



AMENDING FL. STAT. 161.57: REQUIRING MANDATORY DISCLOSURE OF COASTAL HAZARDS BY REAL PROPERTY SELLERS IN FLORIDA

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I. Introduction ..... 3
II. Amending Florida's Coastal Property Disclosure Law ..... 5
III. Issues Facing Florida's Coastal Property Owners ..... 6
A. Critical Erosion ..... 6
B. Beach Nourishment ..... 8
C. Endangered Species ..... 11
IV. The High Cost of Erosion ..... 14
V. Relevant Property Law in Florida ..... 16
A. Existing Mandatory Disclosure Laws in Florida ..... 16
i. Federal Lead Paint Disclosure ..... 17
ii. Radon Disclosure ..... 17
iii. Application of these Provisions to the Proposed Amendment ..... 18
B. The Common Law Duty to Disclose: The Erosion of Caveat Emptor ..... 19
C. Regulations of Realtors ..... 23

VI.	Relevant Disclosure Laws in Other States.....	23
A.	California .....	24
B.	Oregon .....	25
C.	South Carolina.....	26
D.	The Significance of These Statutes .....	27
VII.	Conclusion .....	28
VIII.	Appendices	
	Appendix I.....	31
	Appendix II.....	32
	Appendix III.....	34
	Appendix IV.....	35
	Appendix V.....	36
	Appendix VI.....	37
	Appendix VII.....	40
	Appendix VIII.....	41
	Appendix IX.....	43
	Appendix X.....	46
	Appendix XI.....	56

## I. Introduction

*“It is now time – indeed it is past time – to renew the public dialogue about how we can lower the risks to life and property and reduce the costs to the Nation from the inevitable consequences of coastal erosion.”*

*James Lee Witt, Former Director of the Federal Emergency Management Agency<sup>1</sup>*

Florida has the longest coastline of the lower 48 states. Its beaches and coastal waters provide Florida’s citizens with recreation, sustenance, and a significant portion of its economy in the form of commercial fishing and tourism. Increasingly, it is also providing a place for both new and lifelong Floridians to call home. Many of the state’s residents currently reside on or near the coast, and the population densities in these areas are expected to increase by 30 percent in the next 20 years.<sup>2</sup> Yet, these residents are not always aware that they are establishing their homesteads in a dynamic, often hazardous and environmentally sensitive zone.

In the past few decades, hurricanes have battered the Florida shores with regularity.<sup>3</sup> Studies predict that with the warming trend in the Atlantic, Floridians can expect an increased rate of major storms that make landfall in the state.<sup>4</sup> Coastal homes are at risk anytime a storm makes landfall. This risk is increased tenfold if the shoreline in front of their home has eroded away.

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<sup>1</sup> The H. John Heinz III Center for Science, Economics and the Environment, Evaluation of Erosion Hazards Foreword (2000) at [http://www.heinzctr.org/NEW\\_WEB/PDF/erosnrpt.pdf](http://www.heinzctr.org/NEW_WEB/PDF/erosnrpt.pdf).

<sup>2</sup> Florida Department of Environmental Protection, 1994 Florida Sediment Quality Assessment Guidelines 8 (1994) at [http://www.dep.state.fl.us/waste/quick\\_topics/publications/documents/sediment/volume1/chapter2.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/documents/sediment/volume1/chapter2.pdf).

<sup>3</sup> Chris Hebert, Impact Weather, The 2004 Hurricane Season: Another Active Season is Forecast 2 (2003) at <http://www.impactweather.com/Hurricane2004.pdf>.

<sup>4</sup> William M. Gray and Phillip J. Klotzbach, Extended Range Forecast Of Atlantic Seasonal Hurricane Activity and US Landfall Strike Probability For 2004, Department of Atmospheric Science, Colorado State University (2004) at <http://hurricane.atmos.colostate.edu/forecasts/2003/dec2003/>.

The biological diversity of this zone is complex. Threatened and endangered marine turtles nest on the coast and hatch from its sands.<sup>5</sup> Threatened and endangered flowers and plants grow in the coastal dune systems.<sup>6</sup> Endangered beach mice live amongst these plants and flowers.<sup>7</sup> Yet, potential purchasers of coastal property are not often aware that environmental regulations protecting these species may prevent them from using their property in the manner they intend.

Yet, the coastal issue most coastal property owners will inevitably face is coastal erosion, and it is very important that they are made very aware about the potential costs involved with this process. Erosion constantly eats away at a large majority of Florida's coast. It causes shorelines to disappear and puts homes and other structures at risk. Severe erosion also has the potential to endanger property and lives. However, potential purchasers of coastal property are typically not apprised of all of these issues that could affect their investments and wellbeing. Coastal property disclosure laws could remedy this.

This report discusses current disclosure laws in Florida and their relationship to the issues that coastal property owners face. We review disclosure laws in other states, including California, South Carolina, and Oregon, and the lessons they offer Florida coastal property owners. We review the common law, and conclude that a residential property seller's duty to disclose already exists in Florida. We offer revised statutory language that codifies the common law duty, removes uncertainty, and increases good faith and transparency in the coastal property transaction process.

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<sup>5</sup> Florida Fish and Wildlife Conservation Commission, Florida's Endangered Species, Threatened Species and Species of Special Concern (1997) at <http://myfwc.com/pubs/endanger.pdf>.

<sup>6</sup> Florida Department of Agriculture and Consumer Services, Division of Plant Industry, Rule Chapter 5B-40.0055, Regulated Plant Index at <http://www.doacs.state.fl.us/pi/5b-40.htm>.

## II. Amending Florida's Coastal Property Disclosure Law

The current version of Florida's coastal properties disclosure statement, section 161.57 (see Appendix I), Florida Statutes provides that the "Legislature finds that it is necessary to ensure that the purchasers of interests in real property located in areas partially or totally seaward of the coastal construction control line...are fully apprised of the character" of the land they are buying.<sup>8</sup> This requirement does not explain how buyers would be expected to gain this knowledge, nor does it characterize the information the buyer should be provided during a real estate transaction. It also gives buyers the option of waiving specific disclosure. In essence, the law does not provide accurate guidance to those who are involved in these transactions.

This report recommends that section 161.57 be amended to clearly state exactly what the seller would be required to disclose to potential purchasers in a real estate transaction (see Appendix II). Also, this proposed amendment would require that this information be disclosed early enough in the process that a buyer would be able to make an educated decision on whether or not to offer a bid on property.

This proposed amendment is designed to point out to potential purchasers the impact of erosion hazards on coastal properties. Thus, it removes the current option of allowing purchasers to waive the disclosure of these issues. Where section 161.57 currently only requires that sellers disclose the location of the coastal construction control line (CCCL) if the property is located partially or totally seaward of the CCCL<sup>9</sup>, this proposed amendment would go further. Specifically, the proposed amendment would require that the seller of property located partially or totally seaward of a

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<sup>7</sup> Florida Fish and Wildlife Conservation Commission *supra* note 5 at <http://myfwc.com/pubs/endanger.pdf>.

<sup>8</sup> Fla. Stat. Ann. § 161.57 (2003).

<sup>9</sup> § 161.57.

CCCL inform the potential purchaser if the land is critically eroding. Furthermore, it would provide for a general disclosure that there are environmental regulations unique to the coastal zone that may impact their use of the property. Lastly, it would stress that neither the state nor the federal government guarantees beach nourishment or other forms of rigid coastal armoring for the property, and that the presence of active marine turtle nesting, their hatchlings and nesting sites, and other environmental concerns may impact the permitting process for rigid coastal armoring and beach nourishment. It is important to note that all of the information required by this proposed amendment is easily attainable in the public record, and potential buyers who are made aware of these issues early in the coastal property transaction process can make more informed decisions about whether to go forward with the purchase.

### III. Issues Facing Florida's Coastal Property Owners

Coastal property in Florida faces a number of unique issues such as continuous coastal erosion, the presence of endangered species on property, and environmental regulations exclusive to the coastal zone that dictate what may or may not be done with the property. A closer inspection of some of these issues illustrates the need for increased education of potential purchasers of coastal property.

#### A. Critical Erosion

There are 825 miles of soft coastline in Florida.<sup>10</sup> More than half of the coast has experienced erosion.<sup>11</sup> Approximately 328 miles of this eroding shoreline is currently designated as critically

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<sup>10</sup> Florida Department of Environmental Protection, The Florida Beach Erosion Program (2003) at <http://www.dep.state.fl.us/beaches/programs/bcherosn.htm>.

eroded.<sup>12</sup> The Florida Department of Environmental Protection (department), Bureau of Beaches and Coastal Systems (BBCS) has adopted the following definition for critical erosion:

Critical erosion area is a segment of the shoreline where natural processes or human activity have caused or contributed to erosion and recession of the beach or dune system to such a degree that upland development, recreational interests, wildlife habitat, or important cultural resources are threatened or lost.<sup>13</sup>

To determine if property is critically eroding, a seller can visit the classification of beach areas on the department's website.<sup>14</sup> These classifications are mapped out according to range monuments, or "R-monuments" (see Appendix III for an example from Duval County). These monuments are BBCS reference points that are spaced approximately 1,000 feet apart along Florida's shores.<sup>15</sup> To get quick information on the relation of a particular parcel to specific R-monuments, a seller need only consult the individual county maps under the *Beaches* section of the department's website.<sup>16</sup> Alternately, a seller can contact their local department office and inquire about the nearest R-monuments to their property. In addition, precise and reliable information on the property's R-monuments can always be obtained from the record plat filed in the office of the circuit

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<sup>11</sup> Florida Department of Environmental Protection, State of Florida Strategic Beach Management Plan 1 (2000) at <http://www.dep.state.fl.us/beaches/publications/pdf/int-sbmp.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> Florida Department of Environmental Protection, Critical Erosion Areas (Report Only) 3 (1999) at <http://www.dep.state.fl.us/beaches/publications/pdf/eros-rpt.pdf>.

