Emergency Preparedness

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Joan Cassman, City Attorney, Millbrae
Cecilia Quick, City Attorney, Pacifica
Notes...
RESPONDING TO EMERGENCIES
Combating Disasters without Going into the Red
and
Red-Tagging without Being Red-Faced

Joan L. Cassman, Millbrae City Attorney, Hanson Bridgett LLP
Cecilia M. Quick, Pacifica City Attorney
Elan D. Emanuel, Associate, Hanson Bridgett LLP

INTRODUCTION

From last year’s gas pipeline fire in San Bruno to the recent flooding and landslides in Pacifica and other cities throughout the State, natural disasters and other types of emergencies seem to have become a common occurrence in California. All too often, cities, counties, districts, and other local governmental agencies (hereinafter “local entities”) are overwhelmed when confronting these emergencies. Emergency preparedness is critical and a major element of this preparation is understanding how our local entities obtain necessary resources and assistance to ease the burden of emergencies.

This paper serves as a guide for local officials regarding how best to respond to an emergency both immediately and in the days thereafter. Given the recent state of the economy and the financial plight faced by many local entities, this paper first focuses on the types of financial assistance available to local entities related to an emergency, including mutual aid pursuant to the California Emergency Services Act and funds to repair or restore public facilities damaged by an emergency event pursuant to the Disaster Assistance Act. In addition, this paper addresses the steps local entities must take in evacuating people from, and demolishing, unsafe structures during emergencies, a process known as “red-tagging.” Finally, the paper offers anecdotal case studies on emergencies involving mutual aid, California Emergency Management Agency (EMA) public facility restoration and red-tagging/demolition activities, which the authors hope will provide guidance to others when facing similar emergencies.1

PART I: COMBATING DISASTERS WITHOUT GOING INTO THE RED

Emergencies can take a devastating financial toll on local entities, particularly in troubling economic times. In many cases, local entities simply do not have the financial resources to appropriately respond to an emergency and are forced to depend on money from outside sources. Fortunately, there are several tools available for local entities to obtain financial assistance in order to combat disasters, many of which are identified in either the California Emergency Services Act or the Disaster Assistance Act. Under both of these Acts, declaring a state of

1 We note that Jonathan Lowell has previously submitted a paper, in September, 2004, entitled “Emergency Procedures for City Attorney’s Office,” which provides an excellent overview of this subject and contains several useful attachments, consisting of sample resolutions, ordinances, waivers of liability and other forms which may be needed in responding to an emergency. You may access these materials from the www.cacities.org website, City Attorneys Papers and Opinions Database. It is suggested you download the sample forms now and store them where you can find them in an emergency.
emergency is an essential first step for local entities. Such a declaration is the prerequisite for State assistance in the form of mutual aid or funding to repair, restore, or replace public facilities damaged by a disaster.²

The California Emergency Services Act

The California Emergency Services Act (“CESA”) (Cal. Gov’t Code § 8550 et seq.) is the statutory spine for the State procedures and funding mechanisms for dealing with emergencies. To this end, CESA authorizes the process for the declaration of emergencies by local officials, recognizing the strong role of local government in providing services to respond to emergencies in order to preserve lives and property and to protect the public health and safety.

Under CESA, a state of emergency occurs when disaster conditions threaten the safety of persons and property within the territorial limits of a local entity. Under Government Code § 8558(c), such emergencies include: air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, an earthquake, a sudden and severe energy shortage, and other conditions which are beyond the ability of the resources of the affected local entity to control and which require the combined forces of other entities to combat.

Categories of Emergencies

There are three different categories of emergencies under Government Code § 8558: (1) state of war emergency (or threat of attack by enemy); (2) state of emergency (threat of or conditions of disaster within the state); and (3) local emergency (threat of or conditions of disaster within territorial boundaries of a county or city). A “state of emergency” requires assistance from mutual aid regions to combat the disaster. A “local emergency,” on the other hand, requires only the combined forces of other local entities. See 62 Op. Att’y Gen. 701 n.3 (1979).

Timeliness for a State of Emergency Declaration

Under CESA, declarations of emergency can be made prior to, during, or after a disaster, depending on the unique circumstances surrounding the disaster. This action may be taken only by the governing body of the local entity, or by an official designated by local ordinance. If the declaration is made by a designated official, the declaration must be confirmed by the governing body of the local entity within seven days, and once declared, it remains in effect for a period of no more than seven days unless extended by the local governing body. Cal. Gov’t Code § 8642.

Practice point: Declare an emergency as soon as possible.

Practice point: Every local entity should have an ordinance in place authorizing a designated official to declare emergencies.

² Declaring a state of emergency has several additional benefits. For example, declaring a state of emergency ensures that local governments, as well as local government officials and employees, are immune from liability when exercising their official duties during an emergency. Cal. Gov’t Code § 8655. Many of these additional benefits are discussed in Jonathan Lowell’s paper.
The local governing body is required to meet as soon as possible after the local emergency is proclaimed. *Cal. Gov’t Code § 8642.* Should a declaration of emergency remain necessary, the local governing body must review the conditions of the local emergency at least once every 30 days and ratify the continuing existence of the emergency. Once post-disaster conditions have ceased, a declaration terminating the existence of the local emergency should be made at the earliest possible date. *Cal. Gov’t Code § 8630.*

Both counties and cities have the power to declare an emergency. However, counties have the ultimate power to govern a disaster area, and therefore cities need not independently declare a local emergency when it has already been declared by the county in which it is subsumed. 62 *Ops. Cal. Atty. Gen. 701* (1979).

**Funding Under CESA**

Under CESA, the Governor is tasked with requesting and appropriating State money available for responding to emergencies. For example, *Government Code § 8619* authorizes the Governor to enter into reciprocal aid agreements with other States and the Federal government to combat emergencies. Further, *Government Code § 8646* authorizes the Governor to contract with public and private agencies for services necessary to address emergencies.

CESA also empowers the Governor with several other means of providing vital financial assistance to local entities confronting an emergency. Under *Government Code § 8654*, the Governor is authorized to do the following:

1. make financial grants of up to $10,000 to families or individuals to meet disaster related necessary expenses;

2. apply to the Federal government, on behalf of the local entity, for a loan, and receive and disburse the proceeds of that loan to the local entity;

3. determine the amount needed by a local entity to restore or resume its governmental functions and certify that amount to the Federal government (however that amount may not exceed 25% of the annual operating budget of the local entity for the fiscal year in which the major disaster has occurred); and

4. recommend to the Federal government the cancellation of all or any part of a loan made to a local entity when the revenues of the local entity during the 3 years following the disaster are insufficient to meet its operating expenses as well as disaster-related expenses.

**Funding From the Federal Emergency Management Agency (FEMA)**

Local entities may also obtain money from FEMA if (1) the President has declared a major disaster and (2) the local entity is able to sufficiently demonstrate the need for financial assistance in order to perform government functions. Generally, the President will only declare an emergency if the damage is of such magnitude that Federal assistance is necessary to supplement the resources of states, local governments, and aid organizations in addressing the disaster. FEMA considers various factors in deciding whether or not to grant Federal assistance,
such as the amount and type of damages; impact of damages on affected individuals, state and local governments; available resources of state and local governments and other disaster relief organizations; extent and type of insurance in effect; assistance available from other Federal programs and other sources; imminent threats to public health and safety; recent disaster history in the state; and hazard mitigation measures taken by the state or local governments.

**Practice point:** Advocate for the state and federal government to independently declare an emergency in order to gain increased access to state and federal funds.

**Mutual Aid Regions and Emergency Plans**

Typically, emergencies are of such a severe magnitude that they affect more than one local entity and thus require the assistance of more than one local entity. For this reason, CESA establishes mutual aid regions throughout the State and authorizes local entities to enter into mutual aid agreements to assure the requisite emergency response. Under CESA, each county is designated as a mutual aid region and the governing body of each county may organize and structure its mutual aid region. The mutual aid region may be used by the county for the coordination of emergency services, and to serve as a link in the communications system during a state or a local emergency.

CESA also provides for a State emergency plan and requires cities and counties to administer it. The plan contains information regarding the continuity of government, the emergency services of governmental agencies, mobilization of resources, mutual aid, and public information. Cities must have a plan in place in order to receive State disaster assistance funds for response-related costs. Although CESA does not contain mandatory elements for local entities to include in their local emergency plans, such plans often contain invaluable practical information, including the names and contact information of the chain of command, contact information for assistance organizations, and sample forms and documents to be used to ensure the emergency powers are properly exercised.

**Mutual Aid Agreements**

Many local entities enter into mutual aid agreements to provide emergency assistance to each other in the event of disasters or emergencies. Mutual aid agreements often encompass fire management assistance, law enforcement services, medical services, and general equipment and supplies. It is preferable to have these agreements written in advance of an emergency, but where necessary, they can be arranged verbally after a disaster or emergency occurs. Where the parties do not have a pre-event written mutual aid agreement, the post-event verbal agreement should be documented and executed by an official of each local entity with authority to request and provide assistance.

The costs incurred by local entities providing mutual aid during an emergency are often eligible for reimbursement from Federal and State funding. Though not required, it is best to address the subject of reimbursement in the mutual aid agreements themselves. The most common means of reimbursement is for the local entity requesting mutual aid assistance to claim the eligible costs of the entities providing the assistance and then to disburse the reimbursed costs back to the entities that provided assistance. All entities should keep detailed records of the services
requested and received, as the records must be submitted for purposes of reimbursement. The local entity attorney should collect and maintain the mutual aid agreements in an accessible location and advise others in the entity as to their location.

**Practice point:** Enter into mutual aid agreements in advance of emergencies, but if not in place when an emergency occurs, do so as soon as possible thereafter.

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**Case Study – City Of San Bruno**

On September 9, 2010, a Pacific Gas and Electric gas line exploded igniting a large area in the City of San Bruno. Already in place was a Law Enforcement Mutual Aid plan delineating the current State policy concerning law enforcement mutual aid and describing the standard procedures used to acquire mutual aid resources. The County Sheriff was the Operational Area Law Enforcement and Mutual Aid Coordinator responsible for providing assistance and coordinating emergency management efforts.

