

AGENDA

City of Pacifica Emergency Preparedness & Safety Commission

**LOCATION: City Council Chambers
2212 Beach Blvd
Pacifica, CA 94044**

DATE: Wednesday, April 20, 2016

TIME: 6:30 p.m.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES:

- 1. Approval of the minutes for the March 23, 2016 special meeting.**

APPROVAL OF ORDER OF AGENDA:

COMMISSION COMMENTS:

EX-OFFICIO COMMENTS:

STAFF REPORTS:

- 1. Monthly Reports:**

PUBLIC COMMENT:

Members of the public may, at this time, address the Commission.

UNFINISHED BUSINESS:

- 1. Resolution Of The City Of Pacifica Emergency Preparedness And Safety Commission Denying An Appeal Filed By Millard Tong, Bart Willoughby, Elizabeth Benson, Garth Yeaman, Michelle Mackay, Eileen Frances Horan, Juliet Kalotkin, Kathryn Deliceno, Cassidy Saenz, Gordon King, And Doe 1 And Upholding And Affirming The City Of Pacifica Building Official's Notice To Vacate The Premises At 310 Esplanade, Pacifica, California**

Emergency Preparedness & Safety Commission
Regular Meeting Agenda
April 20, 2016

NEW BUSINESS:

NEXT MEETING: May 18, 2016

EXPECTED ABSENCES: None

ADJOURNMENT

SPECIAL MEETING MINUTES

City of Pacifica
Emergency Preparedness & Safety Commission
Pacifica Police Department Conference Room
2075 Coast Highway
Pacifica, CA 94044

DATE: Wednesday, March 23, 2016

TIME: 6:30 p.m.

CALL TO ORDER: The meeting was called to order.

ROLL CALL:

Commissioners Present: Johnson, Blackburn, Shaw, Chiechi, Salisbury, Erbacher, Chair Taverna

STAFF PRESENT: Michel Biddle, Special Counsel
Chris Clements, Police Captain
Bill Glasgo, Police Sergeant
City Clerk O'Connell

APPROVAL

OF MINUTES: The minutes for the February 17, 2016 were approved.

APPROVAL

OF AGENDA: Agenda for March 23, 2016 was approved.

COMMISSION COMMENTS: None

EX-OFFICIO COMMENTS: None

STAFF COMMENTS: None.

PUBLIC COMMENTS:

Cherie Gladioux stated that her boyfriend lived at 310 Esplanade. She believed it was unjustly yellow-tagged as there was no danger. She thought the two apartments on the end might have been in jeopardy. She stated that he has been homeless since that day in January. The Red Cross gave him three days at a shelter in a church where you could not bring your animal. She stated that 20 people were displaced on that day and could not find adequate housing. She felt that Pacifica did not supply emergency assistance for the people in that building, and they still have not done anything. She stated that Resource Center can give you a \$25 gift card to Safeway, but

she asked where they can cook their food or store it. She also asked how you can take a shower or take care of your animal, while you have to pack up your whole life and put in a storage unit, but if you aren't working, how can you afford a storage unit let alone coming up with a first and last deposit for rent. She felt the city of Pacifica acted unjustly while tenants don't have resources. She asked what happens by the pier, stating that 200 families will be displaced and in the same position. She commented on the city finding \$1.5 million, adding that it was unjust. She stated that they put out 20 families, many of them elderly and are now living in a trailer. She felt it was unjust and something needs to be done about it. She felt the appeal needs to go forward, adding that the apartments at 310 Esplanade have not caved in. She stated that they have demolished the other ones and were vacant. She stated that they didn't jeopardize lives and should have been demolished years ago.

Jeff Bowman stated that the former speaker mentioned most of the points he was going to make. He asked who was on the board and after they have miraculously come up with money, he asked if any of it was going to help any of the residents. He stated that he is sleeping in his car with his dog and none of them have asked him how he was doing. He stated that the Pacifica Resource Center has been more help than all of them. He hoped they sleep well at night knowing that they threw people out because someone deemed the apartment unsafe. He asked if that person was present. He felt that some of that found money should come their way.

PUBLIC HEARING:

Commissioner Erbacher stated that, about the time that the building was red-tagged, his family visited the adjacent structure where his daughter and son-in-law used to live. They walked around the area and walked along the beach, observed the facility and then left.

Commissioner Blackburn stated that he was at the site on Super Bowl Sunday on the beach with a friend and walking his dog. He noted the cliffs with evidence of erosion both north and south of 310 Esplanade.

Commissioner Erbacher stated that his visit was a little bit after Christmas or early part of January, but after it was red-tagged because there were a lot of people with cameras.

Commissioner Blackburn stated that, in his position with the Federal Emergency Management Agency in 2010, when the first apartments came to their attention, Bart Willoughby did contact him at FEMA with questions about potential grant opportunities that could be used to be spent on protecting the apartments. He stated that he talked with him about the grant structure and how money flows from federal government to state to local and advised him as he would have advised anyone calling about potential grant funds. He also talked with the City Attorney about that and whether that could potentially create a conflict of interest. The attorney did not think it would and advised that he should listen to the evidence presented and public comment and make his decision based on the facts presented in the case.

Chair Taverna stated that, after the disclosures, she then turned the hearing over to Michael Biddle, special counsel to the Commission for a brief presentation.

Michael Biddle, Special Counsel, stated that they were convened to consider an appeal filed by the property owner and tenants of 310 Esplanade regarding the notice to vacate that was issued by the Pacifica building official on January 25, 2016. He read the specifics in Section 116.1 of the Pacifica Building Code and Section 109.1 of the International Property Maintenance Code. He added that the building official has the authority under the city's building code to issue the notice to vacate. He also stated that the Commission is designated by the building code as the body to hear appeals of decisions made by the building official. He stated that the Commission was aware that an appeal hearing had been previously scheduled for March 2, 2016 and, in his memorandum to the Commission then and presently in this meeting's packet, there were two procedural issues that were raised and have since been resolved. Briefly, the notice to vacate issued by the building official was dated January 25, 2016 and the code provides ten business days to file an appeal which would have expired February 8, 2016. His memo raised the issue as to whether the Willoughby and Tong declarations of February 9 were timely. He was unaware of a city issued letter of February 2 which provided the appellants until February 9 to submit information. He concluded that the declarations were timely. He had also raised and confirmed the validity of Mr. Willoughby's standing because of some questionable information in the packet regarding a Daly City mailing address. He stated that prior to the March 2 hearing date scheduled he had an email exchange with Mr. Willoughby on Monday, February 29, and Mr. Willoughby raised issues of due process and fairness. He stated that Mr. Willoughby was advised of his ability to request that the Commission continue the hearing to allow sufficient time to review and critique the report prepared by CSA. He stated that property owner, Mr. Tong, and Mr. Willoughby did submit such a request for a continuance on February 29 and the continuance was granted on March 1, and all appellants were provided until 5 pm on March 15 to provide further documentation for consideration by the Commission and hearing was continued to March 23. He pointed out that the packet has the additional material provided. He then outlined the information in his memos of March 2 and 23 to the Commission, i.e., the CSA report specifics. He then referenced the appeal that was filed by owners and tenants, adding that the Commission only needs to address issues raised regarding the city's basis for issuing the notice to vacate. He addressed the process that took place and the fact that the complaints do not apply to the substantive basis for why the city issued the notice to vacate in this instance and are irrelevant. He then addressed the appellants' relevant complaints that the city lacked evidence that the building was unsafe for the occupants, mentioning some of their specific documentation given. He pointed out that, while that documentation implied they have months before any serious damage occurs, the building official does not need to wait for near catastrophic events to take action to prevent loss of life or property. He pointed out the questions before the Commission and that their decision must be based solely on the facts presented during the hearing. He also stated that the hearing was intended to be informal and formal rules of evidence do not apply, adding that they may give greater weight to in person sworn testimony or experts on the specific topic as opposed to statements from individuals not present. He stated that once they reach their decision, they will be asked to issue a written decision, which will be presented at their next meeting for approval and will trigger a 90 day period for either party to seek judicial review under the code of civil procedure, 1094.6. He reminded them that the hearing was being recorded, and those testifying will be sworn in to affirm that their testimony is truthful.

Chair Taverna stated that, at this time, they will hear from the city building official and witnesses regarding the issuance of the notice to vacate the premises at 310 Esplanade, Pacifica, on January 25, 2016 and basis for said notice.

City Clerk O'Connell swore in Michael Cully.

Mr. Cully, Building Official for Pacifica, stated that he has been a certified building official in the Bay Area for 16 years, and 25 years as a certified building and fire plans examiner and inspector. He stated that upon coming to Pacifica in October 2015, he observed the erosion at 320 and 330 as well as the area between 310 and 320 which was deteriorated with an area that resembled an inverted and concave cone set back into the face of the bluff. Because of the projected intensity of the pending El Nino season, he and the code enforcement officer made routine visits to keep track of any change in conditions of the bluff. He also met with Ted Sayre, Pacifica's registered geotechnical engineer, who had a long history with Pacifica and the bluffs along Esplanade. He stated that towards the end of October, he generated a letter to the residents and owner, warning them for the potential of bluff loss that may subject the building to structure failure and the need for immediate evacuation. The city's emergency responders were already making contingency plans. On January 5, another letter was sent warning them of the potential for emergency evacuation should further bluff loss occur. He stated that the January storms brought damage, exposing the foundations of 320 and 330, as well as increased loss at the south end of 310. The deterioration of the bluffs was now more closely monitored and discussed between the geotech and him resulting in the decision for the safe removal of belongings. He then turned the meeting over to Ted Sayre.

City Clerk O'Connell swore in Ted Sayre.

Ted Sayre, engineering geologist, stated that he has worked in Pacifica looking closely at the local bluffs since 1999 and was with the consulting firm that designed the revetment at the 500 block of Esplanade. Since that time, they have been charged with monitoring that revetment and reporting to the Coastal Commission on its performance and has brought them back to look at the local bluffs over the years, and at that time, they look at all the bluffs to the north, commenting that there have been quite a few changes in the bluffs. He stated that, by January 2005, they had noted a precipitous indentation in the bluffs had formed below 320 Esplanade, a cove like feature with flanking sides. He stated that the north side of the indentation was reaching towards the southern portion of 310 Esplanade. He stated that, as soon as a very steep, newly formed precipitous cliff of 70 feet in height was formed in close proximity to a building, several factors of concern come in to play, i.e., with a slope like that in proximity to a structure, it starts a progression of tension cracking with vertical cracks propagate landward of the exposed new cliff face. The tension fractures then become the failure surfaces for future blocks in material that calve from the bluff face in a slab mode of progressive plate failure. They knew the tension cracking was occurring as soon as the steep high bluffs had formed with the indentation that was reaching toward the southern end of 310 Esplanade. The second factor was steep, high slopes, over steepened, almost approaching vertical, which are very vulnerable to further collapse from any erosion at their base from impacts of waves. They had a series of projected high swell and high tides, thermally induced increased ocean levels that were impacting the city through January and were projected to continue that activity through February and March. They had also

predicted rain above normal levels associated with El Nino conditions. He stated that, once slopes are steep and high, they are very vulnerable to another process triggering the failure through seepage induced water coming out of the bluff face and saturates the ground, finding a point of release and fills up the tension cracks and reduces and weakens the edge of the bluff and that can trigger failures of the bluff even with additional erosion at the base of the cliff. He added that just the proximity of the steep high bluff to the building results in a concern about seismic safety of the structure, i.e., the progression of that indentation toward the south end of the building had made the combination of building and steep bluff potentially susceptible to seismically triggered failure. There was a concern that even earthquakes on the order of magnitude 5, which were possible any time along the San Andreas Fault could trigger substantial failures that would be of larger magnitude than the typical progressive slabbing off that they see from the weather or the coastal erosion. He stated that, in late January, we had been through a few weeks of very severe conditions in terms of rainfall, swells, king tides, and had seen rapid bluff retreat on the adjoining property with the development of the cove reaching toward the southern portion of the building and the forecast was predicting additional high swell, high tide combinations along with severe rain through February and March and they believed it was prudent to evacuate the building because of the danger to occupants. If they left them in there for any period of time, the weather could rapidly deteriorate the bluff and cause a progression of failures underneath the structure. He stated that part of their concerns were that the living space included balconies and patios on the western side which would be the first features of the building to fail catastrophically. Once they are undermined, the supports for the balconies go down via vertical post into the patio area and, once the patios drop, the balconies are going to drop. If any people are outside the building in that living area, they are going to be endangered. That was in their minds as the bluff had essentially retreated to near the edge of the patio on the south side in late January. He wanted to respond to some of the reasons presented for revoking the yellow tag. He referred to an email sent to the city by one of the occupants which references a visit to the site of a preeminent academic, Prof. Nick Satar. He stated that the email stated that Prof. Satar had indicated that the property shows no signs of emanate failure. He stated that, in the full email from Prof. Satar from which the quotes were extracted, it was clear that Prof. Satar, less than a week after issuance of the yellow tag had concluded it was not safe for occupants to return to the building, quoting from his email that he did not see how anyone can certify that the bluff was sufficiently stable/safe for occupants to return, and basically he was not saying that it was safe to reoccupy the structure. He referred to other statements made to justify revoking the yellow tag, such as the drone video which he found insightful as it was difficult to get down to the beach and view the entire height of the bluff from the ocean's perspective and difficult to see the bluff from the top. He mentioned his concern at the end of the video, made January 23, when it showed more than half a dozen people on the balconies and patios at 310 watching the failures occur next door and didn't realize the risk they were taking as that same failure could start undermining their patios and balconies. He referred to mention that monster El Nino conditions was all hype, adding that at the end of January there were predictions of continuing high swells, high tides and significant rainfall. He stated that luckily those conditions did not materialize in February, but there was a return of severe conditions in early March. He referred to the assertion that the bluff fails in slivers and there was no justification for the yellow tag, stating that he has seen bluffs retreat in the city on the order of 10 feet or more in a week. He could not say it was safe to occupy a structure when you can have 5-10 feet of bluff fail and in a day or less another 5-10 feet fail with slabs of material coming loose from the bluff and undermining structures and

living areas. He agreed that it was progressive but it can also happen quickly. He referred to the assertion that more detailed factors of safety should be calculated before evacuating people, stating that it was obvious to him that the building was in danger and the building official agreed with that assessment as they had both been watching the progression of bluff collapse in that vicinity for several weeks in January. He stated that to initiate the detailed study necessary to come up with a factor of safety, they would be looking at drilling the site, testing to determine strength of earth materials, slope stability analysis and that process could take more than a month. They felt they didn't have the time, and it was prudent to take action and evacuate the structure before people were harmed.

Special Counsel Biddle, had one question. He stated that the report indicates that the existing inclination of the bluff clearly isn't 90 degrees but he assumes it is 85 degrees. He thought it has an impact in relation to how much bluff retreat you need to have until you get to equilibrium and how far back does the top of the bluff retreat. He asked what the basis was to make the assumption that it is 85 degrees.

Mr. Sayre stated that several cross sections had been measured through the bluff by a member of the U.S. geological survey locally over a period of years, and had measured a wide range of bluffing culminations ranging from 90 degrees to 60 degrees in certain areas, depending on whether the bluff forming materials were what were termed poorly cemented versus weakly cemented. He stated it was very difficult. There was a standard method and characterizing the bluff profile would be to take a piece of surveying equipment and try in the front of the bluff to measure points on the bluff through some reflectors and establish that profile. He said the USGS had the luxury of having a land base lidar, a radar sort of system, to measure 3-dimensional forms accurately over a wide area by setting up in one location. He stated that they did not have that sort of technology or the tide conditions that would readily allow them to get out there and survey the bluff. They made some assumptions based on the types of slopes that had been measured, profiles in the vicinity before and they knew what the range was. He stated that most of the slopes that might appear vertical were actually less than that. He did see material that had fallen off the structure at 320 Esplanade, balconies, patios, and the material fell and became imbedded in portions of the bluff that were very near the toe. They didn't have a long run out of slope but something that was very narrow where items falling from the adjacent structure were impaling themselves almost coincident with the top of the bluff.

Mr. Biddle asked if it was an educated conclusion based on observations of the adjacent property at 320, given the fact that things had fallen near vertical and looking at that in relation to the situation at 310.

Mr. Sayre agreed, adding that the main concern was what he terms a flanking type of failure that the retreat that was occurring and impact 310 was not what they initially thought it might be which would be a retreat from the west and moving progressively back towards the patio across the full length of the structure. Instead, they saw the cove indentation formed immediately south with precipitous slopes around the perimeter of the cove and, with the flanking ends of the cove, marching towards the south end of the building.

Chair Taverna stated that they would now hear from the property owner, Millard Tong and his witnesses, regarding the appeal of the issuance of the notice to vacate the premises of 310 Esplanade, Pacifica, filed February 1, 2016 and supplemented on February 9, 2016.

City Clerk O'Connell swore in Millard Tong.

