

APRIL 4, 2006 REPORT ON LAND MOVEMENT WITHIN THE LANDSLIDE MORATORIUM AREA OUTLINED IN BLUE (A PORTION OF THE SEAVIEW TRACT)

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AGENDA ITEM

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: THE CITY ATTORNEY AND THE DIRECTOR OF PLANNING, BUILDING & CODE ENFORCEMENT

DATE: APRIL 4, 2006

SUBJECT: REPORT ON LAND MOVEMENT WITHIN THE LANDSLIDE MORATORIUM AREA OUTLINED IN BLUE (A PORTION OF THE SEAVIEW TRACT)

RECOMMENDATION

1) Review the City Geologist's report on recent movement in the Klondike Canyon landslide area and the additional information provided with the Staff Report; 2) Provide staff with further direction; and 3) Continue the matter to April 18, 2006.

BACKGROUND

In September 1978, the City Council adopted Urgency Ordinance No. 108U, which established the Landslide Moratorium Area in and around the Portuguese Bend landslide (described as the area outlined in red in the ordinance) (the "Red Area"). As originally drawn, the Landslide Moratorium Area did not include any portion of the Seaview Tract, which currently is referred to as the area outlined in blue on the City's Moratorium Map (the "Blue Area").

In July, 1980, Dr. Perry Ehlig, who at that time was a consulting geologist working with Robert Stone and Associates ("RSA") brought to the City's attention cracking within the western end of the Seaview Tract. Dr. Ehlig recommended that the City conduct studies to determine if a landslide was causing the cracks. The Council authorized RSA to perform the studies, which included trenching and borings, and to report back to the Council.

Meanwhile, residents of the area began the process of forming the Klondike Canyon Landslide Abatement District.

On September 15, 1980, RSA submitted its report to the City. The report discussed the results of the investigations and stated that a landslide was the cause of the cracks. The RSA report stated that the landslide probably was caused by increased accumulation of ground water, and that the limits of the landslide were not known. The RSA report recommended certain actions to reduce the amount of water that enters the landslide by sealing cracks, installing certain drainage devices, and performing additional studies to determine the boundaries of the landslide.

RSA produced an additional report dated December 10, 1980, which identified the extent of the headscarp of the landslide and recommended subsurface investigations be performed. In

response to the RSA reports, on February 3, 1981, the City Council adopted Ordinance No. 139U, which added the entire Seaview area to the Landslide Moratorium as part of the Red Area. The City Council also authorized additional investigations be performed to gain a further understanding of the Klondike Canyon Landslide and its boundaries.

For the next year, subsurface geologic studies were performed in an attempt to ascertain the eastern limits of the Klondike Canyon Landslide. On January 21, 1982, RSA presented another report to the City Council describing the geologic investigations that had been performed (borings and trenching) and RSA's findings and recommendations. The RSA report stated that the Landslide only included 36 lots of the Seaview Tract and that it was "unlikely that the Klondike Canyon landslide will extend further east than its present boundary." The RSA report stated that the most likely causes of the movement of the Klondike Canyon Landslide were ground water and "frictional dragging force" from the Portuguese Bend Landslide.

On February 2, 1982, the City Council discussed a request from a resident living on Yacht Harbor Drive, who had been observed constructing a room addition in violation of the Moratorium (for which a stop work order had been issued). The resident requested that the Moratorium be amended to allow additions to existing structures within the Moratorium Area. In response, the City Council directed Staff to "contact Dr. Ehlig and get an estimate on how much it would cost to determine the appropriate geologic factors that will identify where additions to existing buildings can be safely accomplished and to what extent."

Subsequently, on March 2, 1982, the City Council adopted Ordinance No. 148 U. That Ordinance amended the Moratorium to reduce the boundaries of the Klondike Canyon Landslide to exclude the eastern portion of the Seaview Tract so that only the 36 lots on the western end that were within the boundaries of the Klondike Canyon Landslide remained within the Moratorium. This is the same area that currently is described as the Blue Area; however, at that time it still was included as part of the Red Area.

