Section 4 ("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."); Section 5.1 ("The Conclusions section should be focused on the geologic constraints for the proposed land use or development activity of the site."). Given these omissions, it is

questionable whether the applicant has even reviewed the "Guideline for Preparing Engineering Geologic Reports." That failure is fatal to the application because that guideline is effectively criteria for the subject application.

The applicant admits that its report is premature and incomplete. For that reason alone, the application must be denied. For example, at the hearing, Mr.Remboldt conceded, repeatedly, that more work is to be done: "We've been clear with Mr. Lund he's going to have to do some more borings to confirm the geology in that area." 9.24.18 Hearing Video, 1:25; we think it would be prudent to do more borings," *id.* at 1:42:32; "There's still some issues to be worked out. It's really a work in progress," *id.* at 1:43:11. The "Guideline for Preparing Engineering Geologic Reports" does not contemplate a *preliminary report or a preliminary site investigation* wherein additional information would be provided at a later time. Moreover, the NMC does not contemplate a preliminary geologic report. By the applicant's own admission, there is more to be done, and, at this stage, the report is both premature and incomplete. As such, the application must be denied until a serious attempt at complying with the criteria has been undertaken.

It is also apparent that borings that were done by the applicant occurred in the right of way and not on the actual property. *See* Exhibit 6-A, Appendix A, Maps Drawing 2/3, Geotechnical Site Plan. This is an astounding failure by the applicant. Clearly, the basic requirements of a geologic report would entail boring on the subject property, not an adjacent right of way. As with other failures, this failure cannot be overstated.

As noted above, the applicant is attempting to rely on a stale report from 1991 that cannot be used under the plain language of the code. The 2016 report from H.G. Schlicker & Associates, however, is contained in the record and is prima facie evidence of the conclusions contained therein (because it is less than 5 years old). That report contains numerous references to active landslides in the vicinity and on the subject property and one is even referred to as the "Spring Street landslide":

> "The slope on the eastern area of the subject lot is part of the headscarp of an active landslide, and the lower elevation western part of the site lies on a downdropped active landslide block (Appendix A). The mapped active landslide north of the Jumpoff Joe headland which has its northernmost lateral scarp located along the eastern boundary of the adjacent lot to the north is generally referred to as the Spring Street landslide (Figure 4).
>
> The subject site lies on a mapped active landslide block (Figure 4). The site is located about ¼ mile north of the Jumpoff Joe landslide, a well-documented translational landslide that was first noted in 1922 with substantial movement and

damage to structures in 1942 and 1943; continued movement has been observed to the present date. As noted above, the site also lies at the northern part of the more recent, large Spring Street landslide (Figure 4). Significant movement of the Spring Street landslide occurred in the 1960s and unstable conditions continued at least into the 1970s (Schlicker et al., 1973)....

***

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.

Landslide movement at the subject site and/or in the site area can be exacerbated by a large earthquake, erosion at the bluff toe, or increased groundwater levels. As ocean wave erosion continues to erode the toe of the landslide mass, the risk of larger and more rapid movement increases. The site lies within the Active Coastal Erosion Hazard Zone, defined as currently undergoing bluff recession and erosion, with a lesser risk (High-Risk Zone i.e., high risk of bluff recession within the next 60 years) in areas east of the site along N.W Spring Street. These risks should be accepted by the owner, future owners, developers, and residents/occupants of the site.

***

The site is on an active landslide and would be difficult and expensive to develop. Building permits for development of the site may also be difficult to obtain."

April 14, 2016, Geologic Hazards Report by H.G. Schlicker & Associates, Pages 3-4, 6, 7. Columbia Geotechnical (Exhibit E-6) also noted the overwhelming evidence of an active landslide: " the disturbed 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 the planned new development; and historical distress to the two closest homes (roughly 15 ft north and 75 south of the project) on either side of the property caused by ground movement in the past 30 years or so." Columbia Geotechnical, Exhibit E-6, Page 1-2. Despite the above evidence, Mr. Remboldt alleges there are no "deep-seated landslides" found at the site. Such a statement strains credulity.

Moreover, as is standard practice, Columbia Geotechnical advocated for monitoring in its report because:

> "[o]ld 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. It is common practice to set up a comprehensive monitoring system that can provide data over the course of one or more wet seasons to base the opinion of current slope stability.... 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 make take more than one year). Premature conclusions on stability can only be avoided by monitoring through a season that exceeds normal rainfall, hopefully monitoring over a season of record rainfall."

