
After a Natural Disaster: Government Communications and Actions

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“Civilization exists by geological consent,
subject to change without notice.”

-- Will Durant, 1946



































Overview

- Background and perspective
- Thesis: tension between responsive government and risk management
- Legal principles
- Illustration; first do no harm
- Practical advice on actions and communications









IT'S ALL THE
GOVERNMENT'S
FAULT.

Claims and Defenses – Liability is limited

Permitting and enforcement

- Look what you let me do!
- Immunity: no liability for permitting, or for failure to inspect or enforce, Cal. Gov. Code §818.6, 821.4 & 818.2
- Beware: mandatory duty arguments, Cal. Gov. Code §815.6

Discretionary Acts

- Policy should have been different
- Cal. Gov. Code §820.2 & 818.2
- Is this about policy-making?



Before.



After.

Failed infrastructure

- Ordinary negligence rules
- Design immunity, Cal. Gov. Code §830.6

Your dirt on my property

- Examples
- General rule of immunity, Cal. Gov. Code §831.25
- Failure to warn exception
- Different rules for injuries on government property

A broader “failure to warn”?

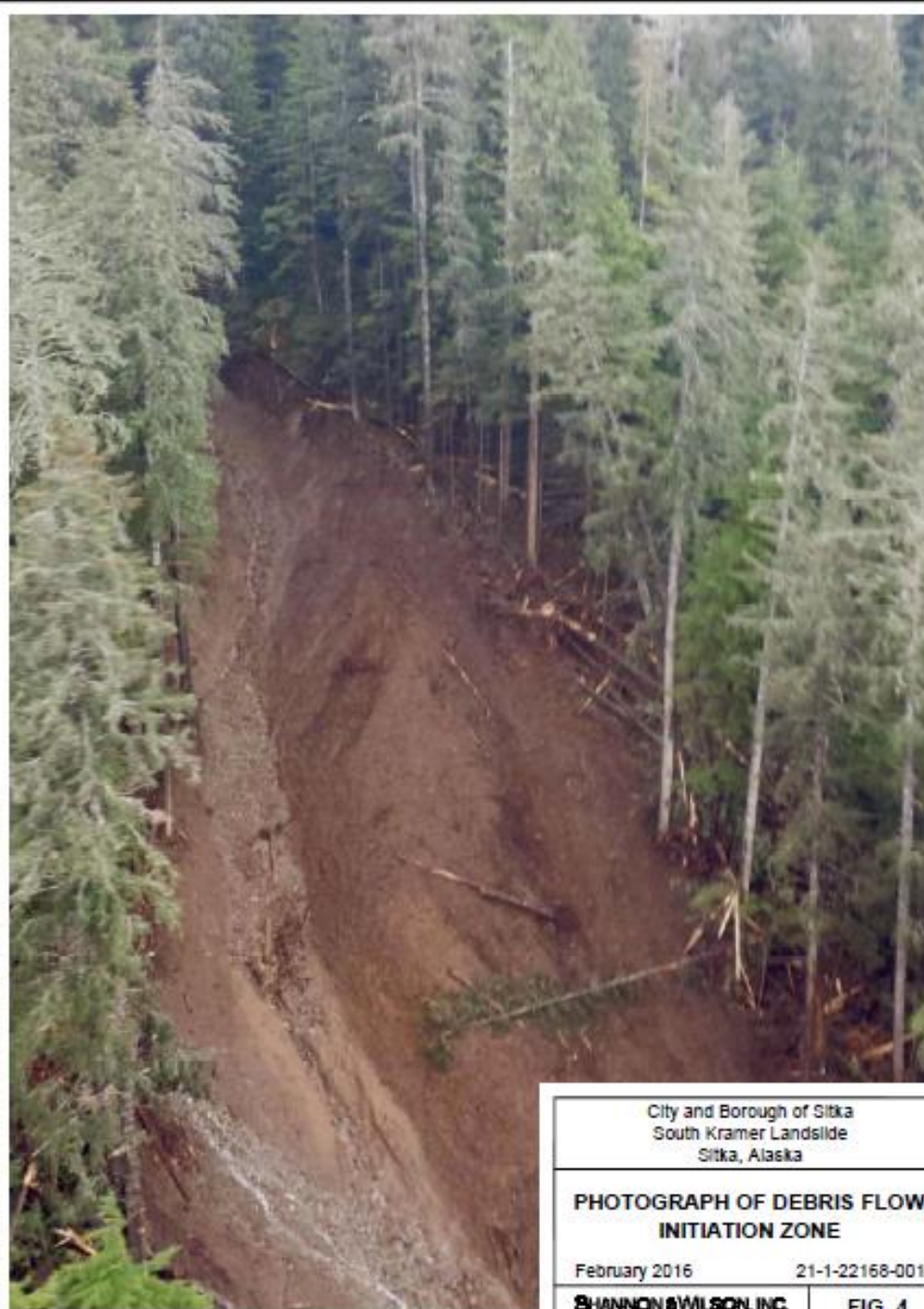
- What if there is no government property involved?
- General rule of immunity
- *Gonzalez* & general tort principles
- Contrast Washington law
- Be careful

