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HANSON BRIDGETT LLP
KIMON MANOLIUS - 154971
kmanolius@hansonbridgett.com
AMELIA MIAZAD - 224200
amiazad@hansonbridgett.com
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366

Attorneys for Plaintiff
City of Pacifica

FILED
SAN MATEO COUNTY

MAR 19 2008

Clerk of the Superior Court

By 
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

BY FAX

City of Pacifica,

Plaintiff,

v.

Arno Rohloff and Does 1-50,

Defendant.

No. **CIV 471308**
PLAINTIFF CITY OF PACIFICA'S COMPLAINT
FOR INJUNCTIVE AND OTHER RELIEF

INTRODUCTION

1. This action arises out of Defendant Arno Rohloff's failure to maintain and secure the hillside and pedestrian path ("the Pedestrian Path") on his property located at Shelter Cove, California, which is threatened by two active landslides ("the Active Landslide Area"). Mr. Rohloff's years of favoring the least expensive solution and providing makeshift and temporary access to his low income tenants, over a permanent fix that would stabilize the Active Landslide Area and provide safe access, has caused the Pedestrian Path, once a functioning street, to become completely impassible. The Active Landslide Area, and the current condition of the Pedestrian Path, pose an immediate threat of serious injury or death to anyone traversing on the hillside or near the path, which sits at the edge of a 50-foot cliff above the ocean. Mr. Rohloff's self help measures and failure to maintain his property have also damaged the uphill properties, and those properties currently face a threat of collapsing down the hillside.

2. The City of Pacifica required Mr. Rohloff to implement a solution that would stabilize the

1 Active Landslide Area and safeguard against the loss of life and property in 2001, when it approved
2 Mr. Rohloff's first planning application to repair the Pedestrian Path subject to the condition that he stabilize
3 the hillside. The City's efforts have been met with years of delay and excuses, and, eight years later, Mr.
4 Rohloff has yet to implement a plan to stabilize the Active Landslide Area.

5 3. The recent surge of storms between mid-January and early February 2008, and
6 Mr. Rohloff's conduct of cutting into the toe of the hillside after these storms, have exasperated the danger
7 to the point where it is now an emergency. Since these storms, the City has issued two Declarations of
8 Public Nuisance and Notices of Emergency Abatement. The first Notice requires Mr. Rohloff to cease all
9 work and submit a plan to address the hillside stability and the second Notice requires him to implement
10 measures that would prevent his tenants and the public from accessing the Active Landslide Area by
11 providing warnings and cordoning off the area. To date, Mr. Rohloff has failed to properly comply with these
12 Notices of Abatement.

13 THE PARTIES

14 4. The City of Pacifica is a municipality, organized and existing under the State of California.

15 5. The City is informed and believes and thereon alleges that Mr. Arno Rohloff is the legal
16 owner of the real property and all buildings and other improvements known as Shelter Cove, and more
17 particularly described as County Assessor Parcel No. 023-730-230, in the City of Pacifica, County of San
18 Mateo, State of California ("Shelter Cove").

19 6. The City sues Mr. Rohloff and Doe One through Doe One Hundred under fictitious names.
20 The City does not know the true names and capacities of these Defendants, but will amend this complaint to
21 allege their true names when ascertained.

22 7. At all relevant times, each defendant was an agent, servant, employee, partner, and joint
23 venturer of each other defendant and at all times was acting within the course and scope of this agency,
24 service, employment, partnership, franchise and/or joint venture.

25 JURISDICTION AND VENUE

26 8. Jurisdiction is proper in the Superior Court for the City and County of San Mateo, California
27 pursuant to Code of Civil Procedure Section 410.10 because this Court has general subject matter
28 jurisdiction and no statutory exceptions to jurisdiction exist.

1 their properties against the active landslides. The City is informed and believes and thereon alleges that
2 owners of these properties have implemented various measures to protect their properties, but that these
3 measures have become ineffective over time due to the active landslides. The City is further informed and
4 believes and thereon alleges that the hillside on Mr. Rohloff's property must first be stabilized before further
5 measures can be taken by the owners to secure their property for the long-term.