<sup>14</sup> Florida Department of Environmental Protection, Critical Erosion Areas (Maps Only) (1999) at <http://www.dep.state.fl.us/beaches/publications/pdf/ero-area.pdf>.

<sup>15</sup> Florida Department of Environmental Protection, Bureau of Beaches and Coastal Systems, Monitoring Standards for Beach Erosion Control Projects 7 (2004) at <http://www.dep.state.fl.us/beaches/publications/pdf/standard.pdf>.

<sup>16</sup> Florida Department of Environmental Protection, Beaches & Coastal Publications, Technical Reports (2003) at <http://www.dep.state.fl.us/beaches/publications/cntymaps.htm#county-maps>.

court of the county. Thus, property sellers can easily obtain information from various sources concerning whether their specific property is critically eroding.

With so much of Florida's coast affected by critical erosion, it is not uncommon for buyers along the coast to be significantly impacted by critical erosion. Critical erosion can potentially impact the value of property, threaten the stability of homes, cause great anxiety in property owners, and increase the pressure on all levels of government to implement costly preventative measures and short term solutions. Mandatory disclosure of the presence of critical erosion will ensure that potential purchasers will enter the decision making process on equal footing with the seller. It will "lower the risks to life and property" for these purchasers.<sup>17</sup> Furthermore, it may reduce the pressure on government to bear the burden and the cost of stabilizing the shoreline.

#### B. Beach Nourishment

Beach nourishment projects are fast becoming a common event for Florida's coastal homeowners. These projects are an attempt by the state to return sand to areas that have experienced high degrees of erosion. The hope is that this will stave off erosion problems for homes, restore nesting habitat for turtles, create habitat for shorebirds, and create better beaches that will attract more visitors. Yet, environmental regulations unique to the coastal zone may affect whether the shoreline abutting one's property will be nourished. However, the future security of the shoreline may form the basis of some coastal real estate transactions. Thus, it is imperative for a purchaser of coastal property to enter into the transaction with the knowledge that continued nourishment of the shoreline is not a certainty.

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<sup>17</sup> The H. John Heinz III Center, *supra* note 1, at Foreword.

Although nourishment projects do provide a temporary solution to erosion hazards, it is important to note that they present their own set of unique problems and challenges. These projects must be repeated over time to keep up with persistent erosion.<sup>18</sup> Studies show that the projects need to be repeated as often as every four years and sometimes cost over a million dollars per mile of coast.<sup>19</sup> The source for sand tends to be from offshore, typically as near to the site as possible.<sup>20</sup> This sand removal is often accomplished by dredging the ocean floor, which may damage offshore coral reefs.<sup>21</sup> Additionally, the turbidity and siltation that often occurs in conjunction with a nourishment project may also damage sensitive corals.<sup>22</sup>

Nourishment projects can also cause distinct physical and biological changes in the onshore environment. Sea Turtles are particularly susceptible to these changes. Steep escarpments that are often formed on newly nourished beaches can prevent female turtles from reaching preferred nesting sites.<sup>23</sup> This may lead to the eggs being laid closer to the water where they are more susceptible to being swept away by the tide.<sup>24</sup> Additionally, increased sand compaction as a result of nourishment

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<sup>18</sup> U.S. Department of the Interior, U.S. Geological Survey, Limited Sand Resources for Eroding Beaches (1997) at <http://coastal.er.usgs.gov/wfla/factsheet/factsheet.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> Florida Department of Environmental Protection, The Florida Beach Erosion Program (2003) at <http://www.dep.state.fl.us/beaches/programs/bcherosn.htm>.

<sup>21</sup> Florida Department of Environmental Protection, Bureau of Beaches and Coastal Systems, Biological Assessment of the Impacts of the Proposed Indian River County Sector 7 Beach Restoration Project On Coastal Environments (2003) at [http://bcs.dep.state.fl.us/env-prmt/indian\\_r/jcp/pending/0215960\\_Indian\\_River\\_County\\_Sector\\_7/Application/IRC%20S7%20JCP%20Application%20Supporting%20Documents/Biological%20Assessment/Biological%20Assessment%20IRC%20Sector%207.pdf](http://bcs.dep.state.fl.us/env-prmt/indian_r/jcp/pending/0215960_Indian_River_County_Sector_7/Application/IRC%20S7%20JCP%20Application%20Supporting%20Documents/Biological%20Assessment/Biological%20Assessment%20IRC%20Sector%207.pdf).

<sup>22</sup> Atlantic States Marine Fisheries Commission, Beach Nourishment: A Review of the Biological and Physical Impacts (2002) at <http://www.asmfrc.org/publications/habitat/beachNourishment.pdf>.

<sup>23</sup> D. Andrew Crain et al., *Effects of Beach Nourishment on Sea Turtles: Review and Research Initiatives*, 3(2) Restoration Ecology 95, 97-99 (1995).

<sup>24</sup> Atlantic States Marine Fisheries Commission *supra* note 22, at 30.

may decrease nesting success.<sup>25</sup> This compaction can cause nesting females to become discouraged and completely abandon a nesting attempt.<sup>26</sup> Furthermore, nourishment can alter the thermal condition of a beach if sands that are darker or lighter than natural are used.<sup>27</sup> The temperature of the nest determines sea turtle sex, and abnormal sex ratios can occur if the thermal conditions of a nourished beach differ from the natural.<sup>28</sup>

The cost of beach nourishment is another concern. Currently, state funds are set aside for nourishment projects, but budget limitations will affect the type and size of projects and whether particular beaches will be nourished at all.<sup>29</sup> The Florida legislature appropriates \$30,000,000 annually for beach erosion control projects.<sup>30</sup> Typically, nourishment projects make up a large portion of those costs.<sup>31</sup> However, studies have found that nourishment may not provide a cost-effective long-term solution to erosion because of dwindling offshore sand resources and the need to repeat these projects.<sup>32</sup>

The proposed amendment seeks to make prospective buyers aware of the fiscal and regulatory uncertainty surrounding shoreline stabilization that could frustrate potential nourishment projects. Informed purchasers will make sounder investments in coastal property, especially in areas

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<sup>25</sup> *Id.* at 97.

<sup>26</sup> Atlantic States Marine Fisheries Commission *supra* note 22, at 30.

<sup>27</sup> Crain *supra* note 23, at 98.

<sup>28</sup> *Id.*

<sup>29</sup> Florida Department of Environmental Protection, Florida Beach Erosion Control Program Fixed Capital Outlay Legislative Budget Request For FY 2003-04 (2002) at <http://www.dep.state.fl.us/beaches/programs/pdf/fco03-04.pdf>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

of high erosion. Furthermore, greater openness in coastal property transactions may also reduce the need for beach nourishment projects, reducing the pressure on government to rescue property owners from eroding beaches. Thus, this proposed amendment may lead to direct benefits to the state in the form of reduced expenditures.

### C. Endangered Species

Florida's coastal residents live in a dynamic and delicate nexus between the natural and man-made worlds. However, with the benefits of living in such a unique environment come regulations designed to protect the natural area. This is especially true when endangered species, such as sea turtles, are present on an owner's property or the neighboring coastal land.

The state of Florida has the highest number of sea turtle nests in the United States. Brevard County alone documents nearly 30,000 nests each year.<sup>33</sup> Environmental regulations to protect nests may limit a buyer's ability to obtain permits for rigid coastal armoring<sup>34</sup> or beach nourishment in areas where nesting occurs.<sup>35</sup> When coastal property owners do build rigid coastal armoring, the rigid coastal armoring can interfere with a turtle's ability to climb high enough on the beach dunes to lay their eggs out of the tide's reach.<sup>36</sup> Because of this armoring, turtles are forced to crawl along walls

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<sup>33</sup> Florida Fish and Wildlife Conservation, Florida Marine Research Institute, 2002 Statewide Nesting Totals (2003) at [http://floridamarine.org/features/view\\_article.asp?id=11812](http://floridamarine.org/features/view_article.asp?id=11812).

<sup>34</sup> "Armoring" is defined in FDEP Rule 62B-33.002(5) as "a manmade structure designed to either prevent erosion of the upland property or protect eligible structures from the effects of coastal wave and current action. Armoring includes certain rigid coastal structures such as geotextile bags or tubes, seawalls, revetments, bulkheads, retaining walls, or similar structures but does not include jetties, groins, or other construction whose purpose is to add sand to the beach and dune system, alter the natural coastal currents, or stabilize the mouths of inlets.

<sup>35</sup> Fla. Stat. Ann. § 161.085(3) (2003).

<sup>36</sup> Andrea E. Mosier and Blair E. Witherington, *Documented Effects of Coastal Armoring Structures on Sea Turtle Nesting Behavior*, Proceedings of the 20th Annual Symposium on Sea Turtle Biology and Conservation. U.S. Department of Commerce, NOAA Technical Memorandum NMFS-SEFSC-477 (2002).

until they can find a break in the barrier.<sup>37</sup> If no break is available, the turtles are forced to lay their eggs too close to the water or may not lay the eggs at all.<sup>38</sup> Eggs which are laid too low on the shore will be uncovered and washed away (see Appendix III).<sup>39</sup>

The Endangered Species Act (ESA) raises concerns for both coastal property owners and governmental entities when rigid coastal armoring and beach restoration and nourishment projects are undertaken. If sea turtles or other endangered species are harmed or killed by shore protection projects, the ESA may be used to enjoin such projects. Section 9 of the ESA prohibits any person from “taking” any endangered species within the United States.<sup>40</sup> Section 9 also prohibits any person from violating any regulation that pertains to endangered or threatened species.<sup>41</sup> The term “take” is defined in the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”<sup>42</sup> The ESA authorizes “any person” to commence a civil suit to enjoin “any person, including the United States and any other governmental instrumentality or agency” who is “alleged to be in violation of any provision of this Act or regulation issued under the authority thereof.”<sup>43</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> 16 USCS §1538(a)(1)(B) (2004).

