

From: [Larry Horowitz](#)

To: (Sent to each member of City Council and newly elected Councilmembers)

Sent: Saturday, November 28, 2009 6:07 AM

Subject: Landslides, Chuckanut Ridge, Public Safety & the CAO

I hope you and your family enjoyed a wonderful Thanksgiving celebration. There is much to be thankful for.

I am writing this morning to ask a favor. As you know, Chuckanut Drive just experienced a second landslide this week. The second slide, near Spokane Street, is in an area where rockslides are uncommon. According to DOT supervisor Ric Willand, this was the “first time I’ve seen anything like this in this area in 15 years.”

We all know that certain accidents are unavoidable; however, when it comes to landslides, **precautions can be taken to minimize these unfortunate events.** In Bellingham, these safeguards have been codified in the City’s *Critical Areas Ordinance* (CAO), which is specifically designed to “protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, or flooding.”

I am writing to ask you to intervene on behalf of the hundreds of citizens who live downstream from Chuckanut Ridge. We have begged Planning Director Tim Stewart to enforce the Critical Areas Ordinance when processing the Fairhaven Highlands development application. We have also begged Mayor Pike to do the same.

The 85-acre Chuckanut Ridge property - which is perched above hundreds of existing homes - has served as a sponge, collecting and sequestering millions of gallons of rainfall each and every year. **When this land is disturbed, no one knows where this perched water will go.** But we do know it will flow downhill, over and under the land that houses hundreds of existing homes. Those of us who live below Chuckanut Ridge have begged the city to protect our families and our homes by enforcing a law that was adopted more than four years ago. It’s a matter of public safety. And when it comes to public safety, a project’s vested status is not an issue. **Public safety trumps vesting.** According to the WA Supreme Court,

“There is no such thing as an inherent or vested right to imperil the health or impair the safety of the community. But, to be protected against such impairment or imperilment, is the universally recognized right of the community in all civilized governments; a protection which the government not only has a right to vouchsafe to the citizens, but which it is its duty to extend in the exercise of its police power.” [*City of Seattle v. Hinckley*, 40 Wash. 468, 471, 82P. 747, 748 (1905)]

I am asking you, as a member of City Council, to protect those citizens you have sworn to protect. The *Critical Areas Ordinance* is your law. It is up to you to ensure that the CAO is enforced and the citizens are protected. Tim Stewart and Dan Pike have been asked, many times, to enforce the city’s only law specifically designed to prevent environmental catastrophes; but, they have refused. It is now incumbent on you to enforce the law that Council adopted in 2005.

Please, for the sake of public safety, require the Planning Dept to enforce the CAO as it processes the Fairhaven Highlands development application.

Thanks in advance for your consideration.

Sincerely,
Larry Horowitz

PS – I have attached below this email this morning’s article about the second Chuckanut Drive rockslide and a copy of my Feb 3, 2009 email to Mayor Pike requesting that the CAO be enforced.

Nov, 28, 2009

Second rockslide closes section of Chuckanut Drive, boxes in residents

<http://www.bellinghamherald.com/102/story/1177799.html>

HANNAH BOSTWICK / THE BELLINGHAM HERALD

BELLINGHAM — A second rockslide on Chuckanut Drive left residents from approximately 200 homes in the area between California and Spokane streets blocked in for more than seven hours Thursday night, Nov. 26.

Road closures from a rockslide earlier this week three miles south of the Whatcom/Skagit County line left residents in between the two areas stuck at home until 6:30 a.m. Friday when crews opened a section of the Interurban Trail to traffic, said Ric Willand, Department of Transportation maintenance supervisor.

The section was limited to emergency vehicles and local traffic, since the trail can handle only so much wear and tear, Willand said.

The rockslide, which left large rocks and trees across both lanes just north of Spokane Street, occurred at roughly 11:30 p.m. Thursday.

Rockslides in this area of Chuckanut Drive are uncommon, and usually consist of fallen trees and smaller rocks, Willand said.

"I was surprised when I got the call," Willand said. "First time I've seen anything like this in this area in 15 years."

On Friday morning an engineer assessed the stability of the hillside and gave recommendations on how to stabilize the slope. Crews spent much of the day cleaning up debris and stabilizing the hillside before reopening one lane to traffic in the late afternoon.

It was unclear Friday how long it would be before the entire road was cleared and both lanes reopened.

The section of Chuckanut Drive south of the county border remains closed and likely will be so through the weekend.

Drivers can access businesses south of that slide by taking Interstate 5 south to the Skagit section of Chuckanut Drive and then heading north.

Feb 3, 2009 email to Mayor Pike

From: [Larry Horowitz](#)

To: [Dan Pike](#)

Sent: Tuesday, February 03, 2009 7:18 AM

Subject: Request to do the right thing by protecting the safety and welfare of Bham citizens

Dear Mayor Pike,

As you know, on my behalf, Councilman Jack Weiss has been kind enough to ask the city attorney to review an issue regarding the public safety exception to vesting. I understand that Jack has also briefed you on this issue, and I thank Jack for taking this on. It is much appreciated.

Unfortunately, the attorney who is best suited to address this issue is consumed with other legal emergencies and may not have time to look into it until it's too late.

In my mind, this issue is simple and straightforward. It is about doing the right thing by protecting the safety and welfare of Bellingham citizens. Your action should not require an attorney's opinion. Many of us voted for you because we believed you would do the right thing when the time came. As far as this issue is concerned, the time has come.

The *Bellingham Municipal Code* (BMC) is crystal clear when it comes to protecting public safety, health and welfare, and it provides an exception to vesting under BMC 21.10.260(B)(2) to achieve this paramount objective: "An application for a land use approval may be denied or approved with conditions under the authority of the City to protect and enhance the public safety, health and welfare." This exception to vesting is consistent with Washington state case law, which was confirmed by the state's Supreme Court in *City of Seattle v. Hinckley*:

"There is no such thing as an inherent or vested right to imperil the health or impair the safety of the community. But, to be protected against such impairment or imperilment, is the universally recognized right of the community in all civilized governments; a protection which the government not only has a right to vouchsafe to the citizens, but which it is its duty to extend in the exercise of its police power." (Emphasis added)

The city's *Critical Areas Ordinance* (CAO) has been designed to protect the community from **injury, loss of life, and property damage** due to **landslides, steep slope failures, erosion, seismic events and flooding**. The safeguards provided by the CAO are not provided by any other regulation within the BMC. If the CAO is not enforced, then the city cannot protect the community from injury, loss of life, and property damage resulting from these environmental catastrophes.

The city's planning director has had more than three years to protect Bellingham's citizens by enforcing the CAO on supposedly vested development applications. He has failed to do so. The responsibility to do the right thing has now fallen on your shoulders and those of City Council. I implore you to tackle this responsibility head on. Doing so will earn you the respect and admiration of your community.

Time is of the essence, and I hope you will act soon.

I look forward to hearing from you at your earliest convenience. In the meantime, I will plan to follow up every couple of days.

Thanks in advance for doing the right thing.

Sincerely,
Larry Horowitz