6 ***Mr. Rohloff's Failure to Complete and Implement a Planning Application.***

7 16. On June 6 2000, Mr. Rohloff's engineer, Mr. Edward Desfosses submitted an application for
8 a building permit to the City of Pacifica's Building Department to repair the Pedestrian Path. On June 13,
9 2000, Ms. Kathryn Farbstein, Assistant Planning Director, contacted Mr. Desfosses and advised him that the
10 repair of the Pedestrian Path required a Coastal Development Permit from the City's Planning Department.

11 17. On June 20, 2000, Mr. Desfosses, on behalf of Mr. Rohloff, submitted a Planning
12 Application for a Coastal Development Permit to repair the Pedestrian Path to Shelter Cove ("The First
13 Planning Application"). On July 27, 2000, Ken Solomon, then Senior Planner for the City, notified Mr.
14 Desfosses that the First Planning Application was incomplete for various reasons.

15 18. Mr. Rohloff ultimately completed the First Planning Application and the City's Planning
16 Commission approved it with numerous conditions. On February 15, 2001, Mr. Rohloff appealed the
17 decision of the Planning Commission to the City Council because he was not satisfied with the conditions of
18 approval. On April 24, 2001, the City Council notified Mr. Rohloff that it had approved the First Planning
19 Application subject to numerous conditions, including the following: "Applicant shall submit detailed plans
20 for erosion control and stabilization of slopes further disturbed by the project, for City Planner approval, prior
21 to issuance of a grading permit."; "Prior to issuance of a grading/building permit, the project geotech shall
22 submit a report that addresses any impact that the construction project will have on the stability of all uphill
23 and downhill properties..."; and "Erosion control plans for construction and post-construction activities are
24 required. Include a description of current and anticipated stormwater runoff patterns on the pathway." This
25 approval also specifically exempted the use of any motor vehicles on the Pedestrian Path.

26 19. On April 25, 2001, the City notified the Coastal Commission that it had approved the First
27 Planning Application. After the City Council approved The First Planning Application, the burden was on
28 Mr. Rohloff to submit it for approval with the Coastal Commission, and, upon approval from the Coastal

1 Commission, apply to the Building Department for a building permit. The City is informed and believes and
2 thereon alleges that Mr. Rohloff never took the next step to obtain approval of the First Planning Application
3 from the Coastal Commission. Mr. Rohloff also never applied to the City for a building permit. The First
4 Planning Application expired, by its own terms, on April 23, 2002.

5 20. The City is informed and believes and thereon alleges that in December 2002, a series of
6 storms caused ground movement on the Active Landslide Area, which then damaged the Pedestrian Path
7 and blocked access to the dwellings on Shelter Cove. On December 19, 2002, the City issued an
8 Emergency Local Coastal Development Permit to "Drill 10 to 12 piers at the edge of the trail to Shelter
9 Cove."

10 21. The City issues Emergency Local Coastal Development Permits to address instances
11 where the emergency nature of the problem requires an expedited permit. However, as a condition of
12 receiving this Permit, Mr. Rohloff agreed in writing to numerous conditions, including applying for and
13 completing the planning application to have the emergency work be considered permanent. Between
14 December 19 and March 21, 2003, the City's Planning Department also verbally stressed to Mr. Rohloff on
15 numerous occasions that he needed to submit a Planning Application for a Coastal Development Permit.

16 22. On March 21, 2003, apparently in response to the City's requests, Mr. Rohloff submitted a
17 Planning Application for a Coastal Development Permit to repair the Pedestrian Path (CDP-233-03)("the
18 Second Planning Application"). On April 18, 2003, the City informed Mr. Rohloff that his application was
19 incomplete. The City asked for further information on numerous issues including what types of excavators
20 would be used, how wide the existing path is and how it would be enlarged, whether Mr. Rohloff's plans on
21 excavating earth as a result of this project, and a written explanation about the status of the Emergency
22 Coastal Development Permit issued on December 20, 2002.

23 23. Over the past five years, Mr. Rohloff has submitted some materials to address the
24 deficiencies in his application in fits and spurts. To date, the Second Planning Application remains
25 incomplete and to date, Mr. Rohloff has failed to complete any planning application to make the emergency
26 abatement work that he did in December 2003 permanent.