<sup>41</sup> 16 USCS §1538(a)(1)(G) (2004).

<sup>42</sup> 16 USCS §1532(19) (2004).

<sup>43</sup> 16 USCS §1540(g)(1)(A) (2004).

Governmental bodies have been found liable in cases arising under section 9 for issuing permits to a private party when the permitted activity caused a take of an endangered species.<sup>44</sup> *In Loggerhead Turtle v. Volusia County*, the court found that the county's practice of allowing vehicles to drive on beaches was causing a take of the endangered loggerhead turtle. The court partially enjoined the county from allowing driving on its beaches during nighttime hours.<sup>45</sup> Thus, applying this third party governmental principle, state and local governments could be held liable for issuing permits for rigid coastal armoring and beach restoration and nourishment projects when they cause the take of an endangered species.

A potential coastal property owner would benefit from understanding the impact and responsibility that comes from owning land inhabited by endangered species. Thus, the proposed amendment would require that sellers disclose the possible presence of sea turtles on the property. This increased transparency in the coastal real estate process will lead to more informed decisions and sounder investments by purchasers of coastal property. Furthermore, it may reduce the pressure on government agencies to succumb to the demands of owners who understood in advance the risk and potential consequences of their purchase. Lastly, increased awareness of the endangered species present in the coastal zone may lead to more effective protection of these species.

#### IV. The High Cost of Erosion

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<sup>44</sup> Pamela Jo Hatley, University of Florida Conservation Clinic, *Feral Cat Colonies In Florida: The Fur And The Feathers Are Flying*, A Report To The U.S. Fish & Wildlife Service 21-22 (2003).

<sup>45</sup> *Id.* at 22; *Loggerhead Turtle v. Volusia County*, 896 F. Supp. 1170, 1180 (M.D. Fla. 1995).

This report concludes that the presence of eroding and critically eroding shorelines on a piece of property has a material effect on the value of the property itself. As for property damage directly from erosion, recent studies have found that over the next 60 years, 25 percent of existing homes located within 500 feet of the coast will fall victim to erosion.<sup>46</sup> Within this time period, the financial losses of property owners caused by erosion are expected to reach half a billion dollars annually nationwide.<sup>47</sup> If all of the currently susceptible properties become developed within that time, that figure rises to \$630 million annually.<sup>48</sup>

In addition to direct costs imposed on property owners through physical damage to coastal property, erosion also causes the reduction of property values. Research has indicated that homes located near unstable and rapidly eroding shorelines are worth less today than identical homes that are located near stable shorelines.<sup>49</sup> This reduction in property value is by greater than 15 percent for coastal Atlantic properties near shorelines likely to erode within 20 years.<sup>50</sup> For the estimated 53,000 structures within the 60-year erosion hazard area on the Atlantic Coast, the property values are expected to depress by approximately \$1.7 to \$2.7 billion due to erosion.<sup>51</sup>

Significant costs are also paid for by local, state, and federal governments to slow or prevent the hazards property owners face from erosion. Between 1967 and 1997, over \$197 million has been

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<sup>46</sup> The H. John Heinz III Center, Evaluation Of Erosion Hazards Summary 1 (2000) at [http://www.heinzctr.org/NEW WEB/PDF/erosnsum.pdf#zoom=100](http://www.heinzctr.org/NEW_WEB/PDF/erosnsum.pdf#zoom=100).

<sup>47</sup> *Id.* at 7.

<sup>48</sup> *Id.* at 3.

<sup>49</sup> *Id.* at 9.

<sup>50</sup> *Id.* at 8.

<sup>51</sup> *Id.* at 10.

spent by the state under the Florida Beach Erosion Control Program.<sup>52</sup> A large part of these funds go to beach nourishment and restoration. Yet, studies have recently determined that increased erosion rate mapping and dissemination of this information is a more cost-effective tool to prevent widespread property damage and loss than nourishment and restoration projects.<sup>53</sup> These studies show that on average, nourishment projects cost \$300,000 per year per mile of coast.<sup>54</sup> Yet, erosion damage exceeds nourishment costs per mile per year only in rare instances.<sup>55</sup> Thus, these studies conclude that the projects only pass a benefit-cost test in limited, high-density areas where the damage costs would be the greatest.<sup>56</sup>

The proposed amendment will put potential coastal property purchasers on notice when the property they seek to buy is critically eroding. Furthermore, it will also put these purchasers on notice that rigid coastal armoring and nourishment projects are not a certainty. Thus, the proposed amendment may alleviate pressure on government in having to rescue property owners when they were aware of the circumstances of their purchase. Therefore, the proposed amendment may translate into state and local governments saving substantial funds.

## V. Relevant Property Law in Florida

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<sup>52</sup> Florida Department of Environmental Protection, The Florida Beach Erosion Control Program (2004) at <http://www.dep.state.fl.us/beaches/programs/bcherosn.htm>.

<sup>53</sup> The H. John Heinz III Center, *supra* note 46, at 16.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

#### A. Existing Mandatory Disclosure Laws in Florida

In Florida, a comprehensive structure of mandatory seller disclosures does not exist as it does in many other states. However, as will be explained below, Florida case law has developed to require certain types of material facts to be disclosed by a seller in a real estate transaction. In addition, two instances of statutorily mandated seller disclosure exist in Florida. The first, a lead paint disclosure<sup>57</sup>, was created by a federal congressional act (see Appendix VI). The second, a radon disclosure<sup>58</sup>, is required by state statute (see Appendix VII). These disclosures are provided daily to buyers and lessees of Florida property and are accomplished with relative ease. The same would be true of the proposed amendment's requirement of a mandatory coastal hazard disclosure.

Unlike the coastal disclosure statement in section 161.57, a purchaser cannot waive these mandatory disclosures. In addition, they provide vital information about the safety of the property being transferred and mandate that the seller disclose knowledge of the presence of any known dangers related to the disclosed defects. As currently written, section 161.57 requires only that the seller provide to the buyer the location of the coastal construction control line if property located seaward of that line is being transferred.<sup>59</sup> Thus, neither the possible or actual presence of danger in the form of critical erosion is required to be disclosed. Thus, it is useful to look at the following examples, and the important information they require to be disclosed, in order to illustrate the utility of the proposed amendment in the coastal property context.

##### i. Federal Lead Paint Disclosure

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<sup>57</sup> Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851-4856 (1992).

<sup>58</sup> Fla. Stat. Ann. § 404.056(2)(k)(5) (2003).

<sup>59</sup> Fla. Stat. Ann. § 161.57 (2003).

Under the Residential Lead-Based Paint Hazard Reduction Act of 1992, sellers and lessors of real estate in the United States must provide purchasers and lessees with information about lead-based paint “before the purchaser or lessee is obligated under any contract to purchase or lease the housing.”<sup>60</sup> Included in this information is a lead hazard information pamphlet that is distributed to every purchaser or lessee.<sup>61</sup> In addition, disclosure must be made to the purchaser or lessee if the seller or lessor knows of the presence of any lead-based paint or lead-based paint hazard in the home in question.<sup>62</sup> Finally, sellers and lessors must provide to all purchasers and lessees a lead-based paint warning in every contract for the purchase and sale of any interest in target housing.<sup>63</sup> Included in the warning is information on the hazards of lead-based paint, especially for young children and pregnant women.<sup>64</sup> Every purchaser and lessee must sign the warning, stating that they have received the warning statement and read the information pamphlet.<sup>65</sup> This disclosure occurs every day in Florida real estate transactions.

ii. Radon Disclosure

An example of a naturally occurring hazard in Florida is radon gas. Section 404.056, Florida Statutes, requires that a radon notification statement be provided to a buyer or lessee “at the time of, or prior to, contract for sale and purchase of any building or execution of a rental agreement for

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<sup>60</sup> Residential Lead-Based Paint Hazard Reduction Act of 1992 § 4852d(a)(1), 42 U.S.C. §§ 4851-4856 (1992).

<sup>61</sup> § 4852d(a)(1)(A).

<sup>62</sup> § 4852d(a)(1)(B).

<sup>63</sup> § 4852d(a)(2).

<sup>64</sup> § 4852d(a)(3).

<sup>65</sup> § 4852d(a)(2)(A)-(C).

any building.”<sup>66</sup> The statute requires that the statement be included on at least one document, form or application in the purchase or rental process to ensure that the buyer or lessee becomes apprised of the information contained in the statement prior to the culmination of the transaction.<sup>67</sup> The statement includes warnings that radon gas is naturally occurring, may present health risks if a person is exposed to it over time, and has been found in buildings in Florida at levels that exceed federal and state guidelines.<sup>68</sup> This disclosure occurs every day in Florida real estate transactions.

iii. Application of the Provisions to the Proposed Amendment

As these two examples illustrate, there already exists a precedent in Florida for mandatory disclosures of material information to buyers and lessees of real property. Amending section 161.57 to require mandatory disclosure of the hazards that face coastal properties would create little additional burden on the seller of real property who already must provide two disclosures. As has been stated, the information required to be disclosed is easily obtainable and most likely already possessed by many sellers of coastal property. Furthermore, the disclosure will not require much additional paperwork or an increased burden upon real estate agents. The coastal property disclosure itself can be easily included with the lead paint and radon disclosures.

