



# Supplemental Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Cotton Shires and Associates / GeoDynamics, Inc., Geotechnical Consultants

Reviewed by: Yolanda Bundy, Environmental Sustainability Director  
Rob Duboux, Public Works Director

Approved by: Reva Feldman, City Manager

Date prepared: February 20, 2021 Meeting date: February 22, 2021

Subject: Big Rock Mesa Landslide, Status and Development Review

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RECOMMENDED ACTION: Receive and file report on Big Rock Mesa Landslide Assessment District related capital improvement options with the Big Rock community.

DISCUSSION: On February 11, 2021, the original agenda report was distributed. Since that time, it has come to staff's attention that an incorrect version of Attachment No. 8 was included with the original agenda report. The corrected version is attached for replacement.

ATTACHMENTS: City of Malibu Geotechnical Consultant, Response to Cunningham BRM questions\_12-23-2020



# City of Malibu

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## MEMORANDUM

To: Richard Mollica, Interim Planning Director  
Yolanda Bundy, Building Official

From: Michael B. Phipps, PG, CEG, Christopher Dean, PG, CEG, Lauren J. Doyel, PE, GE, Geology Department, Building and Safety

Date: January 8, 2021

Re: Geology Response to additional question posed by Christopher Cunningham, 1-5-2021, Planning Commission Hearing for 20272 Inland Lane.

At your request, the Geology Department has prepared this response to an additional question posed by Mr. Cunningham regarding the geologic evaluation of 20272 Inland Lane ("the proposed project"). We understand this question was received via email by the Interim Planning Director following the Planning Commission hearing on January 4, 2021. The email containing the question is attached hereto (Attachment 1); however, the homeowner's comment and question (highlighted in yellow) are also repeated below:

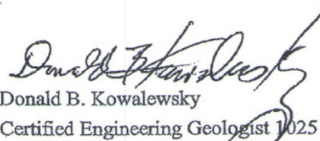
*"In the City Planning Hearing tonight 1/4/20, Eric Sosa read statements from former Malibu City Geologist, Don Kowalewsky's 2018 memo that stated that the Inland Lane project must be rejected since it violates State Law and City Codes since no seismic (pseudostatic) slope stability analyses was performed as required for sites within an earthquake induced landslide.*

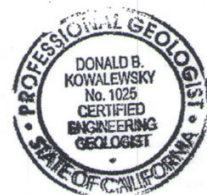
*It was clear that the Geologist for the Applicant did not do this seismic slope stability analyses and he admitted so in the hearing when Commissioner Mazza raised this point toward the end of the hearing. Yet, even with this acknowledgement by the Applicant's Geologist, and knowing that this seismic slope stability analyses was not performed, the Planning Commission approved the project. How can the Planning Commission approve a project that violates State Law (per Kowalewsky's 2018 memo--relevant sections included below)? Please let me know. Thank you."*

Excerpt from D. Kowalewsky memorandum, 2018:

D. The site is within an earthquake induced landslide hazard zone, as mapped by the State Geologist. Reports for proposed development in a mapped hazard zone are required by State law to evaluate the risk from earthquake induced landslide and provide recommendations to mitigate the risk. (Appendix C). The 2013 version of the City of Malibu "Guidelines for the preparation of engineering geologic and geotechnical engineering reports" also requires seismic (pseudostatic) slope stability analyses. (Appendix D). No analyses of the stability of the site were performed considering earthquake forces. Therefore, the project is in violation of both State Law and City Codes.

4. The City would be in violation of State law if they were to approve a new dwelling in a mapped earthquake induced landslide hazard zone without requiring evaluation and mitigation in accordance with the State's requirements as well as their own Codes.

  
Donald B. Kowalewsky  
Certified Engineering Geologist 1025



There are two allegations outlined in the excerpt from the Kowalewsky memorandum:

1. An evaluation of risk due to earthquake induced landslide is required by State Law due to the project being in a mapped hazard zone and the 2013 City adopted Geologic Guidelines require a pseudo-static (seismic) slope stability analysis (reference paragraph D above), and,
2. The project violates state law (as referenced in paragraph 4 above).

The allegations are incorrect for the following reasons:

The proposed project is not "new development," it is exempt from the Seismic Hazards Mapping Act, and it does not meet the definition of project as defined in the Seismic Hazards Mapping Act. The state law that Mr. Kowalewsky references is the Seismic Hazards Mapping Act of 1990 (hereafter, "the Act"). The language within the Act includes the definition of a "Project", as outlined in the excerpt below which is taken from Special Publication 117A, "Guidelines for Evaluating and Mitigating Seismic Hazards" (California Geological Survey, 2008):

Based upon the definition of a "Project", the proposed project is exempt from the provisions of the Act based on the identified exception in Public Resources Code (PRC) Section 2693(d)(1) which is derived from the same exception in PRC Section 2621.6(a)(2)(B), the latter section being language from the Alquist-Priolo Earthquake Fault Zoning Hazard Act. (see excerpt below).

**Public Resources Code Section 2693.**

As used in [Chapter 7.8, the Seismic Hazards Mapping Act]:

d) "Project" has the same meaning as in Chapter 7.5 (commencing with Section 2621), except as follows:

- (1) A single-family dwelling otherwise qualifying as a project may be exempted by the city or county having jurisdiction of the project.
- (2) "Project" does not include alterations or additions to any structure within a seismic hazard zone which do not exceed either 50 percent of the value of the structure or 50 percent of the existing floor area of the structure.

