

MEMORANDUM

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
FROM: THE CITY ATTORNEY AND THE DIRECTOR OF PLANNING,
BUILDING & CODE ENFORCEMENT
DATE: APRIL 18, 2006
SUBJECT: PROPOSED MORATORIUM ON CERTAIN DEVELOPMENT WITHIN
THE ENTIRE LANDSLIDE MORATORIUM AREA OUTLINED IN
RED AND BLUE PENDING REVIEW OF ADDITIONAL
INFORMATION AND AN UPCOMING STUDY SESSION

RECOMMENDATION:

1) ADOPT ORDINANCE NO. _____ U, AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES EXTENDING URGENCY ORDINANCE NO. 427U ESTABLISHING A MORATORIUM ON THE ISSUANCE OF CERTAIN PERMITS AND THE PROCESSING OF PLANNING APPROVALS AND SUSPENDING CERTAIN PREVIOUSLY ISSUED BUILDING PERMITS AND APPROVALS, IN THE PORTION OF THE LANDSLIDE MORATORIUM AREA OUTLINED IN BLUE ON THE LANDSLIDE MORATORIUM MAP ON FILE IN THE CITY'S PLANNING, BUILDING AND CODE ENFORCEMENT DEPARTMENT, WHICH INCLUDES PORTIONS OF DAUNTLESS DRIVE, EXULTANT DRIVE, ADMIRABLE DRIVE AND PALOS VERDES DRIVE SOUTH, AND IMPOSING A MORATORIUM ON THE ISSUANCE OF CERTAIN PERMITS AND THE PROCESSING OF PLANNING APPROVALS AND SUSPENDING CERTAIN PREVIOUSLY ISSUED BUILDING PERMITS AND APPROVALS IN ALL AREAS OF THE LANDSLIDE MORATORIUM AREA AND DECLARING THE URGENCY THEREOF, AND 2) SET A DATE FOR A WORKSHOP ADDRESSING THE ENTIRE LANDSLIDE MORATORIUM AREA AND DEVELOPMENT WITHIN THAT AREA AND GEOLOGIC DISTINCTIONS THAT CAN BE DRAWN AMONG THE VARIOUS PORTIONS OF THE LANDSLIDE MORATORIUM AREA.

INTRODUCTION

At the last City Council meeting, the City Council heard additional testimony about the recent movement of the Klondike Canyon Landslide. A majority of the Members of the City Council stated that they wished to have staff bring back an ordinance restricting development within the larger portion of the Landslide Moratorium Area ("the Red Area") so that development within the Red and Blue Areas would be treated similarly. The City Council also stated that the Council would like to schedule a future workshop to occur

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within sixty days to discuss the regulation of development within the entire Moratorium Area, and the scientific distinctions that can be drawn between the various portions of the Moratorium Area.

BACKGROUND

On November 15, 2005, the City Council adopted Urgency Ordinance No. 427U, which established a 60-day moratorium on the processing and issuance of building, grading or other permits, and landslide moratorium exception permits and the processing or approval of Environmental Assessments, Environmental Impact Reports, Conditional Use Permits, height variation applications, tentative maps or parcel maps in the Blue Area and temporarily suspended Section 15.20.040 K of the Rancho Palos Verdes Municipal Code. These actions were taken to allow time for the completion of collection of new geological data to determine whether construction in the Blue Area is safe in light of the newly observed cracks in the street, or if the proposed development could adversely impact the stability of said Area, or if new structures in the Blue Area will be adversely impacted by the recent increase of movement of the Klondike Canyon Landslide.

Ordinance No. 427 U has been extended twice, once in order for additional time to collect more GPS data and for the City's Geologist to be able to review and evaluate that data and prepare a report to the City Council, and a second time so that the City Council and the public would have adequate time to review the report from the City's Geologist. The second extension of Ordinance No. 427 U will expire on April 20, 2006.

In order for the status quo to be preserved while the City is preparing for and conducting the study session, it is necessary to extend Ordinance No. 427 U again. The attached Urgency Ordinance extends the provisions of Ordinance No. 427 U for an additional ninety days, to July 19, 2006, so that there will be adequate time for the City Council to hold the upcoming study session and give direction to Staff about how the Council wishes to proceed. This means that the City will not issue permits for construction of additions or new structures within the Blue Area, pursuant to the special exception that was created for the Blue Area, which is codified in Section 15.20.040 K of the Municipal Code.

At the last City Council meeting, a majority of the Members of the City Council stated that they wished to treat the Red and Blue Areas similarly. In particular, the City Council was concerned about continuing to allow new additions to be constructed within any portion of the Landslide Moratorium Area until the Council receives additional information from the City's geologic consultants. Accordingly, the proposed Urgency Ordinance that is attached to this report also imposes a moratorium on new additions within the Red Area.

However, because there are so many different types of exceptions that are permitted under the Moratorium Ordinance, and to ensure that Staff understands the City Council's

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direction, each type of Moratorium Exception is discussed below, along with Staff's recommendation about whether it should be subject to the proposed urgency ordinance so that the City Council can give direction to Staff regarding each type of Moratorium Exception.

DISCUSSION

There are fifteen different types of Exceptions to the Moratorium that are codified in Section 15.20.040 of the Municipal Code.

Permits to repair or rebuild existing structures (Paragraphs A and B of Section 15.20.040).

The first exception is for the maintenance of existing structures or facilities that do not increase land coverage or add to the water usage of those facilities.

The second exception is for the replacement, repair or restoration of a residential building or structure that has been damaged or destroyed due to a geologic hazard or some other hazard, such as a fire. This exception allows for the repair or replacement of such structures, provided that the new structure has the same square footage as the prior structure, is in the same general location and will not aggravate any hazardous geologic condition.

When the City Council adopted the first Urgency Ordinance that established the Moratorium in 1978, Ordinance No. 108U, that Ordinance established the exception for the repair or replacement of structures that were destroyed by fire or another casualty, provided that the land coverage and water usage were not increased. Because the first two exceptions continue that philosophy and are applicable uniformly throughout the Moratorium Area, Staff recommends that they not be subject to the urgency ordinance.

Permits to legalize existing structures (Paragraph C).