Millard Tong, owner, stated that the action taken by the City of Pacifica on January 25 in yellow tagging 310 Esplanade was not an emergency or was there any eminent danger to the structure or residence of 310 Esplanade. He stated that his due process rights as a property owner was violated by Pacifica. He stated that, without proper notice, they illegally condemned his property by restricting the use. He stated that there was a completely unnecessary rush to cut all the utilities from the property shortly after the 25th. He felt that the property was not threatened and was still not threatened at this point. He stated that this didn't happen with 330 or 320 Esplanade. He stated that the utilities were cut just before they were scheduled to be demolished. He stated that, in January 2010, four units on the southern end of 320 were threatened and Pacifica gave him notice and opportunity to either relocate the tenants or provide a geotech analysis. He elected to relocate the four tenants and they were given four months of proper notice to do that. He stated that, with 310, there was a complete absence of the due process or proper noticing with the city making the unilateral decision to illegally shut down 310 without just cause, justification, any sort of emergency or eminent danger. He stated, on 320, the shut it down but at that time, the city gave them proper notice to relocate the tenants and have an opportunity to bring in a geotech to refute or explain their situation. He felt that the CSA report was based on more of the 320 situation, rather than the present condition on 310. He stated that, in the rebuttal by Mr. Willoughby, he will be talking about the bluff, using 320 as an example, which was completely different from the 310 today. He stated that several of the tenants, who are present and will be speaking after him, are still looking for a place to live, adding that some are living in cars. He stated that they gave 320 four months to relocate and find a place to live but this did not happen with proper notice or proper due process and has caused a financial hardship on most of the tenants, half of them being Section 8 tenants. He mentioned that, while they have vouchers to find housing, it was difficult to find housing in this rental market as a lot of property owners will not accept Section 8 or those who have animals, with Section 8 tenants most affected. He stated that the winter is over and we are in spring and there is no major bluff loss at 310 and not likely to be a problem in the near future. He stated that there was a large buffer zone in front of 310 and 320 with the majority of 310 units still viable for safe housing in this rental market, adding that most people cannot afford to live in the Bay Area anymore. He stated that many displaced residents at 310 would like to return to the property and continue living there because they feel it is a safe place to live as nothing has taken place as speculated by the CSA report. He stated that several have asked to sign a waiver allowing them to return to 310. He mentioned that Mr. Willoughby has had a bluff safety program in place since 2013 where he monitors the conditions to determine if there is any threat or eminent danger and he sends updates to the building official. He stated that Mr. Willoughby was concerned with the safety of 310 residents as well as himself and demonstrated it on numerous occasions. He proposed that they allow 16 units on the northerly section of 310 to be reopened and the displaced residents allowed to return on waiver. He believed the common area of 310 and 320, with the bluff far enough from the foundation that it is not a problem that the four units not be rented as a safety factor. He believed there is a sufficient safety factor which allows opening 16

units. He stated that there is mediation going on in the litigation he has between the contractor that was hired to build a seawall in front of 310 and 320. He stated that, with that funding, he plans to shore up 310 and make it safe for future use. He stated that he was open to any questions they may have and requested that they remain objective in considering what has been said and provide support of the wrong that happened to the building and residents.

Commissioner Blackburn referred to Mr. Tong mentioning the tenants requesting a waiver as a condition for re-occupancy if that is allowed, and he asked an explanation of the waiver.

Mr. Tong stated that it was a waiver of liability that they know they will be moving into a building that has eminent danger, but not at this present time.

Commissioner Erbacher referred to his mention of doing something with 16 units but he did not express what he would do to protect those 16 units if they were allowed to be occupied. He asked if the contractor mentioned was doing something and asked if there was a concrete proposal at this time to allow occupancy to come back. He asked what his geotechnical plan was for that.

Mr. Tong stated that the 16 units on the northerly, not the southern corner. He stated the four units that would not be occupied would provide a safety factor and they would monitor that with their own drones. If there was any bluff failure or collapse, they would let the building official know right away to plan accordingly with giving proper notice.

Commissioner Erbacher concluded that he was not planning to do any constructive process to control the erosion or sluffing of the slope. He asked if he was willing to get a building permit to do modifications or safety construction or just the waivers.

Mr. Tong stated that, at this point, no.

Chair Taverna stated that they will now hear from Bart Willoughby and his witnesses regarding the appeal of the issuance of the notice to vacate the premises at 310 Esplanade filed January 26, 2016 and supplemented on February 9, 2016.

City Clerk O'Connell swore in Bart Willoughby.

Bart Willoughby, Pacifican resident, stated that he has been in Pacifica for 16 years and has observed the bluffs during that period of time with thousands of photos of the bluffs from Mussel Rock to the 500 block of Esplanade during that period of time. He explained that he is a coastal analyst for several years. From 2006 to 2014, most of the permits issued by the Coastal Commission bear his name as either the agent or the individual involved with the process. He stated that, in 2012, he worked with Robert Anderson from RJR Engineering who designed the seawall at Lands End, one of the most high tech seawalls along the coast and is touted by the Coastal Commission as one of the best armoring processes along the coast. He stated that, in the 1970s, he spent time in the Antarctica with the National Science Foundation observing the greenhouse gases that were causing the warming of the Antarctica, as there was a concern then that the poles would cause melting and the sea levels would rise. He stated he would like to

address a couple things with respect to Mr. Sayre's testimony. He thought it would have been nice if he had that information prior to the hearing and prepare. He stated that the document he referred to from the USGS is Brian Collins. He stated that Mr. Collins did a dissertation in 2004 and did bluff analysis along Esplanade and Mr. Satar also. He stated that the slopes to which he was referring and their failures were slopes that did not have armoring like rock riprap. He stated that, with the 500 block of Esplanade, in 1999 Cotton Shires built the revetment and that was not included in any of that work. He stated that there was no information, as far as the slope analysis, of what happens behind a revetment, so that document doesn't reflect the conditions at 310 because 310 had a revetment which was built in 2009. He then mentioned that most of the water that comes from the roof and center drains on the 310 property and 320, at one point in time all goes to the street. It doesn't flow over the bluff as he made sure in 2008 that all roof water from various times when it rained would go to the street which was the same with the center drain which pumped the water out of the center drain in the back of the property so it didn't extend over the bluff and cause additional failures. He stated that the water penetration into that bluff is a minimal amount, even during high rains because it goes to the street. He inspects the pumps on a regular basis to make sure that it happens. He then mentioned the issue of the email from Mr. Satar. He sent the email before he observed the property. He stated that, when Mr. Satar came to the property on January 30, he invited city staff to attend but nobody attended. He stated that he looked at the upper bluff and didn't see any cracking or stress cracks that would have caused the city to do the yellow tagging as they did. He appreciated that the email came from him to the Coastal Commission, but this was prior to Dr. Satar's coming out on January 30. He stated that the most recent filing of the additional documentation on March 15, 2016, regarding the geotech report used by the city building official for yellow tagging of 310 Esplanade on January 25, 2016 is to show, by example, in the use of 320 was the fact that there was no emergency condition that existed on January 25 for the city to take the action that they did. He stated that he has to educate people on how the process begins. He stated that he has spent years observing the bluffs and he knows how they fail at any given time and any given point when there are high waves, a drought, rain, and he has seen this for 16 years. He knows how the bluffs respond. He stated that the 34 exhibits in the March 15 document, Exhibit E, are photos taken of 320 Esplanade from 2010 to the present day. He explained that the dates of the photos are on the right hand side at the bottom of each photo and the photos are used to education the Commission on how the bluff erosion takes place behind a revetment. He stated that it has taken six years for the gradual and incremental erosion to get to the foundation of 320 and the need to demolish the structure. He stated that the second building at 330 Esplanade that, while not shown in the document, clearly exhibits the same factors of bluff failures as 320, and has taken just as long to cause the structure to be demolished. He stated that this was factual evidence as to how the bluffs along the Esplanade fail behind a revetment which is a long process. He stated that it doesn't happen immediately. He stated that with 310 being the same construction as the buildings of 320 and 330, along with the same soil conditions will take just as long or longer without mitigation, restacking of the revetment or placing of geotech material behind the revetment before the structure is threatened. He stated that 310 Esplanade was not even close to being undermined on January 25, as indicated by the notice of the city building official Exhibit A of March 15 document. He stated that also provided in the document of March 15 as exhibit F in three parts was to show the Commission that the current conditions at 310 have not changed much in the front of the bluff of 310. Moreover, this evidence clearly refutes the city geotech conjectured and speculative opinion of what might happen. He stated that lack of

change in conditions at 310 is much stronger evidence that supports the appellant's contentions that the property is and was safe on January 25. He stated that the historic photos provide compelling evidence that not much has changed at 310, and the drone video clearly shows that the revetment at 310 was not overtopped like it was at 320. He stated that there will never be a wholesale and complete failure of the bluff in front of 310 as indicated by the geotech report because the bluff fails in slivers. He stated that the only condition that would cause major bluff failures would be a tsunami of 50 feet or greater and a major earthquake of 8.5 range but either of those conditions will cause problems all around Pacifica. He appreciated that the building official does not need to wait for near catastrophic circumstances involving loss of life and/or property to present themselves in order to act, but the problem he has is that Pacifica lacks a qualified coastal engineer and a coastal geotech engineer who ultimately understands the coastal processes and what drives the process in Pacifica. He explained that, because of the lack of experience on the part of Pacifica, in 2013, he began a bluff safety monitoring program for the bluffs along Esplanade. He was concerned for his own safety and not wanting to leave that safety in the hands of unqualified administrators and professionals and for the safety of his community, neighbors and friends, the bluff monitoring program consisted of looking ahead at various conditions that could be threatening, such as monitoring the tide charts at Ocean Beach for tides greater than 6 feet plus, the NOAA data buoys of Half Moon Bay and NOAA Wavewatch III for the Pacific Ocean. He always had one week look ahead with real time data. He stated that the city building officials were aware of his monitoring program as updates were sent to the city. He stated that the new building official and planning director became indifferent to this program and there was no potential for catastrophic circumstance for loss of life for property at 310 Esplanade on January 25 for the building official to exercise the restriction of use of property. He stated that, in 2010, the owner of 310 and 320 hired what he would call a Rhodes scholar civil geotech engineer to provide analysis of 320. He stated that RGR Engineering who built the Lands End seawall provided Pacifica and Cotton Shires with a voluminous document that he had, offering to copy it if the Commission wished a copy. He stated that all the city geotech needed was to use this document, plug in the variables of 310 upper and lower bluff, take measurements of the property, inspect the property for cracks and signs of stress on the upper bluff, but the city geotech did nothing but view the drone video from Channel 2 that could not tell the signs of cracking or stress on the upper or lower bluff. He stated that the city administration suffers from lack of information, indicating that the owner of 310 did nothing to shore up the property at 310 Esplanade and compared Lands End seawall to 310. In 2009 and 2012, the owner of 310 built a rock revetment in front of 310, adding additional rock in 2012, comparing the 20 units of income at 310 to the 280 units at Lands End was not intelligent. He stated that Lands End has a greater income from the property with 280 units to support bluff mitigation than the lessee 20 units at 310 Esplanade. He stated that the owner is currently in litigation with the contractor who build the revetment at 310 and 320 that lacked a height of 25 feet and the geotech material behind it. He stated that this litigation is scheduled for mediation at the end of April with several million dollars that may be available to the owner for mitigation purposes, adding that he is involved with that litigation. He stated that whether Mr. Tong can do anything about the bluff will depend on how much money is available to him out of that mediation. He referred to the question of whether Mr. Tong has a plan, stating that he can't until he knows how much money he will have do what he needs to do whatever mitigation there is. He stated that the alleged monster El Nino that was supposed to happen has not come close to the 2009 and 2010 El Nino, and at that time, there was no rock riprap in front

of 330. He stated that it was his call to Doug Rider at that time that 330 needed to be evacuated because it was failing across the bluff because it didn't have any toe protection. He felt that attorneys who do not understand climate and erosion conditions should not comment on saturation of rains over short periods and to advise the Commission as to that issue is improper. He also felt the attorney's position should be one of neutrality and there were several instances where the attorney advising the Commission has departed from that position and has become an advocate for the city. He felt this represents a conflict of interest as the same firm represented the city in the Tong municipal code violations in San Mateo Superior Court. He stated that his position was that he feels safe at 310 Esplanade knowing what he knows. He felt the action in yellow tagging 310 Esplanade and forcing its residents to vacate the property must be supported by substantial evidence which requires relevant and current existing information plus any reasonable inferences that may be drawn from existing conditions, adding that substantial evidence is not wholly speculative assertions about purported future events that existing conditions fail to support either directly or inference. He felt the city had no right to post an alleged catastrophic failure event that has no scientific tether to any current condition and take draconian action in an entirely speculative response to that make believe future event which has happened. He reiterated that administrative action must be based upon scientific evidence of a bluff failure and any reasonable inference and not fairy tale thinking to justify what is an unlawful taking of private property that remains wholly functional and inhabitable at this time and for the foreseeable future. He concluded that all the residents were forcefully and unlawfully evicted by the city's action.

Commissioner Shaw referred to his statement that he was a coastal analyst, and asked if that was a certification.

Mr. Willoughby stated that it was not as it does not require a license, mostly experience.

Commissioner Shaw asked if, when Prof. Satar came in January, there was anything written.

Mr. Willoughby responded that there wasn't, it was all verbal. He stated that when he did his declaration, it was under penalty of perjury. If he had to go to court and testify as a witness with respect to what was said, he could do that.

Commissioner Shaw asked if there was a reason why he wouldn't put it in writing.

Mr. Willoughby stated that he didn't ask him.

Chair Taverna stated that she had a question, mentioning RJR Engineers.

Mr. Willoughby mentioned Robert Anderson.

Chair Taverna responded positively, asking if they did some analysis at some point in the past. Mr. Willoughby stated that they did, adding that they gave the city a copy of that. He stated that they also gave Mr. Sayre's firm a copy of this which they should have. He stated that it broke down the factors of safety at 310. He stated that the document was thick and it has benchmarks with respect to the entire bluff.

Chair Taverna asked when it was done.

Mr. Willoughby stated that it was done on April 25, 2010.

Chair Taverna stated that, at this time, the Commission will hear from tenants, Elizabeth Benson, Garth Yeaman, Michelle Mackay, Eileen Francis Horan, Juliet Kalotkin, Kathryn Deliceno, Cassidy Saenz, Gordon King and DOE1 and witnesses regarding the appeal of the issuance of the notice to vacate the premises at 310 Esplanade, Pacifica, filed February 4, 2016.

City Clerk O'Connell swore in Kathryn Deliceno.

Kathryn Deliceno stated that she has been on housing for ten years and there was no where in Pacifica that accepts Housing. She stated that it was very hard for her to find the place at 310 Esplanade and was there two weeks. She stated that Pacifica didn't let housing know about anything going on with the bluffs. When Housing did their inspection, it was fine. She asked why the city didn't tell Housing about it. She was there a week and a half. She asked why they didn't tell them if they knew about it instead of having her move from a place where she had lived ten years and go to 310 Esplanade and then have to move again. She didn't think it made sense.

City Clerk O'Connell swore in Elizabeth Benson.

Elizabeth Benson stated that she attended the meeting when they put up the sign about the destruction of 330 Esplanade, wondering what would happen to 310. She stated that, after that meeting, a person who worked for the city said it would be necessary to evacuate 310. She remembered thinking they should do something, as she was reading about El Nino and they would be tearing down building that have been holding the bluff in place in the center of the storm. She told the employee that it didn't make any sense to her and she was sure that the destruction of the buildings would go through but she would bring that up. She stated that she didn't want to move as she thought it was a remarkable place to live on the edge of the ocean in an affordable way in Pacifica. She thought the property was well loved by its tenants and the owner. She stated that they were not Section 8 people by some stroke of luck, but there were people in precarious financial situations in that building. She stated that it was still standing now approaching April. She stated it was New Year's Eve when the first idea that there would be some erosion effect taking place. She stated that the back yard was still there and there was plenty of room between the edge of the property for those living inside it and the edge of the cliff. She mentioned that buildings are built on stilts because of earthquakes and they do it because the world is beautiful and they live on the edge of something miraculous. She thought it was unfair and cruel and maybe without the decency to think where they will live or their financial situations. She stated that, when they were evacuated, it was the Bay Area Super Bowl season and not even the hotels would permit the evacuees to rent a hotel room. She felt it was an interesting mix of advanced knowledge and a dramatic lack of human decency when they evacuate people who have lived there for a dozen years or more and were elderly, on assistance, with pets, no financial ability. She thought it was a decent thing to consider housing for people you intend to evacuate. She helps people make plans for when they die for a living and they

know that day is coming, but don't know when, how or why. She stated that until then, you have the opportunity to live and they were living happily and the building is still standing and will continue to stand, given that the other buildings stood for seven or eight years since originally threatened. She felt the experience of those evacuated who lived in cars, streets, friends, hotels, etc. have had an interesting ride when nothing was done beyond a yellow tag and the order to move.

City Clerk O'Connell swore in Brandy McDaniel.

Brandy McDaniel stated that it feels like a marginalized group was taken advantage of. She had the ability to get a new place but it cost \$5,000 to move in. She stated that living in the Bay Area doesn't always allow for \$5,000 laying around at the drop of a hat with 24 hour notice. She stated that, learning that 320 and 330 had four months to figure out a place to go was disturbing and feels unfair. She urged the city to think about their part in all of this. She asked when the cliff was their responsibility, adding that the whole city was on a cliff. She asked if they were going to shut the businesses down on Esplanade. She thought that seemed ridiculous and she felt someone has to do something and take action. She stated that people pay taxes.

City Clerk O'Connell swore in Juliet Kalotkin.

Juliet Kalotkin stated that she was a resident for a year and a half. She lost her job in February and Mr. Tong was a close friend and he offered her the place to stay. She thought it was a peaceful and serene place after working for 21 years in a psyche unit. She thought it was possible that the building would erode but they didn't know when. She stated that she was called at work to come home and told that the place was no longer safe to live and she had to pack her belongings and hire someone to help her move and rent storage space. She stated that it was a financial hardship since she was still recovering from the loss of her job of 21 years. She was glad she had a lot of friends helping her, stating that she has moved to four different places and finally found a room which is cheaper but shared by two others. She stated that they were rushed to vacate knowing that they didn't have a need to move out at that time.

Gordon King stated he was a longtime resident and was in the other building.

City Clerk O'Connell swore in Gordon King.

