



# ASSEMBLY COMMITTEE OF THE WHOLE AGENDA

September 18, 2023 at 6:30 PM

Assembly Chambers/Zoom Webinar

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Assembly Committee of the Whole Worksession - No Public Testimony will be taken.

<https://juneau.zoom.us/j/95424544691> or 1-253-215-8782 Webinar ID: 954 2454 4691

*Please note the 6:30p.m. start time is different than our usual start time due to Vote Center use in the Assembly Chambers.*

- A. CALL TO ORDER
- B. LAND ACKNOWLEDGEMENT
- C. ROLL CALL
- D. APPROVAL OF AGENDA
- E. APPROVAL OF MINUTES
- F. AGENDA TOPICS
  - 1. [Whale Watching Operator Committee Update](#)
  - 2. [Hazard Map Discussion](#)
  - 3. Executive Session - Law Department Litigation Update
- G. NEW BUSINESS
- H. UNFINISHED BUSINESS
- I. STAFF REPORTS
- J. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS
- K. NEXT MEETING DATE
- L. SUPPLEMENTAL MATERIALS
- M. ADJOURNMENT

ADA accommodations available upon request: Please contact the Clerk's office 36 hours prior to any meeting so arrangements can be made for closed captioning or sign language interpreter services depending on the meeting format. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: [city.clerk@juneau.gov](mailto:city.clerk@juneau.gov).



**MEMORANDUM**

**DATE:** September 15, 2023

**TO:** Maria Gladyszewski, Chair Assembly Committee of the Whole

**FROM:** Alexandra Pierce, Tourism Manager

**SUBJECT:** Whale Watch Focus Group

The CBJ Assembly and TBMP have received numerous complaints about the whale watch industry this summer. In response, the operators met on June 26 and agreed to form a focus group to discuss issues surrounding the industry and produce a set of recommendations for action including more stringent TBMP guidelines to be implemented in 2024. The group meets every two weeks and has made good progress. The Committee will hear presentations from focus group chair Bob Janes with Gastineau Guiding and from Suzie Teerlink with NOAA. This is an opportunity to ask questions and provide verbal feedback on the recommendations.

This is an informational update only, and there is no requested Assembly action at this time.

Over the past 27 years, whale watching tour operators have developed and agree to follow thirteen TBMP guidelines regarding their operations on the water as summarized below:

1. **Impacts to coastal zones:** Whale watching tour operators will take all available and reasonable steps to minimize impacts to coastal residents and other vessel operators. Vessel operators will strive to minimize the impacts of their wakes on other watercraft, docks, and beaches throughout the CBJ coastal waterways.
  - a. **Honor and abide by** a voluntary “no wake zone” in the Smugglers Cove/Spuhn Island/Swedula Island vicinity.
  - b. **Will not utilize** the Indian Island passage as a shortcut into and out of Auke Bay at cruising speed.
  - c. **Be diligent in monitoring** their own wakes, vessel traffic, and recreational use of the Coghlan Cut area and adjust their speed and/or routing as necessary to promote a safe environment for all users.
2. **Minimize wake damage to adjacent property owners in Auke Bay:** Operators agree to voluntarily navigate along the centerline of the bay. The centerline is approximate to a line from the white speed buoy to the south end of Coughlin Island.
3. **Monitor the volume and use** of their onboard PA systems and outside speakers in a manner which reduces the impact on residents and recreational boaters. Also, **when transiting through CBJ waters**, operators agree to maintain (whenever possible) a 200-yard distance from boats that are actively fishing to reduce the impact of wake on those vessels.
4. **Operators** will follow all applicable federal (NOAA) regulations regarding marine mammal viewing.
  - a. **Time spent by operators** observing a specific whale or group of whales should not exceed 30 minutes within a 2-hour time span on any one tour or charter.
5. **Vessel engine idling:** Operators agree to minimize engine idling at every reasonable opportunity including loading and unloading of passengers and/or when standing-by in the various vessel loading zones throughout the CBJ.

The majority of whale watching tour operators also belong to Whale SENSE, a voluntary education and recognition program offered to commercial whale watching companies in the U.S. Atlantic and Alaska Regions. Some of Whale SENSE recommendations include:

1. **Do not intentionally approach** whales within 100 yards.
2. **Do not place your vessel** in the path of oncoming humpback whales causing them to surface within 100 yards of your vessel.
3. **Operate your vessel** at a slow, safe speed when near a humpback whale.
4. **Limit time spent** with mom-calf pairs and cooperative feeding groups.

Recently a focus group of whale watching operators met several times to discuss and make recommendations to the fleet for potential new TBMP guidelines. These include:

1. **Eliminate** “whales guaranteed” marketing between April 1-May 15 and September 15-October 31.
2. **Inspected vessels** agree to navigate Coghlin Cut at 5-7 knots when other vessels or people are present, 10-knot maximum speed when no vessels or people present **OR** go around Coghlin Island at full speed.
3. **Inspected vessels** agree to come off step at the imaginary straight line between the two Derby orange markers in Auke Bay and to reduce speed to 5 knots *prior to* reaching the white buoy.
4. **Operators agree:**
  - In open water
    - 100-200 yards, 8 vessels
    - 200+ yards, 8 more vessels
    - Vessels would move in and out of the inner circle in 15-minute cycles with a total of 30 minutes for any one vessel.
  - Shoreline
    - 100-200 yards, 4 vessels
    - 200+ yards, 12 more vessels
    - Vessels would move in and out of the inner circle in 15-minute cycles with a total of 30 minutes for any one vessel.

With a strong commitment to responsible practices, tour operators adhere to NOAA regulations and have agreed to voluntarily follow Whale SENSE and TBMP guidelines. Operators will continue to agree to voluntarily follow Whale SENSE and TBM guidelines. Operators take every precaution to value and protect the well-being of our whales.

# JUNEAU COMMERCIAL WHALE WATCHING FLEET

## TBMP Guidelines and Recommendations to Date



# 27 YEARS OF DEVELOPING GUIDELINES



**Impacts to coastal zones:** Whale watching tour operators will take all available and reasonable steps to minimize impacts to coastal residents and other vessel operators. Vessel operators will strive to minimize the impacts of their wakes on other watercraft, docks, and beaches throughout the CBJ coastal waterways.

- **Honor and abide by** a voluntary “no wake zone” in the Smugglers Cove/Spuhn Island/Swedula Island vicinity.
- **Will not utilize** the Indian Island passage as a shortcut into and out of Auke Bay at cruising speed.
- **Be diligent in monitoring** their own wakes, vessel traffic, and recreational boats in the Coghlan Cut area and adjust their speed and/or routing as necessary to promote a safe environment for all users.



# 27 YEARS OF DEVELOPING GUIDELINES

**Minimize wake damage to adjacent property owners in Auke Bay:** Operators agree to voluntarily navigate along the centerline of the bay. The centerline is approximate to a line from the white speed buoy to the south end of Coughlin Island.



# 27 YEARS OF DEVELOPING GUIDELINES



**Minimize wake damage to adjacent property owners in Auke Bay:** Operators agree to voluntarily navigate along the centerline of the bay. The centerline is approximate to a line from the white speed buoy to the south end of Coughlin Island.

**Monitor the volume and use** of their onboard PA systems and outside speakers in a manner which reduces the impact on residents and recreational boaters.

**When transiting through CBJ waters,** operators agree to maintain (whenever possible) a 200-yard distance from boats that are actively fishing to reduce the impact of wake on those vessels.

# 27 YEARS OF DEVELOPING GUIDELINES



**Operators will follow** all applicable federal (NOAA) regulations regarding marine mammal viewing.

**Time spent by operators** observing a specific whale or group of whales should not exceed 30 minutes within a 2-hour time span on any one tour or charter.

**Vessel engine idling:** Operators agree to minimize engine idling at every reasonable opportunity including loading and unloading of passengers and/or when standing-by in the various vessel loading zones throughout the CBJ.



The majority of whale watching tour operators also belong to **Whale SENSE**, a voluntary education and recognition program offered by NOAA to commercial whale watching companies.