The third exception is for building permits for existing structures that were constructed prior to October 5, 1978, for which permits were not previously granted, in order to legalize such structure(s). Such permits may only be granted if the structure is brought into substantial compliance with the Uniform Building Code. This exception is rarely used. However, in case there is an older structure that needs to receive permits in order to comply with the Code, Staff recommends that this exception not be affected by the new ordinance.

The third exception raises an interesting issue about whether the City should continue to process and grant "after-the-fact" approvals for more recent projects that have been constructed but for which permits have not been issued by the City. Staff is aware of two

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such projects that the Code Enforcement Division had been pursuing. (There may be other situations of which Staff is not aware.) One involves a 104 square-foot addition, and the second involves an unpermitted second story addition. On the one hand, it seems prudent to issue permits for these projects because: (1) it is important to achieve compliance with the Municipal Code; (2) these structures are relatively modest additions, and (3) both homes are connected to a sewer system.

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However, on the other hand, such a policy could encourage property owners within the Moratorium Area simply to violate the Code in order to get their project approved by the City. As an alternative, the urgency ordinance could be limited to permitting illegal structures that were completed prior to January 1, 2006 (or any other date that is selected by the City Council). Staff is seeking direction from the City Council regarding this issue.

Permits for City or RDA projects (Paragraphs D and E).

The fourth type of exception is for an environmental assessment or EIR for a project as to which the City or the Redevelopment Agency is the applicant.

The fifth exception is for projects that are to be performed or constructed by the City or the RDA to mitigate a landslide or enhance land stability.

Because of the important public purpose of protecting public safety by enhancing land stability or mitigating a landslide, Staff recommends that these exceptions continue to be effective and not be subject to the urgency ordinance.

Permits for remedial grading or geologic investigation permits (Paragraphs F and G).

The sixth exception is for remedial grading permits to correct landslide problems or to enhance public safety pursuant to a grading permit that is issued by the City. Unlike the last exception, private individuals can use this type of exception to correct conditions on their properties. Because this type of exception also promotes public safety, only allows remedial grading, and does not allow additional development, Staff recommends that it not be subject to the urgency ordinance.

The seventh category of Moratorium exception is to allow Staff to issue geologic investigation permits so that geologic studies, including borings, can be performed on properties within the Landslide Moratorium Area. As with the last exception, this exception is adding additional information about the geology of the landslide area and does not, by itself, permit additional development. Accordingly, Staff recommends that it not be subject to the urgency ordinance.

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Permits for new additions to existing residential structures not exceeding 600 square feet in size; permits for new structures or additions in the Blue Area, and permits for new attached or detached garages not exceeding 600 square feet in size. (Paragraphs H, K and L.)

These are the exception categories about which the majority of the Members of the City Council gave direction to Staff at the last City Council meeting. Based on that direction, these categories should be subject to the urgency ordinance.

Submittal of a lot line adjustment application (Paragraph J).

On rare occasions the City has received a lot line adjustment application that simply adjusts a lot line between two parcels and does not involve new development. Accordingly, Staff recommends that this exception continue to be effective and not be subject to the urgency ordinance.

Applications for permits for very minor uses or projects (Paragraphs I, M and N).

Paragraph I allows the construction of temporary minor non-residential structures that are less than 120 square feet in size, that are not attached to a foundation, and are not to be used for habitable purposes. If they have plumbing fixtures, they must be connected to a sewer system; otherwise they cannot have plumbing fixtures. Examples are storage sheds and play houses. A geology report or site investigation by the City Geologist is required for projects that are processed under this exception. Because the use of this exception is so restricted, Staff recommends that it continue to be effective and not be subject to the urgency ordinance.

Paragraph M involves the applications for planning approval of structures and uses on properties that "are ancillary to the primary use of the lot or parcel, where there is no possibility of any adverse impact on soil stability." Examples include special use permits "for minor, temporary uses and events; fence wall and hedge permits that do not involve grading or the construction of retaining walls; permits for the keeping of large domestic and exotic animals; conditional use permits for establishment of a use or activity at or on an existing structure where no structural modifications are required, and such other uses or activities and structures that the City geotechnical staff determines to have no potential for adverse impacts upon landslide conditions."

Paragraph N creates an exception for minor projects on land that is already developed with a residential structure, "which do not involve new habitable space, which cannot be used as a gathering space and viewing area, and which do not constitute lot coverage." Examples of projects that would fit within this category would be a remodel to just the interior of a structure or minor improvements to the exterior of an existing structure, which

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are approved by Staff over the counter, such as the addition of a dormer window, air conditioning unit, garden window, skylight, etc.

Because each of these categories is so constrained and only involves very minor projects that will not affect land stability, Staff recommends that these exceptions continue to be effective and not be subject to the urgency ordinance.

Permits to allow existing structures with plumbing fixtures to be attached to an operational sewer system (Paragraph O).

This category does not allow new development but increases land stability by allowing existing structures with functional plumbing to be attached to a sewer system. Accordingly, Staff recommends that this exception continue to be effective and not be subject to the urgency ordinance.

ADDITIONAL INFORMATION

Projects that are under construction.

There are several projects that have received Moratorium Exception permits that currently are under construction. Staff recommends that those projects be exempt from the Urgency Ordinance because they have a building permit and already have commenced construction. If the City were to issue a stop work order for those projects, the property owners undoubtedly would file lawsuits against the City and assert that they have a "vested right" to complete their project because they commenced construction of their project and expended substantial sums in construction costs in reliance on the building permit that was issued by the City. California courts have held that similar facts conferred vested rights on property owners. (See, Avco Community Developers, Inc. v. South Coast Regional Commission, 17 Cal.3d 785 (1976).)

Projects that have not received building permits and are not yet under construction.

Staff is aware of six projects that are in the planning process but have not yet been issued building permits to begin construction. One of these projects are in the Blue Area, and five are in the Red Area. They are:

_____ (Mirich), which is a demolition and reconstruction of a new single family residence and is currently in plan check in the Building and Safety Department.

86 Yacht Harbor Drive (Peusich), which is an addition to an existing home and the construction of a deck, that is in plan check in the Building and Safety Department.