B. The Common Law Duty to Disclose: The Erosion of *Caveat Emptor*

In Florida, the common law doctrine of *caveat emptor*, or “buyer beware,” has been steadily eroding over the past two decades, especially in the residential context. Florida courts have been

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<sup>66</sup> Fla. Stat. Ann. § 404.056(2)(k)(5) (2003).

<sup>67</sup> § 404.056(2)(k)(5).

<sup>68</sup> § 404.056(2)(k)(5).

increasingly willing to come to the buyer's aid when purchases of real property have been challenged due to the seller's failure to disclose facts "materially affecting the value of the property."<sup>69</sup> Property's presence on coastline subject to critical erosion is just such a material fact.

In the watershed case of *Johnson v. Davis*, the Supreme Court of Florida stated, "One should not be able to stand behind the impervious shield of *caveat emptor* and take advantage of another's ignorance."<sup>70</sup> Furthermore, the Court noted that the law seemed to be working towards the disclosure of all material facts where fair conduct demanded it.<sup>71</sup> As such, the Court held that "where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to a buyer."<sup>72</sup> The Court provided a list of the types of facts that a seller has the duty to disclose, including termite infestation, soil defects, flooding of the property, and leaking roofs.<sup>73</sup> The court in *Revitz v. Terrell*, which dealt with the nondisclosure of the fact that a home was in a flood zone, held that the list provided in *Johnson v. Davis* is not exclusive. The court held that a home's presence in a designated flood zone is also a material fact subject to disclosure.<sup>74</sup> No cases have addressed the applicability of *Johnson v. Davis* to coastal property subject to erosion. However, the analogy to a flood zone is a close one. It seems likely that a court would hold that a home's location on an eroding shoreline would fall within the ambit of *Johnson v. Davis*.

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<sup>69</sup> *Johnson v. Davis*, 480 So. 2d. 625, 629 (Fla. 1985).

<sup>70</sup> *Id.* at 628.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 629.

<sup>73</sup> *Id.*

<sup>74</sup> *Revitz v. Terrell*, 572 So. 2d. 996, 998 (Fla. 3d Dist. Ct. App. 1990).

The court in *Billian v. Mobil Corp.* addressed the question of when a seller can be held to have actually “known” about an undisclosed fact materially affecting the value of the property, the type of knowledge required for a *Johnson v. Davis* action.<sup>75</sup> The court stated that unlike a fraudulent misrepresentation cause of action, a *Johnson v. Davis* non-disclosure case “does not focus on the seller’s state of mind motivating the non-disclosure.”<sup>76</sup> Rather, the court held that “*Johnson* casts the cause of action in terms of a ‘duty,’ a concept drawn from the law of negligence.”<sup>77</sup> If the facts of a case give rise to a duty to disclose under *Johnson*, the seller’s state of mind motivating the failure is immaterial; the forgetful or unsophisticated seller is just as liable as the knowing dissembler.”<sup>78</sup> Thus, in Florida there exists a common law duty for a seller of residential property to disclose known facts materially affecting the value of the property. This duty falls on the seller of coastal residential property just as much as it falls on any other seller. As such, when property is affected by critical erosion, this duty would likely require the seller of such property to disclose that material fact.

The court in *Billian v. Mobil Corp.* also discussed how the “materiality” of a fact is to be determined. The court stated that such a determination is to be undertaken objectively on a case-by-case basis.<sup>79</sup> Specifically, the focus should be “on the relationship between the undisclosed fact and the value of the property,” and how the undisclosed fact affects that value.<sup>80</sup> The court in *Revitz v. Terrell* illustrated this relationship. The court there held that even the nondisclosure of the fact that

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<sup>75</sup> *Billian v. Mobil Corporation*, 710 So. 2d 984 (Fla. 4th Dist. Ct. App. 1998).

<sup>76</sup> *Id.* at 988.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 987.

<sup>80</sup> *Id.*

property is encumbered with flood insurance requirements materially affects the value of the property as compared to property unencumbered with such requirements.<sup>81</sup> The court explained that this fact is material because it actually makes a home in a flood zone, and thus encumbered with insurance requirements, worth less than an identical home not in a flood zone.<sup>82</sup> In light of the fact that erosion can cause the partial or total physical loss of property, and in light of empirical evidence that property values decline when located near eroding shoreline, nondisclosure of the fact that property is subject to critical erosion appears on its face to materially affect the value of the property.

However, it is uncertain whether the same *Johnson v. Davis* protection provided purchasers of residential real property is afforded to purchasers of commercial property. Current case law seems to indicate that such protection is not available. The court in *Futura Realty v. Lone Star Building Centers (Eastern), Inc.*, held that *Johnson v. Davis* does not address or change the case law establishing *caveat emptor* as the rule in the sale of commercial property, and does not create a duty of disclosure in the commercial setting.<sup>83</sup> However, the Supreme Court of Florida has not yet determined the question, and the tide may be turning as the doctrine of *caveat emptor* continues to erode. In that respect, the court in *Haskell Company v. Lane Company, Ltd.* stated in an inspired bit of dicta that there is little justification to continue drawing a line between residential real property transactions and commercial real property transactions.<sup>84</sup> Furthermore, the court stated, "The buyer (or lessee) of commercial property has the same reasonable expectations as does the buyer (or lessee) of a

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<sup>81</sup> *Revitz v. Terrell*, 572 So. 2d at 998.

<sup>82</sup> *Id.*

<sup>83</sup> *Futura Realty v. Lone Star Building Centers (Eastern), Inc.*, 578 So. 2d. 363, 364 (Fla. 3d Dist. Ct. App. 1991).

<sup>84</sup> *Haskell Company v. Lane Company, Ltd.*, 612 So. 2d. 669, 675 (Fla. 1st Dist. Ct. App. 1993).

residence.”<sup>85</sup> Going even further, the court remarked that it has come a time to “add *caveat emptor* to the trash heap of discarded legal doctrines and rules” to be replaced by full disclosure by the seller, regardless of the nature of the property.<sup>86</sup> However, the court sidestepped the question and said that the Florida Supreme Court must make such a decision.

In summation, it seems evident that coastal erosion is a fact that materially affects the value of coastal property, especially when the property is classified as critically eroding. Additionally, the possible presence of endangered species that can slow or prevent coastal property owners from obtaining permits for rigid coastal armoring or beach nourishment may also be a fact that materially affects the value of coastal property. Amending section 161.57 to require mandatory disclosure of the hazards and regulations that face coastal properties would simply codify *Johnson v. Davis* in the context of coastal erosion, and extend it to all coastal property transactions. Thus, when a seller complies with the disclosures required by the amendment, they will have complied with their common law *Johnson v. Davis* duty. This will not only have the effect of protecting purchasers of coastal property, but will also shield sellers from future *Johnson v. Davis* type litigation over buyers’ claims that they have not been apprised of coastal-related hazards that materially affect the value of the property.

### C. Regulations of Realtors

The court in *Revitz v. Terrell* held that the seller’s duty to disclose under *Johnson v. Davis* also extends to a seller’s real estate broker.<sup>87</sup> Furthermore, this duty has also been statutorily prescribed

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<sup>85</sup> *Id.* at 675.

<sup>86</sup> *Id.* at 675-676.

<sup>87</sup> *Revitz v. Terrell*, 572 So. 2d at 998.

to real estate brokers under section 475.278, Florida Statutes (see Appendix VIII).<sup>88</sup> Under this statute, brokers owe disclosure to either the buyer or seller they represent of “all known facts that materially affect the value of residential property and are not readily observable to the buyer”.<sup>89</sup> Therefore, this likely creates the duty for a broker to disclose information to their client about coastal erosional hazards and the possible presence of endangered species on the property. An agent’s compliance with the requirements of the proposed amendment would satisfy the duties of this statute and under *Revitz v. Terrell* in regards to these coastal-related issues.

## VI. Relevant Disclosure Laws in Other States

In amending section 161.57, it is beneficial to examine other state coastal and natural hazard notification provisions. Lessons drawn from these laws can inform Florida law. While a number of states have a wide variety of disclosure laws, California, Oregon, and South Carolina were most relevant to this report. Of these, South Carolina’s is the closest to the proposed amendment. With these provisions, these states have given their citizens a more ample opportunity to discover and understand various hazards before making substantial investments of their time and money into real property. This report suggests that Florida follow suit and amend section 161.57.

### A. California

California’s requirements for natural hazards disclosure are some of the most comprehensive of any state (see Appendix IX).<sup>90</sup> California imposes a mandatory duty upon a real estate broker, or upon the seller if the seller has no broker, to provide a Natural Hazards Disclosure Statement to the

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<sup>88</sup> Fla. Stat. Ann. § 475.278(2)(a)7.(b) (2003).

