

**Deposition of: Sandra Comouche,
PMQ of Las Brisas Pacifica, Inc.**

**Jill Mann vs. Las Brisas Pacificas, Inc.
January 27, 2026**



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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JILL MANN, an individual,)
)
 Plaintiff,)
)
 vs.) Case No. 24CU015304N
)
 LAS BRISAS PACIFICAS, INC.,)
 a California mutual benefit)
 common interest development)
 Corporation; and DOES 1-20,)
 inclusive,)
)
 Defendants.)
 _____)

DEPOSITION OF LAS BRISAS PACIFICA, INC.'S

PERSON MOST QUALIFIED,

SANDRA COMOUCHE

Aliso Viejo, California

Tuesday, January 27, 2026

REPORTED BY: Dayna Michelle Glaysher
CSR No. 13079; RPR, CRR No. 28081
Job No. 128608

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF SAN DIEGO

3
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11 inclusive,)
12 Defendants.)
13 _____)

14
15 Deposition of LAS BRISAS PACIFICA, INC., by
16 deponent SANDRA COMOUCHE - PMQ, taken before Dayna
17 Michelle Glaysher, a Certified Shorthand Reporter for
18 the State of California, with principal office in the
19 County of Los Angeles, commencing at 9:41 AM, Tuesday,
20 January 27, 2026, in the Law Offices of LS Carlson Law,
21 85 Enterprise, Suite 310, Aliso Viejo, California.
22
23
24
25

1 APPEARANCES:

2

3 For Plaintiff:

4 LS CARLSON LAW
5 BY: VASKO C. ALEXANDER, Esq.
6 A Professional Law Corporation
7 85 Enterprise, Suite 310
8 Aliso Viejo, CA 92656
9 TEL: (949) 421-3030
10 EMAIL: Valexander@lscarlsonlaw.com

8

9 For Defendants:

10 WASSERMAN KORNHEISER COMBS LLP
11 BY: CRAIG L. COMBS, Esq.
12 7955 Raytheon Rd., Suite A
13 San Diego, CA 92111
14 TEL: 858-505-9500
15 EMAIL: Ccombs@wk4law.com

13

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15 Also Present:

16 Jill Mann, Plaintiff

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1 Aliso Viejo, California, Tuesday, January 27, 2026

2 9:41 AM - 5:28 PM

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6 SANDRA COMOUCHE, PMQ

7 called as a witness by and on behalf of the Plaintiff,
8 having been placed under oath by the Certified Shorthand
9 Reporter, was examined and testified as follows:

10

11 EXAMINATION

12 BY MR. ALEXANDER:

13 Q. Good morning, Ms. Comouche. I introduced myself
14 off the record, but let's make it official. I'm Vasko
15 Alexander. I'm counsel for Ms. Mann, who is here with
16 us in person today. I see that you're represented by
17 counsel as well.

18 Before we begin I'm going to ask you a few kind
19 of ground rule questions, and we're going to set the
20 tone a little bit of what we're going to expect from
21 each other.

22 You understand that you're being designated as
23 the person most qualified for the Las Brisas Homeowners
24 Association, correct?

25 A. Correct.

1 Q. Have you been deposed in the past?

2 A. No.

3 Q. This is your first deposition?

4 A. Yes.

5 Q. Have you offered trial testimony at any point
6 before?

7 A. No.

8 Q. Okay. So let's go over a couple ground rules.
9 The first is please continue doing what you're doing,
10 which is wait for me to ask a question before you
11 respond. Okay?

12 Does that sound fair?

13 A. Fair.

14 Q. We have a court reporter with us today. She
15 could only write down verbal responses. And I'm sure
16 your counsel has given you a couple of these rules in
17 preparation for today.

18 Are you under the influence of any medication
19 that might impair your ability to provide me your best
20 testimony?

21 A. No.

22 Q. I'm going to be asking you for your best
23 recollection based off of your experience with
24 Las Brisas, as well as because you're PMQ historical
25 records of the association.

1 Do you have that understanding?

2 A. Do I have what?

3 Q. Do you have that understanding?

4 A. Yes, I have that understanding.

5 Q. Okay. So why don't we -- actually, you know
6 what, if you have to take a break at any one point, let
7 me know. Okay?

8 A. Okay.

9 Q. Even though, you know, you're sworn in and it's
10 the same effect as being in court, the deposition today
11 is really to gather information. And I don't want you
12 to feel like you have to rush through anything. Okay?

13 A. Okay.

14 Q. My only request here is that you finish answering
15 whatever question I have pending before we take a break.
16 And I'll try to pace us at about one hour breaks. Okay?

17 A. Okay.

18 Q. So we're going to mark the first in order
19 Exhibit 1 the notice of deposition of defendant Las
20 Brisas, Inc. person(s) most qualified.

21 (Exhibit 1 was marked for identification.)

22 And my question to you is have you seen this
23 document before?

24 A. Yes, I have.

25 Q. And when was the last time that you saw this

1 document?

2 A. Last week.

3 Q. Did you review the contents of this document
4 prior to your deposition today?

5 A. Yes, I did.

6 Q. Do you have an understanding that there are
7 starting on page 2 of Exhibit 1 deposition topics that
8 we're going to explore today?

9 A. Yes.

10 Q. Did you review those deposition topics prior to
11 your deposition today?

12 A. Yes.

13 Q. Are there any topics that are listed in this
14 notice that you are not the person most qualified?

15 And I could ask it a different way rather than
16 you going through each one.

17 When you reviewed this document did any category
18 jump at you and you thought you know what, I don't know
19 anything about this category?

