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April 3, 2017

The Honorable Brian Boquist, Chair
Senate Committee On Veterans and Emergency Preparedness
900 Court St. NE, S-311
Salem, Oregon 97301

RE: Testimony on Senate Bill 850

Chair Boquist,

It has been brought to our attention that on April 11, 2017 your committee will be conducting a hearing on the above referenced bill and we would respectfully request that you accept this letter **in opposition** to the legislation, such letter having been duly adopted by the Newport City Council at its April 3, 2017 meeting.

The bill amends ORS 455.477 in a manner that will provide the Oregon Department of Geology and Mineral Industries (DOGAMI) authority to prohibit the construction of certain facilities within a tsunami inundation zone. Under the current law, the Agency serves in an advisory capacity to developers, municipalities, and the Oregon Building Codes Division.

We are opposed to the proposed legislation because:

- 1) The legislation undermines local land use authority, giving a state agency broad discretion to veto uses within a tsunami inundation zone without due process. Under existing laws local governments', not state agencies, determine what uses are or are not water-related or water-dependent and thus exempt from the ORS 455.446 prohibition on essential facilities and special occupancy structures being located in tsunami inundation areas. Such local government determinations must comply with Statewide Planning Goals and are land use decisions, subject to appeal by aggrieved parties. This bill seeks to circumvent ORS 455.446 by giving DOGAMI the authority to prohibit a land use if the Agency, at its sole discretion, determines that "*no available methods can adequately mitigate the risk of unreasonable danger to occupant safety from a possible tsunami.*" What will it take to "adequately mitigate" risk or, for that matter, what constitutes "unreasonable danger" to an occupant? The bill does not define these terms and a developer has no way of knowing whether or not the substantial investment they are making in a site can meet these benchmarks. Further, the proposed legislation includes a clause stating that a decision by the Agency would not be a land use decision as defined in ORS 197.015. This appears to be an attempt to screen the Agency from the type of scrutiny and risk of appeal that local governments are subjected to when they amend their land use plans with regards to water-related and water-dependent uses, and provides developers no recourse to challenge an Agency decision that they believe to be inappropriate.

- 2) The legislation is unnecessary because the existing statutes adequately protect the public. ORS 455.447 requires developers of new essential facilities, hazardous facilities, special occupancy structures and major structures located in an identified tsunami inundation zone to consult with DOGAMI. This must happen before plans are submitted to the local building official for review and approval. Under this structure, DOGAMI plays an appropriate advisory role, assisting in determining the impact of possible tsunamis on the proposed development and in preparing methods to mitigate potential risks. The statute further provides DOGAMI a role in advising the Oregon Building Codes Division, requiring that consultation occur before building codes are amended relative to seismic design standards for facilities in tsunami inundation zones. If DOGAMI believes that seismic standards should be revised or other building design requirements imposed to improve public safety within tsunami inundation zones, then those changes should be accomplished via a uniform set of amendments to the state building codes rather than the ad hoc, case-by-case set of determinations that would result from this proposed legislation.
- 3) DOGAMI provides excellent technical assistance and advice relative to natural disasters; however, the Agency is ill equipped to act in the decision making capacity envisioned with this bill. As a case in point, DOGAMI did a wonderful job in updating the State of Oregon's Tsunami Inundation Maps, a project that wrapped up in 2013. The Agency collaborated with local jurisdictions and the end product is an excellent technical resource. What it isn't, is a hard and fast regulatory tool. ORS 455.446 states that the governing body of DOGAMI, by rule, shall determine the tsunami inundation zone within which new essential facilities, hazardous facilities, special occupancy structures and major structures will be restricted. One would think that the Agency would promptly update the tsunami inundation zone regulatory boundary to reflect the changes they made to the maps in 2013. However, that hasn't been the case, and here in the City of Newport we are still using 1995 maps when determining whether or not the ORS 455.446 restrictions apply. With this track record, how responsive could we expect the Agency to be with developers who in many cases may have multi-million dollar investments on the line?

The proposed legislation appears to be directed specifically at Oregon State University's Marine Studies Initiative, where they plan to construct new research and classroom facilities at the Hatfield Marine Science Center (HMSC) campus in Newport. The decision by the University to proceed with this investment was made as a result of a thorough public vetting process. Likewise, the City of Newport has amended and updated its land use plans relative to the campus and has invested millions in infrastructure to support the facility. All of this was accomplished with significant public involvement. The University is in the process of designing the new facility, and the building will incorporate vertical evacuation elements to complement other public safety investments the City and its partners have made to the area. Let DOGAMI perform its existing advisory role with the project. The City looks forward to receiving their input prior to carrying out its' mandated responsibility to evaluate construction plans for compliance with state building codes, and is confident the University would similarly appreciate the Agency's feedback.