Within three hours of the initial blast, the City Manager signed a Declaration of Local Emergency. Mutual aid fire services within the county were dispatched immediately pursuant to an existing agreement and practice. The City of San Bruno Police Department requested the mutual aid assistance from the County of San Mateo Sheriff’s department, as well as several other cities in the county. The City Manager of the City of San Bruno also requested mutual aid assistance from the County of San Mateo and other cities for non-law enforcement relief and support services needed in connection with the fire, such as public works services.

On the night of September 9th, the State also declared a state of emergency which unleashed resources from fire agencies all over California. 586 fire personnel, including strike teams, hand crews, chiefs, battalion chiefs and overhead positions responded to the disaster site over the course of 48 hours from the initial explosion. The fire suppression apparatus resources included 85 fire engines and fire trucks, 7 planes, a helicopter and other specialized equipment. As of midnight on September 11th, the State of Emergency Declaration ceased. Since at that point Cal EMA monies would no longer be made available to reimburse the expenses of the fire agencies, non-local engine companies were sent home.

The Federal government did not declare an emergency because of the existence of another deep pocket source, i.e., PG&E, to cover the emergency related costs. As it turns out, the State has also looked to PG&E to pay expenditures that would otherwise be covered by Cal EMA funding under CESA.

The City of San Bruno continued to extend the declaration of local emergency executed by the City Manager shortly after the explosion occurred. This declaration maintained San Bruno’s eligibility to receive reimbursement for
emergency related expenses that continued for months following the disaster. The City allowed the declaration to expire at the end of March 2011.

The City of San Bruno did not have pre-existing mutual aid agreements with the respective entities providing assistance and services unrelated to fire. Therefore, the City of San Bruno and those entities providing police, public works and similar forms of assistance executed an agreement after the disaster occurred to reimburse all reasonable and eligible costs expended in mutual aid assistance. As part of the agreement, the entities providing assistance agreed to document all of their mutual aid assistance costs related to the emergency and to submit them to the City of San Bruno. (See sample Agreement as Attachment 1.)

Pursuant to applicable procedures, the City of San Bruno will forward the mutual aid agreement, all invoices, and supporting documents to Cal EMA, and the State will pay the City of San Bruno its share of the invoiced amount. The City of San Bruno will then send the amount it receives from the State to the respective cities. However, PG&E has established a large trust fund which is likely to relieve the State of its obligations and San Bruno will instead submit the same documentation to this trust. There will not be an opportunity for Federal FEMA reimbursement since the President did not declare the disaster as a federal emergency.

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**Emergency Aftermath - The Disaster Assistance Act**

Once the emergency conditions are under control or have ceased, local entities are often left with costly disaster-related expenditures, such as damaged public facilities and no money to cover them. Fortunately, the Disaster Assistance Act, *California Government Code § 8680 et seq.*, provides a funding mechanism for local entities to obtain grants and loans from the State for the repair, restoration, or even replacement of public facilities used for essential government services that were damaged in the emergency. Thus, the Act offers local entities State financial assistance to ease the fiscal burden incurred by local entities as a direct result of responding to or recovering from natural disasters. A “disaster” is defined as a fire, flood, storm, tidal wave, earthquake, terrorism, epidemic, or other similar public calamity that the Governor determines presents a threat to public safety. *Cal. Gov’t Code § 8680.3.*

Under the Act, the Secretary of Cal EMA is authorized to allocate funds to meet the cost of local entity projects. “Projects” are defined as the repair, restoration, or replacement of real property, buildings, levees, flood control works, channels, irrigation works, city streets, county roads, bridges, and other public works that are used for essential government services and are damaged by a disaster. *Cal. Gov’t Code § 8680.4.* The key to obtaining funding under the Act is that the suggested project must involve the repair, restoration, or damage of a public facility. Without this tie-in, a local entity cannot obtain funding under the Act.

*Practice point: Determine what “public facilities” are affected by the disaster in order to secure funding.*
Funds appropriated under the Act may be used for the following purposes:

a. Local entity costs of personnel, equipment, supplies and materials used during disaster response activities, incurred as a result of a state of emergency proclaimed by the Governor, excluding the normal hourly wage costs of employees engaged in emergency work activities;

b. The repair, restoration, reconstruction, or replacement of public facilities damaged as a result of disasters, including certain mitigation measures;

c. Matching fund assistance for cost sharing required under Federal public assistance programs;

d. Indirect administrative costs and any other assistance deemed necessary by the Secretary of Cal EMA;

e. Necessary and required site preparation costs for mobilehomes, travel trailers, and other manufactured housing units provided with FEMA assistance.

In certain instances, it makes more sense to replace, rather than to repair or restore, a public facility. In such situations, the Secretary of Cal EMA may authorize the replacement of the facility, including, an increase in the square footage of the building replaced. However, the local entity is responsible for any costs that result in the betterment of the facility.

Declaration of a Local Emergency

Similar to CESA, the declaration of a local emergency is also essential for obtaining funds under the Act. An allocation may be made to a local entity for a specific project when, within 10 days after the actual occurrence of a disaster, the local agency has proclaimed a local emergency and that proclamation is acceptable to the Secretary of Cal EMA. Cal. Gov’t Code § 8685. The definition of both a “local emergency” and a “state of emergency” is the same as under CESA.

Types of Financial Assistance Available

The Act makes available to the local entity a grant, and under certain conditions, a loan, from Cal EMA in order to implement a specific project. A local entity may also receive an advance of funds to initiate a project, but such advances are limited to not more than 90 percent of the estimated State’s share of the project.

The grant requires a 25% local share and State funds will be made available for no more than 75 percent of total State eligible costs. When a Federal agency, such as FEMA, provides disaster relief funds for the cost of a specific project, the amount of Federal assistance must be deducted from the cost of the project in determining the total amount of the State eligible costs. Further, local entities must try to recover maximum Federal participation in funding projects, i.e. no funds allocated under the Act may be used to supplant Federal funds otherwise available in the absence of State financial relief.

If the Secretary of Cal EMA determines that a local entity is financially unable to meet the local match, Cal EMA may also lend funds for the completion of a project. The local entity is then
required to make its contributions by means of deferred payments in amounts and at the times provided by a loan agreement. The loan must be fully repaid within 10 years, and bear an interest rate equivalent to the prevailing interest rate for legal State investments as of the date of the loan. If the Secretary of Cal EMA determines that a local entity is financially unable to meet the 25% match requirement due to exhaustion of its financial resources because of disaster-related expenditures, Cal EMA may allocate funds to pay 100% of the cost of the project or that portion of the cost which the Secretary determines is necessary to accomplish the project.

Case Study - City of Millbrae Landslide

In mid-February 2000, a hill in the City of Millbrae, which historically had been unstable, began to slide dramatically. The City implemented an emergency response plan, warned homeowners of the impending danger and ordered many homeowners on the uphill street of Crestview and the downhill street of Pinehurst to evacuate their homes. By early March, the landslide was fully mobilized and the City yellow-tagged and red-tagged a number of Crestview and Pinehurst homes. Shortly thereafter, the slide destroyed one home on Pinehurst and severely damaged three others. On the uphill Crestview properties, backyards and retaining walls were lost; the homes remained significantly intact although perilously close to the slide’s edge.

The City immediately retained consultants to develop short-term damage containment plans and long-term repairs to the hillside, but the City had no resources to address the problem itself and all of the land affected was privately owned. The City’s major trunk line across the face of the hill serving homes above the slide area was severely damaged. The City sought help from the California Office of Emergency Services (OES) under the Disaster Assistance Act. As stated above, the Act provides for a 75% grant to fund the repair or restoration of a public facility that has been destroyed by a natural disaster. Since the broken sewer line across the face of the hill could not be restored unless the unstable hillside was repaired, OES was willing to treat the hillside repair as a project eligible for this grant funding.

By the end of the summer the City realized it was looking at a total project cost (including emergency, consultant and construction services) of almost $8.5 million to repair the hillside. OES proposed to give the City a 75% grant. The City urged the Director of OES to consider a 100% grant due to the City’s lack of robust reserves to cover the 25% local share. With the Director of OES unconvinced, the City sent letters to legislators requesting a line item in the 2001 State fiscal budget to cover the 25% local match, but this campaign was unsuccessful. Thus, OES funded $6.4 million of the eligible project costs and the City was forced to look to OES for a loan to fund the $2.1 million local share of the project under the Disaster Assistance Act.

3 In the year 2000, the California Office of Emergency Services, and not Cal EMA, was responsible for administering the Disaster Assistance Act.
As it turns out, this was the first loan OES had ever made. After extensive work to develop a loan agreement which reflected the requirements in the Act, in May 2001, the City and OES executed a loan agreement with the following terms:

- $2.16 million in principle
- 5.39% interest rate
- Annual interest only payments with deferment of payments for the first 3 years
- Deferred interest during the first 3 years is added to principle
- Interest only payments begin in year 4 of the loan
- A balloon payment at the end of 10-year term on the entire increased principle

Four months later, the world as we knew it changed forever with 9/11 and the financial system crashed. The world dove into a recession and local government revenues dried up.

In the spring of 2002 Millbrae made a concerted effort to work with State legislators to get a loan forgiveness item included in the State budget. To this end, AB3005 was approved in the Assembly’s budget. An article in the L.A. Times identified the “pork-barrel” items in the budget and specifically referred to the Millbrae $2 million loan forgiveness, among other items. As a result, the Legislature changed the bill to an authorization to defer for one year any and all fiscal obligations on the loan. This bill was then vetoed by Governor Wilson.

As 2003 was drawing to a close, the City’s fiscal crisis became more urgent. To address the impending loan payments that would commence in May of 2004, the City approached OES and requested the loan forgiveness or, in the alternative, (a) to reduce the interest rate or (b) to further defer the payments required under the loan.