20 A. Knowledge of people who were on the HOA board
21 prior to my living there.

22 Q. Okay. Other than that, the rest of the
23 categories you have developed knowledge in preparation
24 for this?

25 A. I believe so.

1 Q. Okay. Followed by -- following the categories
2 starting at page 12 are requests for production of
3 document categories.

4 Did you bring any documents with you today?

5 A. No, not other than just the requests for the
6 deposition.

7 Q. After you reviewed this deposition notice and the
8 document categories did any categories jump out at you
9 where you thought you know what, I don't have any of
10 these documents, I don't know what he's asking for?

11 A. Again, anything that happened prior to my living
12 and being on the board.

13 Q. Did you review any documents in preparation for
14 your deposition today?

15 A. Can you be more specific?

16 Q. Well, we have these categories of deposition
17 topics that you have now testified that you are the
18 person most qualified for.

19 Did you review any documents related to any of
20 these categories in preparation for your deposition?

21 A. Not specifically.

22 Q. Okay. Did you go -- did you ask your attorney --
23 strike that.

24 Did you review any of the prior deposition
25 transcripts that were taken in this case?

1 A. No, I did not.

2 Q. So you did not review the deposition transcript
3 of Kent Berchiolli, correct?

4 A. Not since -- not since the original deposition.

5 Q. Were you present during Kent Berchiolli's
6 deposition?

7 A. Via Zoom I was.

8 Q. Okay. So you heard his testimony on the topics
9 that I asked him?

10 A. Uh-huh.

11 Q. Okay. Similarly, were you present during
12 Bill Katz's deposition?

13 A. Yes, I was, again via Zoom.

14 Q. I see that you have a couple of documents in
15 front of you that you brought with you today. Let's
16 identify the first document that you have there.

17 What is it?

18 A. It is the notice for the deposition to be the
19 most qualified.

20 MR. COMBS: Wait, can I see that? There
21 might be I think something to me.

22 MR. ALEXANDER: Okay.

23 MR. COMBS: Okay. Sorry. Thanks.

24 MR. ALEXANDER: And we're going to mark this
25 as Exhibit 2. And I will ask our --

1 THE WITNESS: Okay. I have notes on the
2 back. And those are my notes.

3 MR. ALEXANDER: That's okay. We're going to
4 mark those part of the exhibits. And I'm actually going
5 to be asking you questions about these.

6 So let's go off the record for five minutes.
7 I'll make copies.

8 (Discussion held off the record from 9:48 to
9 9:53.)

10 All right. Let's go back on the record.

11 We're going to mark next in order Exhibit 2
12 email from me to Mr. Combs dated January 8, 2026
13 providing the PMQ categories for today's deposition.
14 And on the back of Exhibit 2 are handwritten notes by
15 the deponent.

16 (Exhibit 2 was marked for identification.)

17 And we're going to mark next in order --
18 let's do Exhibit 3 is going to be a timeline that the
19 deponent brought with her.

20 (Exhibit 3 was marked for identification.)

21 BY MR. ALEXANDER:

22 Q. Ms. Comouche, what was the purpose of you
23 preparing the handwritten notes on the back of
24 Exhibit 2?

25 A. So I could have my responses readily available.

1 Q. Okay. Those are your handwritten notes, correct?

2 A. Yes.

3 Q. And what was the purpose behind preparing
4 Exhibit 3?

5 A. Again, so I would have a visual very quickly to
6 say what happened on what date without having to go
7 through masses of paper.

8 Q. Okay. Did you personally prepare Exhibit 3?

9 A. No.

10 Q. Who prepared Exhibit 3?

11 A. Paul Elsesser.

12 Q. And who is Paul Elsesser?

13 A. Paul Elsesser, he's a member of the community.
14 He was on the board at the time of the incident, and
15 basically was man on the ground.

16 Q. Okay. Did you ask him to prepare this Exhibit 3?

17 A. Yes, I did.

18 Q. Did you review everything that was prepared in
19 Exhibit 3, all the information?

20 A. I did not review every document, no.

21 Q. Okay. Do you agree with the contents of
22 Exhibit 3?

23 A. Yes, I do.

24 Q. Do you adopt them as your own?

25 A. Yes, I do.

1 Q. All right. Ms. Comouche, let's get into your
2 background a little bit.

3 How long have you resided at the Las Brisas
4 community?

5 A. In April it will be 21 years.

6 Q. And you own your unit, correct?

7 A. Yes, I do.

8 Q. And what unit is that?

9 A. Number 28.

10 Q. Number 28.

11 So what year did you buy unit number 28?

12 A. Okay. We moved into Las Brisas in 2005. And due
13 to the property being in a very convoluted probate case
14 we did not purchase it until 2008.

15 Q. So it took three years before you could purchase
16 it?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Correct. Sorry.

20 Q. It's okay.

21 MR. COMBS: You got to say yes or no.

22 THE WITNESS: I'm so used to --

23 BY MR. ALEXANDER:

24 Q. You know, it's very natural to start doing that.
25 So I'll just give little reminders here and there.

1 Okay. So you moved in in 2008?

2 A. No, we moved in in 2005.

3 Q. Oh, you purchased in 2008. Okay.

4 Was it a rental arrangement prior to 2008?

5 A. Yes, it was.

6 Q. Okay. At some point did you run for the board?

7 A. Yes.

8 Q. And what -- when did you first run for the board?

9 A. Again, thinking back, it was either I would say
10 2009.

11 Q. So the next year after you purchased?

12 A. Yes. Sorry.

13 Q. That was your first opportunity to run for the
14 board, correct?

15 A. Yes, it was.

16 Q. Okay. Have you been on the board continuously
17 since then?

18 A. Yes, I have.

19 Q. And what positions have you held on the board?

20 A. Member at large.

21 Q. Actually, let's do it the other way. Okay.

22 What was your first position that you had?

23 A. Member at large.

24 Q. Okay. And what does the member at large mean?

25 A. It is the fifth member of the board. Mainly just

1 a tiebreaker position.