Bottom line

- Strong defenses
- So: first do no harm







City and Borough of Sitka
South Kramer Landslide
Sitka, Alaska

**PHOTOGRAPH OF DEBRIS FLOW
INITIATION ZONE**

February 2016

21-1-22168-001

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FIG. 4



City and Borough of Sitka
South Kramer Landslide
Sitka, Alaska

**PHOTOGRAPH OF
DEBRIS FLOW CHUTE**

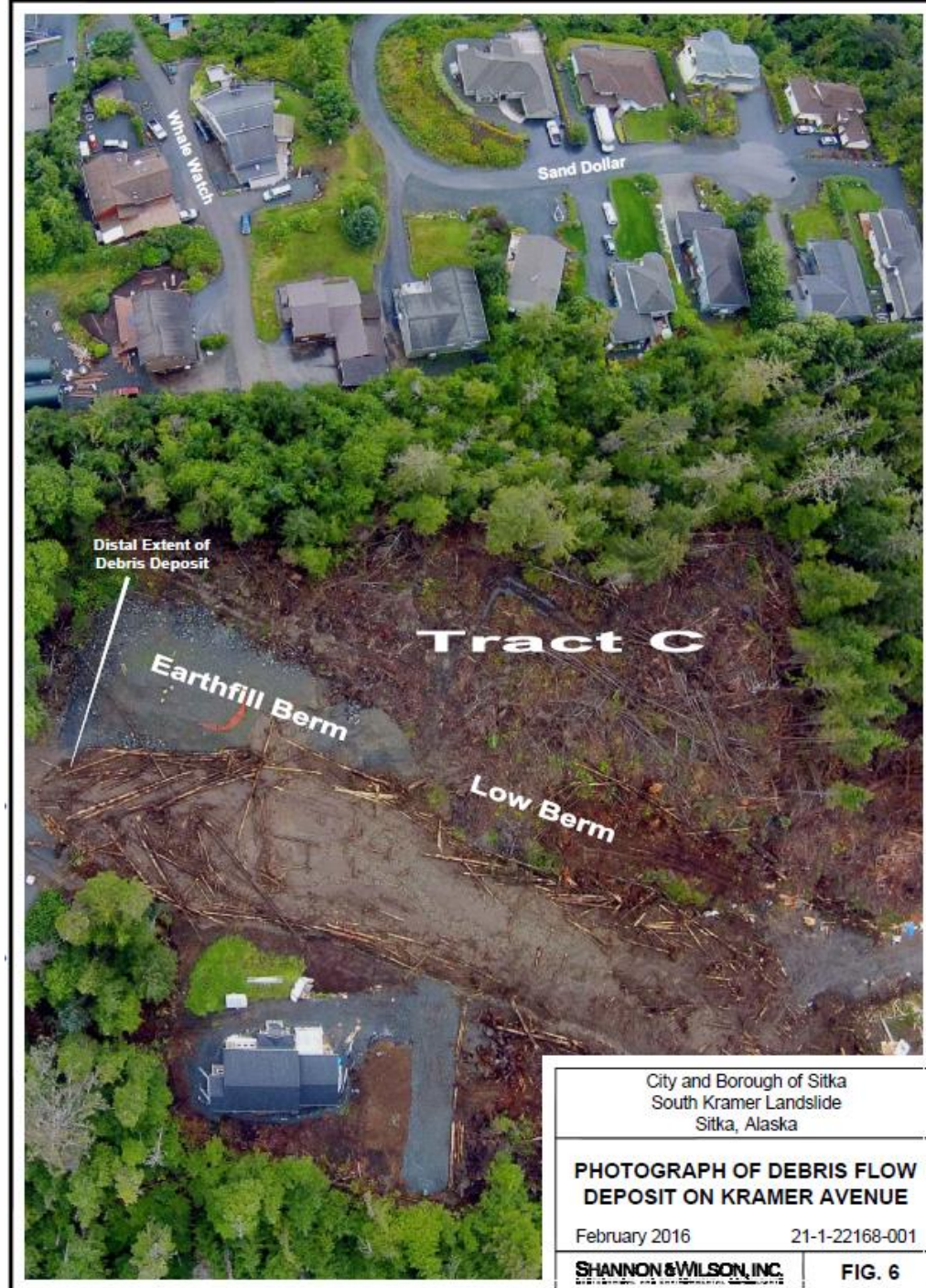
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FIG. 5





City and Borough of Sitka
South Kramer Landslide
Sitka, Alaska

**PHOTOGRAPH OF DEBRIS FLOW
DEPOSIT ON KRAMER AVENUE**

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FIG. 6

Après le delugé

- Rescue and recovery is not the only thing that follows disaster
- Do something! -- Study & regulation
- Say something! -- Meetings and advice
- Fix something! -- Public works
- [Oh, and . . . sue someone]