OES insisted it had no legislative authority to forgive the loan. OES also took the position that the statute would not allow reduction of the interest rate. However, desiring to help Millbrae in any way possible, OES was willing to further defer payments under the loan. Accordingly, the parties entered into an amended loan agreement in April of 2004 pursuant to which the first interest payments under the loan otherwise due to commence the next month were postponed for 3 years to May 2007.

Millbrae continued to work with OES to come up with a solution that would rid the City of this loan obligation while protecting OES from establishing a precedent of loan forgiveness. In the end the parties amended the loan agreement a second time to make the loan repayment contingent upon Millbrae’s general fund reaching the level it had obtained prior to 9/11 adjusted annually to account for cost of living increases. Since this condition was never satisfied, the 10-year loan period has expired and no further loan payments were required.
PART II: RED-TAGGING WITHOUT BEING RED-FACED

What Is A “Red-Tag”?

Technically, there is no such thing as a red-tag. That term simply reflects the color of a placard used to indicate the condition of a structure for continued occupancy of a building, especially after an emergency. A green placard is often used to indicate that there is no damage to the building. A yellow placard can mean that occupancy is restricted. A red placard is typically posted when a building has been damaged so that continued occupancy poses a threat to life safety.

The state statutes and building codes do not define the terms “green-tag,” “yellow-tag” or “red-tag.” Some cities adopt municipal ordinances to clarify the meaning of the different placards. One example of this can be found at the San Bruno Municipal Code, Title 11, Chapter 11.32.

“Red-tag”, as that term is commonly used, typically refers to a notice and order to vacate, often issued in conjunction with an order to repair or demolish a damaged building (herein “Notice and Order”). The Notice and Order is issued by the Building Official, and is accompanied by a placard posted on the building. Sample Notice and Orders are included as Attachments 2 and 3.

Practice point: Merely posting a placard on the building, without more, is inadequate notice.

Why Red-Tag a Building during an Emergency?

During a disaster, it is often apparent that a structure is either damaged or threatened such that the city seeks to vacate it in order to protect the occupant from potential harm or assess the damage or both. As stated in Part I of this paper, the California Emergency Services Act, authorizes a city to declare an emergency. Once the emergency is declared, the city can issue and enforce orders and regulations necessary for the protection of life and property during that emergency, including curfew zones to preserve the public order and safety. Cal. Gov’t Code § 8643. This supports the position that under CESA a city may order an evacuation of an area that is in danger.

Even so, there are benefits to supplementing emergency orders issued pursuant to CESA with a Notice and Order. First, when the emergency the city declared under CESA is terminated, the emergency orders are cancelled. However, while the general area may no longer be in danger, a specific structure may still be unsafe to occupy. A red-tag is building-specific, not area-wide. The Notice and Order does not terminate upon the cancellation of the emergency. It remains in effect until the Building Official determines that the unsafe condition of the building no longer exists. Second, even if a plaintiff successfully challenges the city’s declaration of an emergency and orders under CESA, the Notice and Order can still be valid under other statutory authority. Third, issuing a Notice and Order removes the occupant from harm’s way, and allows the city more time to then determine if the structure can be salvaged or must be demolished without going to the extreme of demolishing the property in a rush without further evidence or a hearing.

A Building Official can issue a Notice and Order if he or she determines that the structure is unsafe to occupy because it violates a Building Code provision or other safety standard. There is
no mandatory duty to issue a Notice and Order. The decision to do so is a discretionary act. The statutes that authorize a city to determine the existence of a nuisance or building code violation or to abate the violations are discretionary, not mandatory, even if the word “shall” is used in those codes. *Fox v. Fresno County* (App. 5 Dist. 1985) 170 Cal. App. 3d 1238).


CESA grants cities immunity from claims based upon the exercise or performance, or the failure to exercise or perform, any discretion ary function or duty in carrying out their emergency powers and orders during a declared emergency. *Cal. Gov’t Code § 8655.* However, due process rights and inverse condemnation protections are Constitutional protections. The Constitution and laws of the United States are the supreme law of the land pursuant to the Supremacy Clause of the U.S. Constitution (U.S. Constitution Art. VI, Clause 2). A State law, like CESA, cannot override Constitutional protections. The right to sue under the constitutional provisions is independent of any right to sue under traditional tort theories. *Friedman v. City of Los Angeles* (1975) 52 Cal. App.3d 317.

Thus, while a city has no obligation to “red-tag” a building, if a city chooses to do so, it must meet the constitutional due process requirements or the city will be vulnerable to legal challenge on Constitutional grounds. *See, Rose v. City of Coalinga* (1987) 190 Cal. App. 3d 1627; *Leppo v. City of Petaluma* (1971) 20 Cal. App.3d 711. Lawsuits based on due process or inverse condemnation can be expensive to litigate; can take a long time to work their way through the courts; and may not be covered by a city’s general liability insurance policy, meaning defense costs may have to come from the city’s general fund.

A properly issued Notice and Order will provide an owner with the required due process, and will put a city in a position to defend a challenge brought on inverse condemnation grounds. Typically, in an emergency situation, the Notice and Order is issued and posted on the building, and the occupant is deprived of the use of the property prior to a hearing. However, due process is still satisfied so long as there is a hearing soon after the decree is made. When immediate action is necessary to protect the public interest, such as when an unsafe nuisance exists, a hearing is not required prior to the exercise of that police power as long as adequate post-deprivation procedural safeguards exist. *Soranno’s Gasco, Inc. v. Morgan* (9th Cir. 1989) 874 F. 2d 1310.
Preliminary Considerations

Do Not Assume the Building Official Has Been Trained In Due Process Matters.

Building Officials are trained to enforce the Building Codes. The Building Codes grant authority for vacating a building as the result of unsafe conditions, but do not always set forth notice and hearing and appeal rights for the owners. It is worth the city attorney’s efforts, prior to issuance of a Notice and Order, to spend time educating the Building Official on due process requirements.

Have the Red Cross or Other Social Services Ready to Assist Tenants and Owners With Finding Shelter.

When a city issues a Notice and Order, it means someone is at least temporarily unable to enter their home or business. The city has no obligation to relocate persons who must vacate due to a code enforcement proceeding (see, 25 CCR 6008(f)(3)(E)). However, if a tenant or owner is going to be displaced, have the social services, such as the Red Cross, ready to assist in advance. First, it may reduce some of the burden and anxiety of the tenant or owner. Second, it may be politically prudent. Third, it may help an agency mitigate their damages if the agency loses a legal challenge.

The Building Official Should At a Minimum Perform an On-Site Inspection, and Prepare Notes or a Report of His or Her Conclusions.

Often a Building Official will rely on oral reports or information obtained from police or fire department responders. While this information can support the Building Official’s determination, the Building Official is the one who must make the findings and draw the conclusions that a structure is unsafe to occupy. The best evidence is the Building Official’s first-hand knowledge.

The Building Official Should Photograph the Placard and Notice Once It Is Posted.

Ideally, the photograph should show the property address. An example of such a photograph is included as attachment 4.

Document the Emergency.

During an emergency, it seems obvious that an emergency is taking place. However, depending on the nature of the legal challenge, a potential plaintiff may have up to five years to file suit. Memories fade; documents are lost; witnesses move. Individuals who were initially grateful to the city for its emergency response measures may be looking for financial restitution from the agency later. Persons who were injured or lost property during the emergency may question whether it was necessary for the city to respond as it did.

Further, the emergency typically endures beyond the actual triggering event, such as the fire or the earthquake or the flood. There is often a window of time during which the city is performing rescue and retrieval, and still assessing the status of the public health and safety, even though the initial event has ceased. This often still falls within the emergency period, but the further away
in time the emergency remains in effect after the triggering event, the more vulnerable to challenge the city’s determination of an emergency status may become. It may become necessary after the fact to prove not only the existence of the emergency but also its severity and effect on public safety and private property. The city should take steps to create a record of the emergency and do so in a way that the evidence is easy to find at a later date.

The city should designate someone to be responsible to collect and maintain evidence of the emergency, including Council resolutions, newspaper articles, web pages, photographs, reports and correspondence, and that person should provide the information to the City Clerk. Typically, the Director of Emergency Services proclaims the emergency, and the City Council then ratifies the existence of the emergency within seven days. Often, the declaration must be extended and the Council does so every 30 days. Cal. Gov’t Code § 8630. The Clerk or appropriate staff person should reference the information in the staff report for the ratification and in other staff reports that may relate to the emergency, such as the resolution continuing or terminating the emergency. This will ensure not only that the information is retrievable, but also, if the legal challenge is in the form of a writ proceeding where the evidence is limited to the administrative record, the evidence will actually be in the record.

Don’t Forget the Lienholders.

The lienholders should be copied on all correspondence that goes to the owner. As a practical matter, if the property is in a condition that can be abated, the lienholder may be more financially capable of correcting the condition, and may have more of a financial incentive to do so, than the owner. If there is a possibility that the property may be demolished, or that the city itself may take action to abate, the lienholders must be notified; it is imperative to obtain a title report with a litigation guarantee, and to update it immediately prior to the abatement or demolition. In addition, if there is a possibility of demolition, the city must record a document such as a lis pendens or the Notice and Order itself, so that a future purchaser has notice of the impending destruction of the property. D & M Financial Corporation (2006) 136 Cal. App. 4th 165; Hawthorne Savings and Loan Association v. Signal Hill (1993) 19 Cal. App.4th 148; Friedman v. City of Los Angeles, supra, 52 Cal. App. 3d at pp. 322.

Legal Authority to Red Tag

California Health and Safety Code § §17920-20.3. 17980 et seq.

§17920-20.3 defines substandard building.

§17980(b) authorizes the city to determine that a building is substandard or dangerous and to order that the violation be abated by repair, rehabilitation, vacation, or demolition of the building. The city cannot require the vacating of a residential building unless it concurrently requires repair or demolition.

§17980.1 sets forth specific requirements that apply in the event of an earthquake.