# CURRENT ISSUES

Public perception of  
commercial fleet  
whale watching behavior



# CURRENT ISSUES

Satellite image of commercial fleet whale watching behavior





# Background...



## June 26 – All Operators Meeting:

- Operators met to discuss current concerns over negative public opinion of commercial whale watching
  - 18 operators/captains
  - Reps from D&H, TBMP, Travel Juneau, CBJ tourism, and Whale SENSE
- From this meeting came the idea of a whale watching operators focus group
- Develop recommendations for additional **future** whale watching guidelines

# TIMELINE OF MEETINGS

June 26

Original operators meeting

Discussion moved from improving public relations to addressing significant issues

Idea to form focus group was proposed

July 17

Goals determined:

1. Develop public relations plan
2. Identify operations issues
3. Consider new guidelines or agreements

July 27

Discussions ensued:

1. Review Whale SENSE goals
2. Discuss elimination of “whales guaranteed” marketing
3. Consider setting a limit of boats around a whale/whales
4. Discuss limited entry idea



# TIMELINE OF MEETINGS

## August 10

Progress:

1. Discussed resolving wake issues in Auke Bay
2. Refined the “whales guaranteed” marketing issue
3. Suggested “Locals Day” event  
(232 local guests, \$5,800 donation to SE Alaska Food Bank)

## August 17

Progress:

1. Discussed idea of limited entry
2. Discussed option of best behavior rather than limited entry
3. Recommended plan for limiting boats around a whale/group of whales

## August 31

Progress:

1. Finalized “whales guaranteed” limitations
2. Finalized wake issues plan
3. Finalized number of boats around whales plan

# PROPOSED NEW TBMP GUIDELINE RECOMMENDATIONS

Operators agree to eliminate "whale sightings guaranteed" marketing:

Apr 1-May 15  
Sep 15-Oct 31



# PROPOSED NEW TBMP GUIDELINE RECOMMENDATIONS

Operators of inspected vessels agree to navigate Coghlin Cut at 5-7 knots when other vessels or people are present, 10-knot maximum speed when no vessels or people present.  
**OR** go around Coghlin Island at full speed.



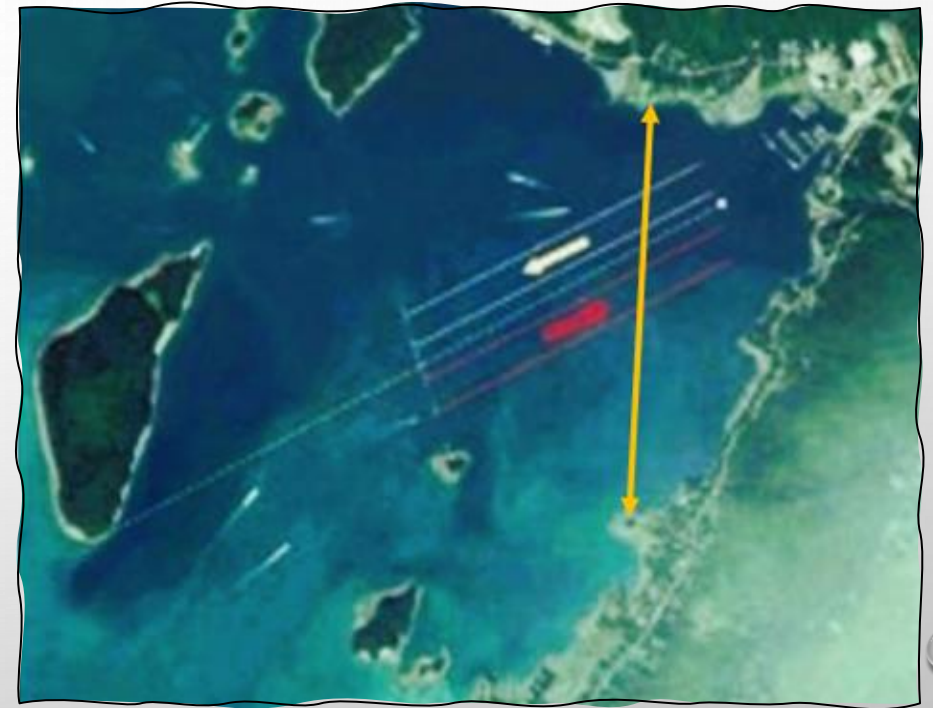


# PROPOSED NEW TBMP GUIDELINE RECOMMENDATIONS

Operators of inspected vessels agree to come off step at the imaginary straight line between the two Derby orange markers in Auke Bay and to reduce speed to 5 knots *prior to* reaching the white buoy.



\*Group is considering a wake study to be completed during the 2024 season.





# PROPOSED NEW TBMP GUIDELINE RECOMMENDATIONS

Operators agree:

- In open water
  - 100-200 yards, 8 vessels
  - 200+ yards, 8 more vessels
  - Vessels would move in and out of the inner circle in 15-minute cycles with a total of 30 minutes for any one vessel.



# PROPOSED NEW TBMP GUIDELINE RECOMMENDATIONS

Operators agree:

- Shoreline
  - 100-200 yards, 4 vessels
  - 200+ yards, 12 vessels
  - Vessels would move in and out of the inner circle in 15-minute cycles with a total of 30 minutes for any one vessel.



## OUR PROMISE

With a strong commitment to responsible practices, our operators will continue to adhere to NOAA regulations.

Operators will continue to agree to voluntarily follow Whale SENSE and TBMP guidelines.

Operators will continue to take every precaution to value and protect the well-being of our whales.



# TBMP WHALE WATCHING FLEET MEMBERS

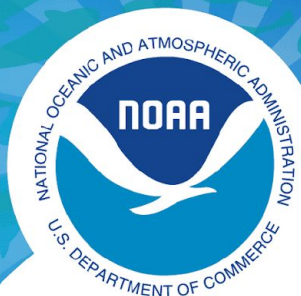
49<sup>th</sup> Fathom Charters  
Alaska Fjordlines  
Alaska Galore Tours  
Alaska Humpback Adventures  
Alaska Luxury Tours  
Alaska Sea to Shore  
Alaska Tales Whale Watching  
Alaska Travel Adventures  
Alaska Whale and Drone Tours

Allen Marine Tours  
Anchor Point Lodge  
Dolphin Jet Boat Tours  
Gastineau Guiding Company  
Harv & Marv's Outback Alaska  
Jayleen's Alaska  
Juneau Charters  
Juneau Lighthouse Tours