<sup>89</sup> § 475.278(2)(a)7.(b).

buyer in every residential real estate transaction.<sup>91</sup> This provision requires the disclosure of listed natural hazards as material facts that affect residential property.<sup>92</sup> The listed hazards requiring disclosure are when the property is located in a wildland fire hazard area, seismic hazard and earthquake fault zone, dam failure inundation zone, or Federal Emergency Management Agency (FEMA) special flood hazard area (100-year flood plain).<sup>93</sup>

Although all of these natural hazards are relevant to the discussion of a mandatory coastal hazard disclosure provision, the most relevant to the proposed amendment are the seismic hazard zone earthquake fault zones and the FEMA 100-year flood plain area.<sup>94</sup> The relevance of the seismic hazard and earthquake fault zones is not due to the type or geographical location of the hazards, but the way the hazards are monitored. In California, state geologists have to continuously review new seismic data in these areas and create new fault zones according to the data.<sup>95</sup> In Florida, the department's Bureau of Beaches and Coastal Systems use continuously compiled aerial photography, topographical mapping, and bathymetric surveying to determine areas of critically eroding shoreline.<sup>96</sup> On the other hand, California's required disclosure of FEMA 100-year flood plain areas is similar to the disclosure of coastal hazards because of the similar geographical locations of the hazards. These flood plains are often in coastal areas, and thus California requires disclosure

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<sup>90</sup> David P. Hendricks, Esq., *Silence is Golden: The Case For Mandatory Disclosure of Coastal Hazards and Land-Use Restrictions by Residential Sellers in North Carolina*, 25 N.C. Cent. L.J. 96, 108 (2002).

<sup>91</sup> Cal. Civ. Code § 1103.2 (2003).

<sup>92</sup> *Id.*

<sup>93</sup> Cal. Civ. Code § 1103(c)(1)(A) (2003).

<sup>94</sup> Hendricks, *supra* note 90, at 108.

<sup>95</sup> Cal. Pub. Res. Code § 2622(c) (2003).

<sup>96</sup> Florida Department of Environmental Protection, Statewide Coastal Monitoring Program (2001) at <http://www.dep.state.fl.us/beaches/publications/pdf/monplan.pdf>.

when a coastal home is in an area that has a 1 in 100 chance in any given year of being inundated with tidewaters.<sup>97</sup>

Thus, California provides real examples of mandatory disclosures similar to those in the proposed amendment. However, in California a coastal home can conceivably fall within a 100-year flood plain area, a seismic hazard area, an earthquake fault zone, and a dam failure inundation zone. In this instance, all of these hazards must be disclosed to a potential homebuyer. This is seemingly more onerous than what the proposed amendment would require. Nonetheless, these disclosures occur every day in California residential real estate transactions.

#### B. Oregon

Oregon has an even more comprehensive provision for seller disclosures than California (see Appendix X), and it explicitly addresses coastal processes. Among the wide and varied disclosures on the mandatory form, the ones that are most pertinent to the proposed amendment are those for natural hazards affecting property.<sup>98</sup> These include disclosures when soil problems are present on the property, and when there has been material damage to the property or any of the structures thereon from fire, wind, or earthquakes.<sup>99</sup> Most importantly, however, Oregon requires disclosure when there is damage from flooding and beach movement, and when the property is located in a designated floodplain, all coastal hazards.<sup>100</sup>

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<sup>97</sup> FEMA: Flood Hazard Mapping -- Frequently Asked Questions (Frequently Used Terms)  
[http://www.fema.gov/fhm/fq\\_term.shtm](http://www.fema.gov/fhm/fq_term.shtm)

<sup>98</sup> Or. Rev. Stat. § 105.465(2).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

However, Oregon's provision does not make any mention of "critical" beach movement or erosion. The Oregon language appears to encompass *any* beach movement the property is experiencing.<sup>101</sup> This is a far broader requirement than merely disclosing when a piece of property is experiencing "critical erosion," which is what the proposed amendment requires. By also requiring disclosure of the property's location in a floodplain and damage to coastal property from flooding, these disclosures combine to place purchasers of Oregon coastal property in an extremely well informed position about the hazards associated with such property. As such, Oregon also has a system of mandatory coastal hazard disclosures that is more complex than that in the proposed amendment. As in California, these disclosures nonetheless occur every day in Oregon residential real estate transactions.

### C. South Carolina

One section of South Carolina's Coastal Zone Management Act deals specifically with the disclosure of issues that may affect coastal property (see Appendix XI).<sup>102</sup> Similar to section 161.57 as currently written, the South Carolina statute provides that when real property located in whole or in part seaward of the setback line is sold, the seller must disclose that the setback line may affect the property.<sup>103</sup> However, unlike section 161.57 or the proposed amendment, the South Carolina Statute requires that the seller of coastal property also provide the "local erosion rate most recently made available by the (South Carolina Department of Health and Environmental Control) for that particular

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<sup>101</sup> *Id.*

<sup>102</sup> S.C. Code Ann. Regs. § 48-39-330 (1999).

<sup>103</sup> *Id.*

standard zone or inlet zone as applicable.”<sup>104</sup> The proposed amendment merely requires the disclosure of the fact the property is critically eroding. Thus, the South Carolina statute exceeds the scope of the proposed amendment by mandating that every seller provide site-specific erosion data. Nonetheless, as in Oregon and California, these disclosures nonetheless occur every day in South Carolina residential real estate transactions.

#### D. The Significance of These Statutes

These state statutes all contain disclosure provisions either almost identical or closely analogous to that contained in the proposed amendment. They demonstrate that language requiring the disclosure of natural hazards in real property transactions can be successfully crafted to not unduly burden such transactions. Moreover, the proposed amendment is less complicated than those of the other states. As such, the proposed amendment seems as though it can be a success in Florida as well.

## VII. Conclusion

Florida is intimately linked with the sea. All of Florida lies within the coastal plain, with a maximum elevation of 120km above sea level.<sup>105</sup> There is not a single point in the state that is more

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<sup>104</sup> *Id.*

<sup>105</sup> Florida Department of Environmental Protection *supra* note 2, at 6.

than 100km from the Atlantic Ocean or the Gulf of Mexico.<sup>106</sup> In some places, those distances are slowly shrinking. The plain fact is that erosion is a constant and natural process that the state must live with. However, requiring that uninformed purchasers of coastal property live with it as well is untenable.

Currently, Florida's population is over 17 million.<sup>107</sup> The U.S. Census Bureau projects the population to grow to 20 million by 2025.<sup>108</sup> Most of these new residents will live on or near Florida's coast.<sup>109</sup> Much of this new growth will be due to an influx of new residents from outside of the state. These newcomers to Florida often are not aware of the unique issues intertwined with coastal living, especially if they come from a landlocked region. However, even lifelong Floridians often are not cognizant of these potentially serious matters. Regardless of a potential purchaser's previous experience, they deserve to be informed of the issues that will confront them before they make a substantial investment in property.

The proposed amendment does not create a significant new burden upon sellers of coastal property. To satisfy the requirements of the proposed amendment, coastal property sellers must apprise themselves of whether their property is classified as critically eroding. The Florida DEP has already calculated the erosion rate for most of Florida's coast, and the department provides this as public information. The process of determining this information is relatively undemanding. The easiest route is through the department's website, but other straightforward procedures are also available.

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<sup>106</sup> *Id.*

<sup>107</sup> United States Census Bureau, Annual Estimates of the Population for the United States and States, and for Puerto Rico: April 1, 2000 to July 1, 2003 (2003) at <http://eire.census.gov/popest/data/states/tables/NST-EST2003-01.php>.

<sup>108</sup> United States Census Bureau, Projection of the Total Population of the States: 1995 to 2025 (1996) at <http://www.census.gov/population/projections/state/stpipop.txt>.

<sup>109</sup> Florida Department of Environmental Protection *supra* note 2, at 8.

This research should not add much more to the work generally done in the course of normal preparations when selling property.

However, regardless of the ease of determining when property is critically eroding, a common law duty to disclose likely already exists for a seller of residential coastal property under *Johnson v. Davis*. The proposed amendment would codify that duty for residential sellers. Furthermore, it would extend those obligations to all sellers of coastal real property. The judicial landscape already seems to be swinging in this direction.

Additionally, many buyers are unaware that the very environmental and biological uniqueness that drew them to the shore may prevent them from protecting their home when their property is critically eroding. Governmental liability under the ESA may prevent permits from being issued in instances where sea turtles or other endangered species are present on or near the property. This is important information to know when making a substantial investment.

Furthermore, several factors have contributed to less cost-effective shore preservation projects, including dwindling sand resources for nourishment and the temporary nature of the projects. Thus, the proposed amendment also aims to place potential coastal property owners in a position of greater understanding regarding the uncertainty surrounding availability of these shore protection projects. This increased transparency in the coastal real estate process will lead to more informed decisions and sounder investments by purchasers of coastal property. Furthermore, it may reduce the pressure on government agencies to succumb to the demands of owners who understood in advance the risk and potential consequences of their purchase.

Erosion is no small matter. It has the potential to cause devastating impacts on the value of property, coastal structures, and human life. This is especially true when such erosion is “critical”. However, the effects of erosion are usually noticed and experienced over a period of time and thus

may not be readily apparent to potential purchasers when they enter real estate negotiations.

Without disclosure, they might not become aware of the issue until it is too late. This misinformation should never provide the foundation of real estate transactions. It is time for Florida to take this situation seriously and amend section 161.57.

## IX. Appendices

### APPENDIX I

TITLE XI. COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS  
CHAPTER 161. BEACH AND SHORE PRESERVATION  
PART III. COASTAL ZONE PROTECTION

161.57. Coastal properties disclosure statement

(1) The Legislature finds that it is necessary to ensure that the purchasers of interests in real property located in coastal areas partially or totally seaward of the coastal construction control line as defined in s. 161.053 are fully apprised of the character of the regulation of the real property in such coastal areas and, in particular, that such lands are subject to frequent and severe fluctuations.

(2) Unless otherwise waived in writing by the purchaser, at or prior to the closing of any transaction where an interest in real property located either partially or totally seaward of the coastal construction control line as defined in s. 161.053 is being transferred, the seller shall provide to the purchaser an affidavit, or a survey meeting the requirements of chapter 472, delineating the location of the coastal construction control line on the property being transferred.