Although these provisions of the Health and Safety Code contain some procedural guidelines, they are neither detailed nor comprehensive.
§ 111.4 authorizes the Building Official to revoke a certificate of occupancy where it is determined that the building is in violation of the Building Code. This implicitly authorizes the Building Official to issue an order to vacate the premises.

§ 112 authorizes the Building Official to disconnect utilities in case of emergency where necessary to eliminate an immediate hazard to life or property. Implicitly, this allows the Building Official to order the owner to vacate the building.

§ 116.1 authorizes the Building Official to find a structure unsafe based on certain criteria, and to order that unsafe structures to be taken down or removed.

None of these sections outright say that the Building Official has the right to vacate a structure, but that authority is suggested in the powers that are detailed in those provisions. § 116.3 requires written notice, but does not provide detailed information about what needs to be included in the notice. § 116.4 specifies the method of service. It does not require that notice be served on the lienholders, nor does it provide for the notice to be recorded against the property. Further, these provisions are silent as to appeal rights. This author suggests that a city that relies on these provisions for issuance of a Notice and Order also adopt supplemental procedures to ensure that the owners are provided their full due process rights. One option is to adopt the 1997 Uniform Code for the Abatement of Dangerous Buildings, discussed in more detail below. Another option is to amend the administrative chapter of the Building Code to adopt some variant of the procedures set forth in Chapters 4, 5, and 6 of the 1997 Uniform Code for the Abatement of Dangerous Buildings.


Chapter 3 contains the definition of a dangerous building.

Section 401.1 explicitly grants the Building Official authority to cause the repair, vacation or demolition of the building. Chapter 4 sets forth detailed requirements for the content and process for the issuance of the Notice and Order, including its service and recordation. Chapter 5 provides details of the appeal, including the form of the appeal, the processing of it, the scheduling and noticing of the hearing, the effect of the failure to appeal, and the scope of the hearing on the appeal. In addition, Section 504 specifies that vacation orders are not stayed pending the appeal.

This 1997 Uniform Code is not part of the International Codes adopted by the International Code Council, and thus is not part of the 2010 California Building Code. If a City has previously adopted the 1997 Uniform Code, it remains in effect and does not need to be re-adopted. If a City has not adopted it and wishes to do so, the City must follow the procedures set out in Cal. Gov’t Code §§ 50020 et seq. In this author’s opinion, the 1997 Uniform Code provides the most comprehensive and thorough procedures for vacating a building, and a city that follows this Code’s procedures will be in a strong defensive posture to resist a constitutional challenge.
1997 Uniform Housing Code

This has procedures that are similar to those set forth in the 1997 Uniform Code for the Abatement of Dangerous Buildings. If a city has already adopted it, this author would recommend following those procedures in issuing a Notice and Order. However, be advised that Chapter 10 of this Uniform Code has been superseded by the provisions of the California Health and Safety Code detailed above. If a city has not adopted this particular Code, this author would not recommend it.

Case Study - City of Pacifica Landslides

The City of Pacifica is a coastal community with approximately 40,000 residents, located just south of San Francisco. One of the westernmost residential streets in the city is Esplanade Avenue, which is three blocks long and runs parallel to the ocean. At the 300 block of Esplanade Avenue there are seven apartment complexes located on the top of the bluffs. The vertical height of these bluffs averages 80 feet high.

Starting on December 15, 2009, a series of powerful storms pummeled the city. A high surf advisory coincided with a high tide, resulting in accelerated erosion of the cliff near a 20 unit apartment complex at 330 Esplanade Avenue. Within a few days, the bluff top lost twenty linear feet. In some areas, up to thirty-nine linear feet sloughed off. The base supporting the structure was undermined. The property owner attempted to place rocks at the toe of the slope in an effort to reduce wave-related erosion, but the upper portion of the cliff continued to fail.

At 6 a.m. on December 17, about a week before Christmas, the City ordered the residents to evacuate within twenty minutes, before the incoming high tide could cause more damage. After the tide retreated, the tenants were allowed the rest of daylight to gather their belongings. The City declared a local emergency, and on December 22, 2009, red-tagged the building.

The City continued to monitor and evaluate the area on a daily basis. Although coastal erosion along the San Mateo coastline averages about a foot a year, the December storms hastened the erosion along the 300 block. In January 2010, six units of the adjoining 20 unit apartment complex at 320 Esplanade were yellow-tagged at the owner’s request due to the rapidly retreating bluff. The evacuations began at 5 a.m. when a twenty-foot section of cliff behind the building broke away and fell into the ocean, taking with it the railing on the back porches. Three months later, when the continuing subsidence caused the bluff to retreat within twenty feet of the structure, the City declared another local emergency and red-tagged the entire building.

Both buildings remain vacant and red-tagged to this day, while the owners struggle to determine what, if any, measures should be taken to restore the
buildings. In the meantime, some of the tenants have moved into the buildings next door, which remain standing, although no one can predict for how long.

CONCLUSION

Emergencies, including natural disasters, can have a devastating impact on the resources of local entities, particularly in tough economic times. Through familiarity with the California Emergency Services Act and the Disaster Assistance Act, as well as attention to sound recordkeeping practices, local entities can take advantage of substantial state funding resources and other outside assistance to aid in their efforts to combat and recover from an emergency. Further, a basic understanding of “red-tagging” best practices and procedures will greatly assist local entities in protecting their constituents from unsafe structures, while at the same time insulating local entities against possible legal challenges. One never knows when an emergency will strike, and just like individuals, local entities should make every effort in advance to be prepared.
MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF SAN BRUNO AND THE CITY OF ____________ PERTAINING TO ASSISTANCE GIVEN UNDER MUTUAL AID RELATED TO THE GLENVIEW FIRE

WHEREAS, on September 9, 2010, a Pacific Gas and Electric gas line exploded and started a large fire in the Glenview area of the City of San Bruno, located within the County of San Mateo, causing multiple deaths, injuries and damage to real and personal property; and

WHEREAS, these events, collectively, will be referred to as the “Glenview Fire”; and

WHEREAS, on September 10, 2010, the Acting Governor declared a State of Emergency due to the Glenview Fire; and

WHEREAS, pursuant to Chapter 2.48 of the San Bruno Municipal Code, the City Manager was authorized as the Director of Emergency Services for the City and did issue an initial “Resolution Proclaiming the Existence of a Local Emergency” dated September 9, 2010, and subsequently issued a “Second Resolution Proclaiming Existence of a Local Emergency,” reiterating the State of Emergency language from the first proclamation and further requested financial assistance from State and Federal agencies including, but not limited to, the Federal Emergency Management Agency (FEMA) and California Emergency Management Agency (CalEMA). The City Manager’s actions were ratified by the San Bruno City Council by Resolution dated September 14, 2010; and

WHEREAS, on September 10, 2010 the County Manager, acting as the Director of Emergency Services for the County of San Mateo, declared the existence of a “local emergency” pursuant to San Mateo County Ordinance Code section 2.46.060; and

WHEREAS, on September 14, 2010 pursuant to Section 8630 of the Government Code, the Board of Supervisors ratified the proclamation; and

WHEREAS, pursuant to Health and Safety Code Section 101080, on September 14, 2010, the County Health Officer proclaimed the existence of a local health emergency which was ratified by the Board of Supervisors on September 14, 2010; and

WHEREAS, on September 28, 2010, the County of San Mateo Board of Supervisors adopted a Resolution that due to continued conditions of extreme peril to the safety of persons and property that have arisen as a result of the fire and explosion in the City of San Bruno, the Board of Supervisors proclamation of local health emergency pursuant to Health and Safety Code section 101080 and proclamation of local emergency pursuant to Sections 8558(c) and 8630(b) of the Government Code continue to exist within the County; and
WHEREAS, the Law Enforcement Mutual Aid Plan delineates the current state policy concerning law enforcement mutual aid and describes the standard procedures used to acquire such mutual aid resources; and

WHEREAS, the County Sheriff is the Operational Area Law Enforcement and Mutual Aid Coordinator; and

WHEREAS, Law Enforcement Mutual Aid Plan provides, in pertinent part, “When an emergency develops or appears to be developing which cannot be resolved by a law enforcement agency within an Operational Area, it is the responsibility of the Operational Area Mutual Aid Coordinator to provide assistance and coordination to control the problem;” and

WHEREAS, the Law Enforcement Mutual Aid Plan provides, in pertinent part, “A request for law enforcement mutual aid requires the approval of the chief law enforcement officer of the requesting jurisdiction”; and

WHEREAS, the City of San Bruno and the City of San Bruno Police Department requested the mutual aid assistance of the County of San Mateo, County of San Mateo Sheriff’s department, the City of ____________, the City of ____________ Police Department and other cities in the County of San Mateo pursuant to the Law Enforcement Mutual Aid Plan to support law enforcement and other services in connection with the Glenview Fire; and

WHEREAS, the City of ____________ and City of ____________ Police Department provided mutual aid assistance, including law enforcement and other personnel, equipment, and materials starting September 9, 2010 and continuing to the present to assist with law enforcement and other services in connection with the Glenview Fire; and

WHEREAS, the City of ____________ and City of ____________ Police Department agree to document all of its mutual aid assistance costs related to the Glenview Fire as attachments to this MOA and submit to the City of San Bruno as soon as practicable; and

WHEREAS, the City Manager of the City of San Bruno also requested mutual aid from the County of San Mateo and other cities in San Mateo County for assistance in providing non-law enforcement relief and support services in connection with the Glenview Fire; and

WHEREAS, the County of San Mateo and cities did respond and provide such non-law enforcement mutual aid and agree to document the costs of providing such mutual aid and submit them to the City of San Bruno for reimbursement as soon as practicable.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the City of ____________ and City of San Bruno that in accordance with State and Federal guidelines the City of San Bruno shall reimburse all reasonable and eligible costs with the City of ____________’s mutual aid assistance and non-law enforcement mutual aid assistance, including but not limited to law enforcement mutual aid assistance, during the Glenview Fire. The City of ____________ and the City of San Bruno shall keep detailed records of the services requested and received, and provide those records as part of the supporting documentation for a reimbursement request.
NOTICE OF DANGEROUS BUILDING
ORDER TO VACATE
NO ENTRY

330 ESPLANADE AVENUE, PACIFICA
[ASSESSOR PARCEL NO. 009-413-030]

TO: 1. 330 ESPLANADE LLC [PROPERTY OWNER]
     MEHRDAD ELIE, DELFARIB FANAIE,

2. ALL TENANTS AND OCCUPANTS OF ALL

IT IS A MISDEMEANOR TO ENTER OR OCCUPY THIS
BUILDING – EXCEPT HAS HEREINAFTER AUTHORIZED –
OR TO REMOVE OR DEFACE THIS NOTICE.
[UCADB, SECTIONS 404.2 AND 701.1]

BY ORDER OF THE PACIFICA BUILDING OFFICIAL

On December 17, 2009 at 9:30 m. the undersigned determined that
the erosion of an adjoining bluff has rendered this building
dangerous pursuant to provisions of the 1997 Uniform Code for the
Abatement of Dangerous Buildings [“UCADB” – adopted by Pacifica
Municipal Code §8-5.01] as follows:

“Section 302 – Dangerous Building.