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38 Cinnamon Lane (Siegel/Friend), which is a replacement of a single family residence that was demolished with additional floor area. That application currently is not complete.

31 Narcissa Drive (De La Tore), which is a proposal to add a 596 square-foot addition accompanied by 28 cubic yards of grading. That application currently is not complete.

7 Plumtree Road (Tarsha), which is a proposal to replace an existing 600 square-foot barn. This application has been approved, but the building permit has not been issued.

1 Cherryhill Lane (Shahin), which is a proposal to replace an existing shed on a vacant lot. That application currently is not complete.

Because these projects have not received a building permit, they do not have a vested right to start and complete the construction. As such, depending upon the City Council's determination about the various exemptions that are discussed above, they may not be able to proceed with their developments.

There also are two property owners that were in the planning process when the City Council established the initial temporary moratorium in November 2005. 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 (Arregoces) 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. These projects also do not have a vested right to proceed with development.

CONCLUSION

Staff recommends that the City Council review this report set the upcoming study session. Suggested dates are Saturday May 13th, Tuesday May 30th, Saturday June 3rd, and Saturday June 10th. Staff also recommends that the Council give direction to Staff about which Moratorium Exceptions the Council would like to place on hold while the Landslide Moratorium Area is being studied and adopt an Urgency Ordinance that will preserve the status quo pending the upcoming study session.

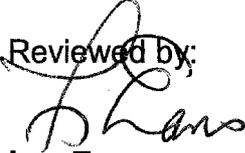
Respectfully submitted:

Joel Rojas, AICP
Director of Planning, Building
and Code Enforcement

Carol Lynch
City Attorney

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Reviewed by:


Les Evans
City Manager

Attachments

Urgency ordinance

Landslide Moratorium Ordinance (Chapter 15.20)

Landslide Moratorium Area maps

Any additional public comments received since the last Council meeting

Proposed agenda for study session

**URGENCY ORDINANCE TO FOLLOW UNDER
SEPARATE COVER**

Chapter 15.20

MORATORIUM ON LAND USE PERMITS*

Sections:

- 15.20.010 Definitions.
- 15.20.020 New construction permits not issued.
- 15.20.030 Revocation of unused permits.
- 15.20.040 Exceptions.
- 15.20.050 Landslide mitigation measures required.
- 15.20.060 Application.
- 15.20.070 Appeals.
- 15.20.080 Expiration.
- 15.20.090 Municipal code and environmental regulations.
- 15.20.100 Exclusions.
- 15.20.110 Required connection to operational sanitary sewer system.

* Prior ordinance history: Ordinances 108U, 118U, 120U, 123U, 128U, 130U, 131U, 139U, 140U, 143U, 148U, 155U, 208, 223, 247, 249U and 276.

15.20.010 Definitions.

The following definitions shall apply to this chapter:

"Alter" means to change in some, but not all, aspects where necessary to continue the use of, and where repair, replacement and restoration are not possible.

"Director" means the director of planning, building and code enforcement.

"Geologic investigation permit" means a permit issued by the city to allow field research for the preparation of geologic, geotechnical or soils reports. Field research shall include investigative trenching, boring or grading which is performed mechanically or by hand. Such trenching, boring or grading shall pertain only to the accumulation of necessary data.

"Maintenance" means to keep in a particular safe condition.

"Repair" means to bring back to a safe condition after partial decay or destruction.

"Replacement" means to exchange a damaged portion for a new equivalent portion without changing form or function. For a dwelling unit it means to construct a new portion of a dwelling to substitute for that existing prior to damage.

"Restoration" means to bring back to the original condition.

"Permanent detached accessory structure" means a structure that is constructed on a permanent foundation,

separate from and appurtenant to a main dwelling unit, which meets the minimum Uniform Building Code standards for human habitation, does not include any kitchen facilities and is not used as a separate dwelling unit. Acceptable structures shall include guest rooms, workshops or similar structures.

"Plumbing fixture" means a plumbing fixture as defined by the Uniform Plumbing Code, unless expressly defined otherwise in this chapter.

"Served by a sanitary sewer system" means that an operational sanitary sewer system is located within the boundaries of the subject lot or parcel or is located within a thoroughfare or right-of-way that is immediately adjacent to the lot or parcel and is no more than two hundred feet from the boundary of the lot or parcel. (Ord. 357 § 5 (part), 2000; Ord 309 § 4 (part), 1995)

15.20.020 New construction permits not issued.

Notwithstanding any other ordinance or code of the city, the city declares a moratorium on the filing, processing, approval or issuance of building, grading or other permits, environmental assessments, environmental impact reports, conditional use permits, tentative maps or parcel maps in the area of the city identified as the "landslide moratorium area" as outlined in red on the landslide moratorium map on file in the office of the director, unless expressly allowed by Section 15.20.040 of this chapter. However, the filing and preparation of environmental assessments, initial studies, negative declarations or environmental impact reports for the exclusive purpose of determining whether a parcel of land may be excluded from the moratorium pursuant to Section 15.20.100 of this chapter are not precluded by this section. (Ord. 309 § 4 (part), 1995)

15.20.030 Revocation of unused permits.

Any building, grading permit or other permit for new construction in the landslide moratorium area which has been previously granted by the city but which has not been acted upon in substantial reliance by the holder thereof is revoked. (Ord. 309 § 4 (part), 1995)

15.20.040 Exceptions.

The moratorium shall not be applicable to any of the following:

A. Maintenance of existing structures or facilities which do not increase the land coverage of those facilities or add to the water usage of those facilities;

B. Replacement, repair or restoration of a residential building or structure which has been damaged or destroyed due to one of the following hazards, provided that a land-

slide moratorium exception permit is approved by the director, and provided that the project complies with the criteria set forth in Section 15.20.050 of this chapter:

1. A Geologic Hazard. Such structure may be replaced, repaired or restored to original condition; provided, that such construction shall be limited to the same square footage and in the same general location on the property and such construction will not aggravate any hazardous geologic condition, if a hazardous geologic condition remains. Prior to the approval of a landslide moratorium exception permit, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed project will not aggravate the existing situation. The applicant shall comply with any requirements imposed by the city's geotechnical staff and shall substantially repair the geologic condition to the satisfaction of the city geotechnical staff prior to the issuance of a final building permit. Upon application to the director, setbacks may conform to the setbacks listed below:

Minimum Setback Standards

Front	Interior side	Street side	Rear
20	5	10	15

2. A Hazard Other Than a Geologic Hazard. Such structure may be replaced, repaired or restored to original condition; provided, that such construction shall be limited to the same square footage and in the same general location on the property and such construction will not aggravate any hazardous condition, if a hazardous condition remains. Prior to the approval of a landslide moratorium exception permit, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed project will not aggravate the existing situation. Upon application to the director, setbacks may conform to the setbacks listed in subsection (B)(1) of this section;

C. Building permits for existing structures which were constructed prior to October 5, 1978, for which permits were not previously granted, in order to legalize such structure(s). Such permits may only be granted if the structure is brought into substantial compliance with the Uniform Building Code;

D. The approval of an environmental assessment or environmental impact report for a project as to which the city or redevelopment agency is the project applicant;

E. Projects that are to be performed or constructed by the city or by the Rancho Palos Verdes redevelopment agency to mitigate the potential for landslide or to otherwise enhance public safety;

F. Remedial grading to correct problems caused by landslide or to otherwise enhance public safety, performed pursuant to a permit issued pursuant to Section 17.76.040(B)(3) of this Code;

G. Geologic Investigation Permits. Prior to the approval of such a permit, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed investigation will not aggravate the existing situation;

H. Minor projects on a lot that currently is developed with a residential structure or other lawfully existing non-residential structure and involves an addition to an existing structure, enclosed patio, conversion of an existing garage to habitable space or construction of a permanent attached or detached accessory structure and does not exceed a cumulative project(s) total of six hundred square feet per parcel; provided that a landslide moratorium exception permit is approved by the director and provided that the project complies with the criteria set forth in Section 15.20.050 and does not include any additional plumbing fixtures, unless the lot is served by a sanitary sewer system. The six hundred square foot limitation on cumulative projects that can be approved on a lot pursuant to this subsection does not include the construction of a new garage, which can be approved pursuant to subsection L of this section. Minor projects involving the construction of an enclosed permanent detached accessory structure shall include a requirement that a use restriction covenant, in a form acceptable to the city, that prevents the enclosed permanent detached accessory structure from being used as a separate dwelling unit is recorded with the Los Angeles County register-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior the approval of a landslide moratorium exception permit for such minor projects, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed project will not aggravate the existing situation

I. Construction of temporary minor nonresidential structures which are less than one hundred twenty square feet in size, with no plumbing fixtures and which do not increase water use, may be approved by the director. If the lot is served by a sanitary sewer system, the permit may allow the installation of plumbing fixtures. All permits shall include a requirement that a use restriction covenant,



in a form acceptable to the city which prevents the structure from being used for any purpose other than a non-habitable use, is recorded with the Los Angeles County registrar-recorder. A minor nonresidential structure is defined as temporary if the Building Code does not require it to be erected upon or attached to a fixed, permanent foundation and if, in fact, it will not be erected upon or attached to such a foundation. Prior to approval of the application, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed project will not aggravate the existing situation;

J. Submittal of a lot-line adjustment application;

K. The construction of residential buildings, accessory structures, pools/spas and grading in the "landslide moratorium area" as outlined in blue on the landslide moratorium map on file in the director's office; provided, that a landslide moratorium exception permit is approved by the director, and provided that the project complies with the criteria set forth in Section 15.20.050 of this chapter. Such projects shall qualify for a landslide moratorium exception permit only if all applicable requirements of this code are satisfied, and the parcel is served by a sanitary sewer system. Prior to the issuance of a landslide moratorium exception permit, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed project will not aggravate the existing situation;

L. Construction of one attached or detached garage per parcel that does not exceed an area of six hundred square feet, without windows or any plumbing fixtures, on a lot that currently is developed with a residential structure or other lawfully existing nonresidential structure; provided that a landslide moratorium exception permit is approved by the director, and provided that the project complies with the criteria set forth in Section 15.20.050. If the lot is served by a sanitary sewer system, the permit may allow the installation of windows and plumbing fixtures in the garage. The approval of a landslide moratorium exception permit for such a project shall be conditioned to require that a use restriction covenant, in a form acceptable to the city, that prevents the garage from being used for any purpose other than parking of vehicles and storage of personal property is recorded with the Los Angeles County registrar-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior to the approval of a landslide moratorium exception permit for such garage, the applicant shall submit to the director any geological or geotechnical studies reasonable required

by the city to demonstrate to the satisfaction of the city's geotechnical staff that the proposed project will not aggravate the existing situation.

M. Submittal of applications for discretionary planning permits for structures or uses which are ancillary to the primary use of the lot or parcel, where there is no possibility of any adverse impact upon soil stability. Examples of these types of applications include special use permits for minor, temporary uses and events; fence, wall and hedge permits that do not involve grading or the construction of retaining walls; permits for the keeping of large domestic animals and exotic animals; conditional use permits for the establishment of a use or activity at or on an existing structure where no structural modifications are required; and such other uses, activities and structures that the city geotechnical staff determines to have no potential for adverse impacts on landslide conditions;

N. Minor projects on those lots which are currently developed with a residential structure, which do not involve new habitable space, which cannot be used as a gathering space and viewing area, and which do not constitute lot coverage;

O. Permits issued pursuant to Section 15.20.110 of this chapter to connect existing structures with functional plumbing fixtures to an operational sewer system. (Ord. 407 § 6, 2004; Ord. 383 § 5, 2002; Ord. 382U § 5, 2002; Ord. 357 § 5 (part), 2000; Ord. 309 § 4 (part), 1995)

15.20.050 Landslide mitigation measures required.

Within the landslide moratorium area as identified in Section 15.20.020 of this chapter, the city shall require that appropriate landslide abatement measures be implemented as conditions of issuance of any permit issued pursuant to this chapter. With respect to proposed projects and uses requiring a landslide moratorium exception permit pursuant to subsections B, H, K and L of Section 15.20.040, which must satisfy all of the criteria set forth in this section, the conditions imposed by the city shall include, but not be limited to, the following:

A. If lot drainage deficiencies are identified by the director of public works, all such deficiencies shall be corrected by the applicant.