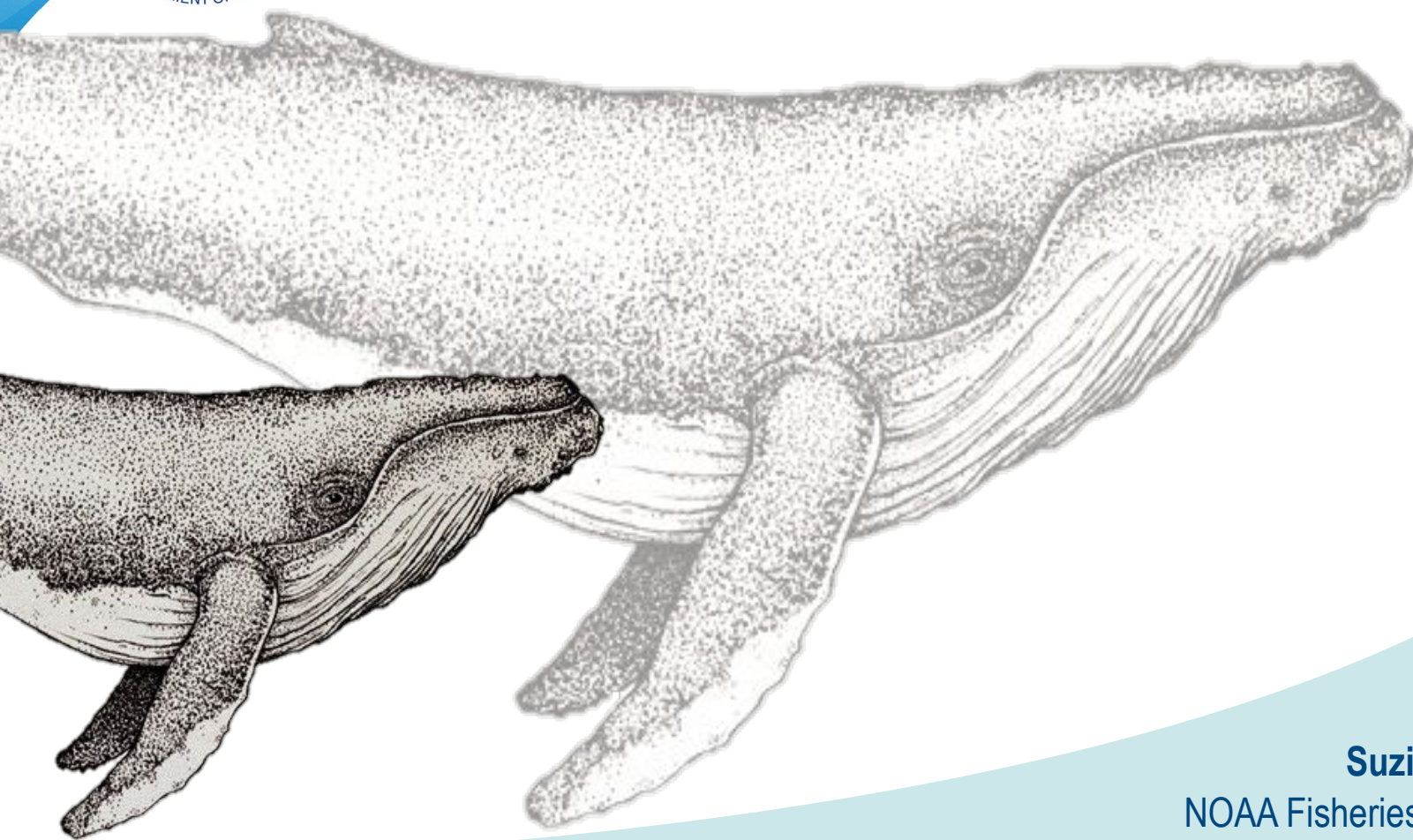
Juneau Sportfishing  
Juneau Tours & Whale Watch  
Juneau Whale Tours  
Lost in Alaska Adventures  
M&M Tours of Juneau  
Rum Runner Charters  
Sea Lion Adventure Tours  
Sea Spirit Charters







# Watching Whales in Juneau, AK: Are existing practices sustainable?



# Hawaii DPS Humpback Whales

Section F, Item 1.

(Data: SPLASH - Basin Wide Study: 2004-2006)



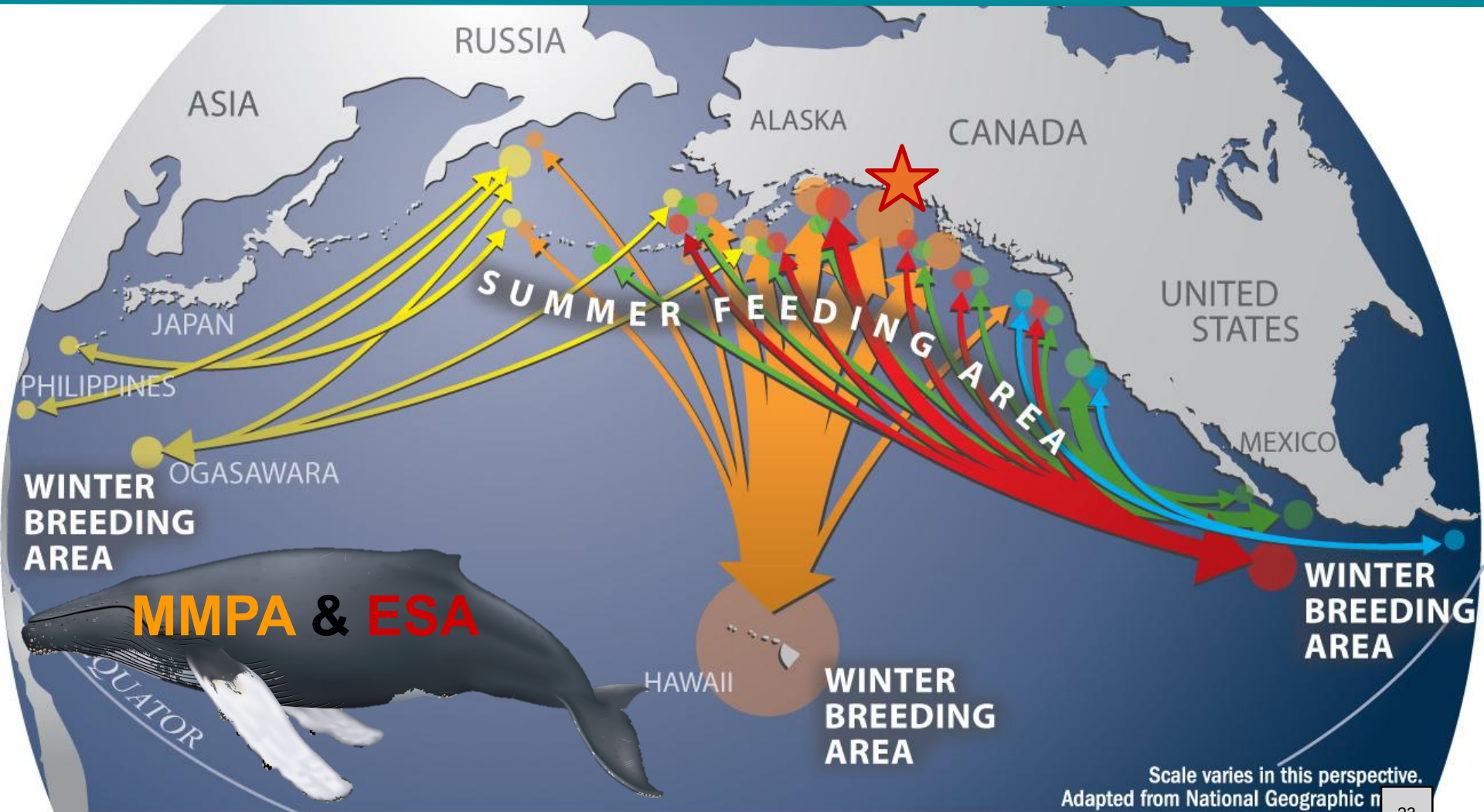
Scale varies in this perspective.  
Adapted from National Geographic



# North Pacific Humpback Whales

Section F, Item 1.

(Data: SPLASH - Basin Wide Study: 2004-2006)



Scale varies in this perspective.  
Adapted from National Geographic

# US Regulations

- **MMPA**
  - Alaska only:  
100-yard Approach Regulation
- **ESA**
  - Applies to humpbacks in AK

Prohibit  
take



## Take:

To **harass**, hunt, capture, or kill, or **attempt to harass**, hunt, capture, or kill any marine mammal



## Harassment:

Any act of pursuit, torment, or annoyance which has the potential to injure or disturb a marine mammal causing disruption of behavioral patterns