For purpose of this code, any building or structure which has any
or all of the conditions or defects hereinafter described shall be
deemed to be a dangerous building, provided that such conditions or
defects exist to the extent that the life, health, property or
safety of the public or its occupants are endangered.”

“5. Whenever any portion or member or appurtenance thereof is
likely to fail... or to collapse and thereby injure persons or damage
property.”

THE EROSION OF THE BLUFF AND ITS SIX FOOT PROXIMITY TO THE BUILDING
POSE SUCH AN IMMEDIATE THREAT TO THE LIFE, LIMB, HEALTH, SAFETY AND
WELFARE OF THE PUBLIC AT LARGE AND THE OCCUPANTS OF THIS PROPERTY
SO AS TO CONSTITUTE AN EMERGENCY.
EFFECTIVE IMMEDIATELY, ALL TENANTS AND OCCUPANTS OF THIS BUILDING ARE ORDERED TO VACATE.

YOU, AND ALL OTHER INTERESTED PERSONS, ARE FURTHER INFORMED AS FOLLOWS:

1. RESTRICTED / LIMITED ENTRY OF A PORTION OF THE BUILDING BY THE PROPERTY OWNER, ITS MANAGERS/MEMBERS, AGENTS OR CONSULTANTS IS AUTHORIZED BETWEEN 7:00 A.M. AND 4:00 P.M. OF ANY DAY SOLELY TO SECURE, ASSESS OR MONITOR THE CONDITION OF THE BUILDING.

2. THIS ORDER TO VACATE SHALL NOT APPLY TO PERSONNEL OF ANY PUBLIC AGENCY OR ENTITY WHILE ACTING IN THEIR OFFICIAL CAPACITIES.

3. THIS ORDER TO VACATE MAY ONLY BE MODIFIED OR RESCINDED IN WRITING BY THE BUILDING OFFICIAL, OR A DESIGNEE THEREOF.

4. THIS ORDER TO VACATE WILL BE RESCINDED IN WRITING WHEN THE CITY OF PACIFICA DETERMINES THAT THIS BUILDING IS NO LONGER DANGEROUS.

5. A COPY OF THIS NOTICE AND ORDER TO VACATE IS BEING SERVED ON LIBERTY BANK, A LIENHOLDER OF RECORD FOR THIS BUILDING.

NO PERSON SHALL DEFACE OR REMOVE THIS NOTICE FROM ANY PORTION OF THE BUILDING TO WHICH IT IS AFFIXED.

ANY PERSON WHO VIOLATES THIS ORDER TO VACATE, OR WHO REMOVES OR DEFaces THIS NOTICE, IS SUBJECT TO ARREST AND MAY BE CRIMINALLY PROSECUTED IN THE SAN MATEO SUPERIOR COURT FOR MISDEMEANOR OFFENSES OF THE FOLLOWING CODES:
UCADB §701.1, which states, in pertinent part, as follows: “Any such person who fails to comply with any such order is guilty of a misdemeanor.”

PACIFICA MUNICIPAL CODE §1-2.01 (A) which states, in pertinent part, as follows: “It shall be unlawful for any person to perform any act that is prohibited, or made or declared to be unlawful or an offense by this code, or to violate any provision or to fail to comply with any of the requirements of this code or the provisions of any code adopted by reference in this code. Any person violating any of such provisions or failing to comply with any of the mandatory requirements of this code or any code adopted by reference herein shall be guilty of a misdemeanor...”

Any person having any record title or an interest in this building may appeal from this notice and order for a hearing before the Emergency Preparedness and Safety Commission provided that a written appeal is filed with the Pacifica City Clerk’s Office (at City Hall, 170 Santa Maria Avenue, Pacifica, CA 94044) within ten (10) days from December 17, 2009. Failure to make a timely appeal will constitute a waiver of all rights to an administrative hearing and determination of this matter. In this event, this notice and order shall be deemed final and binding.

Please be further informed that, pursuant to UCADB §504, a timely appeal will not result in a stay of this notice and order.

IF YOU HAVE QUESTIONS CONCERNING THIS NOTICE OF DANGEROUS BUILDING AND ORDER TO VACATE, PLEASE CONTACT THE UNDERSIGNED AT (650) 333-0852.

Dated: December 18, 2009

______________________________
Doug Rider
Building Official
City of Pacifica

FOR CITY USE:
Notice and Order Personally Served On: ____________________________________________
Date and Time of Personal Service: ________________, _________ A.M. / P.M.
Date and Time of Posting on BUILDING: ____________________, _________ A.M. / P.M.
SERVICE LIST

VIA CERTIFIED MAIL:

330 ESPLANADE LLC [PROPERTY OWNER]
MANAGERS/MEMBERS: MEHRDAD ELIE, DELFARIB FANAIE,
FARSHID SAMSAMI AND RANDY NELSON
P.O. BOX 280148
SAN FRANCISCO, CA 94128-0148

330 ESPLANADE LLC [PROPERTY OWNER]
MANAGERS/MEMBERS: MEHRDAD ELIE, DELFARIB FANAIE,
FARSHID SAMSAMI AND RANDY NELSON
91 WESTBOROUGH BLVD., SUITE 110
SOUTH SAN FRANCISCO, CA 94080-3162

LIBERTY BANK [Lienholder of Record]
MAIN BRANCH
500 LINDEN AVENUE
P.O. BOX 431
SOUTH SAN FRANCISCO, CA 94080

FOR CITY USE:

Date of Mailing: ____________________________

Attachment 3
April 29, 2010

Millard W. Tong, Trustee [Responsible Person]
Alicia W. Tong, Trustee [Responsible Person]
Millard W. Tong and Alicia W. Tong
Revocable Living Trust [Property Owner]
1469A Terra Nova Blvd.
Pacifica, CA 94044

[Copy Via Fax / (650) 899-1552]

Re: Notice of Violation / Substandard and Dangerous Building
Orders to Vacate and Repair
320 Esplanade, Pacifica / APN: 009-413-020

Dear Responsible Persons and Property Owner:

VIOLATIONS AND DETERMINATIONS

This apartment building violates standards in Chapter 18 [Soils and Foundations] of the 2007 California Building Code as adopted by Section 8-1.01 of the Pacifica Municipal Code. Those violations are described in Appendix 1, which is attached hereto.

I have made the following determinations due to those violations and with additional consideration of the reports of RJR Engineering Group dated April 25, 2010 and Cotton, Shires and Associates dated April 23, 2010, copies of which are attached hereto and incorporated by reference.

1. This apartment building is substandard.

   Applicable Statute:

   California Health & Safety Code, Section 17920.3, which states, in pertinent part, as follows:

   Any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public
or the occupants thereof shall be deemed and hereby is declared to be a substandard building:

(5) Structural hazards shall include, but not be limited to, the following:

(1) Deteriorated or inadequate foundations.

(6) Inadequate structural resistance to horizontal forces.

2. This apartment building is dangerous.

Applicable Code:

Section 302.5 and 302.8 of the 1997 Uniform Code for the Abatement of Dangerous Buildings ["UCADB"] as adopted by the city of Pacifica ("City") pursuant to Section 3-5.01 of the Pacifica Municipal Code. Those sections state:

"For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered."

5. Whenever any portion or member or appurtenance thereof is likely to fail or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

8. Whenever the building or structure, or any portion thereof, because of ... (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse."
3. The immediate health and safety of residents of this apartment building would be endangered in the event of an earthquake.

Applicable Code:

California Health & Safety Code, Section 17980.1 (a) and (b) which state, in pertinent part, as follows:

“(a) If a building ... is identified for any other reason to be hazardous to life in the event of an earthquake or is identified as being in a condition that substantially endangers the health and safety of residents pursuant to Section 17980.5, an order requiring the building to be ... repaired so as not to violate any law, regulation, or ordinance applicable to the maintenance and use of the building, may be executed by the enforcement agency or its agents or contractors if all of the following conditions are satisfied:

“(1) The hazardous condition is of a nature that would endanger the immediate health and safety of residents or the public in the event of an earthquake.

“(2) The extent and nature of a hazardous condition related to seismic safety is such that it could be corrected with the application of current technology.

“(3) Any abatement order of the enforcement agency is not complied with or not so far complied with as the enforcement agency may regard as reasonable, within the time therein designated.

“(b) If the owner does not comply with the abatement order within a reasonable time after issuance of the order, the enforcement agency may, as an alternative to any other remedy permitted under law, seek the remedy provided by this section if the court finds the owner in violation of the abatement order and finds that the abatement order was issued in order to correct a hazardous condition which would endanger the immediate health and safety of residents or the public in the event of an earthquake or because of any violation of this part."
4. The violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered.