B. If the project involves additional plumbing fixtures, or additions of habitable space which exceed two hundred square feet, or could be used as a new bedroom, bathroom, laundry room or kitchen, and if the lot or parcel is not served by a sanitary sewer system, septic systems shall be replaced with approved holding tank systems in which to dispose of on-site waste water. The capacity of the required holding tank system shall be subject to the review and approval of the city's building official. For the pur-

poses of this subsection, the addition of a sink to an existing bathroom, kitchen or laundry room shall not be construed to be an additional plumbing fixture. For those projects which involve additions of less than two hundred square feet in total area and which are not to be used as a new bedroom, bathroom, laundry room or kitchen, the applicant shall submit for recordation a covenant specifically agreeing that the addition of the habitable space will not be used for those purposes. Such covenant shall be submitted to the director for recordation prior to the issuance of a building permit. For lots or parcels which are to be served by a sanitary sewer system on or after the effective date of this ordinance (July 6, 2000), additional plumbing fixtures may be permitted and the requirement for a holding tank may be waived, provided that the lot or parcel is to be connected to the sanitary sewer system. If a sanitary sewer system is approved and/or under construction but is not yet operational at the time that a project requiring a landslide moratorium exception permit is approved, the requirement for a holding tank may be waived, provided that the lot or parcel is required to be connected to the sanitary sewer system pursuant to Section 15.20.110 of this chapter, or by an agreement or condition of project approval.

C. Roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course.

D. If required by the city geotechnical staff, the applicant shall submit a soils report, and/or a geotechnical report, for the review and approval of the city geotechnical staff.

E. If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to support and participate in existing or future sewer and/or storm drain assessment districts and any other geological and geotechnical hazard abatement measures required by the city. Such covenant shall be submitted to the director prior to the issuance of a building permit.

F. If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to an irrevocable offer to dedicate to the city a sewer and storm drain easement on the subject property, as well as any other easement required by the city to mitigate landslide conditions. Such covenant shall be submitted to the director prior to the issuance of a building permit.

G. A hold harmless agreement satisfactory to the city attorney promising to defend, indemnify and hold the city harmless from any claims or damages resulting from the requested project. Such agreement shall be submitted to the director prior to the issuance of a building permit.

H. The applicant shall submit for recordation a covenant agreeing to construct the project strictly in accordance with the approved plans; and agreeing to prohibit further projects on the subject site without first filing an application with the director pursuant to the terms of this chapter. Such covenant shall be submitted to the director for recordation prior to the issuance of a building permit.

I. All landscaping irrigation systems shall be part of a water management system approved by the director of public works. Irrigation for landscaping shall be permitted only as necessary to maintain the yard and garden.

J. If the project involves pools and/or spas, a leak detection system approved by the city building official shall be installed.

K. All other necessary permits and approvals required pursuant to this code or any other applicable statute, law or ordinance shall be obtained. (Ord. 357 § 5 (part), 2000; Ord. 309 § 4 (part), 1995)

15.20.060 Application.

A. Applicants for an exception to this chapter under Section 15.20.040(B), (H), (K) and (L), shall file an application for a landslide moratorium exception permit with the director. The application shall be signed by the property owner, and shall include the following:

1. A letter, signed by the property owner, setting forth the reason for request, as well as a full description of the project;

2. Copies of a site plan, showing accurate lot dimensions; the location, dimensions, and heights of all existing and proposed structures; the location of the existing and proposed septic systems and/or holding tank systems; and the location of the existing and/or proposed sanitary sewer system, if the site is or will be served by a sanitary sewer system. The number of copies required shall be determined by the director;

3. Information satisfactory to the city's geotechnical staff (including but not limited to geological, geotechnical, soils or other reports) reasonably required by the city to demonstrate that the proposed project will not aggravate the existing situation;

4. A fee as established by resolution of the city council;

5. If grading is proposed, a grading plan showing the topography of the lot and all areas of project cut and fill, including a breakdown of the earthwork quantities.

B. A landslide moratorium exception permit application shall become null and void if, after submitting the required application to the director, the application is ad-

ministratively withdrawn by the director because the application is allowed to remain incomplete by the applicant for a period which exceeds one hundred eighty days, or if the application is withdrawn by the applicant. (Ord. 357 § 5 (part), 2000; Ord. 309 § 4 (part), 1995)

15.20.070 Appeals.

Any interested person may appeal any decision or any condition imposed by the director to the city council by filing a written request, together with an appeal fee as established by resolution of the city council, with the city within fifteen days after the decision is made. (Ord. 309 § 4 (part), 1995)

15.20.080 Expiration.

A moratorium exception permit shall become null and void after one hundred eighty days from the date of issuance unless the planning applications necessary for the proposed project have been submitted to the director. The director may grant extensions beyond these periods for good cause. (Ord. 309 § 4 (part), 1995)

15.20.090 Municipal code and environmental regulations.

The building code, as amended, and existing plan checking procedures are adequate and appropriate to allow and regulate maintenance, repair, restoration, replacement and alteration as defined in this chapter. The Administrative Code, including Sections 309 through 319 as added by Section 15.18.110, applies and permits are required. Nothing contained in this chapter shall except the proposed construction or use from any requirement or regulation of the building code, zoning ordinance or other ordinance of this Code or the California Environmental Quality Act. (Ord. 309 § 4 (part), 1995)

15.20.100 Exclusions.

For a parcel of land to be excluded from the landslide moratorium area, a landowner, or his designated agent, may apply for such exclusion to the city council.

A. Application. To obtain an exclusion from this chapter, an applicant shall file an application for exclusion with the director and signed by the property owner. An application shall not be deemed complete until all required geology studies have been completed and review has been completed by the city geotechnical staff. An application shall include the following:

1. The reason for the request;
2. A legal description of the property and a map of the property;
3. All anticipated development applications;

4. Any existing geological or geotechnical reports or necessary geology studies as determined by the city geotechnical staff;

5. A fee as established by the city council;

6. Any additional information as determined by the director or the city geotechnical staff;

7. A completed environmental assessment.

B. Public Hearing. Notice shall be published in a newspaper of general circulation in the community not less than fifteen days before the date set for the city council hearings. The notice shall contain all data pertinent to the hearing. Written notice shall also be mailed not less than fifteen days before the date set for the city council hearing to owners of property shown on the last equalized assessment roll as owning real property within five hundred feet of the boundaries of the subject property.