Columbia Geotechnical's recommendations are backed up by the "Guideline for Preparing Engineering Geologic Reports," which essentially acts as approval criteria here. Under "Site Investigation," the Guideline states that "[i]nstallation and monitoring of in situ instruments such as slope inclinometers, piezometers, extensometers and settlement devices, and borehole accelerometers" should be utilized. Section 3.2; Section. 5.2 ("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."). Contrary to the criteria in the Guideline, Mr. Remboldt alarmingly states that "[l]ong term monitoring of precipitation is simply ridiculous and unprecedented for this project site." If ever there were a site for monitoring, this would be it, given the problems associated with it. Moreover, while Columbia Geotechnical advocates for a cautious approach in an area of active movement (and even Mr. Remboldt alleges that "this is a high hazard zone for slope movement, and, as such, warrants great caution," September 12, 2018, Remboldt Submission (Exhibit E-3)), Mr. Remboldt's allegation that monitoring is "ridiculous" should be alarming and lacks the professional integrity necessary for a project such as this. Mr. Remboldt goes on to state that "[t]o my knowledge, unless a site is on an active landslide, long-term monitoring with slope inclinometers is not common practice." The problem is that Mr. Remboldt, contrary to Columbia Geotechnical and the 2016 Schlicker report, does not recognize that there *is an active landslide.*

In Columbia Geotechnical's Addendum to the 8/15/18 submission, the following omissions exist in the applicant's flawed geotechnical report, all of which are components of the "Guideline for Preparing Engineering Geologic Reports":

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 borehold 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."

It appears as though the applicant does not know what the standard practice for such reports is or the applicant has not utilized the "Guideline for Preparing Engineering Geologic Reports." That is fatal to the application because the Guideline is effectively criteria for the application.

For the above reasons, as well as those presented by other testimony in opposition to the application, the applicant has failed to satisfy the criteria of NMC 14.21.060.

III. The application is inconsistent with NMC 14.21.070

NMC 14.21.070.A.2 requires that properties possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site. There has been no showing of compliance with this criterion. The failure to address this criterion is nothing more than a disturbing trend that fails to address all relevant criteria.

IV. The application is inconsistent with NMC 14.21.080

For compliance with NMC Chapter 14.21.090, the applicant's submission has not changed since June 4, 2018, even though the applicant has conceded that necessary, additional work is yet to be done and two versions of the geologic report have issued since that date. NMC 14.21.090 requires that the Geologic Report address a variety of Erosion Control Measures, and the applicant purports to satisfy the criteria in NMC 14.21.090 through the June 4, 2018, submittal by Gary C. Sandstrom. The Sandstrom review is largely based on the flawed Remboldt report, and, therefore, the Sandstrom review is also flawed.

A. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;

This standard is couched in mandatory terms, using the word "shall." The applicant's recommendations, however, related to NMC 14.21.090(A) are largely

premised on constructing buildings one unit at a time but qualifies that this should be done "if possible." In other words, it is not known if this approach is even feasible. In the absence of its feasibility, there is simply no proffered way in which to comply with this mandatory standard. The applicant's equivocation is not sufficient to meet the standard. Moreover, the Remboldt report did not even purport to understand the extent of the development on the subject property, as noted above. Clearly, the number and size of the structures would govern the "possibility" of how erosion is controlled and whether the proposal could feasibly be done piecemeal.

B. Development plans shall minimize cut or fill operations so as to prevent off-site impacts;

Again, the applicant's report was submitted without an actual knowledge of what the development would entail, and, therefore, the applicant cannot be heard to "minimize cut or fill" because the report was prepared without the necessary information in mind. The applicant generally alleges that the site "should be protected with retaining walls, graded slopes or terraces and other forms of protection as mentioned above," but this answer lacks certainty and detail, likely owing to the fact that the applicant was unaware of the specific development at issue. Also, notably, the applicant's answer here concedes that the northernmost residence "would be subject to possible flooding erosion," which is consistent with the findings in the 2016 Schlicker Report ("Landslide movement at the subject site and/or in the site area can be exacerbated by a large earthquake, erosion at the bluff toe, or increased groundwater levels. As ocean wave erosion continues to erode the toe of the landslide mass, the risk of larger and more rapid movement increases.").

C. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

It should be noted that vegetation was already removed by the applicant in its initial work on the property. That has already resulted in erosion. The applicant has not yet accounted for the damage that has already been done, let alone that damage it proposes to do in the future.

D. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;

The applicant's answer does not address "permanent plantings" and the notion that "modular/phased construction" will address erosion control and drainage measures is misplaced. Simply put, more is required of the applicant when it proposes to construct multiple dwellings on an active landslide and highly erosive area that has not been subject to erosion monitoring.

E. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;

This requirement is couched in mandatory terms (e.g., shall) but the applicant does not commit itself to anything more than what it "should" do. The applicant's attempt to satisfy this criterion simply fails to satisfy the plain language of the provision.

F. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;

The answer to this provision refers back to sections A and E. This deferred answer is insufficient because the standard is couched in mandatory terms but the answers to sections A and E are couched in hortatory terms. Again, the applicant has not satisfied the plain language of the provision.

G. All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty-year frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure.

Again, in response to this criterion, the applicant sets forth recommendations instead of commitments or conditions of approval. Moreover, the applicant has not demonstrated an understanding of what would be required to adequately carry runoff from a twenty-year frequency storm. The applicant has not engaged in any monitoring that would bring certainty to the applicant's generalized non-mandatory recommendations.

H. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;

The applicant defers an answer to the answer for Section E. Again, the applicant is not committing itself to any mandatory conditions but rather alleging generalized recommendations that are not, in any way, mandatory. This fails to satisfy the criterion.

I. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:

1. Energy absorbing devices to reduce runoff water velocity;

2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

3. Dispersal of water runoff from developed areas over large undisturbed areas;

The applicant again defers to sections A and E. This provision is couched in mandatory terms rather than permissive terms. However, the applicant's answer to these criteria are loose recommendations devoid of any actual commitment. This repeated deferment and failure to actually commit itself to remedial actions is insulting not only to the City but to the neighbors that will have to live with the adverse effects of this irresponsible development.

J. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures; and

Here, the applicant does little more than parrot the standard without so much as a plan as to how to deal with the spoils or stockpiled material. It is all the more insulting that this is occurring in a highly erosive area that contains an active landslide.

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

Even for this relatively straightforward provision, the applicant fails to commit itself to mandatory requirements. Instead, again, the applicant alleges that it "should" do certain things, not that it "shall" do particular things.

V. Conclusion

For the foregoing reasons, the application must be denied. The applicant proposes to rely on the most dated geologic report in the record, even at the express request that such report not be used by the firm that prepared it; fails to address all relevant criteria; and fails to accord its attempts to satisfy the criteria with the plain language of that criteria. In setting forth this application, the applicant not only puts itself but also those surrounding property owners at a significant risk.

Sincerely,

Sean T. Malone
Attorney for Mona Linstromberg, Elaine Karnes, Teresa Amen, and Robert Earle

Cc:
Clients

OREGON SHORES
CONSERVATION COALITION

Monday, October 8, 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

Additional Comments from Oregon Shores Conservation Coalition

Dear Chair Patrick and Planning Commission members,

We are aware of comments made by Michael Remboldt, casting aspersions on the comments by the Oregon Shores Conservation Coalition in the matter of the Lund Geologic Permit Application. We won't take up the commission's time with a detailed reply—we stand by our comments, and believe they speak for themselves.

However, we did want to make a few observations about the assumptions Mr. Remboldt appears to make, and what they say about the process and his perspective.

He is of course correct that our comments don't offer anything new in terms of the geological evidence—we aren't geologists and don't pretend to have expertise in this area. Our comments point to questions raised both by geologists and by residents of the area which are most definitely not adequately addressed in the geologic report being appealed, despite Mr. Remboldt's protestations. We are not presuming to make a definitive geologic report—we are arguing that the geologic report submitted by Mr. Lund is not sufficiently definitive, and should be rejected.

Mr. Remboldt's disparagement of the geologists who did offer comments is another matter. We're sure Ms. Wilmoth and Mr. Cross can defend themselves adequately against his disrespectful statements, but we would point to what this says about Mr. Remboldt's blinkered point of view. He complains that Ms. Wilmoth isn't qualified to conduct a "peer review," but this is not a peer review of a scientific paper, a matter just among professional colleagues in one niche of geology. This is a public planning process, and these are highly knowledgeable citizens providing well-founded testimony. His type of very narrow-minded credentialism is inimical to

the democratic process. The issue here isn't whether Mr. Remboldt has jumped through just the right hoops to satisfy his circle of technical consultants; the issue is whether the report adequately addresses public concerns about health and safety, costs to the public of failed development, and preservation of natural values. All citizens should be able to offer their own expertise, without someone waving a piece of paper at them and sneering at them because they don't have the right credentials.

Which leads to Mr. Remboldt's repeated complaints that Oregon Shores' comments are "embellished." The points directly to his false assumption, which again is that this is all about a "peer review." The "embellishments" to which he refers are actually the fundamental purpose of our comments. We don't claim expertise in geology, but we do claim expertise in planning and land use law. The thrust of our comments is to place the geologic report and the geologic testimony on the record in the context of code requirements. We demonstrate that the submitted report does not meet the required standards—but again, we'll let our original comments speak for themselves on this point. Mr. Remboldt may genuinely not grasp that this is not an internal debate among geologists, a debate which in his view only those with a certain credential should be admitted, but a public process through which the citizens of a community are making decisions about its future, and which includes planning and legal considerations that don't fall entirely within the scope of geologic technicians.

In dismissing concerns about the risks of developing in a coastal hazard zone, Mr. Remboldt sounds a good deal like the comedian Richard Pryor, whose stock line was "Who you gonna believe, me or your lyin' eyes." Mr. Lund's development is proposed for an area known to geologists as the "Spring Street Landslide." It sits on a landslide block. It is adjacent to the Jump-off Joe landslide complex. Neighbors have pointed out that there is a good deal of observed spring flow across the property not documented in the report. This property is highly landslide-prone, whatever Mr. Remboldt would like to have us believe. Any development here is extremely questionable, but at the least, it should not be allowed to proceed without an adequate geologic review that addresses the long-term questions that have been very plausibly raised.