Applicable Code:

California Health & Safety Code, Section 17980.6 which states, in pertinent part, as follows:

“If any building is maintained in a manner that violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, any other rule or regulation adopted pursuant to the provisions of this part, ... and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair or abate pursuant to this part. Any order or notice pursuant to this subdivision shall be provided either by both posting a copy of the order or notice in a conspicuous place on the property and by first-class mail to each affected residential unit, or by posting a copy of the order or notice in a conspicuous place on the property and in a prominent place on each affected residential unit. The order or notice shall include, but is not limited to, all of the following:

“(a) The name, address, and telephone number of the agency that issued the notice or order.

“(b) The date, time, and location of any public hearing or proceeding concerning the order or notice.

“(c) Information that the lessor cannot retaliate against a lessee pursuant to Section 1942.5 of the Civil Code.”
ABATEMENT ORDERS

A. You are ordered to vacate all tenants and occupants from the entire apartment building.

Completion Deadline: Sunday May 2, 2010 at 11 P.M.

(1) This order is based on the immediate danger to tenants and occupants of this apartment building in the event of an earthquake.

B. You are ordered to close each window opening and lock every door to each dwelling unit, as well as to install an eight-foot high chain link fence around the entire perimeter of the building. Undergo and pass a City inspection of this work.

Completion Deadline: Monday May 3, 2010 at 8 A.M.

(1) This fence must be kept in good repair at all times.

C. You are ordered to select the option of either demolishing or repairing this apartment building and advising the City in writing of your election.

Submittal Deadline: Thursday June 17, 2010 at 10 A.M.

D. You are ordered to meet with the undersigned to establish a timeline that is acceptable to the City for the expeditious demolition or repair of this apartment building.

Meeting Deadline: Thursday June 17, 2010 at 10 A.M.

(1) The undersigned will thereafer issue abatement orders for the procurement of all required permits, as well as for the commencement and completion of the project.

E. Pursuant to California Health & Safety Code, Section 17980(c)(1), you are ordered to provide a copy of this Notice of Violation to each tenant in this apartment building.

Service Deadline: Thursday April 29, 2010 at 11 P.M.
Millard W. Tong, Trustee [Responsible Person]
Alicia W. Tong, Trustee [Responsible Person]
Millard W. Tong and Alicia W. Tong
Revocable Living Trust [Property Owner]
Re: Notice of Violation / Substandard and Dangerous Building
Orders to Vacate and Repair
320 Esplanade, Pacifica / APN: 009-413-020
April 29, 2010
Page 6

Please be further informed as follows:

1. Pursuant to California Health & Safety Code, Section 17980 (c)(1), you are notified as follows: "In accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year."

2. A copy of this Notice of Violation is being sent to a lienholder of record for this apartment building: East West Bank, 475 Huntington Drive, San Marino CA 91108.

3. The violations and determinations discussed in this notice render this apartment building a public nuisance pursuant to Section 1-2.01 (g) of the Pacifica Municipal Code, which states in pertinent part: "any condition caused, maintained, or permitted to exist in violation of any of the provisions or requirements of this Code, or the provisions or requirements of any code adopted by reference by this Code, shall be deemed unlawful and a public nuisance."

4. This notice is not intended to include all violations that may be present at this property.

5. If you fail to comply with any of the foregoing abatement orders in a timely manner, the City may exercise its remedies under law in court to compel your compliance with those orders, and/or to cause the abatement of the violations stated in this notice.

Dated April 31, 2010

Doug Fider, Building Official
City of Pacifica
Appendix 1

California Building Code, Section 1805.3.2 specifically requires a proper setback from the exterior wall of a building to a slope face be maintained so that the structural integrity of the building could be ensured (See the figure below). With the continuous bluff erosion at 320 Esplanade, this results in a deficient clearance from the building foundation to the slope face for proper support of the building foundation system. The building in question is no longer complying with the code or meeting the minimum requirement to ensure a safe foundation.

Chapter 18 Excerpt:

Section 1805.3.2 Excavations near footings or foundations. Excavations for any purpose shall not remove lateral support from any footing or foundation without first underpinning or protecting the footing or foundation against settlement or lateral translation.

Violation: The erosion of the cliff face acting as excavation upon the surrounding grounds has reduced the lateral support for footings on the southwest corner of the structure. No remedial measures have been provided to protect the structure from lateral translation or settlement.

Chapter 18 Excerpt:

Section 1805.2.3 Shifting or moving soils. Where it is known that the shallow subsurfaces are of a shifting or moving character, footings shall be carried to a sufficient depth to ensure stability.

Violation: The continuing erosion of the cliff face is undermining footings in the southwest corner of the building. The foundation needs to be modified or supported or shall be carried deep enough to ensure stability.

Chapter 18 Excerpt:

Section 1805.3 Footings on or adjacent to slopes. The placement of buildings and structures on or adjacent to slopes steeper than one unit vertical in three units horizontal (33.3-percent slope) shall conform to Sections 1805.3.1 through 1805.3.3.
Violation: The 65-foot high cliff face results in most if not all of the structure founded within the required setback. In this case, the required 45-degree angle setback from the cliff face extends 65 feet from the face of the bluff.

Chapter 18 Excerpt:

Section 1805.3.2 Footing setback from descending slope surface. Footings on or adjacent to slope surfaces shall be founded in firm material with an embedment and set back from the slope surface sufficient to provide vertical and lateral support for the footing without detrimental settlement. Except as provided for in Section 1805.3.5 and Figure 1805.3.1, the following setback is deemed adequate to meet the criteria. Where the slope is steeper than 1 unit vertical in 1 unit horizontal (100-percent slope), the required setback shall be measured from an imaginary plane 45 degrees to the horizontal, projected upward from the toe of the slope.

Violation: For this structure the foundation clearances set forth in Figure 1805.3.1 shall be approximately 22 feet (for a 65 foot high bluff). Due to bluff erosion, portions of this building have a setback of less than 20 feet.
Chapter 18 Excerpt:

Section 1805.3.5 Alternate setback and clearance. Alternate setbacks and clearances are permitted, subject to the approval of the building official. The building official is permitted to require an investigation and recommendation of a registered design professional to demonstrate that the intent of this section has been satisfied. Such an investigation shall include consideration of material, height of slope, slope gradient, load intensity and erosion characteristics of slope material.

Comments: The approval of the current structure, with respect to its proximity to the bluff shall be based on the analysis by a registered design professional and shall include consideration of the underlying material, height of slope, assumed angle of repose, load intensity and erosion characteristics of the slope material. Any analysis of this site and structure shall include consideration of seismic performance of the structure, foundation and underlying soils from site-specific seismic criteria in conformance with CBC Chapter 16 and ASCE 7-05.
CITY OF PACIFICA
170 Santa Maria Avenue
Pacifica, California 94044

Attention: Mr. Doug Rider, Building Official

Subject: RESPONSE TO CITY LETTER, DATED APRIL 21, 2010
APARTMENT BUILDING STABILITY
320 ESPLANADE WAY
CITY OF PACIFICA, CALIFORNIA

References:

330 & 320 Esplanade Avenue


100 Esplanade Avenue


Dear Mr. Rider:

RJR Engineering Group (RJR) has prepared this letter in response to the City requests outlined in the April 21, 2010 letter, attached to this letter for reference. RJR was hired by Mr. Tong to provide a third-party review of a recent issue(s) related to soil nail construction at 320 Esplanade ("320"). Although not hired to review 330 Esplanade ("330"), information related to the property was included in this analysis. As a follow-up, Mr. Tong has requested that RJR evaluate the issues posed by the City and summarize the results in this letter.

Any evaluation of the property and building requires a thorough understanding of the current conditions and remedial repairs that have been implemented to date. Therefore, the information and analysis presented in Section 1.0, has been provided herein for reference before addressing the City questions.

Tong / City Stability Request Letter
1.0. CONDITIONS, DATA AND ANALYSIS

A. Current Site (S20) Conditions

At the time of this letter, the existing bluff has eroded to a near vertical (estimating a 70 degree slope) angle which has receded back to within a few feet of the building patio. The recent soil wall failure has resulted in further removal or lateral confining pressure and possibly starting to undermine the existing foundation for S20.

Upper Bluff Stability: A series of soil nails have been drilled and part of the shotcrete facing was constructed under the emergency repair measures for S20. No evidence of a subsurface system was observed behind the wall at several locations. RMR has opined that the lack of a subsurface system behind the shotcrete wall resulted in the buildup of pore pressures and/or hydrostatic pressure and caused the shotcrete wall to fail. It was unclear whether the soil nails pulled out as a result of the additional loading. Alternatively, the soil on the outer face becomes saturated (additional evidence of lack of subdrain control) and the soil liquefied (upon reaching its liquid limit) and flowed out from behind the shotcrete. This removal of soil removed vertical and lateral support for the deck foundation. Subsequently the deck moved away from the slope towards the open face, and failed and may have caused or contributed to soil nail pullout. Whether the soil nails failed directly as a result of hydrostatic pressure(s) build up or deck movement, the primary cause of failure is the failure of the installation of a adequate subdrain system and the adequate control during construction, which is an essential element of these walls.

In general, the integrity of the soils and system relies on the integrity of the various elements working as one system. Soil nails, if properly designed and constructed will provide the necessary lateral confining pressure, vertical support, resistance to corrosion, and increase the slope shear resistance such that the bluff is stable under gross, pseudostatic loading conditions for overall, intermediate or local critical surfaces such that the existing buildings are safe in accordance with the various codes and custom and practice in the industry. Unless building foundations have been compromised or damaged, the soil nail system should provide suitable support and stability and not require any additional underpinning, mudjacking or other remedial measures to stabilize the bluff or building(s).

At the time of this letter, the soil nailing has only been partially implemented. The incomplete system at this time provides essentially no additional support for the slope at this time. The current distress area will require additional mitigation measures. RMR has modeled the existing soil nail analysis and should have the results of the review within the next week.