C. Findings. Upon approval of a landslide moratorium exclusion, the city council shall find as follows:

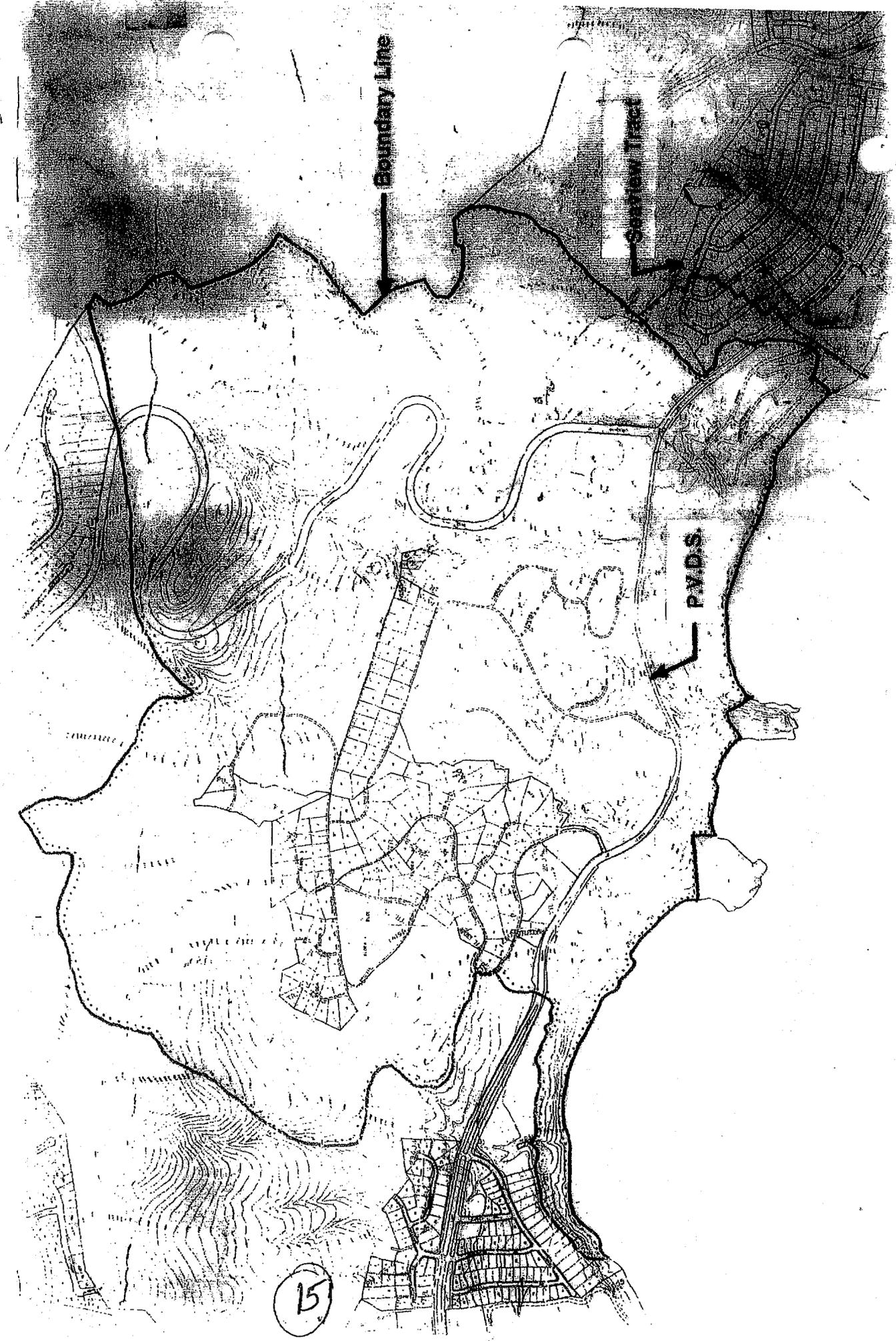
1. The exclusion is consistent with the general plan and any applicable specific plan of the city, including but not limited to, the coastal specific plan of the city;
2. The exclusion promotes the health, safety and welfare of the community;
3. The exclusion shall not aggravate any existing geologic conditions in the area.

D. Conditions Upon Issuance of Approval. In granting any exclusion under this chapter, the city council may impose such conditions as may be reasonably necessary to preserve the intent of the goals and policies of the general plan. (Ord. 309 § 4 (part), 1995)

15.20.110 Required connection to operational sanitary sewer system.

Any owner of a lot or parcel within the "landslide moratorium area," as outlined in red on the landslide moratorium map on file in the director's office, which is developed with a residential structure or any other structure that contains one or more operational plumbing fixtures and is served by a sanitary sewer system, as defined in this chapter, shall connect such structure(s) to the sanitary sewer system within six months after the commencement of operation of the sanitary sewer system. Either the director or the director of public works shall determine whether a lot or parcel is served by a sanitary sewer system, whether a structure contains one or more operational plumbing fixtures, or whether the connection to the sewer system is performed properly, including, without limitation, removal, or the discontinuation of the use, of any existing septic system. (Ord. 357 § 5 (part), 2000)