2 Q. And how long did you hold that position?

3 Give me the years.

4 2009 till roughly when?

5 A. 2009 to 2011.

6 Q. Okay. And what was the next position that you
7 held?

8 A. Secretary.

9 Q. And what are the duties of the secretary?

10 A. To --

11 Q. As you understand them.

12 A. The secretary basically takes care of
13 communications, posts notices, that kind of thing. We
14 don't have to do our own minutes for the meeting.
15 Usually the management company does that.

16 Q. Does the secretary post articles to the
17 Las Brisas newsletter?

18 A. No, not specifically.

19 Q. But sometimes yes?

20 A. Not individually.

21 Q. Not individually. Okay.

22 What is the process of posting an article in the
23 Las Brisas newsletter?

24 A. Usually it is presented to whoever is the editor
25 of the Breeze publication. And then originally it was

1 just published, and now it has to be board okayed.

2 Q. Since when does the publishing of the newsletter
3 have to be board okayed?

4 A. Probably within the last two years.

5 Q. Is it fair to say that it was since the lot 139
6 incident?

7 A. After.

8 Q. After?

9 A. Uh-huh.

10 Q. So prior to the lot 139 incident, which is the
11 subject of this litigation, publications in the
12 newsletter or to the newsletter did not have to be board
13 approved; is that correct?

14 A. Correct. They were at -- they were approved at
15 the discretion of the editor.

16 Q. Okay. How many members does it take now to
17 approve a publication in a newsletter?

18 A. Simple majority, three.

19 Q. And what rules and regulations dictate that there
20 should be an approval before publishing of the
21 newsletter?

22 A. Anything that would be frivolous or derogatory
23 say to an individual. A lot of times people put
24 things -- want to put things in the newsletter that may
25 be important to them but not to the community.

1 Q. And who made the decision that the process of
2 publishing the newsletter is going to be supervised and
3 approved by the board of directors?

4 A. The board of directors.

5 Q. Is that reflected in any minutes?

6 A. I'm sure it is somewhere, but I do not have them.

7 Q. And if no minutes reflect that there was a vote,
8 what does that suggest to you?

9 MR. COMBS: Objection. Calls for
10 speculation.

11 THE WITNESS: Yeah, I have -- I can't
12 speculate. It's what it approves.

13 BY MR. ALEXANDER:

14 Q. Well, you were on the board --

15 A. Correct.

16 Q. -- when the decision was made?

17 How was the decision made?

18 A. It was just made that again we want to look at
19 what was being put out there. Because certain people
20 were writing articles that could affect members in the
21 community.

22 Q. And affect them in what way?

23 A. Making or stating accusations about their ability
24 to be on a committee.

25 Q. Okay. So is it fair to say that all articles

1 that have been published since the incident at 139 have
2 been vetted by the board of directors for their content?

3 A. No because the vetting was after. It was in
4 2024. The incident was in 2023.

5 Q. Okay. So the vetting began in 2024?

6 A. Uh-huh, yes.

7 Q. So since 2024 -- oh, actually, can you give me a
8 rough estimate of when the vetting began in 2024 by
9 month?

10 A. I cannot.

11 Q. Okay. And by the way, I said estimate a couple
12 of times now. And this should've been one of my
13 admonitions. Okay. I'm asking you for your best
14 recollection at any one point. Estimates are okay.
15 Guessing is not.

16 And you understand the difference between --

17 A. I do.

18 Q. -- a guess and an estimate?

19 A. That's why I stated I wasn't going to guess.

20 Q. And I appreciate it. Okay.

21 So you were secretary from 2011 until when?

22 A. Probably 2013. Again, I'm estimating. It could
23 be '13 or '14.

24 Q. Okay. A couple years?

25 A. A couple years.

1 Q. And what was the next position that you held?

2 A. Treasurer.

3 Q. Treasurer. And what are the duties and
4 responsibilities of the treasurer of the board?

5 A. The treasurer receives all of the bids that are
6 produced, and then the -- presents them to the board via
7 the -- I can't think of the word right now.

8 Q. That's okay. Take your time.

9 A. The document that we use at a board meeting.

10 Q. The minutes?

11 A. Not the minutes, but the --

12 Q. The financial reports?

13 A. The agenda.

14 Q. Oh, the treasurer prepares the agenda?

15 A. No, I don't prepare the agenda, but I prepare
16 documents that are to be listed in the agenda.

17 Q. Okay. And what kind of documents would you
18 prepare that are listed on the agenda?

19 A. It would be bids for various services.

20 Q. Okay. Is the treasurer involved with the
21 reserves of the HOA?

22 A. Yes, I'm involved in the reserve study.

23 Q. And what is the role of the treasurer as related
24 to the reserves?

25 A. To maintain a level of reserves that, you know,

1 the community is comfortable with. We have a reserve
2 study company. So we do not physically do the reserves.
3 They do it. They present us with their findings. And
4 then we either agree or disagree, or sometimes we change
5 some of the allocations around depending on what it's
6 about.

7 Q. Okay. And what is the process of changing the
8 allocations between the reserve items?

9 A. It's just done by the finance committee usually
10 and the treasurer.

11 Q. Is the treasurer the chairman of the finance
12 committee?

13 A. No. I'm a member, but I don't have any voting
14 powers.

15 Q. Okay. How long were you the treasurer?

16 A. From --

17 Q. '13?

18 A. Till the present day.

19 Q. Okay. So as you sit here today, you're still the
20 treasurer of the Las Brisas community?

21 A. Yes, I am. Yes, I am.

22 Q. Okay. Has that been a continuous position that
23 you have held?

24 A. Yes.

25 Q. In other words, nobody has stepped in to help you

1 out during a time of sickness or unfortunate events?