Sincerely,

Phillip Johnson, Executive Director

Derrick Tokos

From: Mona Linstromberg <lindym@peak.org>
Sent: Friday, October 05, 2018 8:10 PM
To: Derrick Tokos
Subject: Spring St. comment on Mr. Roth's 9/25 email

I feel compelled to note there is irony in Mr. Roth's comment. While executing his first amendment rights and participating in the process as encouraged under Goal 1 of the Statewide Planning Goals, he himself did not address applicable criteria directly. Be careful of what you criticize. Citizen participation takes many forms and lends perspective. This decision will be based on applicable criteria and there is sufficient evidence in the record to deny this approved geologic permit.

Please enter in the record an acknowledge receipt.

Regards, Mona Linstromberg

Sent via my totally safe HARD WIRED internet connection

Derrick Tokos

From: wlund_albany <wlund_albany@yahoo.com>
Sent: Friday, October 05, 2018 5:23 PM
To: Derrick Tokos
Subject: RE: Columbia Geo Techncial review I found

Yes please and saying that it is from me..

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Derrick Tokos <D.Tokos@NewportOregon.gov>
Date: 10/5/18 5:19 PM (GMT-08:00)
To: 'Bill Lund' <wlund_albany@yahoo.com>
Subject: RE: Columbia Geo Techncial review I found

Do you want me to provide this information to the Planning Commission? As an FYI, the hearing packets will post to our website in a few minutes.

Derrick

From: Bill Lund [mailto:wlund_albany@yahoo.com]
Sent: Friday, October 05, 2018 3:11 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: Fw: Columbia Geo Techncial review I found

Hi Derrick,

I have found some reviews on Ruth Wilmoth and they are not good. Can I or should I reveal this to the Planning Commission. You can read them below.

Thanks,

Bill

Sent: Wednesday, August 29, 2018 4:24 PM
To: P.E. Michael Remboldt <michael@kaengineers.com>
Subject: Columbia Geo Techncial review I found

Hi Mike,

I am doing research on this Columbia GeoTechnical company in Vancouver. It is only this one lady Ruth Wilmoth.

Below is a couple reviews I found and apparently she does not do her homework well:

Columbia Geotechnical

2214 SE Bella Vista Loop, Vancouver, WA

Write a review

1.0

1 review

Sort by:

Most relevant

Ty

Ty Brickner

1 review

2 years ago

CAUTION!! DO YOUR HOMEWORK!

I contacted Ruth, the owner and I believe sole employee at this firm, after I found out I needed a "Geotec" for an addition to my house that I was planning to build. I had never heard of a geotec before and when I called Columbia Geotechnical of Vancouver, I made it clear this process was completely foreign to me. I should add I also called some larger firms and found out that they were very busy and booked out at least 3-4 weeks. When I called Columbia Geotechnical and Ruth said she was available within a few days, I asked her for an appointment. I explained I needed a geotec report for an addition to my house along with a separate shop, all located in Cowlitz Co. I was previously told by the Building Department, that all of the requirements needed for the report were listed on the Cowlitz Co. web site and I passed that information on to Ruth. She said she had done over 100 reports for them, one recent one "just like mine," so she was familiar with what I needed and that she would be out in a few days. She quoted me $1500.00 over the phone based on the recent report that was just like mine.

Ruth came out to visit the site and look over the project. At that time she informed me, after a bit of online research, I was in an old landslide area, but the project still seemed simple to her and it would most likely come in under her estimate. She finished the report but would not send it to the planner until payment was received. The cost came in exactly $1,500.00 as originally quoted, it was not "under" as she thought it would be.

Upon payment, I was given a copy of the report and an additional electronic copy was sent to the Planning Department. A few days later, I received a letter stating the report was not accepted because it did not include the checklist, as per the requirement listed on the web site. The checklist is a requirement for all submissions and this is made very clear on their website. I forwarded Ruth the letter and about 5 days later she sent them the checklist as well as a few OTHER missing items she realized she had left off after reviewing the checklist.

Several weeks later I received a letter that the report was still incomplete and my permit was "on hold" because it was missing the county's required information. I forwarded the letter which included the missing requirements to Ruth. She replied by email a couple of days later that she could provide this information for an additional $1,500.00.

I was never informed there was even a chance that further information would be required or that a partial report was an option for her. I was not informed there was a chance my report would cost additional money. In fact, Ruth, an expert in her field, told me she had turned in 100 of these reports, mine was considered simple and it would most likely come in under her estimate. During a subsequent conversation with the Building Department, I was told the items that were missing from her original report are clearly required by code, listed on the website, and always provided by the geotechs.

Ruth's explanation or reason for her incomplete report was that she was unaware my property was in a steep landslide area, yet she is the one that told me she discovered I was in a landslide area on the first visit to the property during her "research phase" before we signed the contract??

After revisiting a few of the previously called firms, it was suggested by one of these firms, that I allow Ruth to finish the report phase rather than start over with a new firm from scratch and lose even more precious time and money. I told Ruth to go ahead with her final report and agreed to her additional $1,500.00 (100%) increase in cost. She told me she would have it done by the end of that week. Disappointed again, several unanswered calls and emails later, the report was turned in over 2 weeks later.

Do your homework before hiring this company.