Mr. King continued, stating that he was in the other building and Mr. Tong moved them that afternoon into 310. He never felt threatened and it was dog friendly and affordable. He stated that, at that time, he didn't know how many resources are in Pacifica but he was grateful. He stated that it was a rent he could afford just living on social security. He had a small saving but it was evaporated. He stated that Mr. Tong was one of the few people in the state who takes vouchers. He stated he was on TV yesterday and was a Vietnam Vet and he worked for the Department of Vets for 17 years with SIU. He stated that he was doing it for all vets because the voucher system in this area was ridiculous. You pray to get it, and when you get it, nobody will take it. He stated that he was staying in one of Mr. Tong's trailers on his ranch at very small rent. He didn't know where this was going if someone doesn't get on the bandwagon and make

the vouchers worth something instead of just paper. He stated that his wife wanted to say something.

Special Counsel, Michael Biddle, asked if she was one of the named appellants listed.

Chair Taverna stated that they did not have her name, but asked if she was DOE 1.

Mr. Biddle stated that Brandy McDaniel was DOE 1. He stated that, since her husband did file for the appeal and she is a resident, he thought it was fine.

City Clerk O'Connell swore in Lana King.

Lana King stated that she lived in 310 for 15 years and one day she came home and there was the yellow tag. She was so upset. She didn't know what to do and tried to hide in the room but was told to clear out by midnight and police will come and knock on the door. She didn't know what her situation was and she was scared of opening the door. The police told her to leave at that moment. They were told to go to the shelter but they didn't allow her to keep her dog there so they couldn't stay in the shelter and stayed in their car all night. She was cold and scared. They didn't know what to do the next day. She is scared and she asked how the city kicked her out in one day. She asked that they let her back in. She didn't want to go anywhere. She asked them to take the yellow ticket off. She wants to go back. She stated that they said a storm was coming but not even rain is coming.

Chair Taverna asked if any other tenants were present who wanted to speak.

Chair Taverna stated that, at the beginning, anyone who was not on the list could come and speak.

An audience member asked how you notify them. She stated she was not called.

Special Counsel Biddle stated that it was incumbent upon a person to file an appeal and the persons named were those who signed an appeal form and submitted it to the city, and that was the basis upon which the names were listed.

Mr. Biddle stated that the time to file an appeal has passed.

Mr. Biddle suggested that the Chair bring the meeting back to order.

Chair Taverna asked the Commissioners if they have any further questions of the city or the appellants.

Commissioner Erbacher asked the geotech if he read the statements from the other consultant.

Mr. Sayre stated that he did.

Commissioner Erbacher asked if he was the one who did the previous study to the slope area, mentioning that there was attached documentation which indicated that he was studying this area.

Mr. Sayre asked if he was speaking of RJR Consultants who studied 320.

Commissioner Erbacher stated he was talking about Satar.

Mr. Sayre stated that Nick Satar was the email handout they got.

Commissioner Erbacher asked if he studied these specific slopes.

Mr. Sayre stated that he did.

Chair Taverna stated that she would close the public hearing and the Commission will deliberate to affirm, modify or rescind the building official's notice to vacate. They must decide, based on the evidence presented by the parties, whether more likely than not that erosion of the bluff has started to undermine the building at 310 Esplanade and result in structure failure and an unsafe condition for the occupants.

Commissioner Erbacher thought that all of the consultants say that this is a particular area prone to caving in, sliding, due to undermining of the toe and even some of the attachments indicate that they can be subject to immediate, unexpected failures at any time. He felt, based on the conditions at the time of the city's action, they could be leading up to that. He stated that he hasn't found anything that would disavow that thinking.

Commissioner Salisbury agreed with Commissioner Erbacher. She agreed it was a very unfortunate situation and difficult for the tenants and owner, but the CSA studied the building for many years and she felt the evidence was very compelling that there was a potential danger to the tenants. She felt it was warranted.

Commissioner Shaw stated that California has unpredictable earthquakes, storms, etc., and they have been talking about them for a number of years. She felt it was obvious that the cliff's are receding. She thought the rate was uncertain, but she can't get past the safety of human life as the most important thing. She would hate to think of anyone being harmed or killed from them not being on top of things and recognizing the potential danger. She agreed with the other commissioners.

Commissioner Blackburn agreed with Commissioner Shaw's comments on life safety, adding that based on the testimony and things that were said, the building official at the time was acting with information under authority that he deemed prudent to issue the yellow tag. He stated that he has heard nothing that dissuades him from that opinion.

Commissioner Johnson felt that their job as Commissioners was to weigh the evidence. Making hard decisions based on the information given and what they deemed was right was a tragic situation. She didn't deny that, but they were charged to look at whether the evidence and the

decision at that time was made based on correct information and she stands with the other Commissioners on that.

Chair Taverna explained that they were members of the Emergency Preparedness and Safety Commission and, as mentioned, their focus was the safety of the residents of Pacifica. She agreed that it was a tragic situation. They can see their love for their residence and feel their pain. They can see how difficult it is to be in this situation from what they told them, but they have to look at the evidence that has been presented, as far as the safety of the structure. She stated that, with the unpredictability of weather, from drought and now more rains. She stated that, from what they saw in the written and verbal presentations, it appeared that it was an unsafe structure at this point. She thought, at this point, they can take an official vote from the commissioners.

Mr. Biddle stated that someone would need to make a motion and a second.

Chair Taverna asked for a motion in order to take an official vote.

Commissioner Shaw so moved, Commissioner Salisbury seconded it.

Commissioner Erbacher thought they should be clear on the motion.

Chair Taverna stated that she would read what they were voting. The vote was that the Commission supports the decision to have the building vacated, based on the evidence presented by the parties to the hearing. They were voting that it was more likely than not that erosion of the bluff has started to undermine the building at 310 Esplanade which will result in structural failure and an unsafe condition for the occupants at 310.

Special Counsel Biddle concluded that it was to affirm the building official's decision.

Chair Taverna responded affirmatively.

Commissioner Erbacher moved; Commissioner Salisbury seconded.

City Clerk O'Connell stated that they could pass their yes or no vote on the front of the dais.

Chair Taverna stated that all the commissioners support that it was more likely than not that erosion of the bluff has started to undermine the building at 310 Esplanade and it could result in structural failure and unsafe condition for the occupants. She stated that this means they support that the building needed to be vacated.

Special Counsel Biddle reminded the Commission that they will issue a written decision, and he will prepare a resolution for consideration at their meeting in April. They will present the resolution to them in advance to have time to look at it and on the April 20 meeting, they will be asked to approve and adopt the resolution.

Chair Taverna stated she would like to adjourn the meeting.

Commissioner Salisbury so moved; Commissioner Shaw seconded.

ADJOURNMENT: 8:39 p.m.



MEMORANDUM

TO: Members of the Pacifica Emergency Preparedness and Safety Commission **CC:** Captain Chris Clements

FROM: Michael G. Biddle, Special Counsel to the Commission **FILE NO.:** 05620.0161

DATE: April 20, 2016

RE: Resolution Of The City Of Pacifica Emergency Preparedness And Safety Commission Denying An Appeal Filed By Millard Tong, Bart Willoughby, Elizabeth Benson, Garth Yeaman, Michelle Mackay, Eileen Frances Horan, Juliet Kalotkin, Kathryn Deliceno, Cassidy Saenz, Gordon King, And Doe 1 And Upholding And Affirming The City Of Pacifica Building Official's Notice To Vacate The Premises At 310 Esplanade, Pacifica, California

Introduction

On January 25, 2016, the City of Pacifica Building Official (CALEMA ID 50573) ("Building Official") found the residential apartment building at 310 Esplanade, Pacifica, California ("Property"), to be unsafe and ordered the occupants to vacate the Property ("Notice to Vacate"). Thereafter, three (3) separate appeals of the Notice to Vacate were filed with the City Clerk on January 26, 2016, February 1, 2016 and February 4, 2016, and supplemented on March 15, 2016.

A hearing before the Emergency Preparedness and Safety Commission ("Commission") was noticed and conducted on March 23, 2016. At the conclusion of the hearing the Commission determined (Commissioner Erbacher moved; Commissioner Salisbury seconded; 7 ayes, 0 noes), that based on a preponderance of the evidence, it is more likely than not that the erosion of the bluff has started to undermine the building at 310 Esplanade which will result in structural failure and an unsafe condition for the occupants. Accordingly, the appeals were denied and the Building Official's determination to issue the Notice to Vacate was upheld and affirmed.

Attached to this report is a Resolution for consideration by the Commission to adopt and thereby affirm its decision of March 23, 2016. Upon adoption by the Commission and execution by the Chair and City Clerk, the City Clerk will serve a copy of the adopted Resolution upon the Appellants. Service of the Resolution via first class mail, including a certificate of mailing, will trigger a 90 day period within which judicial review can be sought in accordance with Code of Civil Procedure §1094.6.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY OF PACIFICA EMERGENCY PREPARADNESS
AND SAFETY COMMISSION DENYING AN APPEAL FILED BY MILLARD
TONG, BART WILLOUGHBY, ELIZABETH BENSON, GARTH YEAMAN,
MICHELLE MACKAY, EILEEN FRANCES HORAN, JULIET KALOTKIN,
KATHRYN DELICENO, CASSIDY SAENZ, GORDON KING, AND DOE 1 AND
UPHOLDING AND AFFIRMING THE CITY OF PACIFICA BUILDING
OFFICIAL’S NOTICE TO VACATE THE PREMISES AT 310 ESPLANADE,
PACIFICA, CALIFORNIA**

WHEREAS, effective December 25, 2013, the City of Pacifica adopted Ordinance No. 799, and added numerous provisions to Title 8 of the Pacifica Municipal Code relating to Building Regulations; Section 8-1.01 of Title 8 of the Pacifica Municipal Code adopted Chapters 1 through 35, including Appendix C, G and J of the 2013 California Building Code as the Pacifica Building Code and Section 8-5.01 of Title 8 of the Pacifica Municipal Code adopted Chapters 1 through 8, including Appendix A of the 2012 International Property Maintenance Code (“IPMC”), as part of the Pacifica Building Code; and

WHEREAS, Section 116.1 of the Pacifica Building Code provides that structures which are dangerous to human life or the public welfare shall be deemed an unsafe condition which shall be taken down and removed or made safe as the Building Official deems necessary; and

WHEREAS, Section 109.1 of the IPMC provides that when there is imminent danger of failure or collapse of a building or structure which endangers life, the Building Official is authorized to order and require the occupants to vacate the premises; and

WHEREAS, on January 25, 2016, the Building Official ~~—~~found the residential apartment building at 310 Esplanade, Pacifica, California (“Property”), to be unsafe for the occupants, and placed a yellow placard on the building and entry door to each unit in the building notifying the occupants that “[t]he erosion of the bluff has started to undermine this building, which will result in structural failure and an unsafe condition for occupants”; and

WHEREAS, the yellow placard further notified the occupants that entry, occupancy and lawful use to all units are restricted to the owner, tenants and their agents for the removal of personal property only, thereby ordering the occupants to vacate the Property (“Notice to Vacate”); and

WHEREAS, thereafter on February 23, 2016, the City of Pacifica (“City”) released a report dated February 17, 2016, authored by the firm of Cotton, Shires and Associates, Inc. (“CSA”), which describes the basis for issuance of the Notice to Vacate by the Building Official (the “CSA Report”); and

WHEREAS, three (3) separate appeals of the Notice to Vacate issued by the Building Official were timely filed with the City Clerk by: (1) Millard Tong, property owner (“Appellant Tong”), on February 1, 2016, with a separate supporting declaration on February 9, 2016 (“Tong Appeal”); (2) Bart Willoughby, resident (“Appellant Willoughby”), on January 26, 2016, with a separate supporting declaration on February 9, 2016 (“Willoughby Appeal”); and (3) Elizabeth Benson, Garth Yeaman, Michelle Mackay, Eileen Frances Horan, Juliet Kalotkin, Kathryn Deliceno, Cassidy Saenz, Gordon King, one other resident whose name was illegible (identified herein as DOE 1)(“Appellant Tenants”) on February 4, 2016 (“Tenants Appeal”)(collectively, the Tong Appeal, Willoughby Appeal and Tenants Appeal are referred to herein as the “Initial Appeal”); and

WHEREAS, Section 8-1.02 of the Pacifica Municipal Code provides that the City of Pacifica Emergency Preparedness and Safety Commission (“Commission”) will hear and process appeals in accordance with Section 113 of the Pacifica Building Code; Section 113 of the Pacifica Building Code provides that any person aggrieved by an order, decision or determination of the Building Official, such as the Notice to Vacate, may file an appeal of said order, decision or determination with the City Clerk within ten (10) business days of the issuance of said order, decision or determination; and

WHEREAS, in accordance with Section 113 of the Pacifica Building Code, the City Clerk set a hearing date of February 17, 2016 for the Commission to hear the Initial Appeal and provided written notice of the time and place of the hearing to Appellant Tong, Appellant Willoughby and Appellant Tenants (collectively referred to herein as the “Appellants”) at least ten (10) calendar days prior to the hearing; and

WHEREAS, as authorized by Section 113 of the Pacifica Building Code, the Commission continued the hearing to March 2, 2016, and written notice of the time and place of the continued hearing was provided to each of the Appellants at least ten (10) calendar days prior to the March 2, 2016 hearing date; and

WHEREAS, on February 28, 2016, Appellant Willoughby raised concerns of due process and fairness with respect to the timing of receipt of the CSA Report which was released by the City on February 23, 2016; on February 29, 2016, Appellant Willoughby was advised that in order to address any concerns related to due process a continuance of the hearing could be requested, and on March 1, 2016, Appellants Tong and Willoughby requested a continuance of the March 2, 2016 hearing; and

WHEREAS, on March 1, 2016, a continuance of the March 2, 2016 hearing to March 23, 2016 was granted, and written notice of the time and place of the continued hearing was provided to each of the Appellants on March 1, 2016; and

WHEREAS, Appellants were additionally advised that they had the opportunity to submit additional material to the City specifying the basis for their appeal and documentation in support thereof no later than 5:00 p.m., Tuesday, March 15, 2016 (i.e. ten (10) business days from the March 1, 2016 continuance); and

WHEREAS, on March 15, 2016, Appellants Tong and Willoughby submitted additional material to the City Clerk thereby supplementing the basis of the Tong Appeal and Willoughby Appeal (the "Supplemental Appeal")(collectively the "Initial Appeal" and "Supplemental Appeal" shall be referred to herein as the "Appeal"); and

WHEREAS, on March 23, 2016, the Commission held a duly noticed hearing at which time they received and considered the Notice to Vacate; CSA Report; Appeal; memorandum dated March 2, 2016 and March 23, 2016 from Special Counsel to the Commission; oral testimony from the City Building Official, a representative of CSA, and Appellants (a transcription of said testimony is enclosed as Attachment A hereto); and further documentation submitted at the hearing by the City Building Official comprised of three (3) photographs of the Property (enclosed as Attachment B hereto), an email exchange between Appellant Willoughby and staff at the Coastal Commission and the City of Pacifica, dated January 28 and 29, 2016 (enclosed as Attachment C hereto); and by Appellant Tong, labeled "Tong Oral Statement March 23, 2016" (enclosed as Attachment D hereto)(collectively referred to herein as the "Record");

NOW, THEREFORE, BE IT RESOLVED, that based on the Record described above, the City of Pacifica Emergency Preparedness And Safety Commission hereby determines as follows:

1. The Notice to Vacate was issued in accordance with authority vested in the City of Pacifica Building Official as set forth in the Pacifica Building Code.
2. The Appellants are deemed to be aggrieved by the Notice to Vacate and thus have standing to file and pursue the Appeal.
3. The Appeal was timely filed by the Appellants with the City Clerk in accordance with Pacifica Building Code.
4. The City Clerk properly and timely notified the Appellants of the hearing to consider the Initial Appeal set for February 17, 2016, and continued to March 2, 2016, as well as the hearing to consider the Appeal on March 23, 2016.
5. The Appeal asserts in part that the property owner, Appellant Tong, was not provided notice and an opportunity to have his own geotechnical consultant evaluate the Property conditions before the Notice to Vacate was issued by the Building Official. However, Appellants do not cite to any provision in the Pacifica Building Code that obligates the Building Official to notify a

property owner before an order, decision or determination is issued in accordance with authority vested in the Building Official. Nevertheless, Appellants liberally cite to publications and statements attributed to U.C. Berkeley Professor Nicholas Sitar, Civil and Environmental Engineering, in support of their Appeal. Appellant Tong also indicates that Professor Sitar is to perform a LIDAR scan of the bluff and will prepare a letter with his observations and recommendations; however, no such documents were ever produced by Appellant Tong. Thus Appellants appear to tacitly declare Professor Sitar as their de-facto geotechnical consultant. However, with respect to statements actually made by Professor Sitar, Appellants neglected to include the full extent of his assessment of the Property in their Appeal, which only came to the attention of the Commission at the hearing¹. It is evident that Appellants did not provide the full extent of Professor Sitar's statements with their Appeal because his remarks ultimately do not support their position.

As more particularly set forth in Attachment C to this Resolution (see page Attachment C-3), on or prior to January 29, 2016, Professor Sitar advises Appellant Willoughby in part as follows:

"Thank you for getting in touch and I sympathize with your situation. I can certainly come out to inspect the site, and I have seen and carefully reviewed the video posted on line. However, I have to be frank with you. I do not see how anyone can certify that the bluff is sufficiently stable/safe for occupants to return. I agree that as long as the waves are not currently hitting the base of the bluff, the bluff below the northern part of the property shows no signs of imminent failure and as long as the weather holds occupants can be allowed to remove their belongings. Also, as the video shows the failures occur in slivers that are relatively narrow, so there does not appear

¹ At the March 23, 2016 hearing the City submitted an email exchange between Appellant Willoughby and staff at the Coastal Commission and the City's Planning Director, Tina Wehrmeister, to respond to some of the positions taken by Appellants to repeal the Notice to Vacate. The email exchange, occurring on January 28 and 29, 2016, is appended hereto as Attachment C. As shown on page Attachment C-1, on January 29, 2016, Appellant Willoughby advises Nancy Cave, District Manager, North Central Coast District Office, California Coastal Commission in part as follows:

"On Saturday I have a preeminent academic in the discipline of Geology and in particular sandy bluffs coming to 310 and 320 to provide me with an assessment of bluff conditions as they currently exist and any recommendation that can be made, to help deal with the erosion issues. Attached is his response to my inquiry and photos sent."