# Popular Whale Watching Destinations



# Boats in WW Fleet

72

Juneau, AK

10

Friday Harbor, WA

45

Maui, HI

12

Monterey, CA

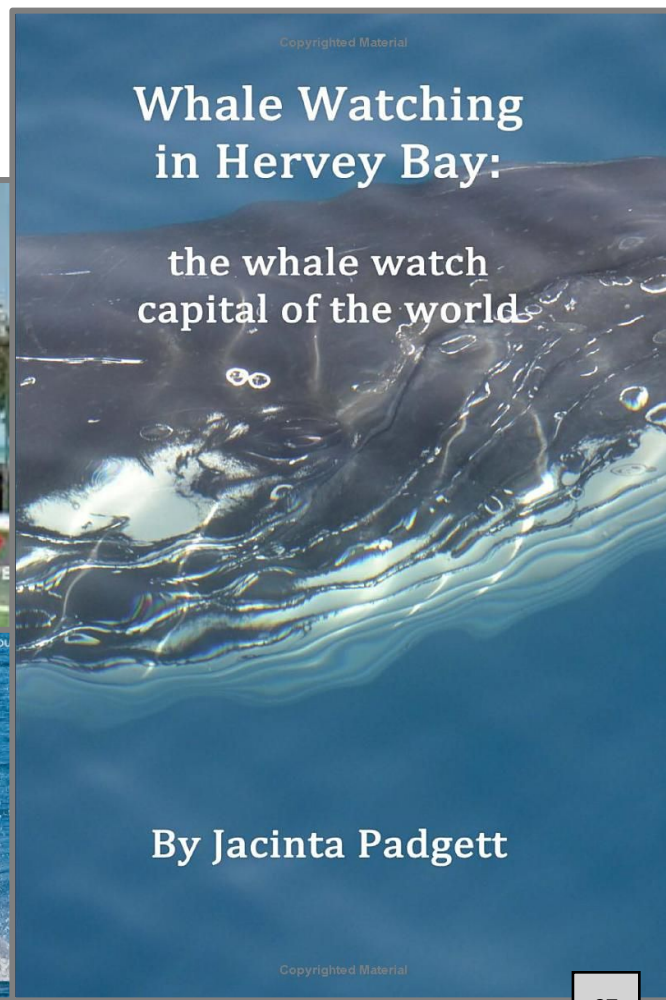
14

Stellwagen Bank



# Hervey Bay, Australia - The Whale Watching Capital of the World

- 12 whale watching boats (reduced from 18)
- 1,200 whales over the season





- 72 boats (and ↑)
- 20 Companies
- \$ back guarantee



ID# 1879  
"Sasha"



ID# 1538  
"Flame"

# Champions of Responsible Whale Watching

Section F, Item 1.

## What does it mean to have Whale **SENSE**?

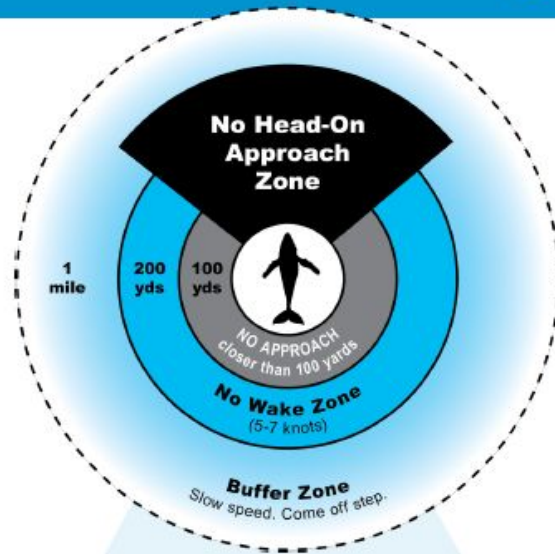
**S**tick to NOAA's guidelines, laws, and regulations to not disturb marine mammals.

**E**ducate staff and passengers on whale protections and marine conservation.

**N**otify authorities of entangled and injured marine mammals.

**S**et an example for other boaters on the water.

**E**ncourage ocean stewardship and ocean literacy.



It is illegal to approach humpback whales in Alaska within 100 yards. All marine mammals are protected and your presence should never change their behavior.



NOAA  
FISHERIES



[www.whaleSENSE.org](http://www.whaleSENSE.org)

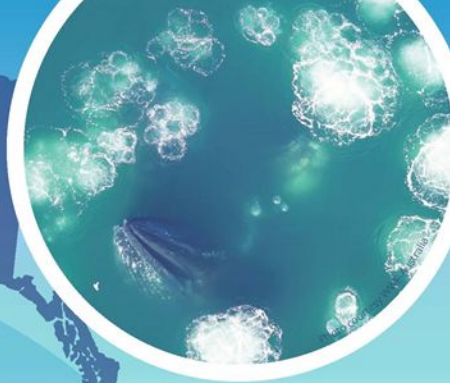
# TBMP

## Tourism Best Management Practices

Making Tourism Work for Juneau



# Give whales BUBBLE room



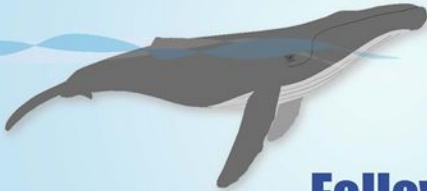
## In Alaska,

Federal humpback whale approach regulations under the Marine Mammal Protection Act require that you:

- ✗ Not approach within 100 yards of a humpback whale
- ✗ Not place your vessel in the path of oncoming humpback whales causing them to surface within 100 yards of your vessel
- ✗ Not disrupt the normal behavior or prior activity of a humpback whale
- ✓ Operate your vessel at a slow, safe speed when near a humpback whale

*Please don't burst my bubble!*

*I give whales personal "bubble" space for their safety and mine*



## Follow these tips:



**Don't let your vessel's presence bubble over**  
Limit your viewing time to 30 minutes



**Reduce your spray**  
Go slow when approaching and departing whales



**A whale could pop up at any time!**  
Use a wide berth in areas that you see whale watching vessels idling or traveling slowly



**Expand your bubble**  
Give more space when watching groups or mother-calf pairs



**Don't be in your own bubble**  
Use VHF radio to coordinate with other boaters to reduce crowding and to avoid ship strike



Choose Whale SENSE operators when booking whale watching tours



**NOAA FISHERIES**  
Alaska Region



**NOAA FISHERIES**

**Report violations in Alaska to  
NOAA Enforcement at 1-800-853-1964**



# Is 'TAKE' occurring in Juneau?

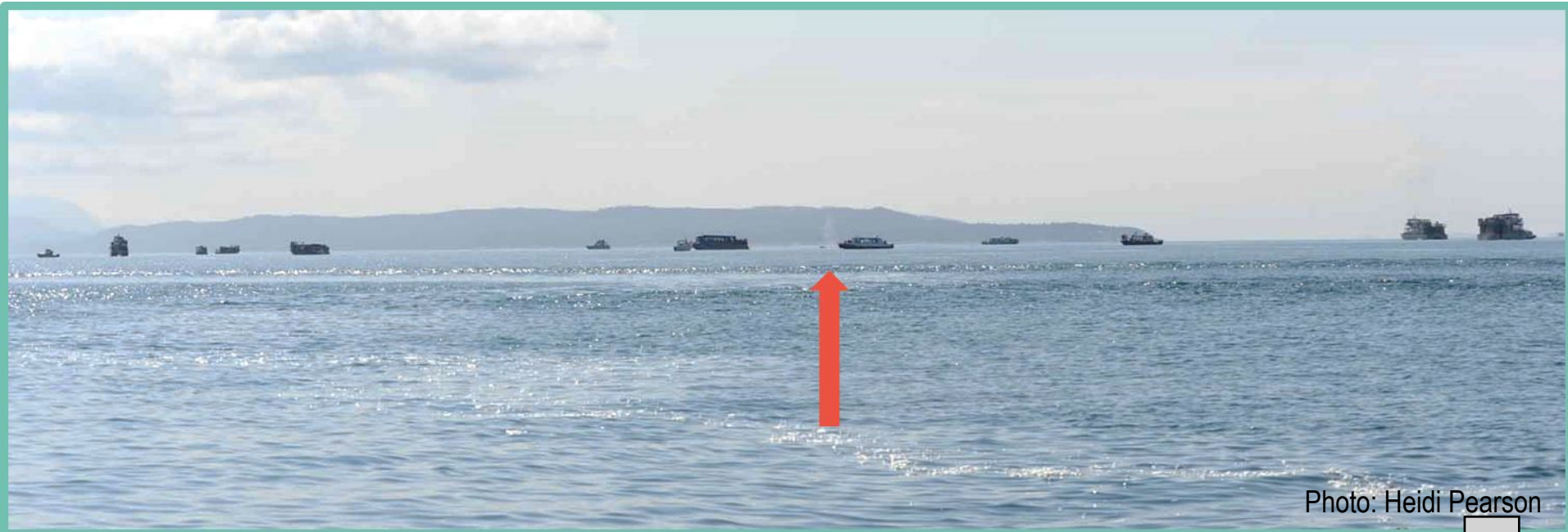
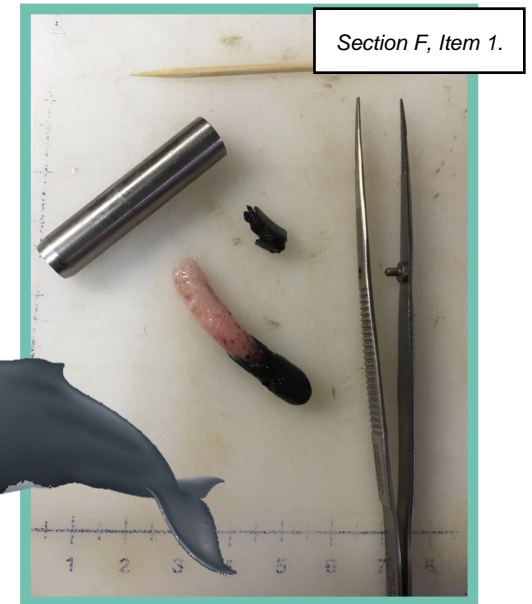