Here is another review from BBB:

Derrick Tokos

From: Mona Linstromberg <lindym@peak.org>
Sent: Saturday, October 06, 2018 5:45 PM
To: Derrick Tokos
Cc: Sean Malone
Subject: Spring St Comparison K & A 9/12 rebuttal/Columbia Geotechnical peer review
Attachments: Spring St K & A Sept 12 Rebuttal.pdf

1-GP-18-A
Please enter the attachment in the record and acknowledge receipt.

Thank you, Mona Linstromberg

Sent via my totally safe HARD WIRED internet connection

October 6, 2018

1-GP-18-A
Applicant: Lund
Tax Lots: 1900, 1903 & 1800

Comment: K & A September 12, Rebuttal of August 15, 2018 Peer Review

After attending the September 24 public hearing and then going back and listening to the hearing on the City's website, I have deduced that neither the applicant nor K & A have taken the time to thoroughly review the existing record. That and the glossing over of observations (e.g. lack of supporting data) in the Columbia Geotechnical peer review make for an inadequate rebuttal of that review.

In K & A's rebuttal (**Item 4, Geologic Setting**) dated September 12, 2018 of the peer review (Ruth Wilmoth, Columbia Geotechnical) and during the September 24th public hearing, Mr. Remboldt referenced the 1991 Schlicker report. Is it possible that Mr. Remboldt never read Mr. Gless'(Schlicker and Assoc.) July 25 email: *"The 1991 report prepared by Herbert Schlicker for Mr. Hal Smith 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."* [1] K & A's rebuttal (again, Item 4), references a report by Mr. Gless dated March 12, 2015 and, in relationship to that March report, K & A is dismissive of the peer review comments. However, the peer review refers to a 2016 report on adjacent property. Mr. Gless in his email provides a link to the actual report (most definitely not dated March 12, 2015). Two Schlicker reports in addition to the 1991 report are in the record, Tax Lot 1800 and 1409 NW Spring Street.

K & A's rebuttal (**Item 5, Slope Movement**) addresses the 15 degree quandary raised in Mr. Cross' comment, in the peer review report, and during the public hearing. The peer review report states in part *"...(t)he calculation sheets and assumptions in their model are not included in the report for our review, but there does appear to be some errors in the design model that would result in a reduced stability from that which is shown,"* At the public hearing, Ms Wilmoth reiterated several times (e.g. see video at 2:04:50) that data was missing from K & A's report that would be needed to assess K & A's conclusions. Again in the record, in Lincoln County's comments dated July 26, 2018 this issue of missing data was also raised; *"(w)hile the field investigation addresses*

[1] See also Elaine Karnes' fuller discussion, dated October 2, of the Schlicker reports.

most of the issues regarding questionable soils, the GER does not provide all the boring logs from their field work." In addition. *"(t)est results showing the Plasticity Index, Expansion Index and ASTM D are not included in this report nor are there results of any compression strength tests."* Though the County did not recommend denial, there is a pervasive pattern in the evidence that strongly supports denial of this application.

K & A (**Item 7, Liquefaction)** states *"(n)one of the borings or probes found conditions conducive to liquefaction..."* since in Item 5 K & A blatantly admits *"...additional borings at the home sites will need to be made to extend the geologic profile, provide data for design of the foundation support system, and* ***allow us to evaluate global stability*** *in the constructed condition." (emphasis added).*[2] A valid conclusion cannot be reached regarding liquefaction at the home sites when the results were based on borings located elsewhere. This is another indication of insufficient data being provided.

Items 9 through 12 from General Foundation Recommendation through Foundation Pads have not been adequately addressed by K & A. The "can" is being kicked down the road to when the "can" is no longer subject to public scrutiny (or peer review). NMC 14.21.120 requires the hiring of a licensed geologic engineer for appeal purposes then denies her access to information needed to formulate a complete assessment.

Items 13a, 13b, and 13c are all lumped together by K & A with the justification the concept is met by doing so. I would specifically like to have the observations made in the peer review under Field Review Cross Section addressed by K & A.[3]

Item 14 Appendix C Slope Stability Analysis, per K & A is "difficult" to interpret, but, obviously, not impossible. Code requires that the appellants retain a licensed geologic engineer. Mr. Remboldt exhibited poor judgment. This is another example of not providing the data needed to assess the conclusions drawn. A note: I do not see the Slope Stability Analysis for Tax Lot 1800.

Item 15 Appendix D Geologic Hazard Assessment by Gary C. Sandstrom. At the very beginning of K & A's rebuttal of the peer review a distinction was made between a geotechnical engineer and a geologic engineer and states *"(a)s such, we assume that any*

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[2] See also Elaine Karnes' fuller discussion, dated October 2, of bore holes.
[3] See page 10 in the Oregon Shores comment dated September 21, 2018

valid peer review made by Ms. Wilmoth is limited to those aspects covered in the Geologic Hazard Assessment made by Mr. Gary C. Sandstrom, C.E.G., R.P.G. – a licensed professional engineering geologist and geologist in the state of Oregon." Given K & A's response to the peer review observations to the Geologic Hazard Assessment, Mr. Remboldt appears to both diminish the information provided in Mr. Sandstrom's report and forget his initial admonishment of Ms. Wilmoth, C.E.G., P.E. If Mr. Sandstrom, not a licensed geotechnical engineer, can correctly evaluate the cited studies in his report as to their geotechnical value, then it would appear Mr. Sandstrom is treading on Mr. Remboldt's turf. Concluding that "(s)uch studies are not meant to be used as a tool to approve or deny development in the area" would seem to indicate that K & A should not be relying on that cited literature in proving its case.