2 A. No.

3 Q. No vacations? I'm teasing.

4 A. You can work around vacations. We do have
5 internet.

6 Q. Okay. Good. Good. Okay.

7 So your treasurer duties from 2013 to the
8 present, you were able to perform them even remotely,
9 correct?

10 A. Correct.

11 Q. Okay. Who is currently on the board?

12 A. Currently Scott Cassidy.

13 Q. And what is his position?

14 A. President.

15 Q. Okay.

16 A. Barbara Turner.

17 Q. Okay.

18 A. Vice president. Frank Helmlinger is secretary.

19 Q. Okay.

20 A. I'm the treasurer.

21 Q. Uh-huh.

22 A. And Albie Solis is the member at large.

23 Q. And who was the president from 2013 to the
24 present when there's an overlap of your treasurer
25 position?

1 I hope my question made sense. If it doesn't --

2 A. No, I know what you're asking. But for me to go
3 back and remember every year how the board changed, I
4 didn't bring that information with me.

5 Q. Okay. Has anyone other than yourself stayed on
6 the board for this extended period of time?

7 A. No.

8 Q. Are you the longest standing member of the board?

9 A. Yes. That's how I got designated the most -- the
10 most popular person to be deposed.

11 Q. Okay. Okay. That's fair. Okay.

12 Who was the president immediately before Scott
13 Cassidy?

14 A. Robyn Richardson-Hibner.

15 Q. And she's no longer involved?

16 A. No.

17 Q. And do you have an estimate of how long
18 Ms. Hibner was on the board?

19 A. Two years.

20 Q. Okay. Does the treasurer have the ability on
21 their own to move allocations between reserves?

22 And I'll give you an example. Road of pavement
23 allocation versus irrigation, let's say.

24 A. Yes, but it's usually discussed with the finance
25 committee and the board.

1 Q. But who makes the final decision?

2 A. I guess I do.

3 Q. As the --

4 A. As the treasurer.

5 Q. As the treasurer. Okay. And if the treasurer
6 reflects that -- well, strike that. We'll get back to
7 that in a minute.

8 Do you have an understanding of what this case is
9 all about?

10 A. Yes, I do.

11 Q. And what is your general understanding?

12 A. General understanding is there was a failure on
13 the slope. The HOA came in. And because of the fact
14 that there were homes above the area affected, they
15 immediately decided that something had to be done.

16 We couldn't just let it sit there. And in the
17 meantime it was still raining. So I know the first
18 thing they did was they went and got tarps and covered
19 the area so that it wouldn't get saturated anymore.

20 Q. And what slope are you referring to?

21 A. Slope on unit 139.

22 Q. Okay. And what is -- you can refer to your
23 notes, by the way, in this. Okay. I'm assuming you're
24 going to be referring to Exhibit 3 a number of times
25 today.

1 But when did the slope failure occur?

2 A. On or about April 27th, 2023.

3 Q. And where are you reading that from?

4 A. I'm reading it from my timeline.

5 Q. Okay. Has the HOA made a determination -- strike
6 that.

7 At the time that the slope failure occurred did
8 the HOA make a determination what caused the slope
9 failure?

10 A. Immediately, no.

11 Q. Did the HOA make a determination as to the cause
12 of the slope failure at any point after?

13 A. Yes, after consulting with GeoTek geology
14 company.

15 Q. Okay. So the determination as to the causation
16 of the slope failure was done after the HOA ostensibly
17 hired GeoTek to make that determination; is that a fair
18 summary?

19 A. That's a fair summary.

20 Q. Okay.

21 A. We didn't have the expertise to determine.

22 Q. Okay. And how long after the HOA observed the
23 slope failure did the HOA hire GeoTek?

24 A. GeoTek was contacted on April 28. So basically a
25 day.

1 Q. Okay. And who contacted GeoTek from the HOA?

2 A. I think it was Paul Elsesser. Yeah, Paul
3 Elsesser.

4 Q. Okay. Did Mr. Elsesser contact Jill Mann prior
5 to hiring GeoTek?

6 A. Yeah, on April 28th, Mr. Elsesser called and
7 emailed Jill Mann.

8 Q. Okay. And who made the determination that GeoTek
9 is the one that's going to be hired?

10 A. They had -- we had consulted with them
11 previously. They were local and they came right out,
12 you know.

13 Q. Do you have an understanding of what professional
14 licenses GeoTek possesses?

15 A. I know they have a professional license. I could
16 not tell you what they are right now.

17 Q. Okay. And at that time in this April 28th, 2023
18 timeline did GeoTek make a recommendation as to any
19 slope repairs?

20 A. Initially the recommendation was to please keep
21 it covered to keep it dry. And they did not make a
22 determination until they did their study.

23 Q. Okay. When was the first time that the HOA made
24 an affirmative statement -- or strike that.

25 When was the first time that the HOA first made

1 the determination that -- as to the cause of the slope
2 failure?

3 A. According to my notes, we received the
4 preliminary investigative report from GeoTek on
5 July 7th. So in the interim they had come out and done
6 soil testing, dug pits to determine how far down, you
7 know, before you hit bedrock.