On page Attachment C-3 is the response from the unnamed "preeminent academic" referred to by Appellant Willoughby. At the hearing Ted Sayre of CSA indicates that the aforementioned unnamed "preeminent academic" is Professor Sitar and that he is quoted as saying "I do not see how anyone can certify that the bluff is sufficiently stable/safe for occupants to return". Subsequently, in his testimony before the Commission, Appellant Willoughby lamented that he would have liked to have had the information provided by Mr. Sayre prior to the hearing so he could prepare. Later, Appellant Willoughby stated that he wanted to address the email from Professor Sitar, indicating that it was sent before he (Professor Sitar) observed the Property on January 30, 2016. Further, Appellant Willoughby stated that he appreciated that the email came from himself to the Coastal Commission, but this was before Professor Sitar's visit on January 30th. Accordingly, Appellant Willoughby confirmed by his testimony that the statements on page Attachment C-3 were provided by Professor Sitar.

to be an imminent danger of a wholesale collapse. However, the southernmost part of the property is already oversteepened at the toe and, therefore, in a much more precarious position.”

Thus, considering the opinion of Professor Sitar, not to mention that of Ted Sayre of CSA, it likely would have been futile for Appellant Tong to hire a geotechnical consultant in the hope of rebutting the Building Official's determination to issue the Notice to Vacate. Also, Appellant Tong had ample opportunity from the date of issuance of the Notice to Vacate on January 25, 2016, to the hearing on March 23, 2016, to engage a geotechnical consultant to refute the Building Official's decision to issue the Notice to Vacate and chose not to do so. Further, this portion of the Appeal does not address the substantive basis for the Building Official's decision to issue the Notice to Vacate, i.e. whether the building at the Property is unsafe for the occupants. Accordingly, for all of the reasons noted above, this part of the Appeal is denied.

6. Appellant Willoughby asserts that in November 2014 the City Building Official provided the owner of 320 Esplanade (i.e. Appellant Tong) with notice and an opportunity to address the loss of riprap at the base of the bluff which had disappeared, and thus questions why the Building Official did not provide the same notice and opportunity to correct problems at the Property before issuing the Notice to Vacate. Again, Appellants do not cite to any provision in the Pacifica Building Code that obligates the Building Official to notify a property owner before an order, decision or determination is issued in accordance with authority vested in the Building Official. Nevertheless, it is noteworthy that the building at 320 Esplanade was vacated in 2010 and thus as of November 2014 when the Building Official notified the property owner (Appellant Tong) of the lack of riprap, there were no life safety concerns associated with building because it was unoccupied. Further, the riprap is a means to mitigate the harm of wave erosion to the base of the bluff that causes bluff failure and thus the lack of riprap at the base of the bluff raised concerns of further erosion. In the case of the Property there is existing, intact, riprap at the base of the bluff intended to mitigate the harm of wave induced erosion. The problem presented to the Building Official relative to the Property in January 2016 was actual bluff failure and the resulting threat to occupant safety notwithstanding the presence of existing, in place rip rap. Thus, the problem confronting the Building Official in November 2014 relative to 320 Esplanade and the vacant structure thereon is wholly different than that being confronted in January 2016 with respect to the Property with a fully occupied structure. Hence there is no rational basis to treat these two dissimilar situations in the same fashion. Further, this portion of the Appeal does not address the substantive basis for the Building Official's decision to issue the Notice to Vacate, i.e. whether the building at the Property is unsafe for the occupants. Accordingly, for all of the reasons noted above, this part of the Appeal is denied.

7. Appellant Willoughby asserts that the Notice to Vacate is an end-run around an appeal he filed on January 13, 2016 of the City of Pacifica Planning Commission's approval of the demolition of 320 Esplanade (CDP-361-

15), which apparently did not include conditions requiring the building at the Property to be vacated during the demolition activities. Nevertheless, the Building Official apparently required the premises at the Property to be vacated during demolition of 320 Esplanade, thereby prompting Appellant Willoughby's appeal of the Planning Commission's approval of the demolition of 320 Esplanade as a means to contest the Building Official's requirement. Appellant Willoughby subsequently withdrew his appeal of the demolition of 320 Esplanade. Review of the CSA Report indicates that "oceanographic conditions have been especially adverse on January 6, 7, 8, 12, 17, 18, 22 and 23" and that City staff have inspected the Property on a daily basis. Building Official Michael Culley and CSA representative Ted Sayre, Engineering Geologist, both testified that they had made routine visits to the Property in January 2016. Accordingly, the suggestion that the Building Official issued the Notice to Vacate solely to facilitate the safe demolition of 320 Esplanade, dismisses the fact that the Building Official was aware of and considered the adverse weather conditions occurring before and after the January 13, 2016 appeal of CDP-361-15, the information gained from the daily inspections of the Property, as well as the video of the bluff failure of January 23, 2016, when the Notice to Vacate was issued on January 25, 2016. Further, this portion of the Appeal does not address the substantive basis for the Building Official's decision to issue the Notice to Vacate, i.e. whether the building at the Property is unsafe for the occupants. Therefore, for all of the reasons noted above, this part of the Appeal is denied.

8. Appellant Willoughby also alleged that as of the date of the Willoughby Appeal the City had not provided any report or other information that would support its decision to issue the Notice to Vacate. Subsequent to the filing of the Initial Appeals, the CSA Report was released to the Appellants by the City on February 23, 2016. A hearing to consider the Initial Appeal had been set for March 2, 2016, and on February 28, 2016, Appellant Willoughby raised concerns of due process and fairness with respect to the timing of receipt of the CSA Report. On March 1, 2016, a continuance of the hearing to March 23, 2016 was granted, and Appellants were additionally advised that they had the opportunity to submit additional material to the City specifying the basis for their appeal and documentation in support thereof no later than 5:00 p.m., Tuesday, March 15, 2016. Accordingly, Appellants were afforded ten (10) business days from March 1, 2016 to March 15, 2016 to further supplement their Initial Appeal; the same amount of time afforded an aggrieved party to appeal a decision of the Building Official pursuant to Section 113 of the Pacifica Building Code. Accordingly, concerns of due process and fairness in relation to the timing of the release of the CSA Report raised by Appellants have been appropriately redressed and thus this part of the Appeal is denied.

9. The Appeal asserts that the Building Official's determination to order the Property and the building thereon to be vacated was premature and lacking in substantive basis to warrant the finding that the building was unsafe for the occupants. The Tong and Willoughby Appeals assert that the bluff at the Property has not changed since 2010 and that there has been very little or no bluff loss along the entire width of the Property. The Willoughby Appeal asserts

that at some unknown point in time the City's geotechnical consultant, Ted Sayre of CSA, indicated that the Property would only need to be vacated once the shot-crete area shown in Exhibit B to the Willoughby Appeal, had eroded. Yet photographs submitted as part of the Tong Appeal and Willoughby Appeal, as well as those submitted by the City at the hearing (Attachment B: pages Attachment B-2 and B-3), show the bluff at the southwest corner of the Property has failed, and with it the shot-crete in this location. In fact a portion of the patio slab in the southwest corner of the Property is hanging over the top of the bluff with no support (see page Attachment B-3). Further, Professor Sitar notes that "the southernmost part of the property is already oversteepened at the toe and, therefore, in a much more precarious position." (see page Attachment C-3). Indeed, the Tong Appeal concedes that the Notice to Vacate "may be partially valid for only the common area between 310 and 320 Esplanade", in apparent recognition of the bluff failure in this location. However, the Tong Appeal thereafter persists that the Notice to Vacate is not valid for the entire building. Accordingly, at the hearing, Appellant Tong requested the opportunity to allow displaced residents to re-occupy the northerly 16 units of the 20 unit structure upon the execution of a waiver. When questioned by Commissioner Blackburn regarding the purpose of the waiver, Appellant Tong stated:

"a waiver of liability that they know they will be moving into a building that has imminent danger, but not at this present time."
(see page Attachment A-8)

Appellant Willoughby also alleges that in discussions with two unidentified individuals, each of whom are alleged to have geotechnical backgrounds, that based on review of the drone photos attached as Exhibit C to the Willoughby Appeal these individuals believe the overall health of the bluff at the Property looked very good, the structures were not undermined, and the City's action to issue the Notice to Vacate was premature. There is no assertion that these unidentified individuals actually personally visited and inspected the Property to arrive at their opinions. Then Appellant Willoughby alleges that Professor Sitar came to the Property² and confirmed that "I agree that as long as the waves are not currently hitting the base of the bluff, the bluff below the northern part of the property shows no signs of imminent failure". After viewing the video Professor Sitar concluded, "[a]lso the video shows the failure occur in slivers that are relatively narrow, so there does not appear to be an imminent danger of a wholesale collapse". Finally, the only area of concern supposedly was at the southern end of the property, causing Professor Sitar to comment, "[h]owever, the southernmost part of the property is already oversteepened at the toe and,

² The statements attributed to Professor Sitar as a result of his alleged visit to the Property are the same exact statements as those attributed to him before his visit and contained in the email exchange included on page Attachment C-3. When questioned by Commissioner Shaw whether Professor Sitar put anything in writing relative to his site visit, Appellant Willoughby stated that it was all verbal; that the declaration he (Willoughby) provided was under penalty of perjury; and if he had to go to court and testify as a witness with respect to what was said he could do that. Thus, based on the representation of Appellant Willoughby, it appears that Professor Sitar merely reiterated his same statements after his site visit as those he made before his site visit.

therefore, in a much more precarious position". The Appeal asserts that there were no cracks in the shot-crete area, no cracks in the slab at the north, center or south end of the property, there has been no major bluff failure at the Property, the revetment below at the beach level "for the most part continues to protect the property", the bluff has not eroded back even to the sidewalk slab, there is absolutely no undermining of the structure and thus given the information from Professor Sitar, no basis for the Building Official to issue the Notice to Vacate.

Of course, it was divulged at the hearing that Professor Sitar had much more to say about the Property than that offered by the Appellants in their Appeal. As provided on page Attachment C-3, Professor Sitar, who "carefully reviewed the video posted on line", noted that he does not "see how anyone can certify the bluff is sufficiently stable/safe for occupants to return." And while Professor Sitar agrees that the "bluff below the northern part of the property shows no signs of imminent failure," he does not advocate for the occupants to return but rather "as long as the weather holds occupants can be allowed to remove their belongings".

10. The Appeal alleges that there was no immediate emergency situation that would justify the issuance of the Notice to Vacate. Appellants complain that the CSA Report fails to indicate that bluff failure behind a revetment happen in small and gradual incremental slivers as Professor Sitar indicates and the drone video show. Further, Appellants assert that these failures take years to cause any major problems. The Appeal cites to the adjacent property at 320 Esplanade as proof that the erosion process is a gradual, slow process. Professor Sitar is cited by Appellants as stating that (i) "the bluff below the northern part of the property shows no signs of imminent failure", and (ii) "as the video shows the failures occur in slivers that are relatively narrow, so there does not appear to be an imminent danger of wholesale collapse". Appellants note that various analysis of the bluff was not undertaken and appear to place great weight on the fact that there is rock rip rap at the toe (base) of the bluff that allegedly will keep most high energy waves from over-topping the revetment. Further appellants allege the approaching Spring season has brought a change to the wave actions and resulting increase in the amount of sand/beach buffer between the revetment and the ocean. As a result, natural sandbars build up in front of the Property causing waves to break further off shore and eliminating large waves that overtop the revetment. In sum while the bluff will likely fail in gradual incremental steps, any further failure beyond that which has already occurred will not happen for some unspecified period of time because the toe of the bluff is no longer subject to wave action (for the time being) as a result of the existing revetment and damage from El Nino storms are behind us.

However, with respect to the value of the existing revetment, Professor Sitar opined that "[t]he rip-rap is completely inadequate erosion protection from wave action, as this storm illustrated with unfortunate consequences." Further, page 2 of the CSA Report does note that the local bluffs "are prone to progressive failure after having been over-steepened by coastal erosion events.....Wave driven toe erosion or seepage through the bluff face (either alone or in combinations) can trigger failures of over steepened slopes". Also, Ted Sayre testified that he

has seen bluffs retreat in Pacifica on the order of 10 feet or more in a week. Hence he could not say it was safe to occupy a structure when you have 5-10 feet of bluff fail in a day and a similar failure the next. Thus, while bluff failure can and does occur gradually, Mr. Sayre noted they “also happen quickly”.

The Appellants cite to Professor Sitar for the proposition that the bluff “has a good chance of remaining in its current configuration until late March or April.” Appellant Willoughby opines that it will take several months of high tides at 6’ and 18’ storm swells to cause an overstepping of the bluff across the majority of the Property. Of course neither the City nor the Appellants can provide a definitive answer to the question of when the bluffs at the Property will actually fail.

In testimony before the Commission, Appellant Tong stated that he is in litigation with the contractor who built the revetment at 320 Esplanade and the Property, and with money from that litigation he plans to shore up the Property and make it safe for future use. Appellant Willoughby also noted the litigation between Appellant Tong and the contractor who built the revetment, which was characterized as “defective” apparently because it lacks a height of 25 feet and geotechnical material behind it. Thus, on one hand Appellants assert the revetment will protect the toe of the bluff from further wave action and consequential bluff loss and as a result the building should be allowed to be reoccupied, while at the same time maintaining the revetment is “defective” in an action against the contractor who installed it. When questioned by Commissioner Erbacher if there was any concrete proposal or plan for the Property or if Appellant Tong was willing to get a building permit to undertake any modifications or construction to improve safety, Appellant Tong stated, “at this point, no”. Thereafter, Appellant Willoughby sought to rehabilitate Appellant Tong’s response to Commissioner Erbacher by offering that Appellant Tong cannot have a plan to address the bluff loss “until he knows how much money he will have to do what he needs to do whatever mitigation there is”. However, it is an unfortunate reality that necessary mitigation is often ignorant of its own cost. If Appellant Tong recovers nothing on his claim against the contractor, the mitigation he needs to do to address bluff loss at the Property does not miraculously become nothing. Indeed Professor Sitar had previously provided Appellants an outline of mitigation in his email exchange with Appellant Willoughby in late January 2016 (page Attachment C-3) as follows:

“Having said that, I do think the property can be saved with a proper retaining wall at the toe of the bluff. The rip-rap is completely inadequate erosion protection from wave action, as this storm illustrated with unfortunate consequences. The kind of retaining structure, soil nails with shotcrete, that protects the toe of the staircase access to the beach needs to be founded at least 10-15 [feet] below the beach level and extended at least 50 feet above the beach. Unfortunately, given the time of year and the storms still rolling in, I am not sure such work is feasible even if all the permits can be secured, until about late March or April. I do believe that bluff has a good chance of remaining in its current configuration

until then unless we have another storm with major wave action, which cannot be ruled out.”

Appellants’ also complain that the photos in the CSA Report do not show the natural layback of the bluff. Yet photographs attached to the CSA Report do provide a side view of the Property and a sense of the current layback of the bluff, and page 2 of the CSA Report notes that “[w]hile nearby bluff slopes appear to be vertical, they probably are characterized by slopes less than 90 degrees inclination.” Thus the CSA Report does recognize the natural layback of the bluff. The CSA Report continues, however, to note that near vertical bluffs will naturally slough back to an approximate 70 degree inclination and for the bluff beneath the Property to reach that point of equilibrium, the top of the bluff will need to retreat approximately 18 feet thereby undermining the structure on the Property that is approximately 11-14 feet from the edge of the tope of bluff.

11. Appellants also allege that the CSA Report relies on the “hype” of a monster El Nino and cite to the fact that February 2016 was a very dry month with 1-2 days of very little rainfall. Yet, the Bay Area experienced near non-stop rain during the first few weeks of March 2016 which brought several inches of rain to Pacifica. Appellants also cite to a recent 3.5 magnitude earthquake of March 14, 2016 that apparently did not result in bluff loss. Ted Sayre of CSA testified that earthquakes on the order of 5.0 magnitude could trigger substantial failure of a larger magnitude than the typical progressive slabbing off. Earthquakes in California are a near daily occurrence and given the right combination of size and location, bluff and/or building failure at the Property are not improbable.

12. As noted in the CSA Report, CSA has experience with the area in question dating back to 1997, including the design of the revetment at 500 Esplanade. CSA performed several site reconnaissances in December 2015 and visited and observed the Property on a regular basis in January 2016; also, City staff had inspected the bluff to the west of the Property on a daily basis during the month of January 2016. The inspections of the Property were the result of on-going concerns related to the deterioration of the bluff upon which the structure is located, particularly in light of El Nino enhanced storms, periods of King Tides, elevated coastal water temperatures and resulting thermal expansion, and repeated offshore swell conditions of 16 to 18+ feet during the month of January. Page 2 of the CSA Report notes that “[s]ite observations have noted significant progressive bluff failures to the north, south, and immediately west of 310 Esplanade in mid to late January.” Ted Sayre of CSA testified that the observed bluff failure coupled with the conditions that were impacting Pacifica through January, and which were projected to continue through February and March, raised concerns of occupant safety and the need to evacuate the Property.