The process of comparing the peer review by Columbia Geotechnical side by side with K & A's rebuttal of that review was enlightening. The above in no way includes all the absent data addressed by Ms. Wilmoth in her peer review and subsequent comments. Please see her comment dated September 28, 2018 provided to me after the public hearing on the 24th. This geologic permit must be denied as there is not the data needed to support many of K & A's conclusions that are the foundation of its Geotechnical Engineering Report.

Thank you for your attention,

Mona Linstromberg

Derrick Tokos

From: Elaine Karnes <karnese@peak.org>
Sent: Sunday, October 07, 2018 10:02 AM
To: Derrick Tokos
Cc: Mona Linstromberg; Rob & Teresa; Chris; Phillip Johnson, Oregon Shores/CoastWatch; Matt and Lisa Thomas
Subject: Evidence for Appeal of Geologic Permit (1-GP-18-A)
Attachments: DOGAMI Bulletin 81, title page.pdf; DOGAMI Bulletin 81, page 90.pdf; DOGAMI Bulletin 81, page 89.pdf; DOGAMI Bulletin 81, page 123.pdf; DOGAMI Bulletin 81, page 127.pdf

Please enter the attached evidence [DOGAMI Bulletin 81, Environmental Geology of Lincoln County, Herbert G. Schlicker] into the record (Appeal Geologic Permit 1-GP-18-A) and please acknowledge receipt.

The entire document can be accessed using the following link: https://www.oregongeology.org/pubs/B/B-081.pdf

Respectfully, Elaine Karnes

STATE OF OREGON
DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES
1069 State Office Building, Portland, Oregon 97201

BULLETIN 81

ENVIRONMENTAL GEOLOGY *of* LINCOLN COUNTY, OREGON

Herbert G. Schlicker, Oregon Department of Geology and Mineral Industries,
Robert J. Deacon, Shannon & Wilson, Engineers, Inc.,
Gordon W. Olcott and John D. Beaulieu, Oregon Department of Geology and Mineral Industries,

* * * * * *

The preparation of this report was financed in part through a Comprehensive Planning Grant from the Department of Housing and Urban Development, under the provisions of Section 701 of the Housing Act of 1954, as amended, in partial fulfillment of HUD contract CPA-OR-10-16-1006.

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Prepared under Contract No. LGR 72-04-05 for
OREGON DISTRICT 4 COUNCIL OF GOVERNMENTS
LINCOLN, BENTON, LINN COUNTIES

September 1973

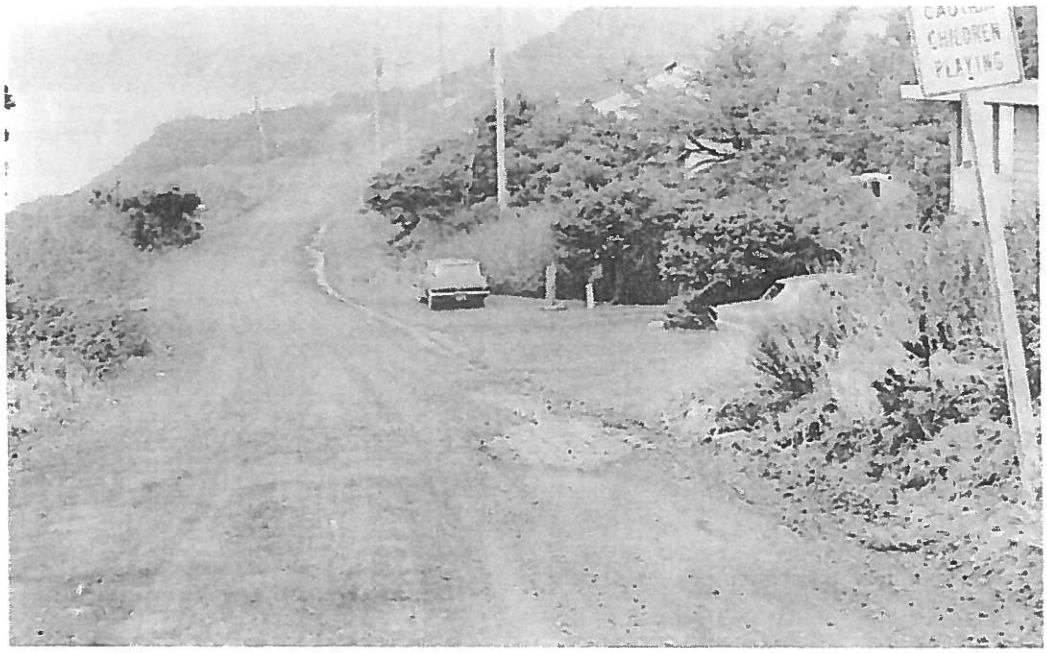

Photo 45. Spring Street dislocated by landslide movement. Water flowing down right side of street comes from spring, indicating the disturbed subsurface drainage of the landslide mass.