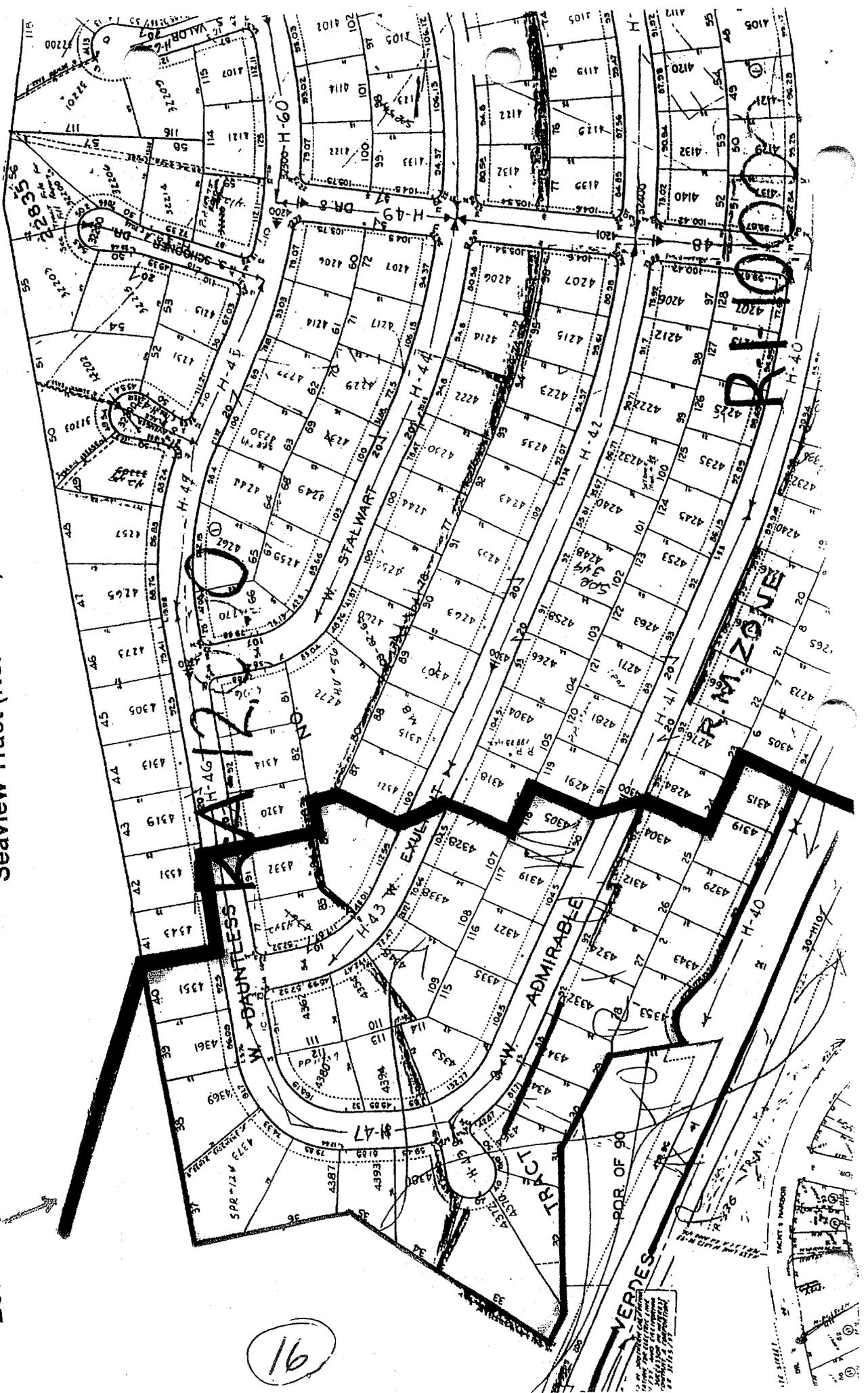
LANDSLIDE MORATORIUM AREA MAP

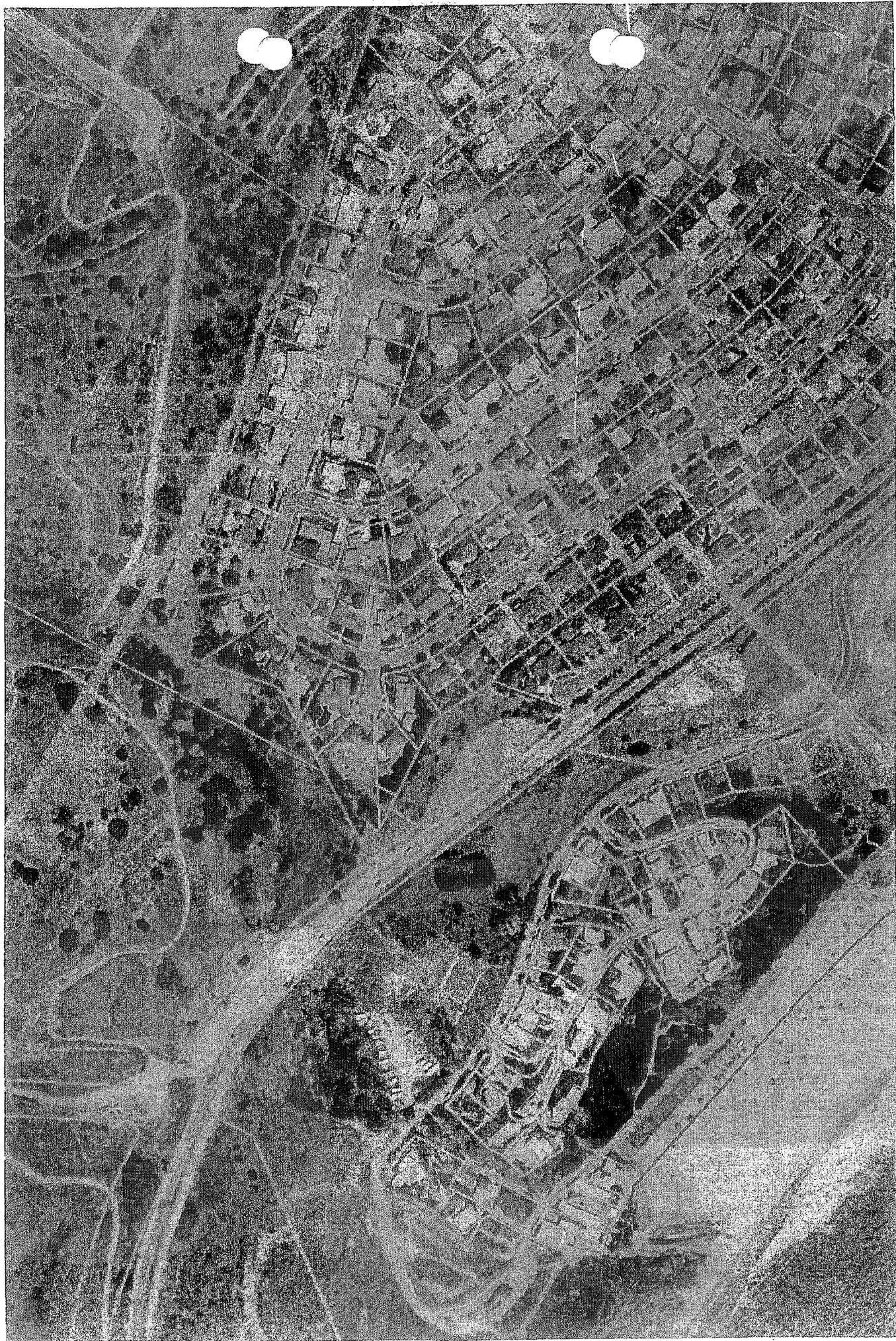


LANDSLIDE MORATORIUM AREA "OUTLINED IN BLUE"

Landslide Moratorium
Boundary Line

Seaview Tract (No. 22835)





X-Sender: joelr@mail.rpv.com
X-Mailer: QUALCOMM Windows Eudora Version 6.1.2.0
Date: Wed, 12 Apr 2006 16:47:09 -0700
To: carlam@rpv.com
From: Joel Rojas <joelr@rpv.com>
Subject: FW: Comments Re Factor of Safety
X-RCPT-TO: <carlam@rpv.com>

X-Sender: lesevans@mail.rpv.com
X-Mailer: QUALCOMM Windows Eudora Version 6.1.2.0
Date: Tue, 11 Apr 2006 11:29:19 -0700
To: joelr@rpv.com, clynch@rwglaw.com
From: Les Evans <lese@rpv.com>
Subject: FW: Comments Re Factor of Safety
X-RCPT-TO: <joelr@rpv.com>

Here are some comments from Peter's friend, Mr. Wedemeyer.
Les

From: "Peter C. Gardiner" <peter.gardiner@rpv.com>
To: "'Les Evans'" <lese@rpv.com>
Cc: "'Lowell R. Wedemeyer'" <lowell@transtalk.com>
Subject: FW: Comments Re Factor of Safety
Date: Tue, 11 Apr 2006 10:49:39 -0700

Les,

Please circulate this email set along with another email and attachment I will send you to the city council members and others as you see fit. Lowell Wedemeyer -- a resident -- has suggested a most interesting approach to the Red-Blue zone issues which I think merits discussion. Essentially he makes the distinction between rules and standards for static-designed structures on static land and static-designed structures on dynamic land and suggests we may need to develop new rules and standards for dynamic-designed structures for dynamic land. I don't know if this will work in practice but I would like to have the opportunity to discuss it and have Lowell participate -- in the Saturday workshop. I find this idea very interesting.
Peter

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

From: Lowell R. Wedemeyer [<mailto:lowell@transtalk.com>]
Sent: Sunday, April 09, 2006 11:26 AM
To: 'Peter C. Gardiner'
Subject: RE: Comments Re Factor of Safety

Peter:

Yes, you may share my comments as you choose. I welcome comments,

differing, critical, or otherwise.

As to varying rates of land motion under dynamically-designed structures, one can simply build them to have internal structural integrity to ride the moving soil, anchor them, and as they move slide them back where they belong by reference to the property lines. No different from a house boat. When the anchor slips, you just move it back and re-anchor it. A caution: transforming this from concept to a functional municipal code is not a small undertaking. There will be a steep learning curve for City Staff, legal counsel, and the professional building construction community. There also will be sticker shock for prospective homeowners who will not understand just how differently a house will have to be built to be safe on a moving soil mass.