The CSA Report references a January 23rd video of the local bluffs that can be viewed at www.ktvu.com/news/81365571-story. The CSA Report notes that previously observed cavities that had formed in the bluff were now significantly

enhanced. An “alarming cavity” extending from the beach to the top of the bluff is now evident at the southwest corner of the building. In testimony before the Commission Ted Sayre of CSA noted that a precipitous indentation in the bluff had formed below 320 Esplanade, a cove like feature with flanking sides. The north side of the indentation was reaching towards the southern portion of the Property, and “as soon as a very steep, newly formed precipitous cliff of 70 feet in height was formed in close proximity to the building, several factors of concern came into play”. A steep cliff starts a progression of tension cracking and CSA “knew tension cracking was occurring as soon as the steep high bluff had formed with the indentation that was reaching the southern end of” the Property. Second, the steep slopes “are very vulnerable to further collapse from any erosion at their base from impacts of waves”. An area of major concern was what Ted Sayre termed a “flanking” type of failure. The bluff retreat was not directly from the west and moving progressively eastward towards the patio across the full length of the structure; rather, the cove indentation formed immediately south with precipitous slopes around the perimeter of the cove and, with the “flanking” ends of the cove, marching towards the south end of the building. The CSA Report further notes a second cavity, located low on the bluff immediately west of the building had been enlarged and effectively undermined support of the upper bluff near the west-central portion of the building.

The CSA Report notes that based on CSA’s long term observations, local bluffs are prone to progressive failure after having been over-steepened. While bluffs may reach near vertical slopes, the slopes are anticipated to fail back to more stable slopes under ongoing storm conditions. Thus the top of the bluff retreats further inland. Wave driven erosion of the toe (base) of the bluff or precipitation seepage through the bluff face can trigger bluff failures of over steepened slopes.

As of January 23rd, the CSA Report notes, and the video and photographs included in the CSA Report, Willoughby Appeal and Tong Appeal show that active bluff retreat has created a near vertical slope from the top of the bluff to the beach approximately 70 to 75 feet below at the southwest corner of the Property. The building structure is located approximately 14 feet from the edge of the top of bluff. However, the top of the bluff edge is within a few feet of the southwestern patio slab edge. In fact, as shown on page Attachment B-3, a portion of the patio slab in the southwest corner of the Property is hanging over the top of the bluff with no support beneath. The second floor balcony is supported by vertical posts with footings located near the center of the patio slabs. While the bluff slopes appear to be vertical, they are likely less than 90 degrees. Thus to evaluate impacts of anticipated bluff retreat, the CSA Report assumed that the current bluff face is at 85 degrees. To achieve a more stable bluff slope of 72 degrees, the top of the bluff would need to retreat approximately 18 feet. The CSA Report notes that near vertical bluffs have been found to slough back to an approximate 70 degree angle by precipitation (rain) driven failures. Thus, if the building structure is approximately 14 feet from the edge of the top of the bluff, and the top of the bluff would need to recede approximately 18 feet landward to achieve a more stable bluff slope of 72 degrees, this amount

of bluff retreat would further undermine the patio, as well as balconies and the building foundation.

Accordingly, the CSA Report notes and Ted Sayre of CSA testified that the over-steepened bluff at the southern edge of the Property in combination with the projected severe rains, high swells and high tides through February and March, led CSA and the Building Official to believe that it was prudent to evacuate the building because of the danger to the occupants as a result of bluff failure. Future bluff failures will likely undermine site improvements resulting in rapid collapse and the fall of patio slabs and balconies to the beach below; undermining of the foundation footings will compromise the structural integrity of the building. Encroachment of the bluff towards the building has also decreased the safety of the Property with respect to ground shaking conditions. Given the proximity of the San Andreas Fault, the ability of the building and the bluff to survive a modest to severe seismic event is in question. As a result, Mr. Sayre of CSA concluded that the Notice to Vacate issued by the Building Official was justified because of unsafe living space conditions.

13. Based on the preponderance of the evidence in the Record, the City of Pacifica Emergency Preparedness And Safety Commission hereby finds that the bluff at the Property is receding, prone to caving, sliding, and subject to immediate and unexpected failure at any moment and thus a potential danger to the tenants. Accordingly, the erosion of the bluff has started to undermine the building at 310 Esplanade which will result in structural failure and an unsafe condition for the occupants, and therefore the Appeal is hereby denied and the determination of the City of Pacifica Building Official to issue the Notice to Vacate the premises at 310 Esplanade, Pacifica, California is hereby upheld and affirmed.

14. The City Clerk is directed to certify the adoption of this Resolution. The Resolution shall take effect immediately upon its adoption by the City of Pacifica Emergency Preparedness And Safety Commission. Further, the City Clerk is directed to serve a copy of this Resolution and accompanying attachments on the Appellants via first class mail to the addresses noted in the Appeal, with a certificate of mailing.

PASSED AND ADOPTED at a regular meeting of the City of Pacifica
Emergency Preparedness And Safety Commission, California, held on the 20th
day of April, 2016 by the following vote of the members thereof:

AYES, Commissioners:

NOES, Commissioners:

ABSENT, Commissioners:

ABSTAIN, Commissioners:

Evelyn Taverna, Chair

ATTEST:

Kathy O'Connell, City Clerk

APPROVED AS TO FORM:

Michael G. Biddle, Special Counsel

Attachment A

Attachment A

SPECIAL MEETING MINUTES

City of Pacifica
Emergency Preparedness & Safety Commission
Pacifica Police Department Conference Room
2075 Coast Highway
Pacifica, CA 94044

DATE: Wednesday, March 23, 2016

TIME: 6:30 p.m.

CALL TO ORDER: The meeting was called to order.

ROLL CALL:

Commissioners Present: Johnson, Blackburn, Shaw, Chiechi, Salisbury, Erbacher, Chair
Taverna

STAFF PRESENT: Michel Biddle, Special Counsel
Chris Clements, Police Captain
Bill Glasgo, Police Sergeant
City Clerk O'Connell

APPROVAL

OF MINUTES: The minutes for the February 17, 2016 were approved.

APPROVAL

OF AGENDA: Agenda for March 23, 2016 was approved.

COMMISSION COMMENTS: None

EX-OFFICIO COMMENTS: None

STAFF COMMENTS: None.

PUBLIC COMMENTS:

Cherie Gladioux stated that her boyfriend lived at 310 Esplanade. She believed it was unjustly yellow-tagged as there was no danger. She thought the two apartments on the end might have been in jeopardy. She stated that he has been homeless since that day in January. The Red Cross gave him three days at a shelter in a church where you could not bring your animal. She stated that 20 people were displaced on that day and could not find adequate housing. She felt that Pacifica did not supply emergency assistance for the people in that building, and they still have not done anything. She stated that Resource Center can give you a \$25 gift card to Safeway, but she asked where they can cook their

food or store it. She also asked how you can take a shower or take care of your animal, while you have to pack up your whole life and put in a storage unit, but if you aren't working, how can you afford a storage unit let alone coming up with a first and last deposit for rent. She felt the city of Pacifica acted unjustly while tenants don't have resources. She asked what happens by the pier, stating that 200 families will be displaced and in the same position. She commented on the city finding \$1.5 million, adding that it was unjust. She stated that they put out 20 families, many of them elderly and are now living in a trailer. She felt it was unjust and something needs to be done about it. She felt the appeal needs to go forward, adding that the apartments at 310 Esplanade have not caved in. She stated that they have demolished the other ones and were vacant. She stated that they didn't jeopardize lives and should have been demolished years ago.

Jeff Bowman stated that the former speaker mentioned most of the points he was going to make. He asked who was on the board and after they have miraculously come up with money, he asked if any of it was going to help any of the residents. He stated that he is sleeping in his car with his dog and none of them have asked him how he was doing. He stated that the Pacifica Resource Center has been more help than all of them. He hoped they sleep well at night knowing that they threw people out because someone deemed the apartment unsafe. He asked if that person was present. He felt that some of that found money should come their way.

PUBLIC HEARING:

Commissioner Erbacher stated that, about the time that the building was red-tagged, his family visited the adjacent structure where his daughter and son-in-law used to live. They walked around the area and walked along the beach, observed the facility and then left.

Commissioner Blackburn stated that he was at the site on Super Bowl Sunday on the beach with a friend and walking his dog. He noted the cliffs with evidence of erosion both north and south of 310 Esplanade.

Commissioner Erbacher stated that his visit was a little bit after Christmas or early part of January, but after it was red-tagged because there were a lot of people with cameras.

Commissioner Blackburn stated that, in his position with the Federal Emergency Management Agency in 2010, when the first apartments came to their attention, Bart Willoughby did contact him at FEMA with questions about potential grant opportunities that could be used to be spent on protecting the apartments. He stated that he talked with him about the grant structure and how money flows from federal government to state to local and advised him as he would have advised anyone calling about potential grant funds. He also talked with the City Attorney about that and whether that could potentially create a conflict of interest. The attorney did not think it would and advised that he should listen to the evidence presented and public comment and make his decision based on the facts presented in the case.

Chair Taverna stated that, after the disclosures, she then turned the hearing over to Michael Biddle, special counsel to the Commission for a brief presentation.

Michael Biddle, Special Counsel, stated that they were convened to consider an appeal filed by the property owner and tenants of 310 Esplanade regarding the notice to vacate that was issued by the Pacifica building official on January 25, 2016. He read the specifics in Section 116.1 of the Pacifica Building Code and Section 109.1 of the International Property Maintenance Code. He added that the building official has the authority under the city's building code to issue the notice to vacate. He also stated that the Commission is designated by the building code as the body to hear appeals of decisions made by the building official. He stated that the Commission was aware that an appeal hearing had been previously scheduled for March 2, 2016 and, in his memorandum to the Commission then and presently in this meeting's packet, there were two procedural issues that were raised and have since been resolved. Briefly, the notice to vacate issued by the building official was dated January 25, 2016 and the code provides ten business days to file an appeal which would have expired February 8, 2016. His memo raised the issue as to whether the Willoughby and Tong declarations of February 9 were timely. He was unaware of a city issued letter of February 2 which provided the appellants until February 9 to submit information. He concluded that the declarations were timely. He had also raised and confirmed the validity of Mr. Willoughby's standing because of some questionable information in the packet regarding a Daly City mailing address. He stated that prior to the March 2 hearing date scheduled he had an email exchange with Mr. Willoughby on Monday, February 29, and Mr. Willoughby raised issues of due process and fairness. He stated that Mr. Willoughby was advised of his ability to request that the Commission continue the hearing to allow sufficient time to review and critique the report prepared by CSA. He stated that property owner, Mr. Tong, and Mr. Willoughby did submit such a request for a continuance on February 29 and the continuance was granted on March 1, and all appellants were provided until 5 pm on March 15 to provide further documentation for consideration by the Commission and hearing was continued to March 23. He pointed out that the packet has the additional material provided. He then outlined the information in his memos of March 2 and 23 to the Commission, i.e., the CSA report specifics. He then referenced the appeal that was filed by owners and tenants, adding that the Commission only needs to address issues raised regarding the city's basis for issuing the notice to vacate. He addressed the process that took place and the fact that the complaints do not apply to the substantive basis for why the city issued the notice to vacate in this instance and are irrelevant. He then addressed the appellants' relevant complaints that the city lacked evidence that the building was unsafe for the occupants, mentioning some of their specific documentation given. He pointed out that, while that documentation implied they have months before any serious damage occurs, the building official does not need to wait for near catastrophic events to take action to prevent loss of life or property. He pointed out the questions before the Commission and that their decision must be based solely on the facts presented during the hearing. He also stated that the hearing was intended to be informal and formal rules of evidence do not apply, adding that they may give greater weight to in person sworn testimony or experts on the specific topic as opposed to statements from individuals not present. He stated that once they reach their decision, they will be asked to issue a written decision, which will be presented at their next meeting for approval and will trigger a 90 day period for either party to seek judicial review under the code of civil procedure, 1094.6. He reminded them that the hearing was being recorded, and those testifying will be sworn in to affirm that their testimony is truthful.

Chair Taverna stated that, at this time, they will hear from the city building official and witnesses regarding the issuance of the notice to vacate the premises at 310 Esplanade, Pacifica, on January 25, 2016 and basis for said notice.

City Clerk O'Connell swore in Michael Cully.

Mr. Cully, Building Official for Pacifica, stated that he has been a certified building official in the Bay Area for 16 years, and 25 years as a certified building and fire plans examiner and inspector. He stated that upon coming to Pacifica in October 2015, he observed the erosion at 320 and 330 as well as the area between 310 and 320 which was deteriorated with an area that resembled an inverted and concave cone set back into the face of the bluff. Because of the projected intensity of the pending El Nino season, he and the code enforcement officer made routine visits to keep track of any change in conditions of the bluff. He also met with Ted Sayre, Pacifica's registered geotechnical engineer, who had a long history with Pacifica and the bluffs along Esplanade. He stated that towards the end of October, he generated a letter to the residents and owner, warning them for the potential of bluff loss that may subject the building to structure failure and the need for immediate evacuation. The city's emergency responders were already making contingency plans. On January 5, another letter was sent warning them of the potential for emergency evacuation should further bluff loss occur. He stated that the January storms brought damage, exposing the foundations of 320 and 330, as well as increased loss at the south end of 310. The deterioration of the bluffs was now more closely monitored and discussed between the geotech and him resulting in the decision for the safe removal of belongings. He then turned the meeting over to Ted Sayre.

City Clerk O'Connell swore in Ted Sayre.

Ted Sayre, engineering geologist, stated that he has worked in Pacifica looking closely at the local bluffs since 1999 and was with the consulting firm that designed the revetment at the 500 block of Esplanade. Since that time, they have been charged with monitoring that revetment and reporting to the Coastal Commission on its performance and has brought them back to look at the local bluffs over the years, and at that time, they look at all the bluffs to the north, commenting that there have been quite a few changes in the bluffs. He stated that, by January 2005, they had noted a precipitous indentation in the bluffs had formed below 320 Esplanade, a cove like feature with flanking sides. He stated that the north side of the indentation was reaching towards the southern portion of 310 Esplanade. He stated that, as soon as a very steep, newly formed precipitous cliff of 70 feet in height was formed in close proximity to a building, several factors of concern come in to play, i.e., with a slope like that in proximity to a structure, it starts a progression of tension cracking with vertical cracks propagate landward of the exposed new cliff face. The tension fractures then become the failure surfaces for future blocks in material that calve from the bluff face in a slab mode of progressive plate failure. They knew the tension cracking was occurring as soon as the steep high bluffs had formed with the indentation that was reaching toward the southern end of 310 Esplanade. The second factor was steep, high slopes, over steepened, almost approaching vertical, which are very vulnerable to further collapse from any erosion at their base from impacts of waves. They had a series of projected high swell and high tides, thermally induced increased

ocean levels that were impacting the city through January and were projected to continue that activity through February and March. They had also predicted rain above normal levels associated with El Nino conditions. He stated that, once slopes are steep and high, they are very vulnerable to another process triggering the failure through seepage induced water coming out of the bluff face and saturates the ground, finding a point of release and fills up the tension cracks and reduces and weakens the edge of the bluff and that can trigger failures of the bluff even with additional erosion at the base of the cliff. He added that just the proximity of the steep high bluff to the building results in a concern about seismic safety of the structure, i.e., the progression of that indentation toward the south end of the building had made the combination of building and steep bluff potentially susceptible to seismically triggered failure. There was a concern that even earthquakes on the order of magnitude 5, which were possible any time along the San Andreas Fault could trigger substantial failures that would be of larger magnitude than the typical progressive slabbing off that they see from the weather or the coastal erosion. He stated that, in late January, we had been through a few weeks of very severe conditions in terms of rainfall, swells, king tides, and had seen rapid bluff retreat on the adjoining property with the development of the cove reaching toward the southern portion of the building and the forecast was predicting additional high swell, high tide combinations along with severe rain through February and March and they believed it was prudent to evacuate the building because of the danger to occupants. If they left them in there for any period of time, the weather could rapidly deteriorate the bluff and cause a progression of failures underneath the structure. He stated that part of their concerns were that the living space included balconies and patios on the western side which would be the first features of the building to fail catastrophically. Once they are undermined, the supports for the balconies go down via vertical post into the patio area and, once the patios drop, the balconies are going to drop. If any people are outside the building in that living area, they are going to be endangered. That was in their minds as the bluff had essentially retreated to near the edge of the patio on the south side in late January. He wanted to respond to some of the reasons presented for revoking the yellow tag. He referred to an email sent to the city by one of the occupants which references a visit to the site of a preeminent academic, Prof. Nick Satar. He stated that the email stated that Prof. Satar had indicated that the property shows no signs of emanate failure. He stated that, in the full email from Prof. Satar from which the quotes were extracted, it was clear that Prof. Satar, less than a week after issuance of the yellow tag had concluded it was not safe for occupants to return to the building, quoting from his email that he did not see how anyone can certify that the bluff was sufficiently stable/safe for occupants to return, and basically he was not saying that it was safe to reoccupy the structure. He referred to other statements made to justify revoking the yellow tag, such as the drone video which he found insightful as it was difficult to get down to the beach and view the entire height of the bluff from the ocean's perspective and difficult to see the bluff from the top. He mentioned his concern at the end of the video, made January 23, when it showed more than half a dozen people on the balconies and patios at 310 watching the failures occur next door and didn't realize the risk they were taking as that same failure could start undermining their patios and balconies. He referred to mention that monster El Nino conditions was all hype, adding that at the end of January there were predictions of continuing high swells, high tides and significant rainfall. He stated that luckily those conditions did not materialize in February, but there was a return of severe conditions in early March. He referred to the assertion that the bluff fails in slivers and there was no

justification for the yellow tag, stating that he has seen bluffs retreat in the city on the order of 10 feet or more in a week. He could not say it was safe to occupy a structure when you can have 5-10 feet of bluff fail and in a day or less another 5-10 feet fail with slabs of material coming loose from the bluff and undermining structures and living areas. He agreed that it was progressive but it can also happen quickly. He referred to the assertion that more detailed factors of safety should be calculated before evacuating people, stating that it was obvious to him that the building was in danger and the building official agreed with that assessment as they had both been watching the progression of bluff collapse in that vicinity for several weeks in January. He stated that to initiate the detailed study necessary to come up with a factor of safety, they would be looking at drilling the site, testing to determine strength of earth materials, slope stability analysis and that process could take more than a month. They felt they didn't have the time, and it was prudent to take action and evacuate the structure before people were harmed.