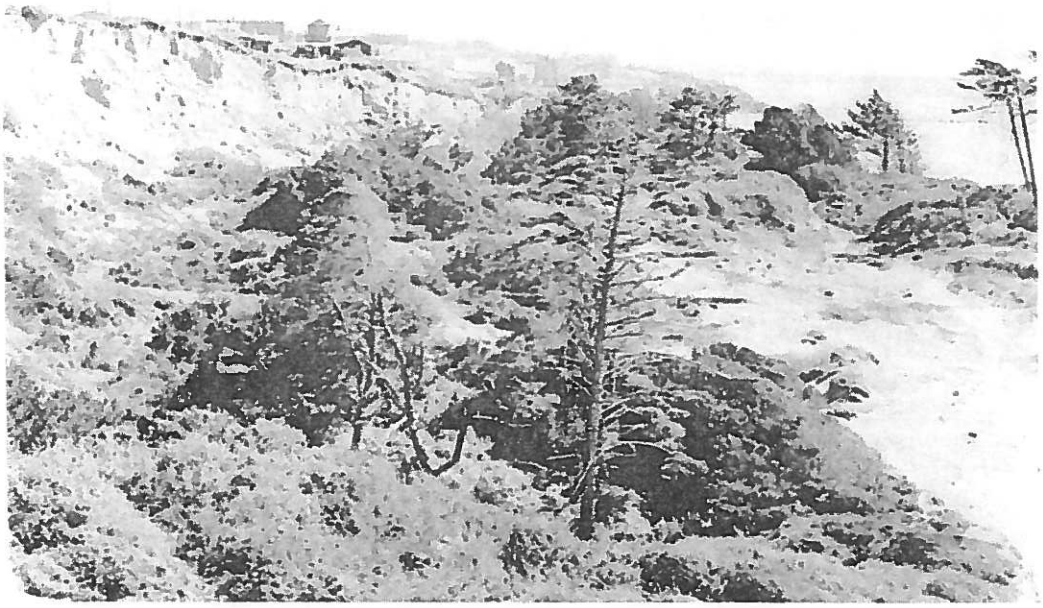

Photo 46. Jumpoff Joe landslide in Newport began in 1922, but major displacement occurred in 1942. A number of houses were situated on the down-dropped block of land.

Photo 43. Active landslide at Spring Street just north of Jumpoff Joe in Newport creates a jumble of unstable ground involving many acres of land.

Photo 44. Close-up of part of the large landslide scarp exposed behind house on Spring Street. Extensive damage to house began in 1961 and slide mass continues to be unstable.