**Public Resources Code Section 2621.6.**

(a) As used in (Chapter 7.5, the Alquist-Priolo Earthquake Fault Zoning Hazard Act), "project" means either of the following:

- (1) Any subdivision of land which is subject to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), and which contemplates the eventual construction of structures for human occupancy.
- (2) Structures for human occupancy, with the exception of either of the following:
  - (A) Single-family wood-frame or steel-frame dwellings to be built on parcels of land for which geologic reports have been approved pursuant to paragraph (1).
  - (B) A single-family wood-frame or steel-frame dwelling not exceeding two stories when that dwelling is not part of a development of four or more dwellings.

The Act does not prohibit cities or counties from imposing stricter requirements. The City of Malibu, upon incorporation and development of geotechnical guidelines, elected to impose stricter requirements, including requiring seismic (pseudo-static) slope stability analyses for new development projects including proposed single-family dwellings located in State-mapped Zones of Required Investigation for earthquake-induced landslide hazards. These stricter requirements are defined in the City's LCP/LIP Section 9.4(D), as well as the City's 2013 guidelines for geotechnical reports as adopted by the City Council. The proposed project is technically considered re-development of a site on which a single-family dwelling previously existed, on a historically active landslide. The previous development on the property was destroyed in the 1993 Malibu-Old Topanga Fire. The proposed project was initially submitted as a pre-application review, followed by a coastal development permit (CDP) application and variance (VAR) application. It was understood from the beginning of the City's geotechnical review of the proposed project that a variance to the slope stability factor of safety requirements within the City's geotechnical guidelines, as well as within LCP/LIP Section 9.4(D), would be required.

The project geotechnical consultant for the 20272 Inland Lane project (GeoConcepts, Inc.) acknowledged the site's location within the historically active Big Rock Mesa Landslide. In the City's fourth Geotechnical Review Sheet (January 16, 2011) for the original project CDP application, the Consultant was requested to evaluate the static and pseudo-static stability of the local slope between the subject property and Pacific Coast Highway. The local slope was determined to have a factor of safety of 1.37 for static conditions. The project geologist (Mark Barrett of GeoConcepts, Inc.) testified in the public hearing that it was clear from experience, and that "everybody knew" (likely referring to the City reviewers) that since the static factor of safety of the local slope was 1.37 (and below 1.5), the seismic factor of safety would be below 1.1, thus the seismic slope stability analysis was not performed.

A variance to the factor of safety requirements identified in LCP/LIP Section 9.4(D) and the City's 2013 Geotechnical Guidelines was requested by the applicant in accordance with Chapter 13.26.5(B) of the City's LCP-LIP, not only because of the local slope stability factor of safety (below FOS=1.5 static and presumed to be below FOS=1.1 seismic), but also due to the site's location upon the Big Rock Mesa Landslide, which also does not meet the factor of safety requirements identified in Section 9.4(D) and the City's Geotechnical Guidelines (as discussed in this department's previous memorandum dated December 24, 2020). The allegation promulgated by Kowalewsky that the project is in violation of City Codes is therefore also incorrect, given the above circumstances and facts.

Attachment 1: *Email from Christopher Cunningham to Richard Mollica, 12:22 AM 1/5/21*

1/8/2021

FW: City Planning Commission Project Approval - mphipps@cottonshires.com - Cotton Shires &amp; Associates Mail

**From:** Christopher Cunningham [REDACTED]  
**Sent:** Tuesday, January 5, 2021 12:22 AM  
**To:** Richard Mollica <rmollica@malibucity.org>  
**Subject:** City Planning Commission Project Approval

Hello Richard:

In the City Planning Hearing tonight 1/4/20, Eric Sosa read statements from former Malibu City Geologist, Don Kowalewsky's 2018 memo that stated that the Inland Lane project must be rejected since it violates State Law and City Codes since no seismic (pseudostatic) slope stability analyses was performed as required for sites within an earthquake induced landslide.

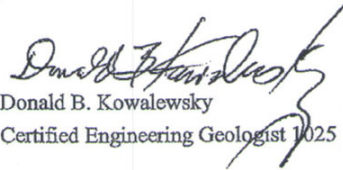
It was clear that the Geologist for the Applicant did not do this seismic slope stability analyses and he admitted so in the hearing when Commissioner Mazza raised this point toward the end of the hearing. Yet, even with this acknowledgement by the Applicant's Geologist, and knowing that this seismic slope stability analyses was not performed, the Planning Commission approved the project. How can the Planning Commission approve a project that violates State Law (per Kowalewsky's 2018 memo--relevant sections included below)? Please let me know. Thank you.

Best,  
Christopher

Kowalewsky 2018 Memo section:

**D.** The site is within an earthquake induced landslide hazard zone, as mapped by the State Geologist. Reports for proposed development in a mapped hazard zone are required by State law to evaluate the risk from earthquake induced landslide and provide recommendations to mitigate the risk. (Appendix C). The 2013 version of the City of Malibu "Guidelines for the preparation of engineering geologic and geotechnical engineering reports" also requires seismic (pseudostatic) slope stability analyses. (Appendix D). No analyses of the stability of the site were performed considering earthquake forces. Therefore, the project is in violation of both State Law and City Codes.

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Christopher Cunningham  
[REDACTED]