The Moratorium Ordinance was amended on several occasions to permit certain activities within the Moratorium area, including: repairs and renovations to existing structures (Ordinance No. 118U); remedial landslide grading (Ordinances No. 120U; 130U and 208U) and other minor changes to existing structures (Ordinances 123U, 128U). The Council also amended the Moratorium to allow minor projects and non-residential structures to be constructed in the Moratorium Area (Ordinances No. 130U, 131U, 140U). In 1989, the Code was amended to allow the construction of small additions and detached garages to developed properties within the Moratorium Area (Ordinance No. 208).

In September 1989, the City Council also amended the Code to change the description of the thirty-six lots that are within the Seaview Tract and a portion of 2 Yacht Harbor Drive as the area outlined in blue on the Moratorium Map ("the Blue Area") and to adopt more flexible development criteria for development within the Blue Area (Ordinance No. 247). This action was in response to a request from a resident within the Seaview Tract who wanted to "substantially remodel his home." The Council's action was based on the fact that this area had been subdivided previously and was almost completely developed (only one or two lots were not developed at the time) and included a sewer system, along with a lack of indicators of recent movement in the Blue Area, all of which distinguished this Area from other portions of the Landslide Moratorium Area. The Council found

that these distinguishing factors and the imposition of stringent development conditions, which would prevent projects from adversely affecting the stability of the area, justified allowing the owners of properties in the Blue Area to have the same development rights as the owners of other properties within the Seaview Tract.

As a result of these actions, the City's current Landslide Moratorium Ordinance (see attached Municipal Code Chapter 15.20) recognizes two separate areas within the overall landslide moratorium area that are subject to differing development criteria. Unlike properties located in the Red Area, owners of properties in the Blue Area are entitled, subject to certain conditions, to seek approval of a landside moratorium exception permit for “[t]he construction of residential buildings, accessory structures, pools/spas, and grading....” (Municipal Code Section 15.20.040 K.) The Code also requires applicants to submit geological studies reasonably required to demonstrate to the satisfaction of the city geotechnical staff that the proposed project would not aggravate the existing situation.

On September 11, 1995, Dr. Ehlig prepared a report to the Chairman of the Klondike Canyon Landslide Abatement Authority, which also was given to the City (copy attached). The report states that despite high rainfall during the previous winter, which raised the ground water level significantly: “GPS measurements prove that the Klondike Canyon landslide has not moved during this past year. This indicates current landslide abatement measures are adequate to keep the landslide in a stable condition. However, careful management is needed to minimize ground water recharge in Klondike Canyon and keep the beach well in good operating condition.” (Emphasis added.) Given that report and other similar statements by Dr. Ehlig, it was reasonable for the City to continue treating the Blue Area differently from the Red Area.

However, in May 2005, following the heavy rains during the winter of 2004-2005, City Staff again witnessed indications that the Blue Area may be experiencing new landslide movement. The movement was brought to the attention of the City's geologist, who documented the movement and recommended that the City continue to monitor the area. In October 2005, Staff received a report from the City Geologist in response to a geology report prepared by an applicant seeking to build additions to an existing residence at 4380 Dauntless. The City Geologist alerted Staff that he had observed cracks in the Blue area

that indicate land movement, and that Staff should be aware of this before issuing the development permits to the applicant.

Based on this report from the City Geologist, Staff placed an item on the City Council's November 15, 2005 agenda to consider whether the more lenient development standards that have been allowed in the Blue Area since 1989 should be repealed, so that the Blue Area will be subject to the same development restrictions as the remainder of the Landslide Moratorium Area, as was the case from February 1981 through September 1989.

The City Council adopted Urgency Ordinance No. 427U establishing a temporary 60-day moratorium on the processing and issuance of building, grading or other permits, in the Blue Area, unless otherwise exempted from the moratorium. The purpose of the 60-day moratorium was to allow the City's Geologist time to acquire additional gps data about the land movement, analyze the data and report his findings to the City Council. On December 20, 2005, the City Council adopted

Urgency Ordinance No. 432U, extending the temporary moratorium an additional sixty-six days to March 21, 2006, to allow more time for the City Geologist to prepare his report to the City Council.