Top Protection: The protection in the area of S20 and S30 consists of ¾ ton to 1 ton rock with some 6 ton stones placed in the outer portions of the temporary emergency repair revetment. The rock have been placed at the toe of the subject bluff. However, no drainage layers, intermediate foundation sand or rock, drainage and stability fabric or toe protection...
has been placed to date. In addition, many of the rocks appear to have been and dumped but not looked into point contact as of the date of this letter. In general, the revetment appears to be performing adequately at this time; however, based on our experience the revetment will require the remaining repairs, modifications and additions to continue to be effective. In increased storm activity, the revetment should be expected to unravel and decrease in efficiency.

D. Site Visit

The assessment, opinions and summary presented in this letter is based on previous work performed for 100 Esplanade and the site visit performed to review the possible cause of distress of the soil walls performed on April 16, 2010.

C. Available Data

RJR was provided Reference 1 – 8 for the review for 320 and the surrounding properties.

Structural Data: RJR was not provided structural plans, designs and calculations for the existing foundation and framing for 320 was available at the time of this report.

Geotechnical Data: A boring was drilled by ESR at or around 320 and 330 to characterize the subsurface data. However, no site specific shear strength testing was performed for the site. RJR performed mapping for 100 Esplanade, compiled data from the Collins (2008) paper, and performed over 30 shear strength tests to characterize the stratigraphy and engineering properties of the bluff. No site specific testing and evaluation has been performed by RJR to date, however, testing on the adjacent properties rendered consistent grain size, shear strength and other engineering properties.

D. Slope Stability Assessment of Bluff

RJR has modeled the bluff at 320 based on the assumptions and data, as discussed herein. The methodology and approach has been described in the reference reports for Lands End (Reference 10, 11 and 12). The initial analysis for 320 rendered the following results.

Saturated Conditions: RJR ran several conditions to evaluate the most critical condition at the bluff where the shear strength of the bluff materials would be saturated, based on ultimate shear strength. These conditions would occur after high intensity or long duration rainfall. In general the bluffs are relatively permeable and based on Collins (2008) drain within 24 to 48 hours. These conditions would generally be expected during the winter months.
The selected shear strength envelope was not the lowest tested values but rather was a typical lower bound value. These assumptions are relatively conservative and, in general, should under-estimate the overall shear resistance (and corresponding factor of safety) of the bluff, except under unique conditions, generally not considered in most geotechnical analysis.

Static Loading with no Rip Rap Revetment: 0.739 (Appendix F)
Static Loading with Rip Rap Revetment: 0.907 (Appendix G)
Pseudostatic Loading with no Rip Rap Revetment: 0.591 (Appendix A)
Pseudostatic Loading with Rip Rap Revetment: 0.737 (Appendix D)

In situ Conditions: RJR ran several conditions to evaluate the less critical condition at the bluff where the shear strengths of the bluff materials would be drier, more approximating late spring and summer like conditions. These samples were on the order of 5 to 10 percent water content in areas not being actively irrigated or following periods of rainfall. As was the case with the saturated values, the selected shear strength envelope was not the lowest tested values but rather was a typical lower bound value for the subset of tests. Given the range of tests encountered, as with the saturated values, actual conditions should be expected to be higher than calculated.

Static Loading with no Rip Rap Revetment: 1.640 (Appendix H)
Static Loading with Rip Rap Revetment: 1.293 (Appendix I)
Pseudostatic Loading with no Rip Rap Revetment: 1.144 (Appendix D)
Pseudostatic Loading with Rip Rap Revetment: 1.339 (Appendix E)

A series of additional analysis were performed with variations in the search limits, intermediate slopes, and reductions in cohesion to assess other possible conditions as well as to test the sensitivity of the modeling and analysis. These results are presented within Appendices A thru K.

E. Basis for Assessment

The data, information and analysis presented above and in the referenced reports presents the basis for the opinions and analysis contained herein in Section 2.0. The City has outlined the City of Pacifica code that is the basis for assessing whether the building is "dangerous". A copy of the full code section was not available for review, and RJR relied on the quoted section(s) in regards to form and content for the response.
2.0. CITY RESPONSE

Based on the data and information contained in Section 1.0., the following presents the summary of the analysis and corresponding response to the City’s requests. In almost every case and answer, the actual conditions and surrounding technical circumstances are complicated and with many variables.

The following presents a summary of the answers and where possible RJR has attempted to point out or explain the variable that should be considered in providing the technical answers. Due to the limited time provided by the City to respond to the letter, RJR has attempted to summarize and explain the necessary answers as best we can with the available information. With the passage of time, more or additional information or other factors may change the findings presented herein. Therefore, we have made every professional effort to provide unbiased and independent assessment for all parties to evaluate and consider. It is important to keep in mind, the following points:

First, discussions of hazards and failures should be assumed to reference catastrophic type occurrences.

Second, until such time as a comprehensive mitigation scheme is implemented, the site/building and adjacent property is exposed to a high risk. This zone of influence includes and extends to the beach as well as City right of way and streets under seismic conditions (see Response 2).

Third, catastrophic danger or failure refers to building collapse or the inability for tenants and emergency personnel to gain ingress and egress to the site.

Last, the ability to fairly and adequately quantify this risk is extremely complicated and based on many factors that require further explanation than the synopsis presented herein.

The following presents a summary of the City questions and the responses by RJR.

City Question 1: Is the apartment building, or a portion thereof, at 320 Esplanade, Pacifica a dangerous building pursuant to Section 362.5 of the UCADD?

Response 1: It is more likely than not that, at some point in the future, the building or some member thereof, will detach, dislodge, or collapse thereby failing. As of April 15, 2010 RJR observed the building perimeter that was visible to the naked eye to a walk around the perimeter. Other than a hairline crack in a concrete patio slab, no signs of building distress, settlement, distress, movement or other evidence of possible detachment, dislodgement or collapse was evident.
RJR has established GPS survey monitoring at 310 and will be establishing additional monitoring at 320 to measure and monitor possible movement. In addition, a daily walk-thru is being conducted by the owner's representative to watch for any evidence of distress.

In summary, if the natural process continues, or other foreseeable or unforeseeable events not to impact the bluff, the slope will degrade causing the building or some member thereof to detach, dislodge or collapse. These events may occur slowly or suddenly, and at this time the temporal definition cannot be determined with any degree of certainty. As discussed in Response #2 below, there are several variables that could adversely affect the hazard to the building needs to be assessed in terms of risk and time.

City Question 2: Is the apartment building, or a portion thereof, at 320 Esplanade, Pacifica a dangerous building pursuant to Section 302.3 of the UCADB?

Response #2: It is more likely than not that at some point in the near future that the ground necessary for the support of the building will deteriorate, decay or collapse.

Between April 2009 and January 2010 this area lost on the order of 30 to 40 feet of bluff. The placement of rip rap at the toe has, at this time, decreased and essentially halted the degradation and removal of the toe. These steps are essential because the mechanism for failure of the bluff is directly related to and a result of toe undercutting by wave action. The failure mechanisms of the bluff and immediate surrounding area have been well documented to be wave undercutting by studies by Collins, et al., (2009) and RJR (2009 and 2010). Few to no geomorphic failures have been observed over the past year (Since April, 2009) by RJR, and by Collins (2008), that observed bluff failures related to groundwater. However, it should be noted that abundant water seeps thru the bluffs. The near vertical slopes in close or immediate proximity of the bluff to the residence raises serious concerns to the stability and safety of the building. The bluffs are beginning to undermine the existing foundations and have removed lateral confining pressure, thereby decreasing the lateral and vertical effectiveness of the foundation.

Any deterioration or decay needs to be assessed and qualified in the following manner:

Natural Static Slope Failures: It has been well documented that the bluff failures occur as wedges and translational failures that occur suddenly and without warning. The failures in the drier periods tend to occur in blocks generally on the order of 5 feet in thickness. We have observed wedged and blocks on the order of 20 feet in the winter months during periods of high surface contact with the bluff (RJR, 2010). As illustrated in the slope analysis, factors of safety are greatly reduced due to the reduction in strength associated with the saturated conditions. Under these conditions, the site has a high likelihood of a catastrophic failure. During the drier months, site stability is marginally stable under static and pseudostatic loading. We would judge that this hazard poses a small risk to the site over the next 3 to 5 months.
Seismic Hazards: The close proximity of the San Andreas Fault system and other regional faults, based on the slope analysis placed the site in imminent peril of a moderate to severe event occur. This is illustrated in the slope stability analysis (quasistatic conditions and Newmark displacements) performed for this site. The unacceptable to marginal factors of safety should also be considered in the following light:

- The ground accelerations are based on the current California Building Code, 2007 requirements for an event with a 10 percent chance in 50 years;
- Ultimate strength values were assumed not peak values or an increased factor to account for the short term strength increase observed in most soils;
- The site could be affected by a seismic event great than that assumed or required to be analyzed for structures. Arguable, given the public safety aspects, higher thresholds should be assumed in the analysis which would in turn, generate lower factors of safety and corresponding greater risk of catastrophic danger. Further the location on the bluff edge and the compromised foundation support will provide greater hazard to the adverse effects of groundshaking. We judge that this hazard presents the greatest potential cause of danger and resulting damage to the site. If one evaluates the probability of a seismic event in any given day (or over the next few months), the odds are low. However, when the seismic event occurs the results would be high risk. This translates to almost certain severe damage ranging to catastrophic failure.

Any discussion and characterization of the site risk, when considering seismic loading conditions to the building and slope, should be considered high. However, the temporal aspect of this risk cannot be stated with any degree of certainty when viewing short time frames, due to the low probabilities of exposure.

Other Events: Broken water lines and other unforeseeable events during any period of analysis present conditions that cannot be readily assessed within the context of the question. For instance, at the present time, should a distant tsunami strike the coast, the revetment could be overtopped and result in a bluff failure. Unless the event was extreme, it is highly unlikely that the time frame would be so short to prevent evacuation. However, a combination of groundshaking and a tsunami could break a water line and cause bluff damage, which given the compromised integrity of the site, could result in catastrophic failure. These examples provide examples of the complexity of assessing the possibility of risk and hazard at the site.