Special Counsel Biddle, had one question. He stated that the report indicates that the existing inclination of the bluff clearly isn't 90 degrees but he assumes it is 85 degrees. He thought it has an impact in relation to how much bluff retreat you need to have until you get to equilibrium and how far back does the top of the bluff retreat. He asked what the basis was to make the assumption that it is 85 degrees.

Mr. Sayre stated that several cross sections had been measured through the bluff by a member of the U.S. geological survey locally over a period of years, and had measured a wide range of bluffing culminations ranging from 90 degrees to 60 degrees in certain areas, depending on whether the bluff forming materials were what were termed poorly cemented versus weakly cemented. He stated it was very difficult. There was a standard method and characterizing the bluff profile would be to take a piece of surveying equipment and try in the front of the bluff to measure points on the bluff through some reflectors and establish that profile. He said the USGS had the luxury of having a land base lidar, a radar sort of system, to measure 3-dimensional forms accurately over a wide area by setting up in one location. He stated that they did not have that sort of technology or the tide conditions that would readily allow them to get out there and survey the bluff. They made some assumptions based on the types of slopes that had been measured, profiles in the vicinity before and they knew what the range was. He stated that most of the slopes that might appear vertical were actually less than that. He did see material that had fallen off the structure at 320 Esplanade, balconies, patios, and the material fell and became imbedded in portions of the bluff that were very near the toe. They didn't have a long run out of slope but something that was very narrow where items falling from the adjacent structure were impaling themselves almost coincident with the top of the bluff.

Mr. Biddle asked if it was an educated conclusion based on observations of the adjacent property at 320, given the fact that things had fallen near vertical and looking at that in relation to the situation at 310.

Mr. Sayre agreed, adding that the main concern was what he terms a flanking type of failure that the retreat that was occurring and impact 310 was not what they initially thought it might be which would be a retreat from the west and moving progressively back towards the patio across the full length of the structure. Instead, they saw the cove indentation formed immediately south with precipitous slopes around the perimeter of the

cove and, with the flanking ends of the cove, marching towards the south end of the building.

Chair Taverna stated that they would now hear from the property owner, Millard Tong and his witnesses, regarding the appeal of the issuance of the notice to vacate the premises of 310 Esplanade, Pacifica, filed February 1, 2016 and supplemented on February 9, 2016.

City Clerk O'Connell swore in Millard Tong.

Millard Tong, owner, stated that the action taken by the City of Pacifica on January 25 in yellow tagging 310 Esplanade was not an emergency or was there any eminent danger to the structure or residence of 310 Esplanade. He stated that his due process rights as a property owner was violated by Pacifica. He stated that, without proper notice, they illegally condemned his property by restricting the use. He stated that there was a completely unnecessary rush to cut all the utilities from the property shortly after the 25th. He felt that the property was not threatened and was still not threatened at this point. He stated that this didn't happen with 330 or 320 Esplanade. He stated that the utilities were cut just before they were scheduled to be demolished. He stated that, in January 2010, four units on the southern end of 320 were threatened and Pacifica gave him notice and opportunity to either relocate the tenants or provide a geotech analysis. He elected to relocate the four tenants and they were given four months of proper notice to do that. He stated that, with 310, there was a complete absence of the due process or proper noticing with the city making the unilateral decision to illegally shut down 310 without just cause, justification, any sort of emergency or eminent danger. He stated, on 320, the shut it down but at that time, the city gave them proper notice to relocate the tenants and have an opportunity to bring in a geotech to refute or explain their situation. He felt that the CSA report was based on more of the 320 situation, rather than the present condition on 310. He stated that, in the rebuttal by Mr. Willoughby, he will be talking about the bluff, using 320 as an example, which was completely different from the 310 today. He stated that several of the tenants, who are present and will be speaking after him, are still looking for a place to live, adding that some are living in cars. He stated that they gave 320 four months to relocate and find a place to live but this did not happen with proper notice or proper due process and has caused a financial hardship on most of the tenants, half of them being Section 8 tenants. He mentioned that, while they have vouchers to find housing, it was difficult to find housing in this rental market as a lot of property owners will not accept Section 8 or those who have animals, with Section 8 tenants most affected. He stated that the winter is over and we are in spring and there is no major bluff loss at 310 and not likely to be a problem in the near future. He stated that there was a large buffer zone in front of 310 and 320 with the majority of 310 units still viable for safe housing in this rental market, adding that most people cannot afford to live in the Bay Area anymore. He stated that many displaced residents at 310 would like to return to the property and continue living there because they feel it is a safe place to live as nothing has taken place as speculated by the CSA report. He stated that several have asked to sign a waiver allowing them to return to 310. He mentioned that Mr. Willoughby has had a bluff safety program in place since 2013 where he monitors the conditions to determine if there is any threat or eminent danger and he sends updates to the building official. He stated that Mr. Willoughby was concerned with the safety of 310 residents as well as himself and demonstrated it on numerous occasions. He

proposed that they allow 16 units on the northerly section of 310 to be reopened and the displaced residents allowed to return on waiver. He believed the common area of 310 and 320, with the bluff far enough from the foundation that it is not a problem that the four units not be rented as a safety factor. He believed there is a sufficient safety factor which allows opening 16 units. He stated that there is mediation going on in the litigation he has between the contractor that was hired to build a seawall in front of 310 and 320. He stated that, with that funding, he plans to shore up 310 and make it safe for future use. He stated that he was open to any questions they may have and requested that they remain objective in considering what has been said and provide support of the wrong that happened to the building and residents.

Commissioner Blackburn referred to Mr. Tong mentioning the tenants requesting a waiver as a condition for re-occupancy if that is allowed, and he asked an explanation of the waiver.

Mr. Tong stated that it was a waiver of liability that they know they will be moving into a building that has eminent danger, but not at this present time.

Commissioner Erbacher referred to his mention of doing something with 16 units but he did not express what he would do to protect those 16 units if they were allowed to be occupied. He asked if the contractor mentioned was doing something and asked if there was a concrete proposal at this time to allow occupancy to come back. He asked what his geotechnical plan was for that.

Mr. Tong stated that the 16 units on the northerly, not the southern corner. He stated the four units that would not be occupied would provide a safety factor and they would monitor that with their own drones. If there was any bluff failure or collapse, they would let the building official know right away to plan accordingly with giving proper notice.

Commissioner Erbacher concluded that he was not planning to do any constructive process to control the erosion or sluffing of the slope. He asked if he was willing to get a building permit to do modifications or safety construction or just the waivers.

Mr. Tong stated that, at this point, no.

Chair Taverna stated that they will now hear from Bart Willoughby and his witnesses regarding the appeal of the issuance of the notice to vacate the premises at 310 Esplanade filed January 26, 2016 and supplemented on February 9, 2016.

City Clerk O'Connell swore in Bart Willoughby.

Bart Willoughby, Pacifican resident, stated that he has been in Pacifica for 16 years and has observed the bluffs during that period of time with thousands of photos of the bluffs from Mussel Rock to the 500 block of Esplanade during that period of time. He explained that he is a coastal analyst for several years. From 2006 to 2014, most of the permits issued by the Coastal Commission bear his name as either the agent or the individual involved with the process. He stated that, in 2012, he worked with Robert Anderson from RJR Engineering who designed the seawall at Lands End, one of the most

high tech seawalls along the coast and is touted by the Coastal Commission as one of the best armoring processes along the coast. He stated that, in the 1970s, he spent time in the Antarctica with the National Science Foundation observing the greenhouse gases that were causing the warming of the Antarctica, as there was a concern then that the poles would cause melting and the sea levels would rise. He stated he would like to address a couple things with respect to Mr. Sayre's testimony. He thought it would have been nice if he had that information prior to the hearing and prepare. He stated that the document he referred to from the USGS is Brian Collins. He stated that Mr. Collins did a dissertation in 2004 and did bluff analysis along Esplanade and Mr. Satar also. He stated that the slopes to which he was referring and their failures were slopes that did not have armoring like rock riprap. He stated that, with the 500 block of Esplanade, in 1999 Cotton Shires built the revetment and that was not included in any of that work. He stated that there was no information, as far as the slope analysis, of what happens behind a revetment, so that document doesn't reflect the conditions at 310 because 310 had a revetment which was built in 2009. He then mentioned that most of the water that comes from the roof and center drains on the 310 property and 320, at one point in time all goes to the street. It doesn't flow over the bluff as he made sure in 2008 that all roof water from various times when it rained would go to the street which was the same with the center drain which pumped the water out of the center drain in the back of the property so it didn't extend over the bluff and cause additional failures. He stated that the water penetration into that bluff is a minimal amount, even during high rains because it goes to the street. He inspects the pumps on a regular basis to make sure that it happens. He then mentioned the issue of the email from Mr. Satar. He sent the email before he observed the property. He stated that, when Mr. Satar came to the property on January 30, he invited city staff to attend but nobody attended. He stated that he looked at the upper bluff and didn't see any cracking or stress cracks that would have caused the city to do the yellow tagging as they did. He appreciated that the email came from him to the Coastal Commission, but this was prior to Dr. Satar's coming out on January 30. He stated that the most recent filing of the additional documentation on March 15, 2016, regarding the geotech report used by the city building official for yellow tagging of 310 Esplanade on January 25, 2016 is to show, by example, in the use of 320 was the fact that there was no emergency condition that existed on January 25 for the city to take the action that they did. He stated that he has to educate people on how the process begins. He stated that he has spent years observing the bluffs and he knows how they fail at any given time and any given point when there are high waves, a drought, rain, and he has seen this for 16 years. He knows how the bluffs respond. He stated that the 34 exhibits in the March 15 document, Exhibit E, are photos taken of 320 Esplanade from 2010 to the present day. He explained that the dates of the photos are on the right hand side at the bottom of each photo and the photos are used to education the Commission on how the bluff erosion takes place behind a revetment. He stated that it has taken six years for the gradual and incremental erosion to get to the foundation of 320 and the need to demolish the structure. He stated that the second building at 330 Esplanade that, while not shown in the document, clearly exhibits the same factors of bluff failures as 320, and has taken just as long to cause the structure to be demolished. He stated that this was factual evidence as to how the bluffs along the Esplanade fail behind a revetment which is a long process. He stated that it doesn't happen immediately. He stated that with 310 being the same construction as the buildings of 320 and 330, along with the same soil conditions will take just as long or longer without mitigation, restacking of the revetment or placing

of geotech material behind the revetment before the structure is threatened. He stated that 310 Esplanade was not even close to being undermined on January 25, as indicated by the notice of the city building official Exhibit A of March 15 document. He stated that also provided in the document of March 15 as exhibit F in three parts was to show the Commission that the current conditions at 310 have not changed much in the front of the bluff of 310. Moreover, this evidence clearly refutes the city geotech conjectured and speculative opinion of what might happen. He stated that lack of change in conditions at 310 is much stronger evidence that supports the appellant's contentions that the property is and was safe on January 25. He stated that the historic photos provide compelling evidence that not much has changed at 310, and the drone video clearly shows that the revetment at 310 was not overtopped like it was at 320. He stated that there will never be a wholesale and complete failure of the bluff in front of 310 as indicated by the geotech report because the bluff fails in slivers. He stated that the only condition that would cause major bluff failures would be a tsunami of 50 feet or greater and a major earthquake of 8.5 range but either of those conditions will cause problems all around Pacifica. He appreciated that the building official does not need to wait for near catastrophic circumstances involving loss of life and/or property to present themselves in order to act, but the problem he has is that Pacifica lacks a qualified coastal engineer and a coastal geotech engineer who ultimately understands the coastal processes and what drives the process in Pacifica. He explained that, because of the lack of experience on the part of Pacifica, in 2013, he began a bluff safety monitoring program for the bluffs along Esplanade. He was concerned for his own safety and not wanting to leave that safety in the hands of unqualified administrators and professionals and for the safety of his community, neighbors and friends, the bluff monitoring program consisted of looking ahead at various conditions that could be threatening, such as monitoring the tide charts at Ocean Beach for tides greater than 6 feet plus, the NOAA data buoys of Half Moon Bay and NOAA Wavewatch III for the Pacific Ocean. He always had one week look ahead with real time data. He stated that the city building officials were aware of his monitoring program as updates were sent to the city. He stated that the new building official and planning director became indifferent to this program and there was no potential for catastrophic circumstance for loss of life for property at 310 Esplanade on January 25 for the building official to exercise the restriction of use of property. He stated that, in 2010, the owner of 310 and 320 hired what he would call a Rhodes scholar civil geotech engineer to provide analysis of 320. He stated that RGR Engineering who built the Lands End seawall provided Pacifica and Cotton Shires with a voluminous document that he had, offering to copy it if the Commission wished a copy. He stated that all the city geotech needed was to use this document, plug in the variables of 310 upper and lower bluff, take measurements of the property, inspect the property for cracks and signs of stress on the upper bluff, but the city geotech did nothing but view the drone video from Channel 2 that could not tell the signs of cracking or stress on the upper or lower bluff. He stated that the city administration suffers from lack of information, indicating that the owner of 310 did nothing to shore up the property at 310 Esplanade and compared Lands End seawall to 310. In 2009 and 2012, the owner of 310 built a rock revetment in front of 310, adding additional rock in 2012, comparing the 20 units of income at 310 to the 280 units at Lands End was not intelligent. He stated that Lands End has a greater income from the property with 280 units to support bluff mitigation than the lessee 20 units at 310 Esplanade. He stated that the owner is currently in litigation with the contractor who build the revetment at 310 and 320 that lacked a height

of 25 feet and the geotech material behind it. He stated that this litigation is scheduled for mediation at the end of April with several million dollars that may be available to the owner for mitigation purposes, adding that he is involved with that litigation. He stated that whether Mr. Tong can do anything about the bluff will depend on how much money is available to him out of that mediation. He referred to the question of whether Mr. Tong has a plan, stating that he can't until he knows how much money he will have to do what he needs to do whatever mitigation there is. He stated that the alleged monster El Nino that was supposed to happen has not come close to the 2009 and 2010 El Nino, and at that time, there was no rock riprap in front of 330. He stated that it was his call to Doug Rider at that time that 330 needed to be evacuated because it was failing across the bluff because it didn't have any toe protection. He felt that attorneys who do not understand climate and erosion conditions should not comment on saturation of rains over short periods and to advise the Commission as to that issue is improper. He also felt the attorney's position should be one of neutrality and there were several instances where the attorney advising the Commission has departed from that position and has become an advocate for the city. He felt this represents a conflict of interest as the same firm represented the city in the Tong municipal code violations in San Mateo Superior Court. He stated that his position was that he feels safe at 310 Esplanade knowing what he knows. He felt the action in yellow tagging 310 Esplanade and forcing its residents to vacate the property must be supported by substantial evidence which requires relevant and current existing information plus any reasonable inferences that may be drawn from existing conditions, adding that substantial evidence is not wholly speculative assertions about purported future events that existing conditions fail to support either directly or inference. He felt the city had no right to post an alleged catastrophic failure event that has no scientific tether to any current condition and take draconian action in an entirely speculative response to that make believe future event which has happened. He reiterated that administrative action must be based upon scientific evidence of a bluff failure and any reasonable inference and not fairy tale thinking to justify what is an unlawful taking of private property that remains wholly functional and inhabitable at this time and for the foreseeable future. He concluded that all the residents were forcefully and unlawfully evicted by the city's action.

Commissioner Shaw referred to his statement that he was a coastal analyst, and asked if that was a certification.

Mr. Willoughby stated that it was not as it does not require a license, mostly experience.

Commissioner Shaw asked if, when Prof. Satar came in January, there was anything written.

Mr. Willoughby responded that there wasn't, it was all verbal. He stated that when he did his declaration, it was under penalty of perjury. If he had to go to court and testify as a witness with respect to what was said, he could do that.

Commissioner Shaw asked if there was a reason why he wouldn't put it in writing.

Mr. Willoughby stated that he didn't ask him.

Chair Taverna stated that she had a question, mentioning RJR Engineers.

Mr. Willoughby mentioned Robert Anderson.

Chair Taverna responded positively, asking if they did some analysis at some point in the past.

Mr. Willoughby stated that they did, adding that they gave the city a copy of that. He stated that they also gave Mr. Sayre's firm a copy of this which they should have. He stated that it broke down the factors of safety at 310. He stated that the document was thick and it has benchmarks with respect to the entire bluff.

Chair Taverna asked when it was done.

Mr. Willoughby stated that it was done on April 25, 2010.

Chair Taverna stated that, at this time, the Commission will hear from tenants, Elizabeth Benson, Garth Yeaman, Michelle Mackay, Eileen Francis Horan, Juliet Kalotkin, Kathryn Deliceno, Cassidy Saenz, Gordon King and DOE1 and witnesses regarding the appeal of the issuance of the notice to vacate the premises at 310 Esplanade, Pacifica, filed February 4, 2016.

City Clerk O'Connell swore in Kathryn Deliceno.

Kathryn Deliceno stated that she has been on housing for ten years and there was no where in Pacifica that accepts Housing. She stated that it was very hard for her to find the place at 310 Esplanade and was there two weeks. She stated that Pacifica didn't let housing know about anything going on with the bluffs. When Housing did their inspection, it was fine. She asked why the city didn't tell Housing about it. She was there a week and a half. She asked why they didn't tell them if they knew about it instead of having her move from a place where she had lived ten years and go to 310 Esplanade and then have to move again. She didn't think it made sense.