8 Q. They were doing the investigation?

9 A. Yeah, they were doing their investigation.

10 Q. So the first report that the HOA received was
11 July 7th, 2023, correct?

12 A. According to my knowledge, yes.

13 Q. Yeah. Do you know if that was a final report or
14 a preliminary report?

15 A. It was a preliminary report.

16 Q. What did the preliminary report state?

17 A. I don't remember.

18 Q. But at that point the HOA made a determination as
19 to the cause of the failure, correct?

20 A. Yes.

21 Q. So the report as you sit here today -- would this
22 refresh your recollection that maybe the report did
23 opine as to the cause of the failure?

24 A. Okay. If that's -- I wasn't on the same
25 wavelength there. Yes, it did.

1 Q. Okay. And what was the cause of the failure
2 according to GeoTek?

3 A. According to GeoTek it was excessive rainfall.

4 Q. And that was in the report?

5 A. Yes.

6 Q. And that's how the HOA determined what?

7 Strike that.

8 Did the HOA adopt GeoTek's conclusion that it was
9 excessive rainfall that caused the failure at slope 139?

10 A. Yes, it did.

11 Q. Did the HOA contact any other third party vendor
12 to get a second opinion as to that causation statement?

13 A. No.

14 Q. Okay. Did the HOA have an understanding that
15 that is -- that the July 7, 2023 report was a
16 preliminary report?

17 A. Yes, it was noted it was preliminary report.

18 Q. But it made a final finding as to the causation
19 of the slope failure based on the preliminary report,
20 correct?

21 A. Yes. The final report had all of the data from
22 all of the investigations.

23 Q. So the final report to your recollection included
24 the exact same information as the preliminary report?

25 A. Yes.

1 Q. Were the conclusions in the final report the same
2 as the preliminary report?

3 A. Yes.

4 Q. And what was the conclusion in the final report?

5 A. The failure was caused by an excessive amount of
6 rain.

7 Q. Okay. When was the date of the final report?

8 A. I don't have that information.

9 Q. Do you know what an as-graded report is?

10 A. No.

11 Q. When was slope repair complete?

12 A. Slope repair was not completed until April 18th
13 of 2024.

14 Q. Does that inform you of when GeoTek's final
15 report might've taken place or refresh your
16 recollection?

17 A. It said as-graded report came from GeoTek on
18 May 22nd.

19 Q. Do you have an understanding as to what that
20 might be?

21 A. No, I don't.

22 Q. Okay. So slope failure was April 27, 2023,
23 correct?

24 A. Correct.

25 Q. Or at least that's when --

1 A. It was noticed.

2 Q. When it was noticed, yes.

3 Who noticed the slope failure first from the
4 HOA's perspective?

5 A. Okay. Our gardener Luis was doing his usual
6 rounds and he noticed it. So he called Kent Berchiolli
7 who was then the president and the landscape chair. And
8 then Luis's supervisor Santos was also informed.

9 Q. Who does Luis work for?

10 Is it the HOA?

11 A. No, Green Horizons.

12 Q. And who is Green Horizons?

13 A. Green Horizons is a landscaping company.

14 Q. And does the HOA hire Green Horizons for work to
15 perform?

16 A. Yes, they're on contract.

17 Q. And what is their contract?

18 A. Every year they contract to maintain the
19 vegetation on the slopes to do the weeding and to
20 maintain the irrigation.

21 Q. Okay. Do you have a distinction in your mind
22 between types of slopes that are present or exist at the
23 Las Brisas community?

24 A. Yes.

25 Q. And what is your understanding of that?

1 A. There are common area slopes and there is private
2 property slopes.

3 Q. And how does the HOA define private area slopes?

4 A. The HOA defines it as looking at the tract plot
5 of the land. And it will designate that this area
6 belongs to the owner of the property.

7 Q. And the remainder slopes, is it fair to say that
8 the HOA takes the position they are common area slopes?

9 A. Yes. And they are again in the tract that they
10 are -- it's considered like lot number 170.

11 Q. Okay. What was Green Horizons doing on lot 139?

12 A. I'm sure he was just doing his usual routine --
13 just a check. Because of the rain he couldn't do much
14 else.

15 Q. Does the HOA consider what -- lot 139 a private
16 slope?

17 A. It does.

18 Q. So why is Green Horizons on the private slope on
19 behalf of the HOA?

20 A. Because from the inception of the HOA the slopes
21 were always maintained by one company. And for
22 continuity sakes, for, you know, aesthetics. Plus, the
23 original developer put the irrigation lines in
24 horizontally and not vertically.

25 So the irrigation lines go across several

1 properties at one time. So say you turn on the
2 sprinkler valve and, you know, five houses get
3 sprinkled. It's not like each individual house has
4 their own line.

5 Q. And you're referring to private slopes, correct?

6 A. Private and common.

7 Q. Okay. Private and common?

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Yes. I'm sorry.

11 Q. Who pays for that water irrigation?

12 A. It's part of the HOA dues. It's a budgeted line
13 item in the budget.

14 Q. So if a budgeted line item is reflected in a
15 budget, it's paid for by the HOA, correct?

16 A. By the members of the HOA, yes. It's through
17 their dues.

18 Q. Okay. But it's --

19 A. Yeah, it's HOA.

20 Q. But it is the HOA.

21 Individual members are not paying for this water,
22 correct?

23 A. No.

24 Q. That created a double negative.

25 There -- the HOA pays for all the water for

1 irrigation on the private slopes, correct?

2 A. And the common, right, correct.

3 Q. Okay. Does the HOA maintain vegetation on
4 private slopes?

5 A. Yes.

6 Q. And who pays for that?

7 A. Again, it's part of the HOA contract with
8 Green Horizons.

9 Q. Who makes the determination as to what kind of
10 plants are going to be planted on private slopes?

11 A. I would say usually the landscape chair is --
12 determines what's going to be planted. And again,
13 because of the history of the community, that vegetation
14 has been there since 1986.

