

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.