The City Geologist submitted his report to the City on March 14, 2006, for review and discussion at the City Council meeting on March 21st and again this evening. To provide additional time for the City Council and the public to review the City Geologist's report, the City Council adopted another Urgency Ordinance at the March 21st meeting. That ordinance extended the temporary moratorium on the acceptance of applications and the issuance of permits for the Blue Area, by an additional 30 days, to April 20, 2006.

DISCUSSION

As discussed in the City Geologist's report dated March 14, 2006 (attached), the City Geologist evaluated the recent movement of the Klondike Canyon landslide by reviewing past documents, photo documentation, and survey documentation. As a result of this evaluation, the City Geologist has concluded that the Klondike Canyon landslide

experienced accelerated movement in 2005 due to an increase in the local groundwater within and below the slide mass as a result of the past winter's heavy rains and due to increased drag from the accelerated movement of the adjacent Portuguese Bend

Landslide. However, the accelerated movement has declined to a slow creep, as has been the case since the 1980s. Based on those recent events and past observations and monitoring, the City Geologist stated that: "the Klondike Canyon landslide should be

considered an active landslide with the potential for continued slow movement and occasional increased acceleration." He also notes that although it doesn't appear that the slide is capable of catastrophic failure at this time, continued movement of the Portuguese Bend landslide could cause episodic acceleration in the creep rate of the Klondike Canyon slide. He concludes that "the continued slow movement of the landslide will result in

distress and damage to structures and improvements that straddle or are adjacent the landslide boundaries."

The landslide movement in the Blue Area and the City Geologist's analysis undermine the distinction between the Red and Blue Areas and thus do not support continued reliance on Dr. Ehlig's previous optimism about the containment of the movement of the Klondike Canyon Landslide.

Numerous judicial decisions have held that governmental regulations are required to be based on distinctions that are not irrational, arbitrary and capricious, or without any evidentiary support. (See, *Lockary v. Kayfetz*, 917 F.2d 1150, 1155 (1990).) The absence of geologic data that support continuing the distinction between the Red and Blue Areas might be used by owners of properties in the Red Area to argue that the City is not adopting consistent regulations for properties within the Landslide Moratorium Area and almost certainly will be used by the plaintiffs at the upcoming trial in the Monks case to advance their claims against the City.

Accordingly, the City Attorney recommends that the City Council discuss these issues and consider whether to adopt an ordinance that would repeal Municipal Code Section 15.20.040.K, thereby removing the more lenient development restrictions that have been allowed in the Blue Area, and any other action that the Council deems appropriate and provide further direction to Staff about all of these issues.

CONCLUSION

Pursuant to City Council direction given on November 15, 2005, the City Geologist has evaluated the recent movement related to the Klondike Canyon Landslide and has reported his findings to the City Council. Accordingly, Staff recommends that the Council review the City Geologist's report on recent movement in the Klondike Canyon landslide area and the additional information provided with this Staff Report, provide staff with further direction, and continue the matter to April 18, 2006.

ADDITIONAL INFORMATION

There are two property owners that were in the planning process when the City Council established the temporary moratorium. One is the property owner at 4394 Dauntless Drive (Matura), who was seeking approval of a second story addition by the Planning Commission. The other is the property owner at 4380 Dauntless Drive (Arrogances) who was seeking a Landslide Moratorium Exception Permit for first and second story additions. Both applications were denied without prejudice after the temporary moratorium was enacted on November 15, 2005. The property owner at -----has received planning approval but has not yet been issued a building permit for the demolition of the existing house and the construction of a new 5,000+ sq. ft. residence, since his plans

are still in the plan check process. When the temporary moratorium was enacted, the plan check process was frozen on this project.

ALTERNATIVES

The City Council could direct staff to prepare an ordinance that maintains the depiction of the Blue Area on the City's Landslide Moratorium Map but incorporates the same restrictions on development that are applied in the Red Area.

Respectfully submitted:

Joel Rojas, AICP CAROL LYNCH
Director of Planning, Building City Attorney
and Code Enforcement

Reviewed by:

Les Evans
City Manager

Attachments

Report from Dr. Ehlig dated September 11, 1995
Report from City Geologist dated March 14, 2006
Landslide Moratorium Ordinance (Chapter 15.20)
Landslide Moratorium Area maps
Geology Report re: 4380 Dauntless dated October 25, 2005
Photos of land movement
Public comments