15 Q. Since day one, yeah?

16 A. Yeah.

17 Q. Who makes the determination as to how much water
18 is going to be introduced to the slopes as part of the
19 irrigation system?

20 A. Okay. Generally that falls on Green Horizons.
21 And they determine whether it will be watered twice a
22 week or three times a week and the duration.

23 Q. Has the HOA ever questioned Green Horizon's
24 watering schedule?

25 A. Yes, occasionally they have.

1 Q. In what capacity?

2 A. The amount of time and the amount of water are --
3 unfortunately our water bill is astronomical considering
4 we water all the properties. So sometimes, you know,
5 just for budgeting reasons we'll say cut that down by
6 three minutes or something like that.

7 Q. And what is the irrigation schedule at the
8 Las Brisas community?

9 A. In the winter months it's twice a week, and I
10 think it's Sunday night or Monday night and Thursday
11 night. And in the summer it's Monday, Wednesday, Friday
12 again at night.

13 Q. And how long do the sprinklers run?

14 A. Again, it's by area. And because it's the
15 entirety community, it takes hours to get it done.

16 Q. Let me narrow it down a little bit. At unit --
17 or strike that.

18 At lot 139 how long do the sprinklers run there?

19 A. I have no knowledge.

20 Q. Okay. Does the HOA manage pest control on the
21 slopes?

22 A. Yes, it manages gophers, rat traps.

23 Q. Okay.

24 A. Things like that.

25 Q. How long has the HOA managed gophers on the

1 private slopes?

2 A. Again, I can't say for certain.

3 Q. For as long as you are aware of, correct?

4 A. Yeah, I've been aware of it for probably ten
5 years.

6 Q. Okay. Has the HOA ever invoiced a private
7 homeowner for pest control?

8 A. No.

9 Q. Has the HOA ever invoiced a private homeowner for
10 vegetation?

11 A. No.

12 Q. Has the HOA ever invoiced a private homeowner for
13 the water bills?

14 A. No.

15 Q. I'm not going to mark this as an exhibit. It's
16 the verified cross-complaint for Las Brisas Pacificas.

17 Okay. Did you review this document prior to --
18 or in preparation for your deposition today?

19 A. I did not review it within the last week. I may
20 have reviewed -- obviously when I received it I reviewed
21 it.

22 Q. If we turn to page -- it's not numbered. There
23 is a verification page.

24 A. Yes, I've got that page.

25 Q. Okay. Are you able to identify who verified this

1 cross-complaint?

2 A. Yes, I can.

3 Q. And who is that individual?

4 A. Robyn Richardson-Hibner.

5 Q. Who was the president at the time, correct?

6 A. At the time, correct.

7 Q. And you were on the board obviously at the time?

8 A. Correct.

9 Q. Were you involved in reviewing this
10 cross-complaint at the time of its filing?

11 A. Can you be more specific?

12 Q. Sure. Did you review the allegations in this
13 cross-complaint at the time of its filing?

14 A. Yes, I did.

15 Q. Were you critical with any of these allegations?

16 A. No.

17 Q. Do you have a general understanding of what this
18 cross-complaint is about?

19 A. You filed a complaint against us, and then we
20 filed back a cross-complaint saying we weren't
21 responsible. You know, basically I think that's what it
22 is.

23 Q. Okay. Do you have an understanding that the
24 HOA -- well, strike that.

25 What are the allegations -- what is the HOA

1 trying to recover from Ms. Mann under this
2 cross-complaint?

3 A. We're trying to recover the cost of the
4 excavation work.

5 Q. Excavation work related to what?

6 A. The repair of the slope.

7 Q. You're talking about 139 of course?

8 A. Of course.

9 Q. Yeah.

10 A. It's about the Mountain Movers, the company that
11 came in and actually did the physical work to stabilize
12 the slope.

13 Q. Is it the HOA's opinion that the slope is
14 completely remediated, that it's repaired?

15 A. Yes, it is.

16 Q. And what is the HOA's basing that opinion on?

17 A. Basing it on the opinion of GeoTek, that the
18 recommended procedures were followed and they were
19 completed in a proper manner.

20 Q. Okay. Is that from GeoTek's preliminary report
21 or their final report?

22 A. Probably the final report.

23 Q. Okay. Why is -- why is the HOA seeking to
24 recover monies from Ms. Mann for this repair work?

25 A. Basically the CC&Rs state that HOA funds,

1 specifically reserve funds cannot be used on private
2 property.

3 Q. Has the HOA ever used reserve funds to repair
4 other slopes in the community?

5 A. No.

6 Q. Do you have an understanding that the HOA is
7 looking to foreclose on Ms. Mann's property as a result
8 of this?

9 A. Yes.

10 Q. Does the HOA still intend to foreclose on her
11 property?

12 A. Yes. It was our only means of ensuring that we
13 might get payment for the work done.

14 Q. Okay. What specific article of the CC&Rs
15 provides that the HOA is entitled to the money alleged
16 in the cross-complaint?

17 A. I do not have that information in front of me.
18 I'm sure you have a copy of our CC&Rs and I'm sure
19 you've noted the line in the article that it's in it.

20 Q. Well, unfortunately I'm not being deposed today.
21 So okay. And we're going to get to them in a minute
22 here.

23 Why did the HOA go in and perform repairs on a
24 private slope?

25 A. Because at the time it was -- first of all, it

1 was a shock because nothing like this had ever occurred
2 before. It was still raining. And, again, the -- we
3 felt that it was our fiduciary responsibility to do
4 something because Ms. Mann was not proceeding to get any
5 bids or anything to do the work.