27 24. On January 3, 2008, Mr. Rohloff abandoned the Second Planning Application and filed a
28 third Planning Application for a Coastal Development Permit ("The Third Planning Application."). The Third

1 Planning Application is different from the first two applications because it seeks to convert the Pedestrian
2 Path into a twelve foot wide driveway for vehicular access, and also seeks to add parking spaces at Shelter
3 Cove.

4 25. On February 1, 2008, the City's Planning Department informed Mr. Rohloff that the Third
5 Planning Application was incomplete. Mr. Rohloff has not responded to this letter and his application
6 remains incomplete.

7 ***Mr. Rohloff's Self-Help Measures***

8 26. The City is informed and believes and thereon alleges that when the landslides are
9 activated by storms they cause the hillside to slide down and blocks access to the Pedestrian Path. The
10 City is informed and believes and thereon alleges that after these storms, Mr. Rohloff has had a pattern and
11 practice of clearing and widening the Pedestrian Path by digging into the side of the hill. The City is further
12 informed and believes that at one point the Pedestrian Pathway had a hole that was about eight to ten feet
13 wide, and Mr. Rohloff used wooden boards to bridge over the chasm. Mr. Rohloff has done this work
14 without the City's approval and in spite of the City's orders to stop work.

15 27. For example, the City is informed and believes and thereon alleges that in April 2006, there
16 were two large storm that triggered the Active Landslide Area and caused a large amount of soil to spill
17 down the hill, blocking the Pedestrian Path. The City is informed and believes and thereon alleges that Mr.
18 Rohloff's response was to clear the Pedestrian Path by cutting into the side of the hill and disposing of the
19 soil in the ocean.

20 28. The City is informed and believes and thereon alleges that Mr. Rohloff's practice of cutting
21 into the side of the hill to widen the Pedestrian Path destabilizes the Active Landslide Area.

22 29. The City is informed and believes and thereon alleges that Mr. Rohloff has, on numerous
23 occasions, used a 3-wheel vehicle and a small tractor on the Pedestrian Path. The City is informed and
24 believes and therein alleges that the use of these vehicles on the Pedestrian Path further destabilize the
25 hillside.

26 ***The Recent Damage Caused By January/February 2008 Storms***

27 30. Between mid-January and early February, a strong surge of storms hit Shelter Cove. The
28 City is informed and believes and thereon alleges that these storms caused massive ground movement

1 down the hillside, creating twenty or more crevices or huge visible scars in the ground. The movement also
2 caused soil to move down the hillside, which covered and blocked the Pedestrian Path.

3 31. The City is informed and believes and thereon alleges that on February 5 and 6, consistent
4 with his pattern and practice over the years, Mr. Rohloff hired workers to grade at the base of the slide in
5 order to clear the Pedestrian Path. There was active ground movement during this removal, and soil fell
6 down the hillside as the workers continued to cut into the base of the slide.

7 32. The City is informed and believes that the stability of the Active Landslide Area is far worse
8 today than in was in December 2007.

9 ***Mr. Rohloff's Failure To Comply With The City's Two Declarations of Public Nuisance and Notices of***
10 ***Emergency Abatement.***

11 33. On February 13, 2008, the City served a Declaration of Public Nuisance and Notice of
12 Emergency Abatement on Mr. Rohloff. This Declaration required Mr. Rohloff to immediately stop all work
13 including any removal of soil or debris or widening of any roads or pathways, until he receives the requisite
14 permits for this work. The Notice also imposed the following requirements: "1. Engage licensed
15 geotechnical engineer and provide proof of that engagement to the City within 48 hours from the service of
16 this Notice; 2. Formulate a plan to address the hillside stability, the pathway leading to the Property, and
17 submit that plan to the City within one week from the service of this Notice; 3. Commence implementation of
18 the plan by applying for any and all necessary permits within one day from approval of the plan by the City.
19 If no permits are necessary, implementation shall mean a good faith commencement of abatement activity
20 within the one day deadline; 4. Cooperate and coordinate with any emergency abatement that the City must
21 conduct to stabilize the hillside, the Property, or adjacent properties; and 5. Complete the plan within 30
22 days of the date that the City approved the implementation plan."