City Clerk O'Connell swore in Elizabeth Benson.

Elizabeth Benson stated that she attended the meeting when they put up the sign about the destruction of 330 Esplanade, wondering what would happen to 310. She stated that, after that meeting, a person who worked for the city said it would be necessary to evacuate 310. She remembered thinking they should do something, as she was reading about El Nino and they would be tearing down building that have been holding the bluff in place in the center of the storm. She told the employee that it didn't make any sense to her and she was sure that the destruction of the buildings would go through but she would bring that up. She stated that she didn't want to move as she thought it was a remarkable place to live on the edge of the ocean in an affordable way in Pacifica. She thought the property was well loved by its tenants and the owner. She stated that they were not Section 8 people by some stroke of luck, but there were people in precarious financial situations in that building. She stated that it was still standing now approaching April. She stated it was New Year's Eve when the first idea that there would be some erosion effect taking place. She stated that the back yard was still there and there was plenty of

room between the edge of the property for those living inside it and the edge of the cliff. She mentioned that buildings are built on stilts because of earthquakes and they do it because the world is beautiful and they live on the edge of something miraculous. She thought it was unfair and cruel and maybe without the decency to think where they will live or their financial situations. She stated that, when they were evacuated, it was the Bay Area Super Bowl season and not even the hotels would permit the evacuees to rent a hotel room. She felt it was an interesting mix of advanced knowledge and a dramatic lack of human decency when they evacuate people who have lived there for a dozen years or more and were elderly, on assistance, with pets, no financial ability. She thought it was a decent thing to consider housing for people you intend to evacuate. She helps people make plans for when they die for a living and they know that day is coming, but don't know when, how or why. She stated that until then, you have the opportunity to live and they were living happily and the building is still standing and will continue to stand, given that the other buildings stood for seven or eight years since originally threatened. She felt the experience of those evacuated who lived in cars, streets, friends, hotels, etc. have had an interesting ride when nothing was done beyond a yellow tag and the order to move.

City Clerk O'Connell swore in Brandy McDaniel.

Brandy McDaniel stated that it feels like a marginalized group was taken advantage of. She had the ability to get a new place but it cost \$5,000 to move in. She stated that living in the Bay Area doesn't always allow for \$5,000 laying around at the drop of a hat with 24 hour notice. She stated that, learning that 320 and 330 had four months to figure out a place to go was disturbing and feels unfair. She urged the city to think about their part in all of this. She asked when the cliff was their responsibility, adding that the whole city was on a cliff. She asked if they were going to shut the businesses down on Esplanade. She thought that seemed ridiculous and she felt someone has to do something and take action. She stated that people pay taxes.

City Clerk O'Connell swore in Juliet Kalotkin.

Juliet Kalotkin stated that she was a resident for a year and a half. She lost her job in February and Mr. Tong was a close friend and he offered her the place to stay. She thought it was a peaceful and serene place after working for 21 years in a psyche unit. She thought it was possible that the building would erode but they didn't know when. She stated that she was called at work to come home and told that the place was no longer safe to live and she had to pack her belongings and hire someone to help her move and rent storage space. She stated that it was a financial hardship since she was still recovering from the loss of her job of 21 years. She was glad she had a lot of friends helping her, stating that she has moved to four different places and finally found a room which is cheaper but shared by two others. She stated that they were rushed to vacate knowing that they didn't have a need to move out at that time.

Gordon King stated he was a longtime resident and was in the other building.

City Clerk O'Connell swore in Gordon King.

Mr. King continued, stating that he was in the other building and Mr. Tong moved them that afternoon into 310. He never felt threatened and it was dog friendly and affordable. He stated that, at that time, he didn't know how many resources are in Pacifica but he was grateful. He stated that it was a rent he could afford just living on social security. He had a small saving but it was evaporated. He stated that Mr. Tong was one of the few people in the state who takes vouchers. He stated he was on TV yesterday and was a Vietnam Vet and he worked for the Department of Vets for 17 years with SIU. He stated that he was doing it for all vets because the voucher system in this area was ridiculous. You pray to get it, and when you get it, nobody will take it. He stated that he was staying in one of Mr. Tong's trailers on his ranch at very small rent. He didn't know where this was going if someone doesn't get on the bandwagon and make the vouchers worth something instead of just paper. He stated that his wife wanted to say something.

Special Counsel, Michael Biddle, asked if she was one of the named appellants listed.

Chair Taverna stated that they did not have her name, but asked if she was DOE 1.

Mr. Biddle stated that Brandy McDaniel was DOE 1. He stated that, since her husband did file for the appeal and she is a resident, he thought it was fine.

City Clerk O'Connell swore in Lana King.

Lana King stated that she lived in 310 for 15 years and one day she came home and there was the yellow tag. She was so upset. She didn't know what to do and tried to hide in the room but was told to clear out by midnight and police will come and knock on the door. She didn't know what her situation was and she was scared of opening the door. The police told her to leave at that moment. They were told to go to the shelter but they didn't allow her to keep her dog there so they couldn't stay in the shelter and stayed in their car all night. She was cold and scared. They didn't know what to do the next day. She is scared and she asked how the city kicked her out in one day. She asked that they let her back in. She didn't want to go anywhere. She asked them to take the yellow ticket off. She wants to go back. She stated that they said a storm was coming but not even rain is coming.

Chair Taverna asked if any other tenants were present who wanted to speak.

Chair Taverna stated that, at the beginning, anyone who was not on the list could come and speak.

An audience member asked how you notify them. She stated she was not called.

Special Counsel Biddle stated that it was incumbent upon a person to file an appeal and the persons named were those who signed an appeal form and submitted it to the city, and that was the basis upon which the names were listed.

Mr. Biddle stated that the time to file an appeal has passed.

Mr. Biddle suggested that the Chair bring the meeting back to order.

Chair Taverna asked the Commissioners if they have any further questions of the city or the appellants.

Commissioner Erbacher asked the geotech if he read the statements from the other consultant.

Mr. Sayre stated that he did.

Commissioner Erbacher asked if he was the one who did the previous study to the slope area, mentioning that there was attached documentation which indicated that he was studying this area.

Mr. Sayre asked if he was speaking of RJR Consultants who studied 320.

Commissioner Erbacher stated he was talking about Satar.

Mr. Sayre stated that Nick Satar was the email handout they got.

Commissioner Erbacher asked if he studied these specific slopes.

Mr. Sayre stated that he did.

Chair Taverna stated that she would close the public hearing and the Commission will deliberate to affirm, modify or rescind the building official's notice to vacate. They must decide, based on the evidence presented by the parties, whether more likely than not that erosion of the bluff has started to undermine the building at 310 Esplanade and result in structure failure and an unsafe condition for the occupants.

Commissioner Erbacher thought that all of the consultants say that this is a particular area prone to caving in, sliding, due to undermining of the toe and even some of the attachments indicate that they can be subject to immediate, unexpected failures at any time. He felt, based on the conditions at the time of the city's action, they could be leading up to that. He stated that he hasn't found anything that would disavow that thinking.

Commissioner Salisbury agreed with Commissioner Erbacher. She agreed it was a very unfortunate situation and difficult for the tenants and owner, but the CSA studied the building for many years and she felt the evidence was very compelling that there was a potential danger to the tenants. She felt it was warranted.

Commissioner Shaw stated that California has unpredictable earthquakes, storms, etc., and they have been talking about them for a number of years. She felt it was obvious that the cliff's are receding. She thought the rate was uncertain, but she can't get past the safety of human life as the most important thing. She would hate to think of anyone being harmed or killed from them not being on top of things and recognizing the potential danger. She agreed with the other commissioners.

Commissioner Blackburn agreed with Commissioner Shaw's comments on life safety, adding that based on the testimony and things that were said, the building official at the time was acting with information under authority that he deemed prudent to issue the yellow tag. He stated that he has heard nothing that dissuades him from that opinion.

Commissioner Johnson felt that their job as Commissioners was to weigh the evidence. Making hard decisions based on the information given and what they deemed was right was a tragic situation. She didn't deny that, but they were charged to look at whether the evidence and the decision at that time was made based on correct information and she stands with the other Commissioners on that.

Chair Taverna explained that they were members of the Emergency Preparedness and Safety Commission and, as mentioned, their focus was the safety of the residents of Pacifica. She agreed that it was a tragic situation. They can see their love for their residence and feel their pain. They can see how difficult it is to be in this situation from what they told them, but they have to look at the evidence that has been presented, as far as the safety of the structure. She stated that, with the unpredictability of weather, from drought and now more rains. She stated that, from what they saw in the written and verbal presentations, it appeared that it was an unsafe structure at this point. She thought, at this point, they can take an official vote from the commissioners.

Mr. Biddle stated that someone would need to make a motion and a second.

Chair Taverna asked for a motion in order to take an official vote.

Commissioner Shaw so moved, Commissioner Salisbury seconded it.

Commissioner Erbacher thought they should be clear on the motion.

Chair Taverna stated that she would read what they were voting. The vote was that the Commission supports the decision to have the building vacated, based on the evidence presented by the parties to the hearing. They were voting that it was more likely than not that erosion of the bluff has started to undermine the building at 310 Esplanade which will result in structural failure and an unsafe condition for the occupants at 310.

Special Counsel Biddle concluded that it was to affirm the building official's decision.

Chair Taverna responded affirmatively.

Commissioner Erbacher moved; Commissioner Salisbury seconded.

City Clerk O'Connell stated that they could pass their yes or no vote on the front of the dais.

Chair Taverna stated that all the commissioners support that it was more likely than not that erosion of the bluff has started to undermine the building at 310 Esplanade and it could result in structural failure and unsafe condition for the occupants. She stated that this means they support that the building needed to be vacated.

Special Counsel Biddle reminded the Commission that they will issue a written decision, and he will prepare a resolution for consideration at their meeting in April. They will present the resolution to them in advance to have time to look at it and on the April 20 meeting, they will be asked to approve and adopt the resolution.

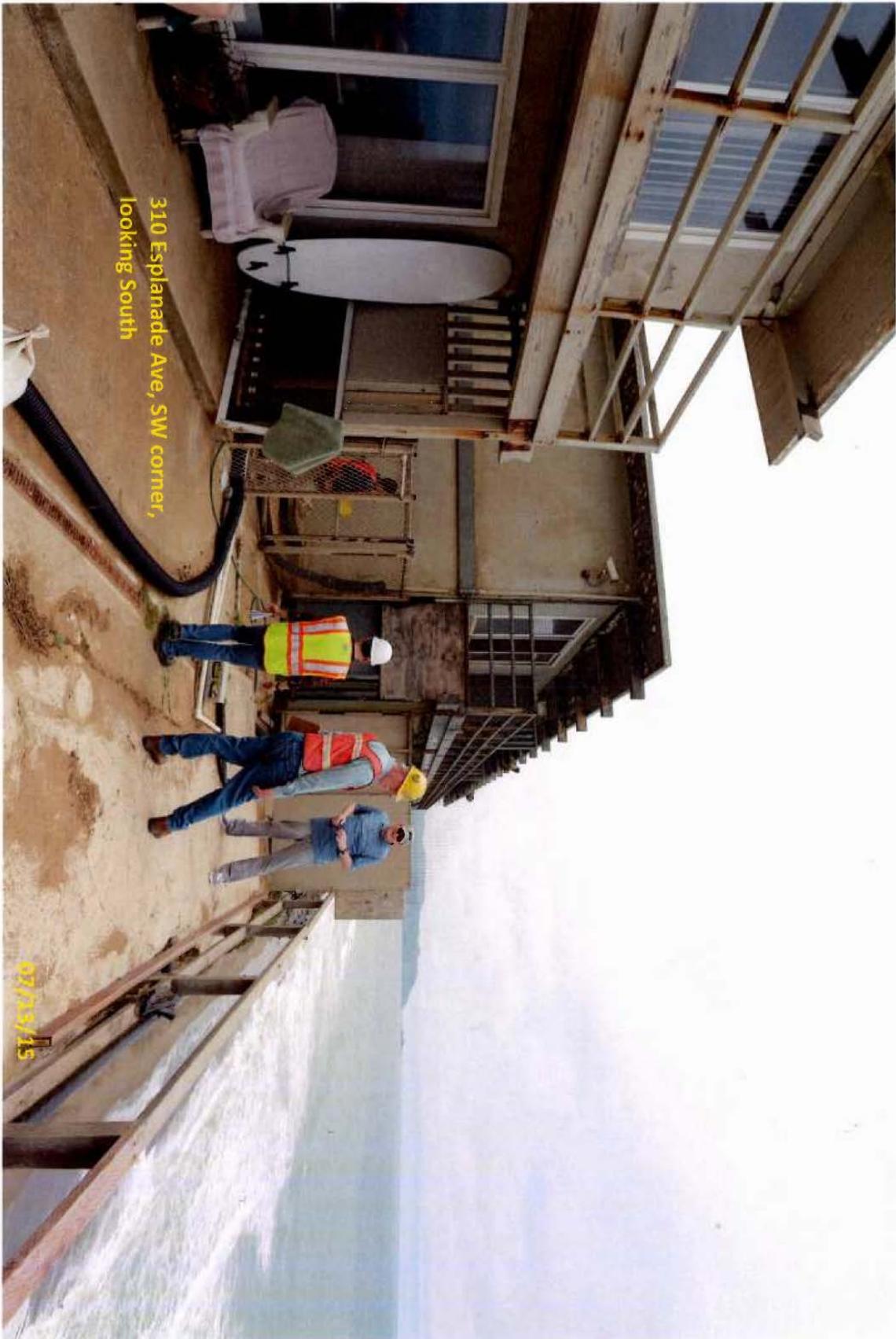
Chair Taverna stated she would like to adjourn the meeting.

Commissioner Salisbury so moved; Commissioner Shaw seconded.

ADJOURNMENT: 8:39 p.m.

Attachment B

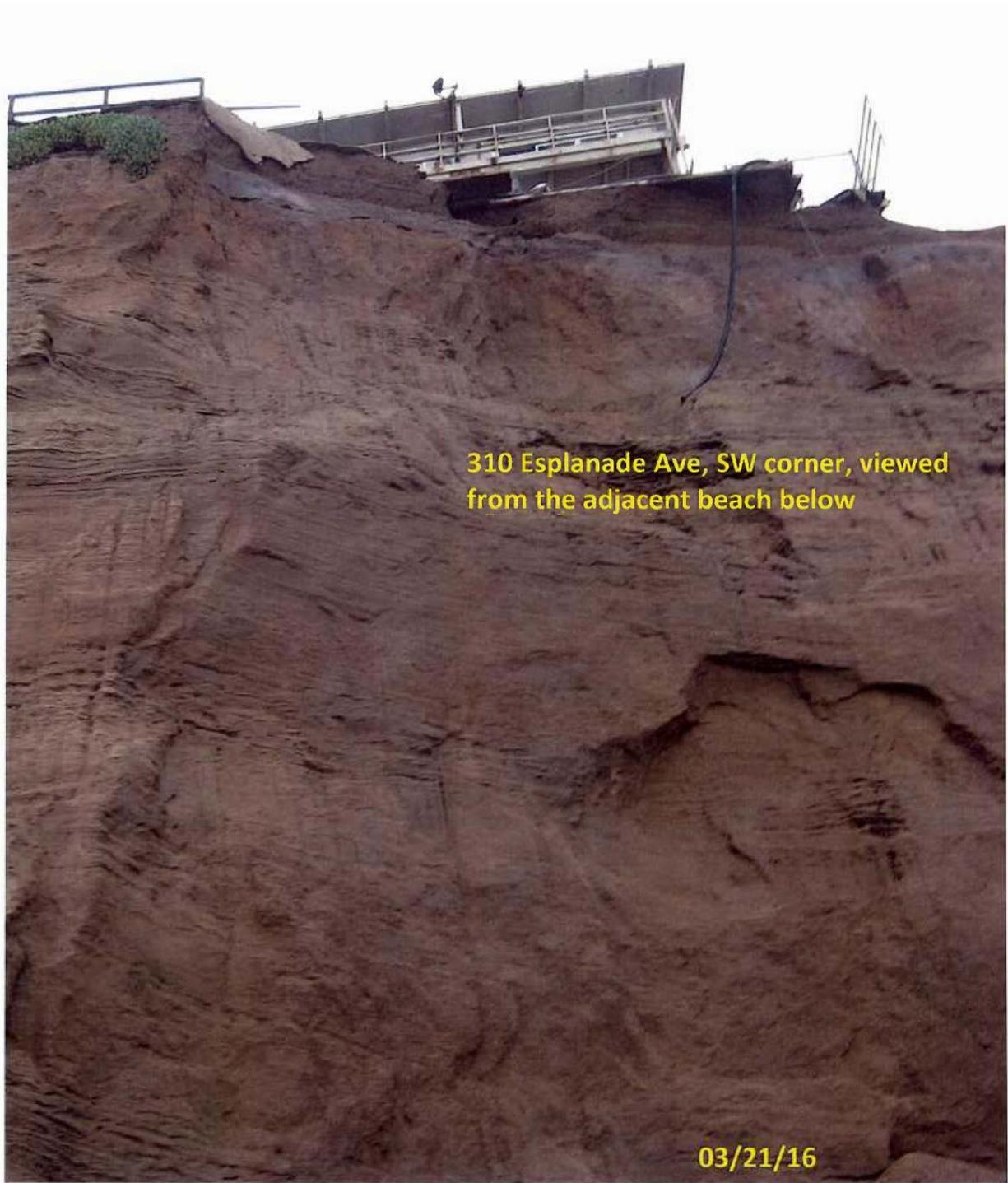
Attachment B



Attachment B-1



Attachment B-2



310 Esplanade Ave, SW corner, viewed from the adjacent beach below

03/21/16

Attachment C

Attachment C

Wehrmeister, Tina

Subject: FW: 320 Demolition
Attachments: 310 Esplanade Preliminary Assessment.pdf; January 23, 2016014.JPG; January 23, 2016015.JPG

From: Bart [mailto:wavetool@earthlink.net]
Sent: Friday, January 29, 2016 7:49 AM
To: Cave, Nancy@Coastal
Cc: Lester, Charles@Coastal; Rexing, Stephanie@Coastal; Carl, Dan@Coastal; Wehrmeister, Tina
Subject: Re: 320 Demolition

Nancy,

Thank you, for the response. I have to preface my concern for 320 Esplanade. The City was the applicant for the demolition process of 320 that was approved by the Planning Commission. However, after-the-fact the City of Pacifica while the City Council voted in an emergency meeting to allocate \$400K for the demolition process of 320, that allocation of funds has been withdrawn by the City at the Status Conference Hearing at the Bankruptcy Court on January 26, 2016. So 320 is still sitting now, very precariously in a state that is bothersome. Nancy, at this point the certainty of 320 is now seriously questionable.