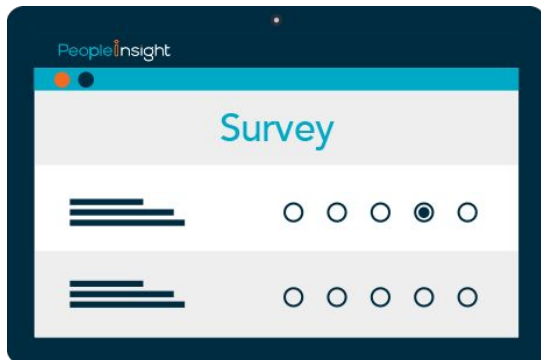
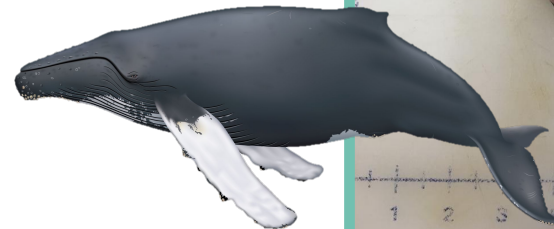
Photo: Heidi Pearson



Land-based Theodolite Studies  
(Vessel disturbance)



Blubber hormone analysis  
(stress response)



Human Perceptions  
(both passenger and community)

- Short-term responses
- Long-term impacts are complicated
- High community concern
- Passengers want to be **CLOSE**

# Potential NOAA Management Tools

- Jurisdiction related to protected species: e.g.
  - Distance to whales
  - Vessel speed restrictions near whales
  - Underwater sound limitations
  - # boats near whales







Thank you!

Suzie Teerlink, Permit #14296



(907) 586-0757  
Jill.Maclean@juneau.org  
www.juneau.org/CDD  
155 S. Seward Street • Juneau, AK 99801

**August 25, 2023**

**MEMO**

**To: Maria Gladziszewski, Chair, Committee of the Whole and Members**

**CC: Rorie Watt, City Manager**

**From: Jill Maclean, Director, AICP**

**RE: An Ordinance Amending the Sensitive Areas Requirements of the Land Use Code Related to Landslide and Avalanche Areas**

**Helpful Tip**

[Tetra Tech Technical Memo No. 4](#) provides a “*Guide to Avalanche and Landslide Hazard Designations*”. In other words, this memo provides the reader with a foundation towards understanding hazard mapping and its impacts. Staff strongly encourages all interested parties to read it prior to discussion. (Click link above and scroll down to Final Hazard Assessment to find Tech Memo No. 4)

**Background**

The downtown Juneau avalanche and landslide areas (also referred to as hazard areas) have been studied multiple times since the maps were first adopted in 1987. Over the decades, several attempts were undertaken to update the avalanche and landslide maps to no avail.

The adopted avalanche and landslide maps for downtown Juneau, dated September 9, 1987, are based on maps developed in the 1970s. These low-resolution maps combine landslide and avalanche areas into a single map, which identifies moderate and severe hazard areas. The avalanche and landslide areas cannot be distinguished, resulting in challenges for property owners to obtain property insurance. This lack of distinction also creates challenges for property owners seeking detailed safety information and mitigation options, because avalanche and landslide impacts are different. How and when to update the adopted landslide and hazard maps has been problematic for several decades, it is staff’s firm recommendation that the status quo should not be maintained.

With Assembly approval (Resolution Serial No. 2813), staff applied for FEMA grant funding to undertake an update and review of the adopted maps. During the FEMA grant application process, CDD consulted with CBJ Emergency Services, CBJ Lands Division, and the CBJ Engineering and Public Works to determine the highest priority areas for updated hazard assessment based on known threats, critical infrastructure,

housing density, and future development needs. Other priority areas not funded include the remaining stretch of Thane Road, Blackerby Ridge to Thunder Mountain, and the western side of Thunder Mountain. If the Assembly chooses, it may direct the City Manager to direct staff to apply for future grant funding for further hazard area assessments.

In 2018, CDD was awarded a grant from the Federal Emergency Management Agency (FEMA) to update these maps with current scientific analysis, and to evaluate avalanche and landslide areas separately. Following a competitive bid process, Tetra Tech Inc. was hired as the contractor.

The project area covered by Tetra Tech Inc. is larger than the currently adopted 1987 maps. Due to the increase in the scope area, approximately 42 properties have been evaluated for the first time, while the remaining properties have been updated. The following chart provides approximate figures on the changes between the adopted and proposed maps for severe areas.

	<b>1987 Adopted Maps</b>	<b>2022 Proposed Maps</b>
Number of properties within the mapped study area	1108	1150
Number of properties within high/severe landslide and avalanche zones	173	381*
Number of properties within the 1987 adopted severe zone, but out of the 2021 proposed high/severe zone	16	N/A
Number of properties within the proposed 2021 high/severe zone, but out of the 1987 adopted severe zone	N/A	217

*\*In the previous memo to LHEDC, the number stated was 374. With additional properties on Calhoun Ave., the number is 381.*

In August 2021, the Planning Commission (Commission) held a public hearing on the proposed Tetra Tech Inc. avalanche and landslide maps; a draft ordinance and regulations were not proposed at that time, as it was not part of the scope of the project and grant funding. At that time, the Commission forwarded the proposed map with a recommendation to the Assembly for direction on next steps for an appropriate community review and adoption process, including funding for steps which are deemed necessary. The Commission further recommended that new landslide and avalanche hazard mapping and study results should be held without adoption, pending development of associated hazard zone policies and regulations. The Commission also asked for preliminary direction from the Assembly.

In the fall and winter of 2021 to 2022, the Assembly reviewed the Commission’s Recommendation, and directed staff to further pursue FEMA grant funding to conduct public outreach, and to work with the contractor to develop additional technical memorandums to address public concerns and consult local avalanche experts.

CDD successfully procured additional FEMA grant funds which resulted in: updates to the avalanche maps; seven technical memorandums to address areas of concern and a user-friendly guide to the hazard designations; and website updates and a mailing to inform the public about the final report and memos. In December of 2022, the Manager presented a preliminary recommendation that was forwarded to the Planning Commission.

On May 23, 2023, the Commission held a public hearing on the proposed maps, and the revised draft ordinance that developed out of the Title 49 Subcommittee and was further reviewed by the



Commission's COW and forwarded to the full Commission for approval (**Attachment A**). At the hearing, the Commission heard concerns from the public, and voiced its own concerns. In the Notice of Recommendation, the Commission recommended the following:

*Do not adopt the director's analysis and findings, and do not adopt the proposed ordinance amending the code related to landslide and avalanche areas, and do not adopt the landslide and avalanche area maps. Consider a method of public notification based on the 2022 avalanche and landslide area maps for affected property owners.*

The Assembly should note that this recommendation is rather different than what was contemplated at the COW December 19, 2022. Staff reports, minutes, and contractor presentations are available on the CDD Special Projects website at [CDD – Project – Landslide and Avalanche Assessment – City and Borough of Juneau](#). Links to the Commission hearings for August 21, 2021, and May 23, 2023, are available on the city website at: <https://juneau-ak.municodemeetings.com>. Meeting packets, including agendas, staff reports, and public comments; and a link to watch the meeting via Zoom are available via Municode. For additional information on the public process see **Attachment B**.

### Discussion

The Assembly has a difficult decision in determining how best to mitigate hazard areas in Juneau. Recognizing the difficulty in balancing the rights of property owners, the housing crisis, insurance challenges, and public health, safety, and welfare, staff has identified five potential options for the Assembly to consider. The Assembly should take time with this decision and strive to understand why the Commission made its recommendation and the abundant subtlety of the issues.