23 34. On February 29, 2008, the City served a second Declaration of Nuisance and Notice of
24 Emergency Abatement on Mr. Rohloff. This Declaration imposed the following requirements: "You are
25 hereby directed to abate the nuisance immediately by cordoning off all reasonable access to the pathway,
26 and to active landslide or unstable hillside areas. You are further directed to meet the following milestones
27 and timelines: 1. Because the current gate has proven ineffective to block access, implement additional
28 measures to physically block all ingress and egress to the pathway, but in such a manner as not to further

1 destabilize the hillside, within 24 hours from the service of this Notice; 2. Post weather resistant signage at
2 both ends of the pathway, reasonably calculated to warn Shelter Cove tenants, neighbors and the public at
3 large, of the dangerous and hazardous conditions along the pathway, within 24 hours from the service of
4 this Notice; 3. In addition the requirements and timelines set forth in paragraphs 1 and 2 above, formulate a
5 further plan that is reasonably calculated to give notice to the Shelter Cove tenants, neighbors and public at
6 large, that access to the pathway, active slide areas, and unstable hillside areas, is prohibited. The City
7 suggests that such a plan include signage (as in para. 2, above), but that the additional signage be placed
8 at locations other than at the ends the pathway. This further signage shall be posted at multiple locations,
9 and be reasonably calculated to warn potential pathway users, or those who might attempt to traverse active
10 slide areas or unstable hillside areas, that these areas are unsafe and must be avoided. Submit said plan to
11 the City within 24 hours from the service of this Notice; 4. Commence implementation of the plan within one
12 day from approval of the plan by the City. Implementation shall mean a good faith commencement of
13 abatement activity within the one day deadline; and 5. Cooperate and coordinate with any emergency
14 abatement that the City must conduct to further prohibit access to the pathway.”

15 35. To date, Mr. Rohloff has not properly complied with these Notices.

16 CAUSES OF ACTION

17 **FIRST CAUSE OF ACTION** 18 **VIOLATION OF CITY OF PACIFICA MUNICIPAL CODES**

19 36. The City hereby incorporates by reference and realleges paragraphs 1 through 35 as
20 though fully set forth herein.

21 37. For the past several years, continuing up to the present time, Defendants have been
22 maintaining Shelter Cove in violation of the Pacifica Municipal Code, including but not limited to, violations of
23 code sections 5-25.03(B)(1); 5-25.03(B)(14); and 5-25.03(B)(27).

24 38. For the past several years, continuing up to the present time, Defendants knew, or should
25 have known, that Shelter Cove was being operated and maintained in violation of the Pacifica Municipal
26 Code, but failed to take reasonable steps to correct the code violations.

27 39. Defendants will continue to maintain Shelter Cove in a manner that violates the Pacifica
28 Municipal Code.

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**SECOND CAUSE OF ACTION
PUBLIC NUISANCE**

**Count One
Public Nuisance Per Se: Violation of Pacifica Municipal Code**

40. The City hereby incorporates by reference paragraphs 1 through 39 as though fully set forth herein.

41. For the past several years, continuing up to the present time, Defendants have been maintaining Shelter Cove in violation of the Pacifica Municipal Code including but not limited to violations of code sections: 5-25.03(B)(1); 5-25.03(B)(14); and 5-25.03(B)(27).

42. Pacifica Municipal Code Section 5-25.03 provides that all conditions in violation of the Pacifica Municipal Code or state law constitute a public nuisance.

43. For the past several years, continuing up to the present time, Defendants knew, or should have known that Shelter Cove was being maintained as a public nuisance, but failed to take reasonable steps to abate the nuisance.

44. Defendants will continue to maintain Shelter Cove as a public nuisance.

45. The City has no adequate remedy at law in that damages are insufficient to protect the public from the present danger and harm caused by the conditions described above.

46. Unless the nuisance is abated, the community, neighborhood, and the residents of the City will suffer irreparable injury and damage because the described conditions will continue to be injurious to the enjoyment and free use of the life and property.