APPENDIX II

Proposed Amendment to Fl. §161.57

A bill to be entitled

An act amending s. 161.57, F.S.; prescribing duties of sellers of certain coastal real property to provide a disclosure statement regarding impacts of erosion and environmental regulations to the property.

Be It Enacted by the Legislature of the State of Florida:

Section 161.57, Florida Statutes, is amended to read:

- (1) The Legislature finds that it is necessary to ensure that the purchasers of interests in real property located in coastal areas partially or totally seaward of the coastal construction control line as defined in s. 161.053 are fully apprised of the character of the regulation of the real property in such coastal areas and, in particular, that such lands are subject to frequent and severe fluctuation that may prove hazardous to coastal structures and human life.
- (2) ~~Unless otherwise waived in writing by the purchaser, at or prior to the closing of any transaction of~~ Before an offer is accepted by the seller in any transaction where an interest in real property located either partially or totally seaward of the coastal construction control line as defined in s. 161.053 is being transferred, the seller shall provide to the purchaser either:
  - a. an affidavit that states that the property may be subject to coastal erosion and federal, state, county and municipal environmental regulations resulting from the coastal location of the property, and that delineates the location of the coastal construction control line, and
  - b. a survey meeting the requirements of chapter 472, delineating the location of the coastal construction line on the property being transferred.
- (3) The affidavit must also include the following:
  - i. Neither the state nor local government guarantees the right to rigid coastal armoring nor the right to beach nourishment.

Added text is Underlined; Deleted text is ~~Struck through~~.

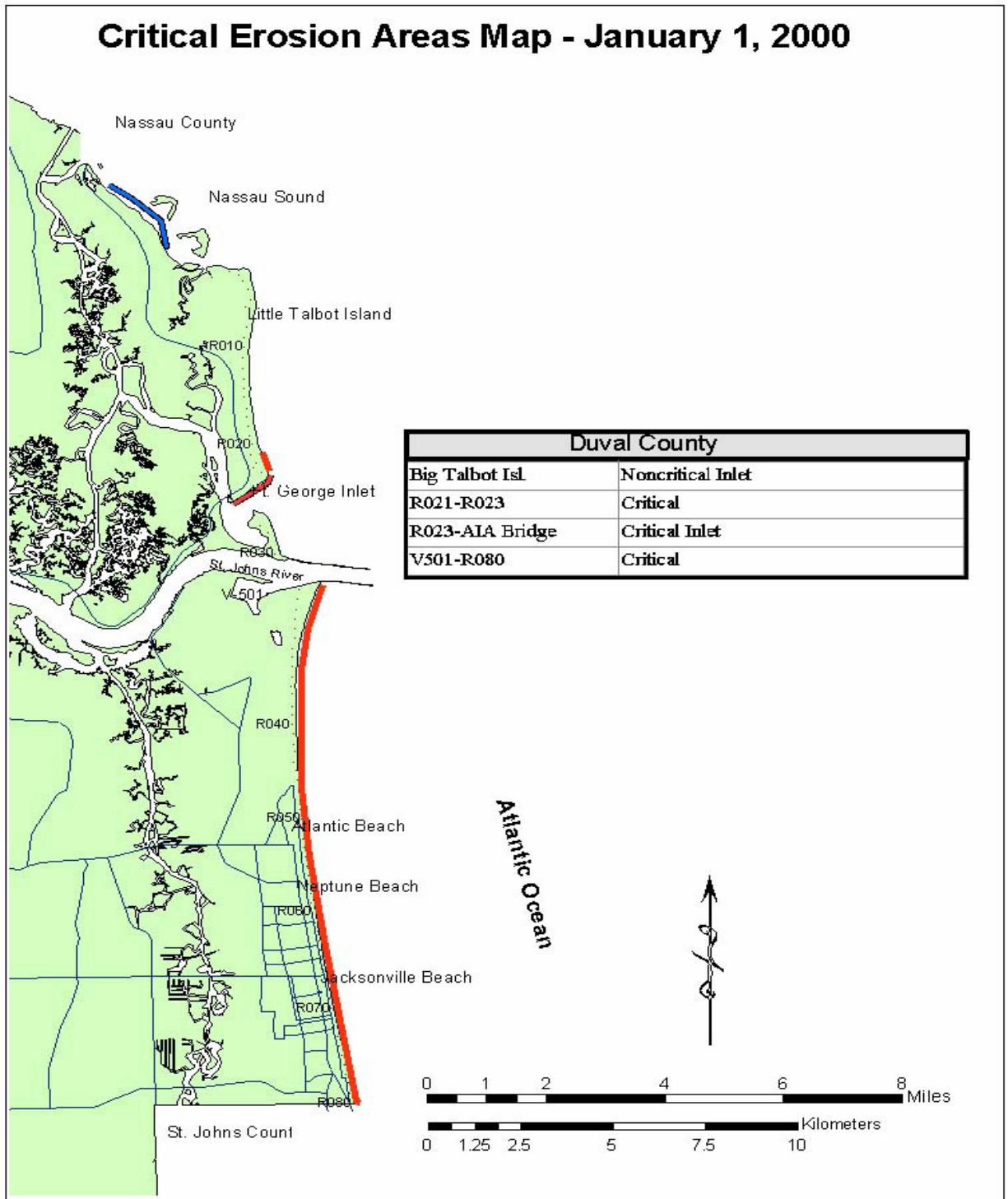
- ii. Marine turtle nesting, their hatchlings and nesting sites, and other environmental concerns may impact the permitting process for rigid coastal armoring and beach nourishment.

(4) Before an offer is accepted by the seller in any transaction where an interest in real property located either partially or totally seaward of the coastal construction control line as defined in s. 161.053 is being transferred, the seller shall determine whether the property is critically eroding as designated by the Department. If the property is designated as critically eroding, the affidavit must also include a statement that the property is critically eroding and that critical erosion may prove hazardous to coastal structures and human life.

Added text is Underlined; Deleted text is ~~Struck through~~.

### APPENDIX III

(Red = Critical Erosion; Blue = Non critical Erosion)



APPENDIX IV



Figure 1 Sea Turtle nest built against armament. Seaweed shows how closely the tide comes in.

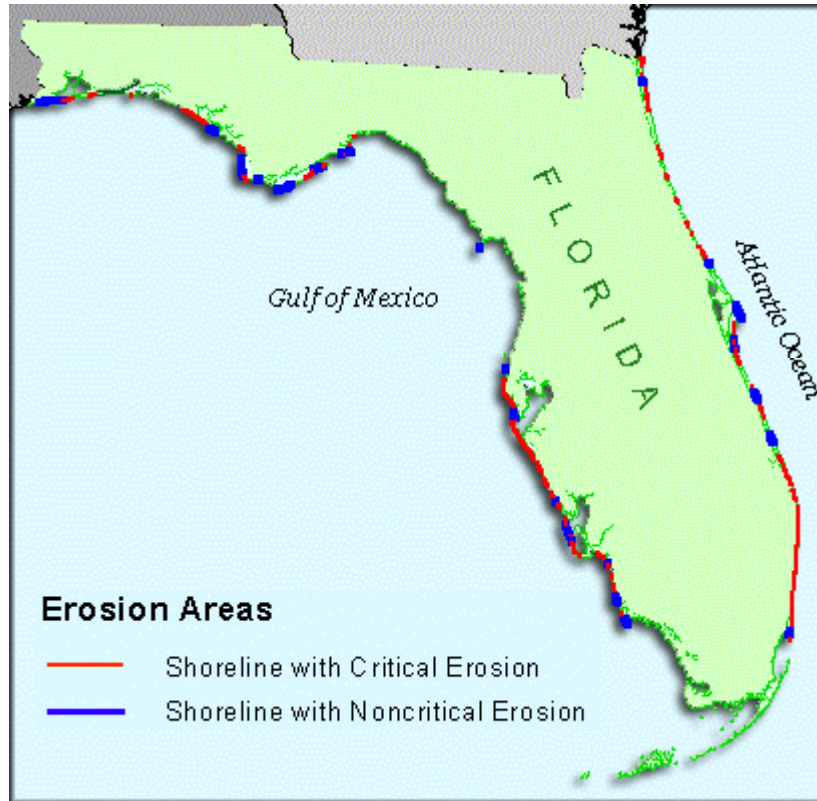


Figure 2 This house shows the dramatic difference between beaches with armament and the natural position of the beach.

## APPENDIX V

### Critical Erosion Areas

The map below illustrates the current critical and noncritical erosion areas in Florida.



Taken from the Florida Department of Environmental Protection website.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 63A--RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION  
SUBCHAPTER I--LEAD-BASED PAINT HAZARD REDUCTION

§ 4852d. Disclosure of information concerning lead upon transfer of residential property

(a) Lead disclosure in purchase and sale or lease of target housing

(1) Lead-based paint hazards

Not later than 2 years after October 28, 1992, the Secretary and the Administrator of the Environmental Protection Agency shall promulgate regulations under this section for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease. The regulations shall require that, before the purchaser or lessee is obligated under any contract to purchase or lease the housing, the seller or lessor shall--

(A) provide the purchaser or lessee with a lead hazard information pamphlet, as prescribed by the Administrator of the Environmental Protection Agency under section 406 of the Toxic Substances Control Act [15 U.S.C.A. § 2686];

(B) disclose to the purchaser or lessee the presence of any known lead-based paint, or any known lead-based paint hazards, in such housing and provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor; and

(C) permit the purchaser a 10-day period (unless the parties mutually agree upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(2) Contract for purchase and sale

Regulations promulgated under this section shall provide that every contract for the purchase and sale of any interest in target housing shall contain a Lead Warning Statement and a statement signed by the purchaser that the purchaser has--

(A) read the Lead Warning Statement and understands its contents;

(B) received a lead hazard information pamphlet; and

(C) had a 10-day opportunity (unless the parties mutually agreed upon a different period of time) before becoming obligated under the contract to purchase the housing to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(3) Contents of Lead Warning Statement

The Lead Warning Statement shall contain the following text printed in large type on a separate sheet of paper attached to the contract:

"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is

notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

(4) Compliance assurance

Whenever a seller or lessor has entered into a contract with an agent for the purpose of selling or leasing a unit of target housing, the regulations promulgated under this section shall require the agent, on behalf of the seller or lessor, to ensure compliance with the requirements of this section.