On Saturday I have a preeminent academic in the discipline of Geology and in particular sandy bluffs coming to 310 and 320 to provide me with an assessment of the bluff conditions as they currently exist and any recommendations that can be made, to help deal with the erosion issues. Attached is his response to my inquiry and photos sent. I am pleased that he indicated that 310 *"the property shows no signs of imminent failure"* and that *"the failures occur in slivers that are relatively narrow, so there does not appear to be an imminent danger of a wholesale collapse"*.

I understand from Rob Anderson at RJR that the demolition process is continuing to a final stage for 330. The failures behind the revetment at 320 is moving more in a Southerly direction then to the North. I suspect this has more to do with waves and storm swells generated Westerly and from the North. However, any storm swell from the South potentially could cause more loss behind 310.

However Nancy, I believe our first concern should be for the demolition of 320 and how that is going to happen ASAP. A good portion of the bluff at 320 is already at the foundation of 320 as of January 23rd. When the low tide happens tomorrow around 10:00AM we will be heading to beach so the Geologist can see 320 first hand. I will upload photos to the Commission of the current conditions and any recommendation that he makes. All the parties should connect on Monday-Tuesday at the latest to determine a course of action and how to attain that.

Sincerely,
Bart Willoughby
415.238.8837 Cell

On 1/28/2016 12:18 PM, Cave, Nancy@Coastal wrote:

Bart: Thank you for your information. As you and your client know, the Commission has previously communicated to your client the status of current incomplete long-pending CDP applications for followup work after placing rock

through emergency permits in 2010 and before. If your client wishes to complete any of those pending CDP applications, or would like to propose demolition in a new CDP application, and if that is occurring in our jurisdiction, we are willing to work with you once we receive that application material from your client. We have also been aware of and working with the City as they contacted owners at 330 and 320 Esplanade regarding the need to Abate Nuisances earlier in 2015. We have worked with the City as they processed a CDP for the demolition of 330 Esplanade and we stand ready to work with the owners when they come to us with respect work needed to be performed on the beach. With respect to 320 Esplanade, we are aware of and have been coordinating with both the City, State and Federal Government with respect to their inquiries and efforts in Pacifica. We stand ready to work with you and the City if your client pursues a CDP for the demolition of 320 Esplanade just as we are working with the owner of 330- Esplanade. Finally, regarding 310 Esplanade, we are aware of and coordinating with the City, State and Federal government with respect to activity at that location as well.

If you have further concerns or questions, please do not hesitate to contact me.

Nancy Cave
District Manager
North Central Coast District Office
California Coastal Commission
415-904-5290 (direct line)
415-904-5260 (North Central Coast District direct line)
415-904-5400 (FAX)

-----Original Message-----

From: Bart [<mailto:wavetool@earthlink.net>]
Sent: Thursday, January 28, 2016 5:30 AM
To: Lester, Charles@Coastal; Cave, Nancy@Coastal; Rexing, Stephanie@Coastal
Subject: 320 Demolition

Everyone,

At the Bankruptcy Status hearing on January 26th in the Millard Tong BK owner of 320. The City Attorney for Pacifica indicated that the City did not have the money to perform the demolition of 320. This is now a big problem and frankly, I am concerned that 320 in the next few weeks could be teetering at the edge of the bluff with more debris going down at beach level.

I am still the agent for Millard Tong and frankly we need to put our heads together here and see what we all can come up with in making sure this building is not collapsed down on the beach. This would be a huge mess along with a major safety problem for the environment.

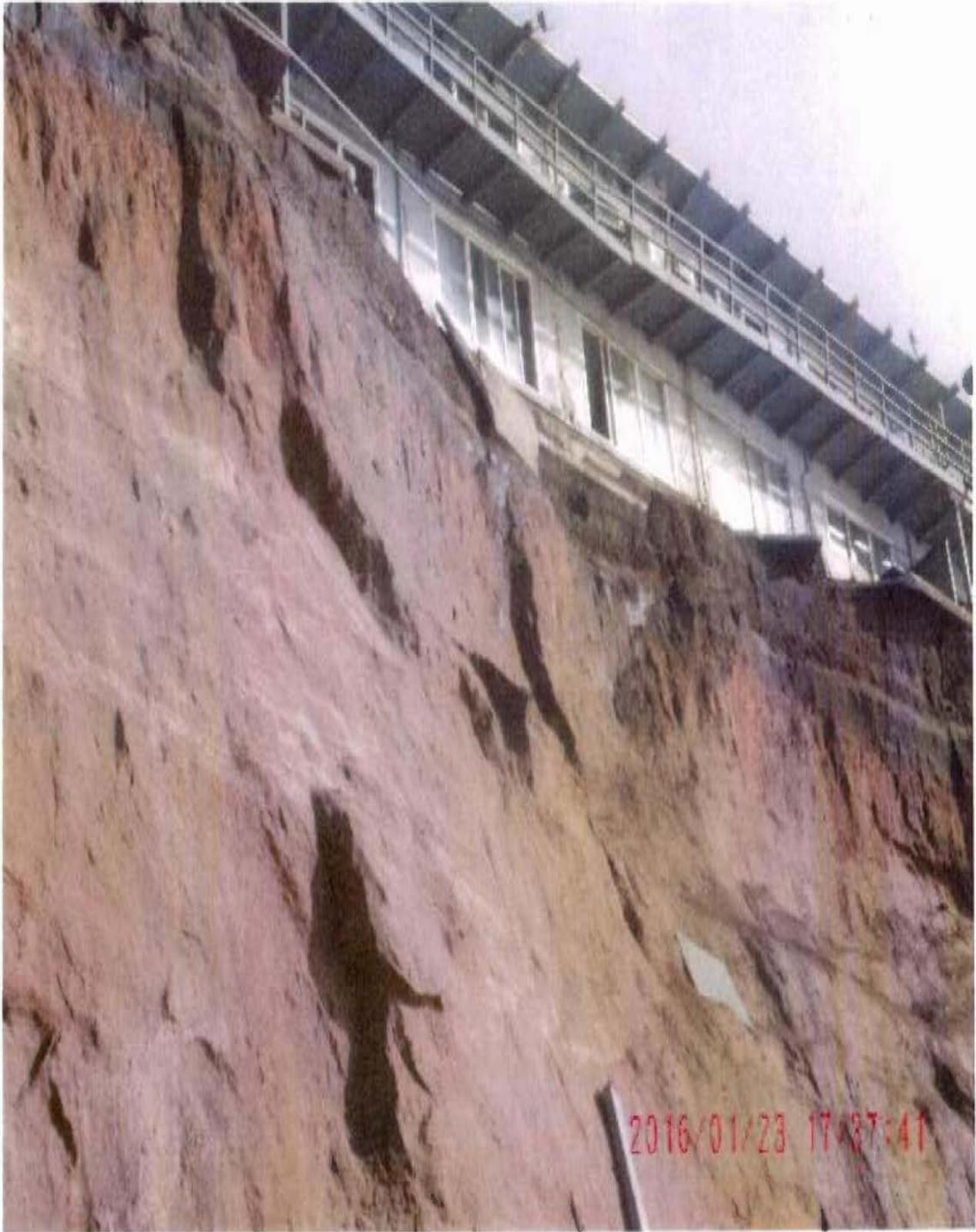
Bart Willoughby
415.238.8837

This email has been checked for viruses by Avast antivirus software.
<https://www.avast.com/antivirus>

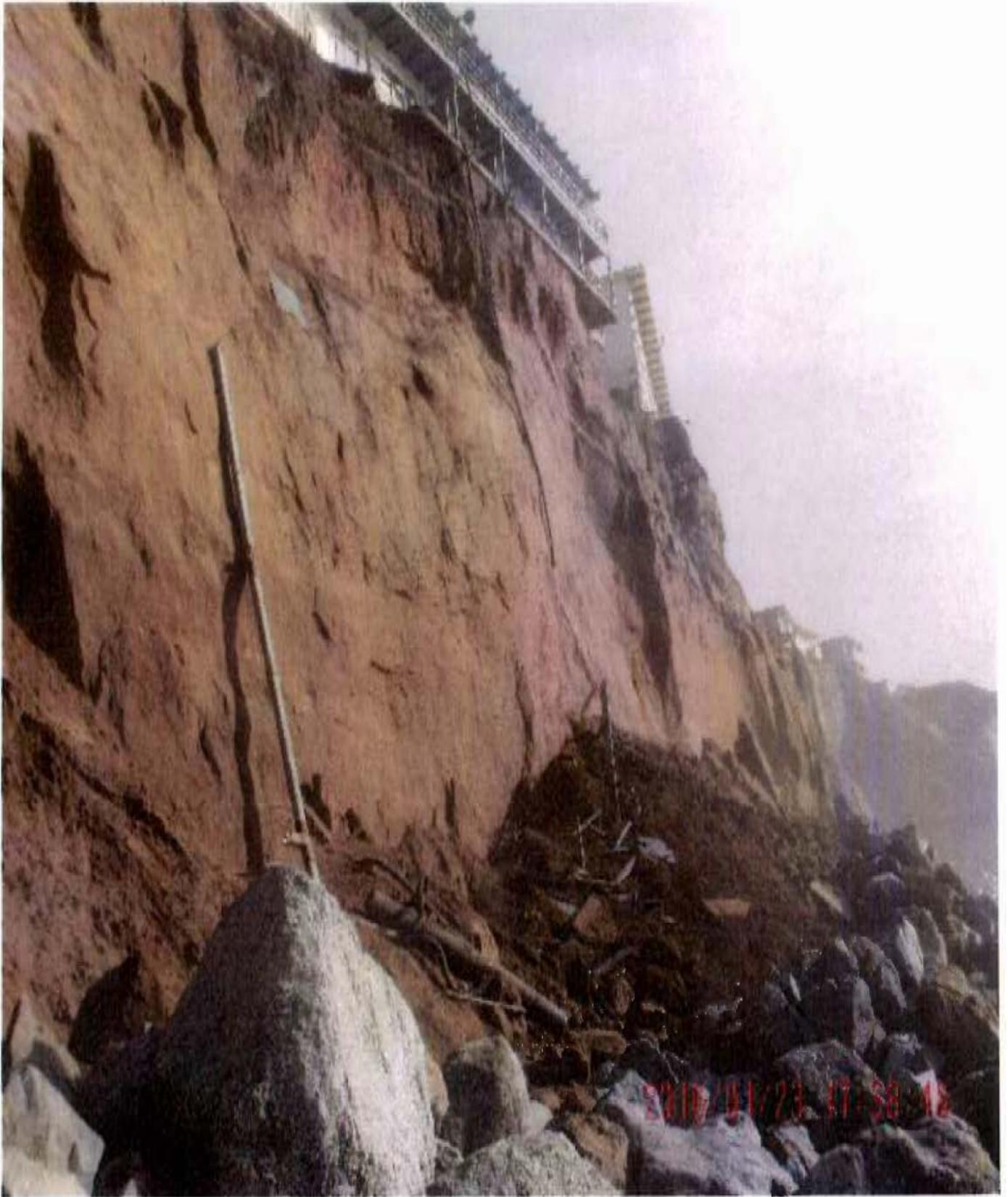
Hi:

Thank you for getting in touch and I sympathize with your situation. I can certainly come out to inspect the site, and I have seen and carefully reviewed the video posted on line. However, I have to be frank with you. I do not see how anyone can certify that the bluff is sufficiently stable/safe for occupants to return. I agree that as long as the waves are not currently hitting the base of the bluff, the bluff below the northern part of the property shows no signs of imminent failure and as long as the weather holds occupants can be allowed to remove their belongings. Also, as the video shows the failures occur in slivers that are relatively narrow, so there does not appear to be an imminent danger of a wholesale collapse. However, the southernmost part of the property is already oversteepened at the toe and, therefore, in a much more precarious position.

Having said that, I do think the property can be saved with a proper retaining wall at toe of the bluff. The rip-rap is completely inadequate erosion protection from wave action, as this storm illustrated with unfortunate consequences. The kind of retaining structure, soil nails with shotcrete, that protects the toe of the staircase access to the beach needs to be founded at least 10-15 below the beach level and extended at least 50 feet above the beach. Unfortunately, given the time of year and the storms still rolling in, I am not sure such work is feasible even if all the permits can be secured, until about late March or April. I do believe that bluff has a good chance of remaining in its current configuration until then unless we have another storm with major wave action, which cannot be ruled out.



Attachment C-4



Attachment C-5

Attachment D

Attachment D

Tong Oral Statement March 23, 2016

The action taken by the City of Pacifica on January 25, 2016, in the “yellow-tagging” of 310 Esplanade was not an emergency and there was no imminent danger to the structure or the residents of 310. My due process rights as a property owner were violated by the new City Administration (City Manager and Planning Director) when the City in a unilateral decision and without proper notice illegally condemned the property by the use of restricting the use of the property. There was a complete unnecessary rush to cut the gas, sewer and water to the building when the structure was not threatened and is still not threatened of being undermined as indicated by the City Official’s Notice of January 23, 2016. This never happened to 320 or 330 Esplanade until the property was scheduled to be demolished.

Back in January 2010 (4) units were threatened at Southern portion 320 Esplanade and the response by the City of Pacifica then was to give me notice and opportunity to provide geo technical services and/or elect to move the residents out of those (4) units. I elected for safety purposes to relocate the (4) residents. In that instance due process to me as the owner of the property was served by 1. Giving me proper notice of the conditions, 2. Electing to provide geo-technical and/or vacate the units that were threatened. In the instance of 310 Esplanade there is and was a complete absence of any due process or proper notice with the City administration making the unilateral decision to essentially illegally shut down 310 without cause, without justification and without any sort of emergency or imminent danger. Eventually, I had to shut down 320 Esplanade but again the City provided notice and due process was served. I brought in a geo technical expert from RJR Engineering that provided material to the City and to Cotton, Shires on the various aspects of the bluff process that involved data indicating the factors of safety. The Cotton Shires Report on 310 really is lacking in data supporting there was an actual emergency situation and to my knowledge Cotton, Shires never actually made a site visit of 310 to determine if an emergency was present or existed. The entire report by Cotton Shire is about the drone video of which was about 320 Esplanade and not 310 Esplanade. The photos provided in the report by Cotton, Shires was more about 320 from the drone video and nothing more.

In the rebuttal that Mr. Willoughby provided for this hearing on the Cotton, Shires Report he was trying to educate the reader regarding the process of bluff retreat and used 320 as an evidentiary example of how the bluff really fails because it took from 2010 to the present day for the bluff to retreat to the point that 320 had to be demolished. The current conditions of 310 represent for the most part what the upper portion of the property was like back in 2011 and there has not been, nor do I believe there will be a major failure of the upper bluff. It will take several years from now (as 320 has proven 6 years) for 310 to get into the condition as 320 Esplanade.

Several of the residents who are here tonight are still looking for a place to live given the short notice provided by the City in the "yellow-tagging" of 310. The City gave residents of 320 almost (4) months to find new housing before closing down 320 and there was less property at 320 at that time. 310 has 3x more property on January 25, 2016 then 320 on May 1, 2010. My understanding is that several residents are sleeping in their vehicles and while have vouchers are unable in this rental market to find suitable affordable housing, this is a travesty and financial hardship.

The winter of 2015-2016 is now over and we are into the Spring with storms and storm swells subsiding. There has been no major bluff loss in front of 310 Esplanade and given what is known there is not likely to be any in the near future. There is also a large beach buffer zone in front of both 310 and 320 with the majority of 310 still very viable and safe housing in a rental market where most cannot afford to live in the Bay Area any more. I know many of the displaced residents of 310 would like to return to the property and continue living there, most believe it is a safe place to live and that is true given that nothing has taken place as speculated by Cotton, Shires report. Several have even requested to sign a waiver allowing such occupancy of 310.

I know that Mr. Willoughby has had a bluff safety program in place since 2013 where he monitors conditions in advance to determine if there is a threat or condition that needed to be monitored closely and sent updates to the City Building Official on a regular basis. I know that Mr. Willoughby has been concerned for the safety of my residents at 310 as well as himself and has demonstrated this on numerous occasions.

What I would like to propose is allowing 16 units of the 20 at 310 Esplanade to be reopened and displaced residents allowed to return (on waiver). I believe the common

area between 310 and 320 while not undermined with the bluff far enough away from the foundation as not to be a problem that (4) units not be rented just as a safety factor. I believe there is a sufficient factor of safety that allows for the opening of 16 units. Additionally, there is a mediation in the litigation that I have between the contractor that built the revetment in front of 310 and 320 that may yield sufficient funding so that I can do something to the bluff in front of 310 to help shore it up even more. This would include the shoring up the common area between 310/320.

I am open to any questions you might have in this instance and would ask that you remain objective and consider what has been said here tonight and provided in support of the wrong that happened to 310 and the residents of 310.

Thank you,
Millard Tong