6 Q. So it's your testimony that Ms. Mann refused to
7 repair her slope?

8 A. According to my knowledge, yes.

9 Q. How did you gain that knowledge?

10 A. Just by the fact that she did not do anything to
11 facilitate it.

12 Q. Do you have an understanding as to how the
13 community has reacted to this litigation?

14 A. Can you be more specific?

15 Q. Well, from your own experience, how has the
16 community reacted to this litigation?

17 A. They are generally upset.

18 Q. Okay.

19 A. They want it to be over with and --

20 Q. They want it to be done?

21 A. They want it to be done.

22 Q. Okay. Has -- strike that.

23 The CC&Rs were adopted at the time of the
24 establishment of the community, correct?

25 A. At the inception of the community, correct.

1 Q. Have they been amended since then?

2 A. I know of one amendment. Prior to my living
3 there, I don't know of any -- you know, there may have
4 been, but I'm not privy to that knowledge.

5 Q. And what amendment are you aware of?

6 A. Where -- the amendment we did was to define the
7 extent to which the HOA is responsible for slopes,
8 private slopes, and defined it as just to maintenance,
9 vegetation and irrigation and not structural
10 remediation.

11 Q. When did that amendment take place?

12 A. I would say last year.

13 Q. 2025?

14 A. Yes.

15 Q. Could you give me an estimate was it the
16 beginning of the year or the second half of the year?

17 A. Again, I'm not sure.

18 Q. But the amendment took place after the slope
19 failure, correct?

20 A. Yes.

21 Q. And the amendment took place after the HOA filed
22 its cross-complaint against Ms. Mann, correct?

23 A. Yes.

24 Q. Why did the HOA make an amendment?

25 A. Because there was such ambiguity about who was

1 responsible for what. And the fact that historically
2 the HOA did maintain vegetation, irrigation, watering,
3 et cetera of slopes, whether they were private or
4 common. And that the repair part was kind of ambiguous.

5 Some people would say prior to -- you know, over
6 the years they would say well, we're going to repair the
7 slope. Well, they meant they were doing this, they were
8 replacing plants that had died. And that's really not a
9 repair job. It's a maintenance.

10 But it's a matter of semantics. People were
11 using that word. And they weren't repairing the slope,
12 they were just maintaining it.

13 Q. Do you have an understanding that in 2019 the HOA
14 installed a French drain on lot 139?

15 A. Yes.

16 Q. And how did you become aware of that
17 installation?

18 A. I was a board member.

19 Q. Okay. And when did that installation take place?

20 A. It took place -- hang on. I got that.
21 February 2nd, 2019.

22 Q. And you're referring to Exhibit 2, correct?

23 A. My note on the back.

24 Q. And what note are you specifically reading?

25 A. It says date of inspection of French --

1 installation of French drain. It's above number 1.

2 Q. 2/6/19?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. That's it.

6 Q. I'm looking at bullet point 3 of Exhibit 2.

7 Since it's your handwriting, can I trouble you to
8 read it for us?

9 A. Okay. French drain okayed by the board of
10 directors in 2019. Gesture of goodwill to the -- you
11 know --

12 Q. You could supplement it.

13 A. I can supplement it. Okay. A gesture of
14 goodwill to the owner who was having problems with water
15 and mud coming over her retaining wall.

16 Q. Okay.

17 A. Pablo landscape and Green Horizons both presented
18 bids. Pablo was awarded the bid. He installed the
19 drain. We did no further modifications or cleaning.

20 Q. Who is Pablo?

21 A. Pablo is the landscape person that we hired to
22 install the French drain.

23 Q. Who made the decision to hire Pablo?

24 A. It was a board decision. And at that time it was
25 Bill Capella, Bill Katz, Michael Stoia and myself.

1 Q. And where was this French drain installed?

2 A. On the -- above the retaining wall on lot 139.

3 Q. Was it underground?

4 A. Yes, it was below ground, yeah.

5 Q. Did the HOA seek the opinion of a civil engineer
6 prior to installing a French drain at the bottom of the
7 slope?

8 A. Honestly, I can't remember if GeoTek was
9 contacted or not. It may have been.

10 Q. As you sit here today, do you know if the HOA
11 consulted with a civil engineer prior to installing a
12 French drain at the top of the slope?

13 A. I don't. Like I said, I don't recall.

14 Q. You were present during Bill Katz's deposition,
15 correct?

16 A. Yes.

17 Q. You recall Mr. Katz testifying that no civil
18 engineer was contacted prior to the installation?

19 A. Okay. They -- the three gentleman were more
20 involved in this than I was.

21 Q. And who are the three gentleman?

22 A. Bill Capella, Bill Katz and Michael Stoia.

23 Q. Okay.

24 A. The other members of the board.

25 Q. Do you recall from Mr. Katz's deposition that

1 Pablo does not have or did not have a civil engineer
2 license?

3 A. No.

4 Q. You don't recall that?

5 A. I don't recall that.

6 Q. Do you know if Pablo had --

7 A. No.

8 Q. -- civil engineer license?

9 A. I doubt it.

10 Q. Is it fair to say that the HOA installed a French
11 drain on lot 139 without -- well, strike that.

12 Has the HOA produced any records that it
13 consulted a civil engineer prior to the installation of
14 the French drain at 139?

15 A. No.

16 Q. If those records exist, where would they be?

17 A. They would be in the minutes somewhere.

18 Q. And if they do not exist, does that suggest to
19 you that no civil engineer was consulted prior to the
20 installation of the French drain?

21 A. Correct.

22 Q. If a civil engineer was retained or hired by the
23 HOA prior to the installation of the French drain, how
24 would those -- how would that record be reflected?