Parties and their interests

- Those immediately affected
- Adjacent property owners
- Broader community
- Business and development communities
- Elected officials and government staff
- Fourth estate

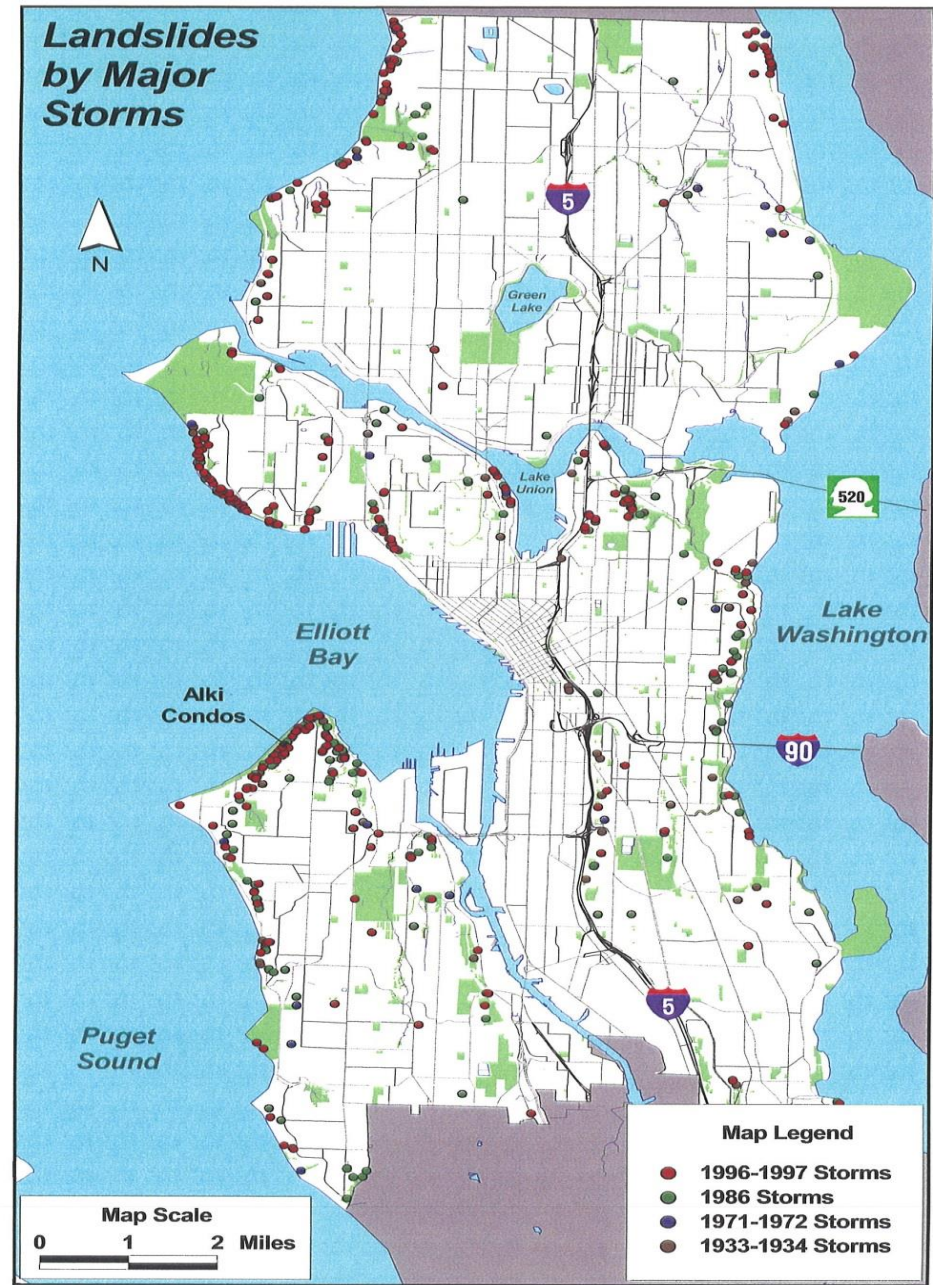
The problem

- Many voices with serious & divergent concerns
- Clamor for the government to “do something”
- The tension between “good government” and best risk management practice

Issues that arise (and risks)

- What do we tell the community – “warning”
- Lifting tags
- Permitting
- Legislation & zoning
- Public works &/or property acquisition
- Risk study & mapping

Landslides by Major Storms



Are you sure you want to do that?

- The scenario: client, for good government reasons, creates a survey of, *e.g.*, landslides
- Weigh “good government” vs. litigation risk
- Involve counsel – including with client staff

Five practical rules

1 - Manage communications – form a team

2 - Publicize risk – with care

- Do not undertake to protect from the foreseeable but unpreventable
- The “sleep at night” rule

3 - The Sheehan rule (for public works)

Five practical rules (cont.)

4 - Careful with your documents

- Don't destroy anything
- Remember the telephone

5 - Respond with all deliberate speed

Presentation Material Available

Slides available as a PDF download at our
blog:

<http://www.sbwllp.com/blog/>