

## Cheryl Lund

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**From:** goodmule@aol.com  
**Sent:** Wednesday, June 05, 2019 12:55 PM  
**To:** planning@cityofgearhart.com  
**Subject:** COMMENTS TO DRAFT EXHIBIT A / CITY FILE #19-001CP ZTA / DATED 5-20-2019

JUNE 3, 2019

### TSUNAMI RESILIENCY GEARHART COMPREHENSIVE PLAN

THE PURPOSE OF THIS COMMENTARY IS TO FORMALLY BRING ATTENTION TO WHAT WE BELIEVE IS THE LACK OF PROPER AND EFFECTIVE PUBLIC DISCLOSURE OF THE HAZARDOUS IMPACTS AS OUTLINED IN THE ABOVE CAPTIONED DRAFT.

WE HAVE LEARNED FROM DISCUSSIONS WITH MEG REED AND THE NEWPORT DOGAMI OFFICE THAT THERE HAS BEEN CONSIDERABLE DEBATE AND INTER GOVERNMENTAL DISPUTES REGARDING WHAT REPRESENTS PROPER DISCLOSURE OF THE VARIOUS ECONOMICAL EFFECTS OF THESE TYPE OF REGULATIONS AND HOW THEY COULD ADVERSELY IMPACT PRIVATE BUSINESS.

THE OPTICS OF THE SUGGESTED DISCLOSURE ACKNOWLEDGEMENT STATEMENT ON ONE HAND STIPULATES A NEED TO....INCREASE AWARENESS AND EDUCATE THE PUBLIC AND PROSPECTIVE PURCHASERS....( section 9 page 12) BUT ON A MORE NEBULOUS SIDE THE DRAFT PLACES ALL RISK AND LIABILITY ON PROSPECTIVE PURCHASERS (section 9, subsection c ). YET, UNDER... PURPOSES OF SECTION 9 (page12)... THE SUBJECT DISCLOSURE IS HELD AND BURIED WITHIN THE CITY RECORDS WITH AN EXPLICIT RECITAL THAT THE DISCLOSURE IS NOT TO BE PART OF THE PUBLIC DEED RECORDS. NO OTHER DISCLOSURES ARE APPARENTLY REQUIRED. OUR CONTENTION IS THAT THIS PROCESS SHEDS LIABILITY FOR THE CITY AND PLACES NO PENALTY NOR OBLIGATION ON SPECIAL INTEREST GROUPS WHO HAVE MATERIAL KNOWLEDGE OF THE STIPULATED HAZARDS - ALL AT THE POTENTIAL RISK AND EXPENSE OF AN UNAWARE CONSUMER.

UNDER THE STIPULATED DISCLOSURE PROCEDURES THE CITY HAS NO CONTROL OR ASSURANCES THAT A PERMIT HOLDER OR DEVELOPER WILL MAKE THE DISCLOSURES - AND WITHOUT THE INVOLVEMENT OF THE REAL ESTATE COMMUNITY THE EFFECTIVE DELIVERY OF ALL DISCLOSURES IS QUESTIONABLE AT BEST. IF THERE IS NO PARTY OBLIGATED NOR RESPONSIBLE FOR NECESSARY DISCLOSURES THEN HOW HAS EFFECTIVE NOTICING BEEN PROVIDED?

DISCUSSIONS WITH OREGON AGENCIES SEEMS TO INDICATE A NON BINDING AND NARROW DISCLOSURE SYSTEM HAS BEEN DICTATED BY ACTIVIST EFFORTS OF THE VARIOUS REAL ESTATE PLAYERS WHO DEEM ANY IN DEPTH DISCLOSURE AS HAVING ADVERSE ECONOMIC IMPACTS ON THEIR BUSINESS MODEL. WHILE COMMUNITIES SUCH AS GEARHART WANT TO MEET STATE DISCLOSURE EXPECTATIONS THEY AT THE SAME TIME WANT TO PRESERVE REVENUES FROM VARIOUS PERMITTING FEES AND PROPERTY TAXES. THE CONSUMER'S INTEREST AND PROTECTION HAS NO STANDING IN THIS CLOSED AND SELF SERVING RELATIONSHIP.