(5) Promulgation

A suit may be brought against the Secretary of Housing and Urban Development and the Administrator of the Environmental Protection Agency under section 20 of the Toxic Substances Control Act [15 U.S.C.A. § 2619] to compel promulgation of the regulations required under this section and the Federal district court shall have jurisdiction to order such promulgation.

(b) Penalties for violations

(1) Monetary penalty

Any person who knowingly violates any provision of this section shall be subject to civil money penalties in accordance with the provisions of section 3545 of this title.

(2) Action by Secretary

The Secretary is authorized to take such lawful action as may be necessary to enjoin any violation of this section.

(3) Civil liability

Any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(4) Costs

In any civil action brought for damages pursuant to paragraph (3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party

prevails.

(5) Prohibited act

It shall be a prohibited act under section 409 of the Toxic Substances Control Act [15 U.S.C.A. § 2689] for any person to fail or refuse to comply with a provision of this section or with any rule or order issued under this section. For purposes of enforcing this section under the Toxic Substances Control Act [15 U.S.C.A. § 2601 et seq.], the penalty for each violation applicable under section 16 of that Act [15 U.S.C.A. § 2615] shall not be more than \$10,000.

(c) Validity of contracts and liens

Nothing in this section shall affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan, nor shall anything in this section create a defect in title.

(d) Effective date

The regulations under this section shall take effect 3 years after October 28, 1992.

## APPENDIX VII

Title XXIX. Public Health

Chapter 404 Radiation

404.056. Environmental radiation standards and projects; certification of persons performing measurement or mitigation services; mandatory testing; notification on real estate documents; rules

(5) Notification on real estate documents.--Notification shall be provided on at least one document, form, or application executed at the time of, or prior to, contract for sale and purchase of any building or execution of a rental agreement for any building. Such notification shall contain the following language:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

The requirements of this subsection do not apply to any residential transient occupancy, as described in s. 509.013(11), provided that such occupancy is 45 days or less in duration.

## APPENDIX VIII

### TITLE XXXII. REGULATION OF PROFESSIONS AND OCCUPATIONS

#### CHAPTER 475. REAL ESTATE BROKERS, SALESPERSONS, SCHOOLS, AND APPRAISERS

##### PART I. REAL ESTATE BROKERS, SALESPERSONS, AND SCHOOLS

475.278. Authorized brokerage relationships; presumption of transaction brokerage; required disclosures

7. Any additional duties that are mutually agreed to with a party.

(b) *Disclosure requirements.*--Duties of a transaction broker must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of limited representation, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase and bold type. This paragraph expires July 1, 2008.

(c) *Contents of disclosure.*--The required notice given under paragraph (b) must include the following information in the following form:

#### IMPORTANT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

You should not assume that any real estate broker or salesperson represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you make a decision on representation.

#### TRANSACTION BROKER NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.

As a transaction broker, (insert name of Real Estate Firm and its Associates) , provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;

2. Accounting for all funds;

3. Using skill, care, and diligence in the transaction;

4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;

5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;

6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and

7. Any additional duties that are entered into by this or by separate written agreement. Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

This paragraph expires July 1, 2008.

## APPENDIX IX

WEST'S ANNOTATED CALIFORNIA CODES

CIVIL CODE

DIVISION 2. PROPERTY

PART 4. ACQUISITION OF PROPERTY

TITLE 4. TRANSFER

CHAPTER 2. TRANSFER OF REAL PROPERTY

ARTICLE 1.7. DISCLOSURE OF NATURAL HAZARDS UPON TRANSFER OF RESIDENTIAL PROPERTY

§ 1103. Application of article; transfer by sale, exchange, installment land sale contract, lease with option to purchase of real property

(a) Except as provided in Section 1103.1, this article applies to the transfer by sale, exchange, installment land sale contract, as defined in Section 2985, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of any real property described in subdivision (c), or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

(b) Except as provided in Section 1103.1, this article shall apply to a resale transaction entered into on or after January 1, 2000, for a manufactured home, as defined in Section 18007 of the Health and Safety Code, that is classified as personal property intended for use as a residence, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, that is classified as personal property intended for use as a residence, if the real property on which the manufactured home or mobilehome is located is real property described in subdivision (c).

(c) This article shall apply to the transactions described in subdivisions (a) and (b) only if the transferor or his or her agent are required by one or more of the following to disclose the property's location within a hazard zone:

(1) A person who is acting as an agent for a transferor of real property that is located within a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a special flood hazard area if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a special flood hazard area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the special flood hazard area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(2) A person who is acting as an agent for a transferor of real property that is located within an area of potential flooding designated pursuant to Section 8589.5 of the Government Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within an area of potential flooding if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within an inundation area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(3) A transferor of real property that is located within a very high fire hazard severity zone, designated pursuant to Section 51178 of the Public Resources Code, shall disclose to any prospective transferee the fact that the property is located within a very high fire hazard severity zone and is subject to the requirements of Section 51182 if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a very high fire hazard severity zone.

(B) A map that includes the property has been provided to the local agency pursuant to Section 51178 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the local agency.

(4) A person who is acting as an agent for a transferor of real property that is located within an earthquake fault zone, designated pursuant to Section 2622 of the Public Resources Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a delineated earthquake fault zone if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a delineated earthquake fault zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 2622 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(5) A person who is acting as an agent for a transferor of real property that is located within a seismic hazard zone, designated pursuant to Section 2696 of the Public Resources Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a seismic hazard zone if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a seismic hazard zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 2696 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(6) A transferor of real property that is located within a state responsibility area determined by the board, pursuant to Section 4125 of the Public Resources Code, shall disclose to any prospective transferee the fact that the property is located within a wildland area that may contain substantial forest fire risks and hazards and is subject to the requirements of Section 4291 if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a wildland fire zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 4125 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(d) Any waiver of the requirements of this article is void as against public policy.

## APPENDIX X

2003 OREGON REVISED STATUTES  
TITLE 10. PROPERTY RIGHTS AND TRANSACTIONS  
CHAPTER 105. PROPERTY RIGHTS. ACTIONS FOR RECOVERY OF REAL PROPERTY  
SELLER'S PROPERTY DISCLOSURE AND DISCLAIMER STATEMENTS

105.465. Application of ORS 105.465 to 105.490, 696.301 and 696.870; form of disclosure statement; disclaimer as alternative to disclosure statement.

(1) The provisions of ORS 105.465 to 105.490, 696.301 and 696.870:

(a) Apply to the real property described in subparagraphs (A) to (D) of this paragraph unless the buyer indicates to the seller, which indication shall be conclusive, that the buyer will use the real property for purposes other than a residence for the buyer or the buyer's spouse, parent or child:

(A) Real property consisting of or improved by one to four dwelling units;

(B) A condominium unit as defined in ORS 100.005 and not subject to disclosure under ORS 100.705;

(C) A timeshare property as defined in ORS 94.803 and not subject to disclosure under ORS 94.829; and

(D) A manufactured dwelling, as defined in ORS 446.003, that is owned by the same person who owns the land upon which the manufactured dwelling is situated.

(b) Do not apply to a leasehold in real property.

(2) Except as provided in ORS 105.475 (4), a seller shall complete, sign and deliver a seller's property disclosure statement as set forth in section 3 of this 2003 Act to each buyer who makes a written offer to purchase real property in this state.

SECTION 2. Sections 3 and 4 of this 2003 Act are added to and made a part of ORS 105.465 to 105.490.

SECTION 3. A seller's property disclosure statement must be in substantially the following form:

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If required under ORS 105.465, a seller shall deliver in substantially the following form the seller's property disclosure statement to each buyer who makes a written offer to purchase real property in this state:

---

## INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. Please refer to the line number(s) of the question(s) when you provide your explanation(s). If you are not claiming an exclusion or refusing to provide the form under ORS 105.475 (4), you should date and sign each page of this disclosure statement and each attachment.

Each seller of residential property described in ORS 105.465 must deliver this form to each buyer who makes a written offer to purchase. Under ORS 105.475 (4), refusal to provide this form gives the buyer the right to revoke their offer at any time prior to closing the transaction. Use only the section(s) of the form that apply to the transaction for which the form is used. If you are claiming an exclusion under ORS 105.470, fill out only Section 1.

An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not excluded, the seller must disclose the condition of the property or the buyer may revoke their offer to purchase anytime prior to closing the transaction. Questions regarding the legal consequences of the seller's choice should be directed to a qualified attorney.

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(DO NOT FILL OUT THIS SECTION UNLESS YOU ARE CLAIMING AN EXCLUSION UNDER ORS 105.470)

Section 1. EXCLUSION FROM ORS 105.465 TO 105.490:

You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not claiming an exclusion, you must fill out Section 2 of this form completely.

Initial only the exclusion you wish to claim.

\_\_\_\_\_ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed under building or installation permit(s) # \_\_\_\_\_, issued by \_\_\_\_\_.

\_\_\_\_\_ This sale is by a financial institution that acquired the property as custodian, agent or trustee, or by foreclosure or deed in lieu of foreclosure.