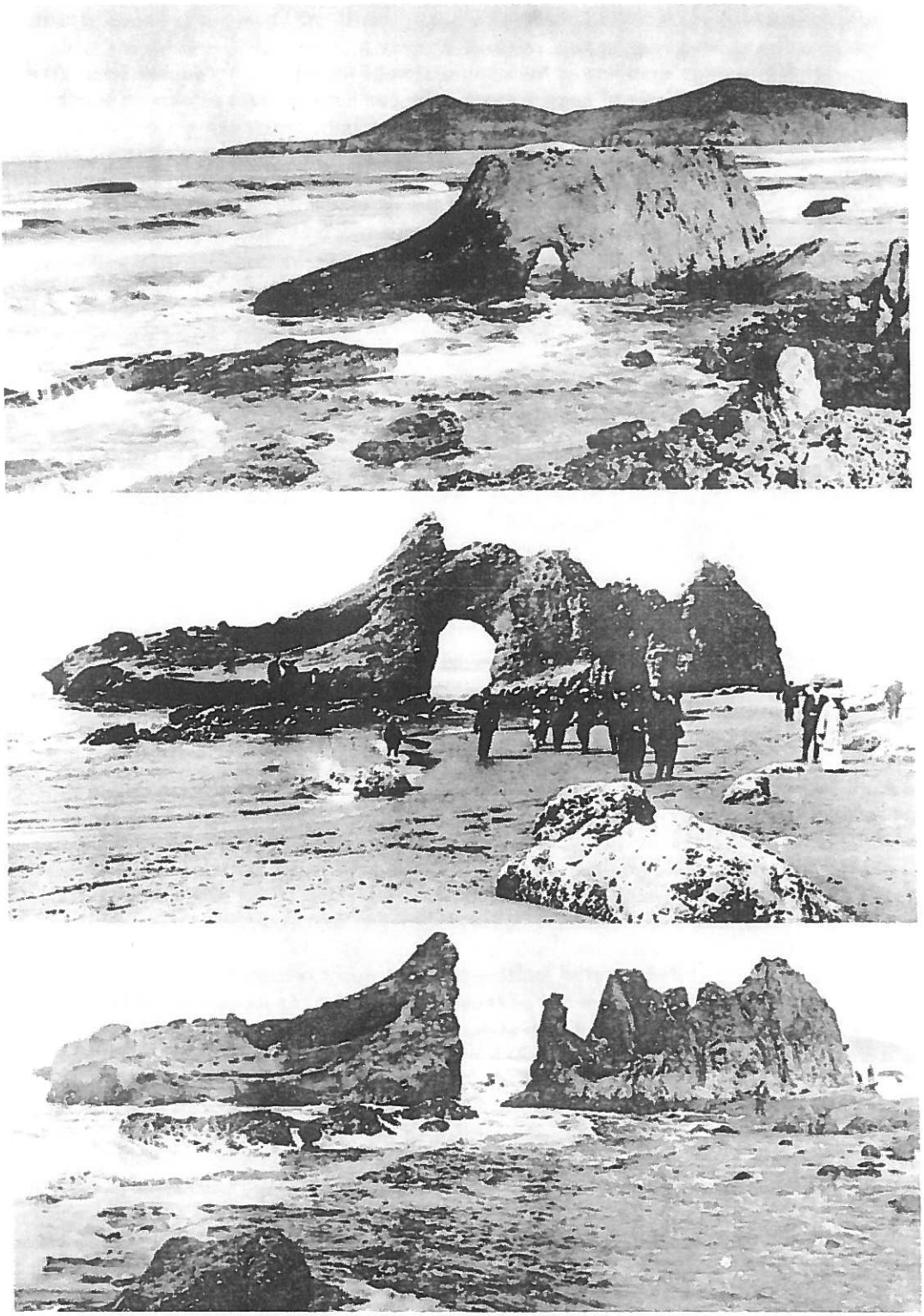

Photo 73. Jumpoff Joe in three stages of erosion: in 1900 (top), marine terrace remnant has a small arch; in 1913 (middle), surface eroded and arch enlarged; in 1926 (bottom), arch gone and outer rock an isolated sea stack. (Photos courtesy of Pacific Studio, Newport)

SUMMARY AND RECOMMENDATIONS

The geologic and climatic environment of Lincoln County is attended by a variety of natural hazards that have the potential for creating serious problems involving property and, possibly, lives. On the other hand, an understanding of these hazards and a sensible approach to coping with them in the planning stages of development can eliminate much of the grief that might otherwise transpire.

The information and recommendations in this report are presented as basic guidelines for the County so that planning and development can proceed in such a way as to avoid the losses induced by geologically hazardous conditions. It must be emphasized that the report is general in scope, delineating only broad areas where hazardous geologic conditions exist. Local sites should be evaluated by qualified geologists and soils engineers responsible to the County or cities in order to protect the individual land owners and investors. Developers of problem areas should be required to employ qualified consultants.

The following discussion reviews the areas in Lincoln County that are subject to geologic hazards and suggests ways these problems can be avoided or corrected. The report also reviews the available mineral resources needed for continued growth of the County.

Areas Subject to Geologic Hazards

Marine terraces

Most of the coastal communities and recreational developments of Lincoln County are situated on the marine terraces. These elevated platforms, representing former strandlines of the sea, extend the full length of the County, interrupted only by headlands and bays. The terrace materials consist of weakly cemented sand, silt, and pebbly sand which are overlain in many areas by old, fairly stable dunes. Bedrock beneath the terrace and dune sediments is tilted sharply seaward and is exposed in sea cliffs in some places.

The margins of these terrace areas adjacent to the ocean are attractive places to build, and many small beach cottages, permanent homes, condominiums, and motels occupy these locations. Unfortunately the sea cliffs at the terrace margins are slowly but continually receding. Wave erosion during storms and high tides undermines the cliffs, while rain, wind, and frost loosen the upper portions; as a result, masses of terrace material slip seaward at unpredictable rates and in unexpected places.

In general, marine terrace margins can be expected to retreat from 6 inches to 1 foot per year; however, in certain areas, recession can average more than 10 feet per year. In some locations, erosion may not be evident for a decade and then 10 or 15 feet of the cliff may drop off in a single season. Occasionally very large areas involving a number of acres of land may slide seaward, such as in the Jumpoff Joe area of Newport.

Excessive slippage along terrace margins is due to sliding of weakened, water-saturated bedrock along its seaward-tilted bedding planes. Of course, the overlying terrace sediments move with it. Particularly vulnerable to bedding-plane failure is the Nye Mudstone in the Newport area. This type of movement may have vertical and horizontal components of only 2 feet to as much as 50 feet. At first the surface of the slide block is not disrupted, but it is generally back-tilted, or rotated down, on the landward side. Water often accumulates in a sag pond at the back of the slide.

The surface of these slump areas may range from 50 to 100 feet wide and from 200 to 1,000 feet long. To the untrained eye, such apparently level areas of ocean frontage might appear to be desirable building sites. Unfortunately, however, these areas are extremely unstable since the ground surface must adjust to constant wave erosion at the toe of the slide. In a short time, the entire slump block can be eroded away. During the limited life of the slump block, home owners will be plagued with continual problems of settlement, such as cracks in walls, jammed doors and windows, and water- and sewer-line difficulties.