At the LHEDC meeting on July 17, 2023, the committee voted to eliminate Options 1 and 2; and move forward Options 3, 4, and 5 to the full Assembly for consideration with an additional new Option 6 listed below. The six options have been included so that the full Assembly has context of the Options proposed to date.

~~Option 1 maintains the status quo. Current, combined avalanche and landslide maps remain in effect, and the current land use code ordinance and regulations remain in effect. Insurance continues to be a challenge to property owners and interested buyers.~~

~~Option 2 is the adoption of the Planning Commission recommendation, stated above (**Attachment C**).~~

**Option 3** repeals the current hazard maps and ordinance, and adopts the Tetra Tech maps and the CDD staff drafted ordinance that was presented to the Commission and not recommended by the Commission. The Commission and the public have voiced concern about this option.

**Option 4** repeals the current hazard maps and ordinance, and adopts the Tetra Tech maps and studies as public information only (not adopted into the Land Use Code). No other requirements are included. (Note that this is a variant of the Commission's recommendation).

**Option 5** adopts a path developed by staff in response to the concerns raised by the Commission and the public. This option repeals the current maps and current ordinance; and adopts the moderate and severe avalanche areas, and the moderate, severe and high landslide areas developed by Tetra Tech for public information purposes only. Additionally, the CBJ would annually notify the property owners in the moderate and severe avalanche areas and in the moderate, severe, and high landslide areas, and

properties within 500 ft. of these mapped areas for awareness purposes; and requires property owners in the hazard areas to notify renters of the hazards (**Attachment D**). With the addition of a CUP requirement for development greater than a single dwelling unit, this option would be similar to the COW discussion from 12/2022.

**Option 6** repeals the adopted maps and ordinance and does not adopt the Tetra Tech maps and study; and does not conduct any public informational outreach.

**In closing, we strongly encourage interested parties to read [Tetra Tech Technical Memo No. 4](#).**

#### **Attachments**

**Attachment A:** Revised Notice of Decision Planning Commission Dated June 27, 2023

**Attachment B:** Table of Public Process

**Attachment C:** Draft Ordinance April 2023 Avalanche and Landslide Areas and Hazard Maps T49 Subcommittee Version

**Attachment D:** Draft Ordinance June 2023 Avalanche Landslide Areas Staff Version

**ATTACHMENT A**



Planning Commission

(907) 586-0715

PC\_Comments@juneau.org

[www.juneau.org/community-development/planning-commission](http://www.juneau.org/community-development/planning-commission)

155 S. Seward Street • Juneau, AK 99801

**PLANNING COMMISSION  
NOTICE OF RECOMMENDATION  
REVISED**

Date: June 27, 2023

Case No.: AME2021 0008

City and Borough of Juneau  
City and Borough Assembly  
155 South Seward Street  
Juneau, AK 99801

Proposal: Planning Commission Recommendation to the City and Borough Assembly regarding an ordinance amending the land use code related to avalanche and landslide areas, and replacing the avalanche and landslide area maps.

Hearing Date: May 23, 2023

The Planning Commission, at its regular public meeting, amended the analysis and findings listed in the attached memorandum dated May 8, 2023 and recommended the following to the City and Borough Assembly:

Do not adopt the director's analysis and findings, and do not adopt the proposed ordinance amending the code related to landslide and avalanche areas, and do not adopt the landslide and avalanche area maps. Consider a method of public notification based on the 1987 adopted hazard maps for affected property owners.

Attachments: March 8, 2023 memorandum from Teri Camery, Community Development, to the CBJ Planning Commission regarding AME20210008.

This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of CBJ 01.50.020 (b).



City and Borough Assembly  
Case No.: AME20210001  
June 27, 2023  
Page 2 of 2

*mandy cole*  
Mandy Cole, Acting Chair  
Planning Commission

6/27/2023  
Date

*Alsa Lund*  
Filed With City Clerk

6/27/2023  
Date

**cc: Plan Review**

**NOTE:** The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this recommended text amendment. ADA regulations have access requirements above and beyond CBJ - adopted regulations. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.

**ATTACHMENT B**

**Table of Public Process to Date: Hazards Mapping and Ordinance**

<b>July 17, 2023</b>	Assembly Lands, Housing, and Economic Development Committee Final hazard assessment discussion
<b>June 26, 2023</b>	Assembly Lands, Housing, and Economic Development Committee Final hazard assessment discussion
<b>May 23, 2023</b>	Planning Commission regular meeting Public hearing on final hazard assessment
<b>April 20, 2023</b>	Planning Commission Title 49 Committee Final hazard assessment discussion
<b>April 11, 2023</b>	Planning Commission Committee of the Whole Final hazard assessment discussion
<b>March 14, 2023</b>	Planning Commission Committee of the Whole Final hazard assessment discussion
<b>November 7, 2022</b>	Assembly Committee of the Whole Final hazard assessment discussion
<b>February 14, 2022</b>	Assembly Committee of the Whole Draft hazard assessment discussion
<b>September 20, 2021</b>	Assembly Committee of the Whole Draft hazard assessment discussion with Tetra Tech Inc.
<b>August 10, 2021</b>	Regular Planning Commission meeting Public hearing and presentation of draft hazard assessment with Tetra Tech Inc.
<b>July 21, 2021</b>	Community Development Department Public Meeting Presentation of draft hazard assessment with Tetra Tech Inc.
<b>April 12, 2021</b>	Assembly Lands Committee Hazard assessment update
<b>September 16, 2019</b>	Regular Assembly Meeting Hazard assessment update
<b>August 27, 2019</b>	Planning Commission Regular Meeting Hazard assessment update
<b>December 17, 2018</b>	Regular Assembly Meeting Appropriation for \$205,000 hazard assessment grant
<b>December 12, 2018</b>	Planning Commission Regular Meeting Staff update on hazard assessment grant
<b>December 18, 2017</b>	Regular Assembly Meeting Resolution Approved for hazard assessment grant funding
<b>December 4, 2017</b>	Assembly Public Works and Facilities Committee Meeting Resolution Recommendation for FEMA hazard assessment grant funding

ATTACHMENT C

Presented by: The Manager  
Presented: 2023  
Drafted by:

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2023 XX

An Ordinance Amending the code related to avalanche and landslide areas and replacing the avalanche and landslide areas maps

WHEREAS, and...

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

**Section 2. Amendment of Section.** CBJC49.70.300 Avalanche and landslide areas is amended to read:

(a) *Generally.*

- (1) Development in mapped moderate and severe avalanche and severe landslide areas shall minimize the risk of loss of life or property due to landslides and avalanches.
- (2) Boundaries of severe avalanche areas will be as shown on the avalanche area maps dated April 27, 2022, as the same may be amended from time to time by the assembly by ordinance.
- (3) Boundaries of severe landslide areas will be as shown on the landslide area maps dated April 27, 2022, as the same may be amended from time to time by the assembly by ordinance.



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(4) Owners and developers shall provide written notice to potential buyers or renters that the property is located in a moderate or severe avalanche area, or a severe landslide area, or both.

(b) *Moderate and Severe avalanche areas.*

(1) Notwithstanding any other provision, subdivision other than a lot line adjustment, or a lot consolidation, or development greater than a single-family dwelling within severe avalanche areas shall require a conditional use permit. Lots platted as Public Use Lot(s) must comply with 49.15.422.

(2) Notwithstanding any other provision, development greater than a single-family dwelling, within the moderate or severe avalanche areas shall require a conditional use permit with site specific engineering for the following: peak drainage, special foundation or high back wall engineering, and debris flow diversion mechanisms. For the purposes of this section, accessory dwelling units are considered development greater than a single-family dwelling.


(3) If a developer disagrees with the boundaries shown on the severe avalanche map, the developer may seek departmental relocation of the boundaries by submitting a site specific study prepared and stamped by a civil engineer licensed in the State of Alaska. Such studies shall include detailed analyses of topography, vegetation, potential snow accumulation, and other factors. The results should indicate actual hazard area boundaries and potential debris flow direction, time, distance and mass. If, in the

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opinion of the Director of Engineering & Public Works, the studies clearly establish that the map boundaries are inaccurate and the proposed development is outside a moderate or severe avalanche area, the department shall proceed accordingly.