TO COMPOUND THESE ISSUES THE CITY SEEKS A HOLD HARMLESS CLAUSE FOR ANY OF THE PROPOSED ACTIONS OR EVENTS (section 9, subsections c& d) STEMMING FROM THE REFERENCED PROPOSAL. IN THE ABSENCE OF PENALTIES FOR NON COMPLIANCE OF PROPER DISCLOSURES THE CONSUMER IS THE ONLY PARTY IN JEOPARDY. THERE HAS BEEN LONG STANDING DISCLOSURE LAWS AND REMEDIES BUILT TO PROTECT REAL ESTATE PURCHASERS BUT IN THE CASE OF THE CITY'S PROPOSAL, THE UNAWARE CONSUMER HAS NO EFFECTIVE DISCLOSURE OR REMEDIES FOR DAMAGES RELATING TO THE POTENTIAL OF NON DISCLOSURE. THEREFORE, AS WRITTEN THE DISCLOSURE PROCESS IS NEITHER EFFECTIVE NOR DOES IT SERVE THE BEST INTERESTS OF THE GENERAL PUBLIC AND MOST CERTAINLY DOES NOT ADEQUATELY SERVE THE PUBLIC SAFETY, NECESSITY, OR ITS CONVENIENCE.

WE FORMALLY REQUEST THE CITY INCORPORATE INTO THE CAPTIONED DRAFT THE FOLLOWING:

a. STIPULATIONS REQUIRING BUILDERS, DEVELOPERS, REAL ESTATE COMPANIES AND TITLE COMPANIES TO PRESENT THE CITY'S DISCLOSURE AT THE TIME OF TRANSACTION WITH SUBSTANTIAL NON COMPLIANCE PENALTIES;

b. THE DISCLOSURE STATEMENT TO BE MADE A PART OF AND INCORPORATED INTO: 1. ANY APPROVED DEVELOPMENT'S FINAL RECORDED PLAT; AND 2. PERMITS ISSUED FOR NEW STRUCTURES, RENOVATIONS AND REMODELING;AND

c. THE DISCLOSURE STATEMENT TO BE DISPLAYED IN A PREDOMINATE LOCATION ON THE CITY's WEBSITE EASILY ACCESSIBLE TO THE GENERAL PUBLIC WITH A TITLE EMPHASIZING THE IMPORTANCE AND CATASTROPHIC NATURE OF THE POTENTIAL HAZARD EVENT.

AS A SIDE NOTE WE BELIEVE IT PRUDENT FOR THE CITY TO USE THE BUILDING PERMITTING PROCESS TO IMPOSE HAZARDOUS IMPACT FEES ON NEW CONSTRUCTION IN ORDER TO DEFER THE FUTURE COST OF EVACUATION MITIGATION AND TO REQUIRE TSUNAMI INSURANCE

#### SUMMARY:

THE DRAFT AS PROPOSED IDENTIFIES THE FULL KNOWLEDGE OF TSUNAMI AND EARTHQUAKE DAMAGE AND RELIEVES THE CITY OF THE ATTENDING LIABILITIES OF SUCH EVENTS. BUT IT ALSO PROVIDES SAFE HARBOR ALLOWING THE CITY TO CONTINUE TO PROMOTE NEW DEVELOPMENT AND CONSTRUCTION IN WELL DOCUMENTED FLOOD ZONES WITH NO EFFECTIVE DISCLOSURE TO THE UNAWARE CONSUMER. WE BELIEVE THAT STATE AND COUNTY AGENCIES; MUNICIPALITIES; REAL ESTATE COMPANIES; DEVELOPERS AND BUILDERS ALL SUBSTANTIALLY PROFIT FROM PARTICIPATING IN CONTINUED ACTIVITY IN TSUNAMI ZONES. YET, THE DISCLOSURE STATEMENT AS PROPOSED DENIES THE PUBLIC AN EQUAL OPPORTUNITY TO BE WELL INFORMED REGARDING ,FOR MANY, THE LARGEST SINGLE INVESTMENT THEY WILL EVER MAKE.

AS TO THE PURPOSE OF STANDING IN ANY APPEAL PROCESS WE ARE HEREBY TYING OUR PRESENTATION AND REQUESTS TO THE DRAFT FIRST MENTIONED AND DATED 5-20-2019 - FILE#19-001CP-ZTA AS FOLLOWS:

1 COMPREHENSIVE PLAN REPORT - GOAL-7 sections .01, .02, .03, .04 page 2

11 GOAL 7 GENERAL PLAN POLICIES.subsections 1,2,4, and specifically 7.

111 GOAL 14- URBANIZATION sections1 and 2 page 5

1V COMPREHENSIVE PLAN MAP AMENDMENTS subsection 6 page 6

V EXHIBIT A PART 2 subsection 4 page 8

V1 TSUNAMI HAZARD OVERLAY sections 1,2 page 8;  
section 4 subsection b vii,viii page 9

V11 SECTION 8 FLEXIBLE OPTION PLAN page 11 subsections a.(ii) b., c.

V111 SECTION 9 - PURPOSE AND APPLICABILITY pages 12 & 13

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