**Count Two
Public Nuisance: Civil Code Sections 3479 and 3480**

47. The City hereby incorporates by reference paragraphs 1 through 46 as though fully set forth herein.

48. For the past several years, continuing up to the present time, Defendants have been maintaining Shelter Cove in such a manner as to constitute a continuing public nuisance within the meaning of Civil Code Sections 3479 and 3480.

49. Defendants' practices are injurious to the health, are offensive to the senses, and interfere with the comfortable enjoyment of life and property.

1 50. For the past several years, continuing up to the present time, Defendants knew or should
2 have known that Shelter Cove was being maintained as a public nuisance, but failed to take reasonable
3 steps to abate the nuisance.

4 51. Defendants will continue to maintain Shelter Cove as a public nuisance.

5 52. The City has no adequate remedy at law in that damages are insufficient to protect the
6 public from the present danger and harm caused by the conditions described herein.

7 53. Unless the nuisance is abated, the community, neighborhood, and the residents of the City
8 will suffer irreparable injury and damage in that the described conditions will continue to be injurious to the
9 enjoyment and free use of the life and property.

10 **WHEREFORE THE CITY PRAYS:**

11 1. For an order declaring Shelter Cove a public nuisance under California State Law and the
12 Pacifica Municipal Code;

13 2. For a temporary restraining order and a preliminary and permanent injunction prohibiting
14 Defendants from engaging in the activities that render Shelter Cove a public nuisance;

15 3. For a temporary restraining order and preliminary and permanent injunction enjoining
16 Defendants from doing any and all work on or near the Active Landslide Area, without the requisite permits,
17 including any self help measures of grading, excavating, removing soil, or any work whatsoever;

18 4. For an order requiring Defendants to show cause why they should not be prevented from
19 doing any and all work without the requisite permits on or near the Active Landslide Area during this pending
20 action;

21 5. For a temporary restraining order and preliminary and permanent injunction compelling
22 Defendants to immediately abate the nuisance in accordance with Civil Code section 3480 et seq. by
23 developing and submitting a plan to the City to stabilize the Active Landslide Area and immediately
24 implementing that plan upon approval from the City;

25 6. For an order that all work on the Active Landslide Area should be approved and monitored
26 by a state licensed Certified Engineering Geologist and Geotechnical Engineer;

27 7. For an order that Defendants complete the following requirements set forth in the
28 Declarations of Public Nuisance:

- 1 • Engage licensed geotechnical engineer to develop a plan to immediately stabilize the Active
- 2 Landslide Area and Pedestrian Pathway;
- 3 • Formulate a plan to stabilize the Active Landslide Area and the Pedestrian Pathway, and submit
- 4 that plan to the City;
- 5 • Commence implementation of the plan by applying for any and all necessary permits within one day
- 6 from approval of the plan by the City;
- 7 • Complete the plan within 30 days of the date that the City approves the plan;
- 8 • Implement measures to physically block all ingress and egress to the Pedestrian Pathway;
- 9 • Post weather resistant signage at both ends of the pathway, reasonably calculated to warn Shelter
- 10 Cove tenants, neighbors and the public at large, of the dangerous and hazardous conditions along
- 11 the pathway; and
- 12 • Formulate and implement a further plan that is reasonably calculated to give notice to the Shelter
- 13 Cove tenants, neighbors and public at large, that access to the pathway, active slide areas, and
- 14 unstable hillside areas, is prohibited.

15 8. For an order that Defendants pay all amounts, including attorneys' fees and costs, incurred

16 by the City in abating the nuisance, in an amount to be proven at trial;

17 9. For an order that Defendants pay administrative fines and penalties pursuant to the Pacifica

18 Municipal Code and under California State Law as determined by the Court;

19 10. For an order that the City shall have a lien upon Shelter Cove in the amount expended to

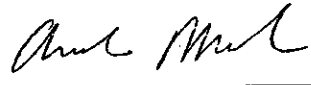
20 abate the nuisance and all unpaid penalties; and

21 11. For such other and further relief as this Court may deem just and appropriate.

22 DATED: March 19, 2008

HANSON BRIDGETT LLP

23

24 By: 

25 AMELIA MIAZAD

26 Attorneys for Plaintiff

27 City of Pacifica

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