We respectfully request that the Committee take no further action on this bill. Thank you for your time and consideration.

Sincerely,



Sandra Roumagoux, Mayor
City of Newport

On Behalf of the Newport City Council

Enclosure: Copy of City's June 1, 2016 Letter to OSU Regarding the MSI Facility

xc: Sen. Arnie Roblan
Rep. David Gomberg



Spencer R. Nebel
City Manager
CITY OF NEWPORT
169 S.W. Coast Hwy.
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June 1, 2016

Dr. Edward J. Ray, President
OREGON STATE UNIVERSITY
600 Kerr Administrative Building
Corvallis, OR 97331-2128

COPY

RE: Siting of the MSI Facility

Dear President Ray:

On Monday, July 21, 2014, the Newport City Council voted to support the development of a Marine Study Campus Program on the campus grounds of Hatfield Marine Science Center in Newport, Oregon. It was the feeling of the Council that a development by OSU would complement the investments that have been made by the City's Urban Renewal District to develop infrastructure to create a safe and efficient vehicular pedestrian access throughout South Beach.

Recently, with financial assistance from FEMA, the City of Newport has completed a \$900,000 project to improve tsunami evacuation to Safe Haven Hill for the South Beach area including the Hatfield campus. This project was completed since the City acknowledges the geological hazards that exist in the South Beach area. It is important to the City to make this type of investment to enhance the safety of individuals in South Beach, who are part of the growing and unique blend of marine science agencies that are located together on the Yaquina Bay.

Earlier this month, the City was invited to a discussion at the Hatfield Marine Science Center to receive an update on this critical project. At this meeting, Hatfield Marine Science Executive, Bob Cowen, outlined the process that OSU had taken to address site location for the MSI building. We certainly appreciate the due diligence of care that OSU is taking relating to this decision, and we want to share our view of the issues relating to the siting of this facility in Newport.

Several of the thoughts that we would like to share with you are as follows:

- There has been significant investment by OSU, the Federal government, State of Oregon, Port of Newport that has facilitated the creation of a marine science community

on Yaquina Bay in South Beach. The interconnection and proximity of the various agencies and programs helps build synergy and support for future investments in this area, which enriches and strengthens each of the programs.

- Locating the campus off site would have an impact of reducing the interaction, which helps to build the exchanges among the marine science community in South Beach.
- There are significant geological threats that will impact South Beach sometime in the future. This event could happen tomorrow or several hundred years from now. It should also be noted that a full fledged Cascadia Subduction Zone event will cause significant property damage, and loss of life from the I-5 corridor to the Pacific Ocean. This includes the Oregon State University campus in Corvallis. The threat from the Cascadia Subduction Zone is not just a coastal issue, and is not just a tsunami issue. The alternative locations outside of a tsunami area may be subject to other threats, such as landslides, liquefaction, or other hazards that could impact the safety of individuals in those facilities at those locations as well. Perhaps the only way to eliminate this potential threat, would be to locate the program in Kansa!
- OSU could use this project as a way to demonstrate to engineering technology ways to create public buildings that will be able to remain standing after a Cascadia event and perhaps provide for vertical evacuation of folks as they supplement to Safe Haven Hill evacuation site. This effort could be a great demonstration project on how to live within the Cascadia Subduction Zone instead of permanently evacuating the coast due to these future threats.
- OSU has determined that student housing will be located outside the tsunami inundation areas. This addresses the greatest risk from tsunami hazards since the number of hours a student would be on campus, or staff would be working on campus would be less than 25% of the time. Seventy-five percent of the time, students would be in other locations outside the tsunami zone if you base the students time in the academic facilities being forty hours a week, with 168 hours being included in a seven-day week.

It is important to located this facility in a location that will truly help grow our marine science community for many years in the future in Newport. It is also an opportunity for OSU to create a state of the art building that will demonstrate how to build a sustainable building on the Oregon Coast. It is our opinion that OSU should continue with their plans to build the Marine Studies Initiative facility on the Hatfield campus incorporating reasonable standards for both seismic and tsunami evacuation at that location. If we can provide any additional information, please feel free to contact us.

Sincerely,

Sandy Roumagoux, Mayor

Spencer Nebel, City Manager