City Question 3: Is the apartment building, or a portion thereof, at 320 Esplanade Pacifica in such a condition as to make it immediately dangerous to the life, health, property or safety of the public or its occupants (as referenced to Section 403 of the UCABB)?
Response 3: Under the present static conditions, it is the professional opinion of RJR that the building poses a danger to life, limb, property and safety of the public and occupants. The temporal assessment is not possible to quantify the temporal definitions and relationship to “immediate”.

The following points and issues can be defined or discussed:

Bluff Failure: Bluff failures has been a predominately driven by toe undercutting. A thorough discussion of these mechanisms is presented in the RJR 2009 and 2010 reports. At the present time, this action has been diminished to negligible magnitudes due to the placement of rip rap. The decrease in rainfall as we approach the spring and summer season, results in an increase in the shear strength resistance of local, artificial and gross stability of the bluff

Magnitude of Bluff Failures: In general the bluff failures occurs as a series of wedges that are typically on the order of 2 to 4 feet in width. Larger block were observed during rainy periods in conjunction with prolonged high tides in contact with the bluff (RJR 2009 and 2010).

Apartment Foundations: No plans and calculations were available for review. We suspect these buildings are founded on conventional foundations. The erosion and failure of the bluffs have reduced the lateral confining pressure and reduced the overall stability and integrity of the foundations. The foundations will offer little to no resistance as the bluffs fall. Where the foundations may be tied together, temporary support will be provided as the concrete and steel members are loaded, and follow the respective stress path. The subsequent failure will most likely be within the brittle range, suddenly and with little warning.

Apartment Structure: The building is of Type V, wood frame construction. The structures will maintain some degree of integrity and will exhibit some degree of slow deformation (elastic range) as a result of the nature of the wood under the loading reaches the critical point at which time it will fail rapidly.

In summary, under static conditions, the bluff erosion/recession has diminished to negligible magnitudes at this time. We anticipate that under most foreseeable failure scenarios, the building degradation would occur with adequate warning during the summer periods. However, during the winter, the degradation may occur rapidly in such a manner as to prevent adequate response time. As a result of the rainy periods, high tides, storm surge and/or swells, such hazards would present unacceptable and immediate risk. When considering seismic conditions and term “immediate” is based on probabilities of exposure, as discussed above.
3.0. CLOSURE

This letter presents a synopsis of the professional engineering opinions of R.J.R. as requested by the City of Pacifica. The analysis, findings and opinions need to be taken as a whole, and applicable within the overview presented. The conclusion and analysis is site specific and may, and will, change with the passage of time or with further data and understanding.

RJR has made every effort to characterize the situation, based on our understanding and data available. The risks associated with the building and the surrounding area (zone of influence, Page 6) are complex. The site was at a greater risk of danger over the last several months, during the rainy season and the associated high tides, swells and storm surge. During the drier months, the risk from a failure associated with static loading appears to decrease significantly, but for some outside influence adversely affecting the bluff. However, the seismic risk remains a critical element that looms, given the close proximity to the San Andreas Fault and other regional faults that are capable of generating ground accelerations and/or shaking which could severely damage or result in catastrophic failure of the bluff thereby affecting the building and the City Road. This risk decreases as the saturation levels decrease and swells decrease (see before mentioned slope analysis and discussion on Page 4 - 5).

RJR has requested a meeting that includes the owner and his representatives, the City of Pacifica and their consultants and the California Coastal Commission to further discuss these findings and the direction of the project. RJR has expressed concern to 320 in regards to the work to date and the remedial measures that are required to correct the possible deficiencies. The risks associated with the site and discussed herein can be fully mitigated with a properly designed toe protection and soil nail system. Upon completion of the system, the site factor of safety would be or greater than code requirements. It is imperative that these measures be properly coordinated and implemented before next winter to reduce the potential of a catastrophic failure.

At this time, based on our conversations with Tong representatives, Mr. Tong has decided to voluntarily evacuate the residences of 320 so that the building is vacant. The building will remain vacant until such time as the mitigation measures are completed. Representatives of 320 will coordinate with the City and keep them apprised of the progress. Assistance from the City may be required during this process.

If the City or other parties have questions or need further clarification, please do not hesitate to give us a call at (805) 485-3955.
Sincerely,

RJR ENGINEERING GROUP

Robert W. Anderson, NSPE, RCE, GC, PE
Principal Engineer
RCE 53383
Exp. 12/31/2010

Distribution:

Mr. Millard Tong, Client
Mr. Bart Willoughby, Client Representative
Ms. Lesley Ewing, California Coastal Commission
Mr. Tedd Stark, Redwood Construction
April 21, 2010

Rob Anderson
RJR Engineering
3300 Camino Avenue, Ste. 200
Oxnard, CA 93030

[Copy Via Fax: 805-650-5123]

Re: Apartment Building at 320 Esplanade, Pacifica

Dear Mr. Anderson:

The 1997 Uniform Code for the Abatement of Dangerous Buildings ("UCADB") is adopted by the city of Pacifica ("City") pursuant to Section 8-5.01 of the Pacifica Municipal Code.

Section 302 (Dangerous Building) of the UCADB states, in pertinent part, as follows:

"For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered."

"5. Whenever any portion or member or appurtenance thereof is likely to fail or to become detached or dislodged, or to collapse and thereby injure persons or damage property."

"8. Whenever the building or structure, or any portion thereof, because of ... (6) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (6) the deterioration, decay, or inadequacy of its foundation; or (9) any other cause, is likely to partially or completely collapse."

Please answer the following questions concerning Section 302 of the UCADB:

1. Is the apartment building, or a portion thereof, at 320 Esplanade, Pacifica a dangerous building pursuant to Section 302.5 of the UCADB?

1.1 If your answer is in the affirmative, please state detailed reasons in support of your answer.
1.2 If your answer is in the negative, please state detailed reasons in support of your answer.

2. Is the apartment building, or a portion thereof, at 320 Esplanade, Pacifica a dangerous building pursuant to Section 302.8 of the UCADB?

2.1 If your answer is in the affirmative, please state detailed reasons in support of your answer.

2.2 If your answer is in the negative, please state detailed reasons in support of your answer.

Section 403 [Repair, Vacate and Demolition] of the UCADB states, in pertinent part, as follows:

"The following standards shall be followed by the building official ... in ordering the repair, vacate or demolition of any dangerous building or structure:

2. If the building ... is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered vacated."

Please answer the following question concerning Section 403 of the UCADB:

3. Is the apartment building at 320 Esplanade, Pacifica in such a condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants?

3.1 If your answer is in the affirmative, please me with a written statement in support of your answer.

3.2 If your answer is in negative, please me with a written statement in support of your answer.

Please provide me with your written answers to the foregoing questions and supporting statements by April 25, 2018, by 10:00 a.m.

Thank you for in advance your cooperation.

[Signature]

Douglas Rider
Pacifica Building Official
TO:       Doug Rider
          City Building Official
          CITY OF PACIFICA
          170 Santa Maria Avenue
          Pacifica, California 94044-2506

SUBJECT:  Geotechnical Evaluation - Abatement of Dangerous Buildings

RE:       Emergency Assessment
          320 Esplanade Avenue Apartment Building
          Pacifica, California

Dear Mr. Rider:

In reply to your letter of April 21, 2010, regarding the apartment building at 320
Esplanade Avenue, we have prepared the following answers to presented questions.
Due to the requested quick-turnaround to address issues of public safety, this
communication should be considered as an emergency assessment. We understand
that the City has adopted the 1997 Uniform Code for Abatement of Dangerous Buildings
(UCADB) pursuant to Municipal Code Section 8-501. In our recent letter (dated April
20, 2010) to your office regarding the subject property, we expressed our concern about
the safety of this building for human occupation under static and seismic conditions.

As a preface to our response of submitted questions, we would like to clarify that
our expertise is in the areas of geologic and geotechnical hazard recognition, assessment,
and mitigation. Based on our long-term local observations and the current proximity of
the existing building to the edge of the bluff, it is our opinion that the remaining
occupants of the building are endangered by potential building collapse and should be
evacuated.

Our expertise is not in public policy or the law. However, we have endeavored
to address the questions of your recent letter as follows:

Item 1:  Is the apartment building, or a portion thereof, a dangerous building
        pursuant to Section 302.5 of the UCADB?
Reply: We understand that if any portion or appurtenance (including decks and patios) of the building is likely to fail and present potential injury to persons or damage to property, then the structure qualifies as a dangerous building. We conclude that the structure meets this criteria because, at a minimum, appurtenances along the western side of the building are likely to fail.

Item 2: Is the apartment building, or a portion thereof, a dangerous building pursuant to Section 382.8 of the UCODB?

Reply: We understand that if any portion of the building is likely to partially or completely collapse because of ground instability, then the structure qualifies as a dangerous building. In our opinion, it is likely that the above criteria will be met under conditions of strong seismic ground shaking. We do not have sufficient information to form an opinion regarding the likelihood of partial or complete building collapse under static conditions.

Item 3: Is the apartment building in such a condition to make it immediately dangerous to the safety of the public or occupants?

Reply: In terms of public safety, we consider it prudent to prohibit the public from walking on the beach beneath the building and suspending bluff. This public risk would not be altered by building evacuation.

In terms of occupant safety, we conclude that the building is dangerous to occupants in the event of strong seismic ground shaking. We do not have sufficient data to form an opinion on whether the building is immediately dangerous under static conditions.

LIMITATIONS

This assessment has been performed to provide technical advice to assist the City with its geotechnical decisions. Our services have been limited to a visual review of the property. We have not conducted an investigation of static or seismic slope stability. Our opinions and conclusions are made in accordance with generally accepted
principles and practices of the geotechnical profession. This warranty is in lieu of all other warranties, either expressed or implied.

Respectfully submitted,

COTTON, SHIRES AND ASSOCIATES, INC.
CITY GEOTECHNICAL CONSULTANT

[Signature]

Ted Sayre
Principal Engineering Geologist
CEG 1795

[Signature]

David T. Schrier
Principal Geotechnical Engineer
GB 2834

COTTON, SHIRES AND ASSOCIATES, INC.
Vocated