Concerning fear that the placement of such a structure on a soil mass will be considered a cause of subsequent sliding, the extra mass of a single house is truly negligible relative to the mass of the soil in motion. As a matter of physics, it is not really a problem. The real problems are extra water from the habitation the grading which alters the pre-existing soil, such as cutting into the toe of slopes, penetrating existing impervious layers in the soil to allow water into previously drier areas, and a few other things. The extra weight of a house rarely is significant. The cumulative effects of a whole new neighborhood watering lawns, or the effects of water leaks in a water line, sewer, or swimming pool are very dangerous however.

Lowell

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

From: Peter C. Gardiner [<mailto:peter.gardiner@rpv.com>]

Sent: Saturday, April 08, 2006 10:15 PM

To: 'Lowell R. Wedemeyer'

Subject: RE: Comments Re Factor of Safety

Lowell,

I have enjoyed your thoughtful memo. I particularly like your notion of "static standards" for designing structures for "static" land, vs. new dynamic structural standards perhaps for various degrees of "dynamic" land. Very novel and innovative.

How do we get around the problem that after someone builds a "dynamic based standards" structure, the land which has been moving at one inch a year suddenly starts to move at 5 inches a month? There will surely be a claim that that last structure "caused" the accelerated movement and lawsuits flying in all directions.

To what degree can I (a) share and (b) attribute the contents of your memo to me with the city council members and the public?

Peter

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

From: Lowell R. Wedemeyer [mailto:lowell@transtalk.com]
Sent: Saturday, April 08, 2006 10:44 AM
To: Peter C. Gardiner
Subject: Comments Re Factor of Safety

Peter:

I sat through the re-broadcast last night of Tuesday's City Council meeting and I perceived wide-spread uncertainty about the meaning, appropriate use, and abuse of a geologic factor of safety. There is genuine cause for confusion. The term is not adequately defined in the municipal building code and thus can vary from a speculative horseback opinion to a true scientific number based on the very best current science practices. City Council members have no means to distinguish speculation from science for lack of enforceable municipal standards for a factor of safety report. I believe that there are ways to mitigate that confusion and reach higher degrees of public understanding and meaningful public discourse on the topic.

I wrote some quick, unpolished comments which I append. Of course, you know that I am not licensed as a geologist or as a professional engineer. If nothing else, these comments could serve as a guideline for inquiring of geology and engineering professionals to seek answers from them in language that willing non-geologists and non-engineers can reasonably expect to understand.

Lowell R. Wedemeyer

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<http://www.eset.com>

_____ NOD32 1.1479 (20060409) Information _____

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