- (4) The commission may require mitigating measures certified as effective by a civil engineer licensed in the State of Alaska for development in moderate or severe avalanche areas. Such measures may include dissipating structures or dams, special structural engineering, or other techniques designed for the site. Mitigating measures may also include reduction in the proposed density, occupancy, or development.

(c) *Severe landslide areas.*

- (1) Notwithstanding any other provision, no subdivision other than a boundary line relocation, a lot line adjustment, or a lot consolidation, shall be approved in a severe landslide area. Applications for all other subdivision types shall not be accepted for filing or shall be rejected by the director.
- (2) Notwithstanding any other provision, no development, which is within a severe landslide area shall increase the density of the lot or increase the occupancy of the building; provided, that a single-family dwelling may be constructed on a vacant lot. Accessory dwelling units are not permissible on lots located in a severe landslide area.
- (3) Notwithstanding any other provision, development including a single-family dwelling within the severe landslide areas shall require a conditional use permit with site specific engineering for the following: peak drainage, special foundation or high back wall engineering, and debris flow diversion mechanisms. 

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(4) The commission may require mitigating measures certified as effective by a civil engineer licensed in the State of Alaska for development in severe landslide areas. Such measures may include dissipating structures or dams, special structural engineering, or other techniques designed for the site. Mitigating measures may also include reduction in the proposed density, occupancy, or development.

(5) If a developer disagrees with the boundaries shown on the severe landslide map, the developer may seek departmental relocation of the boundaries by submitting a site specific study prepared and stamped by a civil engineer licensed in the State of Alaska. Such studies shall include detailed analyses of topography, vegetation, potential snow accumulation, and other factors. The results should indicate actual hazard area boundaries and potential debris flow direction, time, distance and mass. If, in the opinion of the Director of Engineering & Public Works, the studies clearly establish that the map boundaries are inaccurate and the proposed development is outside a severe landslide area, the department shall proceed accordingly.

*(d) Warning and disclaimer of liability.* Avalanches and landslides may occur outside hazard areas in excess of engineering expectations. The location and severity of the event may be increased by manmade or natural causes. This article does not imply that land outside of designated hazard areas, or uses permitted within such areas, will be free from danger or damage. This article shall not create liability on the part of the City and Borough of Juneau or any officer or employee thereof for any damages that result from reliance of this article or any administrative decision lawfully made under this article.



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**Section 4. Amendment of Section.** CBJC 19.04.R301.9 Geophysical hazards is amended to read:

"*301.9 Geophysical hazards.* In Severe geophysical hazard zones as shown in "Downtown Juneau Landslide and Avalanche Hazard Assessment" dated April 27, 2022, and on the "Moderate and Severe Avalanche Maps and Severe Landslide Area Map", ~~both adopted by ordinance serial no. 87-49, adopted~~ 2023 or when the building official determines that development is proposed in an area similar in nature to those studied in the above referenced documents, and is located outside of the study area, an engineered structural analysis shall be submitted with the permit application. The building official may waive this requirement upon presentation of more specific studies prepared and stamped by a civil engineer licensed in the State of Alaska showing the proposed site is not likely to be affected by geophysical hazards."

**Section 5. Amendment of Section.** Hillside Development CBJ 49.70.210(a)(4) is amended to read:

Any hazard area identified on the avalanche and landslide area maps dated ~~September 9, 1987,~~ April 27, 2022 ~~consisting of sheets 1—8,~~ as the same may be amended from time to time by the assembly by ordinance or any other areas determined to be susceptible to geophysical hazards.

**Section 6. Amendment of Section.** Definitions CBJ 49.80.120 is amended to read:

Accessory dwelling unit (ADU) means a subordinate dwelling unit added to, created within, or detached from a single-family residence, which provides basic requirements for living, sleeping, cooking, and sanitation. The unit may have a separate exterior entrance or an

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entrance to an internal common area accessible to the outside. ADUs are not included in the density calculation for a site.

Density means the amount of development per acre permissible on a parcel under the applicable zoning, measured as dwelling units per acre (du/ac).

**Section 7. Effective Date.** This ordinance shall be effective 30 days after its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Beth A. Weldon, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk



**49.70.300 Avalanche and Landslide areas.**

**(a) Warning and disclaimer of liability.** Avalanches and landslides may occur outside mapped hazard areas. The location and severity of the event may be increased by manmade or natural causes. This article does not imply that land outside of mapped hazard areas will be free from danger or damage. This article shall not create liability on the part of the City and Borough of Juneau or any officer or employee thereof for damages that result from reliance on this article or any administrative decision lawfully made under this article.

**(b) Generally.**

- (1) Boundaries of potential landslide areas are shown on maps dated April 27, 2022.
- (2) Boundaries of potential avalanche areas are shown on maps dated April 27, 2022.
- (3) For the purposes of this article, “hazard” refers to avalanche or landslide.

**(c) Public Notice.** The purpose of public notice is to reasonably inform interested parties that resources are available for review.

- (1) A link to hazard maps and reports will be clearly posted on the City and Borough of Juneau’s Community Development Department web site, and remain posted year-round.
- (2) In (insert month) of each year, notice of the maps and their links will be:
  - (A) Mailed to properties within:
    - (i) Moderate and severe mapped avalanche zones,
    - (ii) Moderate, high and severe mapped landslide zones,
    - (iii) Properties within 500 feet of these zones, AND
    - (iv) Post office boxes hosted by the Federal Station post office, located in the Federal Building at 709 West 9<sup>th</sup> Street as of this regulation.

Failure to mail notice to a person as provided in this section does not invalidate an action taken by an agency under this chapter.

- (B) Published in a newspaper of general circulation.
- (C) Distributed to the municipal clerk and each municipal library.

**(d) Recorded documents.** The City and Borough of Juneau will record a notice that a property is in a hazard zone with the Alaska Department of Natural Resources Recorder’s Office. The notice will include:

- (1) The nature of the hazard (avalanche or landslide)
- (2) The designation of the hazard
  - (A) Moderate and severe for avalanche
  - (B) Moderate, high and severe for landslide



(3) A copy of the hazard map, legible in black and white print.

(4) Notice that owners are obligated to notify renters of the hazard, and a form for doing so.

**(e) Owner obligation.** Owners of properties in the hazard zone must:

(1) Notify tenants of the hazard in writing on a form acceptable to the City and Borough of Juneau.



DATE: July 14, 2023  
 TO: Alicia Hughes-Skandijs, Chair LHED Committee  
 FROM: Sherri Layne and Robert Palmer, CBJ Law Department  
 SUBJECT: Ord. 2023-18: Landslide and Avalanche maps and regulations

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On June 26, 2023, the Lands, Housing, and Economic Development (LHED) Committee posed legal questions about potential changes to the avalanche and/or landslide maps and associated Title 49 regulations.

### **City and Borough of Juneau as a Regulator**

In 2020, the City & Borough of Juneau (CBJ) contracted with Tetra Tech to update the landslide and avalanche maps. The CBJ currently regulates development in landslide and avalanche areas in CBJC 49.70.300 based on 1987 landslide and avalanche area maps. The CBJ also regulates hillside developments, which occasionally overlap with the landslide and avalanche regulations. CBJC 49.70.200-270. While the LHED Committee considers the various policy options, the following is a primer on the basic questions of government liability related to regulating landslides and avalanches risks (i.e. Title 49).

#### **(1) CBJ cannot be liable for money damages for failure to protect private property**

**owners/occupants from hazards on private property:** The CBJ—as a regulator—is immune from tort liability for failure to inspect, discover, or abate a hazard to health or safety on private property. A.S. 9.65.070(d)(1). Thus, a private property owner cannot successfully sue the CBJ for money damages for adopting the Tetra Tech maps *or* failing to adopt the maps under a theory that the CBJ knew of potential hazards but failed to discover or abate the hazards on the private property. While the government has an interest to keep residents informed about risks, it does not have a legal duty to do so, nor does it have liability for actually holding public meetings or providing information about those risks.