\_\_\_\_\_ The seller is a court appointed receiver, personal representative, trustee, conservator or guardian.

\_\_\_\_\_ This sale or transfer is by a governmental agency.

Signature(s) of Seller claiming exclusion \_\_\_\_\_

Date \_\_\_\_\_

Buyer(s) to acknowledge Seller's claim \_\_\_\_\_

Date \_\_\_\_\_

(IF YOU DID NOT CLAIM AN EXCLUSION IN SECTION 1, YOU MUST FILL OUT THIS SECTION.)

Section 2. SELLER'S PROPERTY DISCLOSURE STATEMENT

(NOT A WARRANTY)  
(ORS \_\_\_\_\_ (SECTION 3 OF THIS 2003 ACT))

NOTICE TO THE BUYER: THE FOLLOWING REPRESENTATIONS ARE MADE BY THE SELLER(S) CONCERNING THE CONDITION OF THE PROPERTY LOCATED AT \_\_\_\_\_ ('THE PROPERTY').

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. BUYER HAS FIVE DAYS FROM THE

SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO REVOKE BUYER'S OFFER BY DELIVERING BUYER'S SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE STATEMENT, UNLESS BUYER WAIVES THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY, BUYER is ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON BUYER'S BEHALF INCLUDING, FOR EXAMPLE, ONE OR MORE OF THE FOLLOWING: ARCHITECTS, ENGINEERS, PLUMBERS, ELECTRICIANS, ROOFERS, ENVIRONMENTAL INSPECTORS, BUILDING INSPECTORS, CERTIFIED HOME INSPECTORS, OR PEST AND DRY ROT INSPECTORS.

Seller \_\_\_\_\_ is/ \_\_\_\_\_ is not occupying the property.

I. SELLER'S REPRESENTATIONS:

The following are representations made by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property, or any real estate licensee engaged by the seller or the buyer.

1. TITLE

Yes  No A. Do you have legal authority to sell the property?

Yes  No \*B. To your knowledge, is title to the property subject to any of the following:

- (1) First right of refusal
- (2) Option
- (3) Lease or rental agreement
- (4) Other listing
- (5) Life estate?

Yes  No \*C. Are you aware of any encroachments, bound- ary agreements, bound- ary disputes or recent boundary changes?

Yes  No \*D. Are you aware of any rights of way, ease- ments or licenses (access limitations) that may affect your interest in the property?

- Yes  No \*E. Are you aware of any written agreements for joint maintenance of an easement or right of way?
- Yes  No F. Are you aware of any governmental study, survey or notices that would affect the property?
- Yes  No G. Are you aware of any pending or existing assessments against the property?
- Yes  No H. Are you aware of any zoning violations or nonconforming uses?
- Yes  No \*I. Are you aware of a boundary survey for the property?
- Yes  No \*J. Are you aware of any covenants, conditions or restrictions which affect the property?

## 2. WATER

### A. Household Water

(1) The source of the water is:

Public  Community

Private  Shared

(2) Water source information:

Yes  No \*a. Are you aware of any written agreements for shared water source?

Yes  No \*b. To your knowledge, is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?

Yes  No c. Are any known problems or repairs needed?

Yes  No (3) Are you aware of any water treatment systems for the property?

Leased  Owned

B. Irrigation

Yes  No (1) Are you aware of any water rights for the property?

Yes  No \*(2) If there exist any, to your knowledge, have the water water rights been used during the last five-year period?

Yes  No \*(3) If so, is the certificate available?

C. Outdoor Sprinkler system

Yes  No (1) To your knowledge, is there an outdoor sprinkler system for the property?

Yes  No (2) To your knowledge, has a back flow valve been installed?

Yes  No (3) To your knowledge, is the outdoor sprinkler system operable?

3. SEWAGE

Yes  No A. To your knowledge, is the property connected to a sanitary sewer?

Yes  No B. Are you aware of any sanitary sewer proposed for the property?

Yes  No C. To your knowledge, is the property connected to a septic system or cesspool?

Yes  No D. Are you aware of any problems or repairs needed?

Yes  No E. To your knowledge, does your sewage system require on-site pumping to another level?

4. INSULATION

\*A. To your knowledge, is there insulation in the:

Yes  No (1) Ceiling?

Yes  No (2) Exterior walls?

Yes  No (3) Floors?

Yes  No B. To your knowledge, are there any defective insulated windows?

#### 5. STRUCTURAL

Yes  No \*A. To your knowledge, has the roof leaked?

Yes  No If yes, has it been repaired?

Yes  No B. Additions/conversions/ remodeling?

Yes  No \*If yes, are you aware of whether a building permit was obtained?

Yes  No Was final inspection obtained?

Yes  No C. To your knowledge, are there smoke alarms?

Yes  No If there are, which are electrical (hard-wired)?

Yes  No \_\_\_\_\_  
D. To your knowledge, is there a woodstove?

Make \_\_\_\_\_

Yes  No Was it installed with a permit?

Yes  No E. Are you aware of whether a pest or dry rot, structural or " whole house " inspection has been done?

Yes  No F. Are you aware of any moisture problems in the structure (especially in the basement)? If yes, explain frequency and extent of problem on attached sheet

Yes  No G. Are you aware of a sump pump on the property?

#### 6. SYSTEMS AND FIXTURES

If the following systems or fixtures are included in the purchase price, are they, to your knowledge, in good working order on the date this form is signed?

Yes  No A. Electrical system, including wiring, switches, outlets

and service

Yes  No B. Plumbing system, including pipes, faucets, fixtures and  
toilets

Yes  No C. Hot water tank

Yes  No D. Garbage disposal

Yes  No E. Built-in range and oven

Yes  No F. Built-in dishwasher

Yes  No G. Sump pump

Yes  No H. Heating and cooling systems

Yes  No I. Security system

Yes  No I.  Owned  Leased

7. COMMON INTEREST

Yes  No A. Home Owners' Association?

Name of Association

\_\_\_\_\_  
Contact Person

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone Number

Yes  No B. Regular periodic assessments: \$\_\_\_\_\_ per  Month  
 Year  Other \_\_\_\_\_

Yes  No C. Are you aware of any pending special assessments?

Yes  No D. Are you aware of any shared "common areas" or any joint  
maintenance agreements (facilities such as walls,  
fences, pools, tennis courts, walkways or other areas  
co-owned in undivided interest with others)?

8. GENERAL

Yes  No A. Are you aware of any settling, soil, standing water or

drainage problems on the property or in the immediate area?

Yes  No B. To your knowledge, does the property contain fill?

Yes  No C. Are you aware of any material damage to the property or any of the structure from fire, wind, floods, beach movements, earthquake, expansive soils or landslides?

Yes  No D. To your knowledge, is the property in a designated flood plain?

Yes  No E. To your knowledge, is the property in a designated slide zone?

Yes  No F. Are you aware of any substances, materials or products that may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property?

Yes  No G. Are you aware of any tanks or underground storage tanks (e.g., septic, chemical, fuel, etc.) on the property?

Yes  No H. To your knowledge, has the property ever been used as an illegal drug manufacturing site?

#### 9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects

Yes  No Are you aware of any other material defects affecting this property or its value that a prospective buyer should know about?

B. Verification The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy

hereof. I/we authorize all of my/our agents to deliver  
a copy of this disclosure statement to other real  
estate licensees and all prospective buyers of the  
property.

DATE \_\_\_\_\_ SELLER \_\_\_\_\_

SELLER \_\_\_\_\_

**II. BUYER'S ACKNOWLEDGMENT**

A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects that are known to me/us or can be known by me/us by utilizing diligent attention and observation.

B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in any amendments to this statement are made only by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property, or of any real estate licensee engaged by the seller or buyer. A financial institution or real estate licensee is not bound by and has no liability with respect to any representation, misrepresentation, omission, error or inaccuracy contained in another party's disclosure statement required by this section or any amendment to the disclosure statement.

C. Buyer (which term includes all persons signing the "buyer's acknowledgment" portion of this disclosure statement below) hereby acknowledges receipt of a copy of this disclosure statement (including attachments, if any) bearing seller's signature(s).

DISCLOSURES, IF ANY, CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. IF THE SELLER HAS FILLED OUT SECTION 2 OF THIS FORM, YOU, THE BUYER, HAVE FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS DISCLOSURE STATEMENT TO REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE UNLESS YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS SELLER'S PROPERTY DISCLOSURE STATEMENT.

BUYER \_\_\_\_\_ DATE \_\_\_\_\_

BUYER \_\_\_\_\_ DATE \_\_\_\_\_

Agent receiving disclosure statement on buyer's behalf to sign and date: \_\_\_\_\_ Real Estate Licensee \_\_\_\_\_  
Real Estate Firm

Date received by agent \_\_\_\_\_

## APPENDIX XI

CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED  
TITLE 48. ENVIRONMENTAL PROTECTION AND CONSERVATION  
CHAPTER 39. COASTAL TIDELANDS AND WETLANDS  
§ 48-39-330. Disclosure statement.

Thirty days after the initial adoption by the department of setback lines, a contract of sale or transfer of real property located in whole or in part seaward of the setback line or the jurisdictional line must contain a disclosure statement that the property is or may be affected by the setback line, baseline, and the seaward corners of all habitable structures referenced to the South Carolina State Plane Coordinate System (N.A.D.-1983) and include the local erosion rate most recently made available by the department for that particular standard zone or inlet zone as applicable. Language reasonably calculated to call attention to the existence of baselines, setback lines, jurisdiction lines, and the seaward corners of all habitable structures and the erosion rate complies with this section.

The provisions of this section are regulatory in nature and do not affect the legality of an instrument violating the provisions.