#### **(2) CBJ cannot be liable for money damages for publishing the Tetra Tech maps for legislative policy discussions.**

Similar to the above provision, the CBJ—as a regulator—is immune from tort liability for performing or the failure to perform a discretionary function. A.S. 9.65.070(d)(2). Thus, a private property owner cannot successfully sue the CBJ for money damages for publishing the Tetra Tech maps for legislative policy discussions.

#### **(3) CBJ cannot be liable for money damages for approving a development permit in a landslide or avalanche area.**

The CBJ—as a regulator—is immune from tort liability for approving a development permit. A.S. 9.65.070(d)(3). Thus, a private property owner cannot successfully sue the CBJ for money damages for approving a building permit, a variance, conditional use permit, or rezoning in a landslide or avalanche area.

**(4) Regulatory “takings.”** The regulatory takings analysis is more complex and usually arises due to an alleged substantial decrease in private property value or a substantial increase in costs to develop. As the CBJ considers whether to adopt the Tetra Tech maps and keep the associated development regulations, CBJC 49.70.300, the CBJ should explain why it is choosing one policy option instead of another (i.e. no action, just adopt the Tetra Tech maps for informational purposes, amend CBJC 49.70.300, or repeal CBJC 49.70.300).

- **100% Deprivation of property value.** If the CBJ has landslide or avalanche regulations (based on hazard areas defined on maps) that deprive the property owner of all economic valuable use of private property, then the CBJ could be liable for taking that private property, but it depends on the facts.
- **Diminished property value.** If the CBJ has landslide or avalanche regulations (based on hazard areas defined on maps) that deprive the property owner of some economic valuable use of the property, a case-specific analysis is necessary based on the following factors:
  - (1) character of the government [CBJ] action;
  - (2) economic impact of CBJ action;
  - (3) the private property owner’s economic expectations; and
  - (4) legitimacy of the CBJ’s interest.

**(5) Tetra Tech limitations.** The Tetra Tech maps include boundary line limitations,<sup>1</sup> and require parcel specific mitigation analysis:

The level of assessment prepared for this project is suitable for determining whether land areas could be affected by [avalanches or landslides]. A more detailed site-specific investigation and evaluation would be required to determine appropriate mitigations for specific properties.

While the maps have some limitations, the limitations do not prevent the CBJ from adopting them for informational purposes or making them a basis for some development regulations.

In summary, Alaska law provides immunity to the CBJ for most regulatory claims. However, to avert a takings claim, the Assembly should consider the limitations of the Tetra Tech maps and explain why it is choosing one policy option over the others.

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<sup>1</sup> Downtown Juneau Landslide and Avalanche Hazard Assessment, Tetra Tech, at 20 (PDF 41) (April 27, 2022) (1.5.2 Landslide Limitations) and at 39 (PDF 59) (2.5.2 Avalanche Limitations).



(907) 586-0757  
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www.juneau.org/CDD  
155 S. Seward Street • Juneau, AK 99801

**MEMO**

**To: Maria Gladziszewski, Chair, Committee of the Whole and Members**

**CC: Rorie Watt, City Manager**

**From: Scott Ciambor, CDD Planning Manager** *Scott Ciambor*

**Re: An Ordinance Amending the Sensitive Areas Requirements of the Land Use Code Related to Landslide and Avalanche Areas – Follow-up Information and Memo Clarification**

This memo includes follow-up information requested at the 8-28-23 COW meeting and language clarification to the memo in that meetings packet.

**Assembly Committee of the Whole 8-28-23 Hazard Assessment additional information requested.**

- 1) Cost estimate of a semi-quantitative borough-wide hazard assessment comparable to the 2022 Tetra Tech report. These numbers are extrapolated from the Tetra Tech costs:
  - Entire borough on a parcel by parcel basis: Several hundred million
  - Developed area of the borough: Approximately 10 Million
  
- 2) Number of properties that are within the avalanche area but not within the landslide area on the 2022 Tetra Tech maps.
  - There are 90 structures within the moderate and severe avalanche areas that are not within high and severe landslide areas in the 2022 Tetra Tech maps. (The 90 structures may include a few out-buildings that aren't houses.)
  
- 3) Hazard regulations in other communities.
  - **Avalanche areas.**
    - The abstract for the article in this link states that four communities in the western United States have detailed avalanche mapping available, each with different development restrictions. The abstract incorrectly states that Juneau does not restrict development in avalanche zones. [Municipal Avalanche Zoning: Contrasting Policies of Four Western United States Communities | Journal of Glaciology | Cambridge Core](#)



- **Geologically hazardous areas including landslides.** Geologically hazardous areas including landslides. Many municipalities have regulations regarding development in “geologically hazardous areas,” along with adopted maps. A few examples include:
    - Kirkland, Washington. The community maintains critical area maps noting “landslide susceptibility” and “liquefaction potential” and requires site-specific geologic hazard studies prior to approval of development. [KZC Chapter 85 – CRITICAL AREAS: GEOLOGICALLY HAZARDOUS AREAS \(codepublishing.com\)](#)
    - Bothell, Washington. The community has adopted landslide hazard area maps and prohibits development in these areas with some exceptions. Geotechnical studies are required. [Ch. 21.64 Critical Areas Regulations | Redmond Zoning Code \(municipal.codes\)](#)
    - Bellevue, Washington. The community defines landslide hazard areas as areas with slopes of 15 percent or more with more than 10 feet of rise in addition to other characteristics. Requires buffers around these zones and establishes performance standards for development. [Part 20.25H Critical Areas Overlay District | Bellevue Land Use Code \(municipal.codes\)](#)
    - Cincinnati, Ohio. The City of Cincinnati has established a Geotechnical Office to provide geotechnical expertise concerning landslide stabilization and prevention within property controlled by the city. Private hillside development is under the control of the Department of City Planning and Buildings through the building code. The Geotechnical Office assists building plan examiners in their review of building permits. [Retaining Walls & Landslides - Transportation & Engineering \(cincinnati-oh.gov\)](#).
    - Pittsburgh, Pennsylvania. The community has a landslide prone layer in adopted maps. [Pittsburgh Zoning Map - Landslide Prone Layer — Details Reviewed LLC](#)
    - Rancho Palos Verdes, California. The city has placed a moratorium on development in three landslide areas. [Landslide Moratorium Areas | Rancho Palos Verdes, CA - Official Website \(rpvca.gov\)](#)
    - City of Lake Oswego, Oregon. The city has landslide inventory and landslide susceptibility mapping and a guide for property owners. [Landslides | City of Lake Oswego](#)
    - Article of interest on California landslides: [Deadly California mudslides show the need for maps and zoning that better reflect landslide risk \(phys.org\)](#)
- 4) Summary of what happened with the Sitka hazard maps and regulations.
- The Sitka landslide that killed three people happened in 2015.
  - At the time of the landslide, Sitka had several different hazard maps from federal and state agencies.
  - In response to the landslide, Sitka enacted a Landslide Area Management ordinance and commissioned geotechnical reports that were used to identify properties at risk. The

ordinance required property owners who wanted to build on a vacant lot or expand on an existing lot located in a medium or high hazard zone to record a “land covenant” that referenced the hazard report.

- The unintended effect was that banks and insurance companies didn’t want to assume additional risk, so the ordinance was repealed.
- Without the code requirement to have a covenant clearing linking the property to the hazard reports, the problem with lenders and insurers seems to be resolved.
- The hazard reports and maps are still available.
- This summary is based on phone conversations and email correspondence with Coral Crenna, Planning Manager for the City and Borough of Sitka.
- Attached is a report from the Rand Corporation (June 2023) about hazard insurance in Sitka.

### **August 28, 2023, Memo Clarification**

The August 28, 2023, Memo included the following language when referring to the Planning Commission Notice of Recommendation:

"Do not adopt the director's analysis and findings, and do not adopt the proposed ordinance amending the code related to landslide and avalanche areas, and do not adopt the landslide and avalanche area maps. Consider a method of public notification based on the 2022 avalanche and landslide area maps for affected property owners."

This is inaccurate. The Planning Commission’s Notice of Recommendation was formally corrected to read: “Consider a method of public notification based on the 1987 adopted hazard maps for affected property owners.”