25 A. Again, in the minutes of the meetings.

1 Q. And those meeting minutes were reflected there is
2 an agreement between the civil engineer and the HOA for
3 those services, correct?

4 A. Correct.

5 Q. And the absence of those minutes and those
6 records indicates that no civil engineer was retained by
7 the HOA prior to the installation of the French drain,
8 correct?

9 MR. COMBS: Objection. Calls for
10 speculation.

11 BY MR. ALEXANDER:

12 Q. Is that correct?

13 A. Yes.

14 MR. ALEXANDER: We've been going for about
15 an hour. Why don't we take a ten minute break.

16 (Recess taken from 10:37 to 10:43.)

17 BY MR. ALEXANDER:

18 Q. Okay. We're back on the record.

19 Ms. Comouche, you understand you're still under
20 oath, correct?

21 A. Yes, I do.

22 Q. Let's go through Exhibit 2 and just go through
23 your notes here because I'm having a difficult time
24 reading your handwriting.

25 Bullet point 1, what does it say?

1 A. It just says CC&Rs - maintain vegetation,
2 irrigation on all slopes. No repairs on private
3 property. And that's basically referring to the
4 amendment.

5 Q. That's the amendment that took place in 2025?

6 A. Yes.

7 Q. What is bullet point 2?

8 A. Should I just read it?

9 Q. Yes, please.

10 A. Okay. HOA is responsible for landscaping,
11 irrigation and drainage. No reimbursement from owners
12 for regular maintenance - part of the HOA dues. There
13 was no difference in how 139 was treated for maintenance
14 - repairs not covered on any of the owners' lots.

15 Q. Okay. And number 3 we went over earlier.

16 Let's go to number 4.

17 A. Okay. Green Horizons controls the watering
18 schedule with the HOA's okay. Broken lines, et cetera,
19 reported to Green Horizons -- or reported by Green
20 Horizons or more commonly the property owners because
21 they're on the premises at all times. Where am I?

22 Irrigation lines moved on -- to avert -- okay.
23 Irrigation lines were moved on lot 139 to avert any
24 additional water. They were reinstalled after the
25 excavation work was completed.

1 Q. This is --

2 A. So basically re-routed the water lines so the
3 other properties could get watered, but theirs was not.

4 Q. Does the HOA currently irrigate lot 139?

5 A. Yes. All the irrigation was reinstalled again.

6 Q. And who pays for that water?

7 A. The HOA.

8 Q. What about bullet point 5 on Exhibit 2?

9 A. I don't know. What does bullet point 5 say?
10 Since my notes are very -- oh. Observation complaints,
11 work orders, landscape committee notes, board
12 discussions and other reports to or within the
13 association that relate --

14 Q. I'm sorry, I'm sorry, I'll interrupt you there.
15 I'm looking at your handwritten notes.

16 A. I know, but that's my answer because I have --
17 that's my answer to that.

18 Q. Okay.

19 A. That request is that all the reports prior to the
20 incident were provided to you in discovery.

21 Q. Me meaning?

22 A. That a review was in bullet point 5.

23 Q. Okay. Okay. Me personally as Mr. Alexander.

24 Okay. Number 6?

25 A. The slope slippage was discovered by Luis during

1 his regular maintenance check - persons that inspected
2 the slope immediately thereafter were Bill Katz, Paul
3 Elsesser, Kent Berchiolli.

4 We were told to shut off all irrigation lines to
5 139 and cover it with tarps. And then the timeline is
6 April 27th, 2023, approximate date until the completion
7 in 2024. And I do have the date of completion now is
8 May 22nd.

9 Q. Okay. And number 7, please.

10 A. Okay. GeoTek was called because they had advised
11 the HOA previously. They were called because of the
12 uncertainty of the slope stability and their rapid
13 response to the incident. GeoTek did an intensive
14 investigation of the slope area. Okay. You could refer
15 to their report for more details.

16 Q. And we're talking about the April 2023 timeline,
17 correct?

18 A. Yes.

19 Q. And this is before GeoTek issued its final
20 report, correct?

21 A. Correct. They were consulted and they came out
22 the next day. And then they proceeded to advise us to
23 cover it and, you know, remove the waterlines.

24 Q. Okay. What is bullet point 8?

25 A. Bullet point 8 must have something to do with who

1 did the excavation or why did we use Mountain Movers.
2 Mountain Movers was one of three excavation companies to
3 come out and submit the bids. We had a very difficult
4 time to even get a company to come out and submit a bid
5 because of the access to the property.

6 Q. Okay.

7 A. Mountain Movers was the most reasonable one for
8 the work outlined in GeoTek's report. And Mountain
9 Movers followed the slope -- scope of work from GeoTek.
10 We actually hired GeoTek to come back and to --

11 Q. Supervise?

12 A. Thank you. Supervise the work so that it was
13 done according to their codes.

14 Q. Okay. Number 9?

15 A. What is number 9? Okay. I have to go look.
16 Okay. To provide documents for the communication of all
17 the drainage systems on the slope. I have no -- I don't
18 know because the timeline is 37 years so I -- I have no
19 reason to know that.

20 Q. Did you review any documents from the HOA's
21 document production in preparation for this deposition
22 that goes beyond the installation of the slope -- of the
23 French drain on the slope?

24 A. I'm still not sure what you're asking.

25 Q. Okay. We'll get to that. That's okay. Strike

1 that.

2 Let's jump to 14.

3 A. Okay. I just wrote no homeowner was ever charged
4 for repair work of the slope. Okay. The HOA -- I can't
5 read my own writing. The HOA was seeking reimbursement
6 for the excavation work on 139 since it was private
7 property.

8 The decision to proceed with the work to the --
9 was to protect the adjoining properties from any damage.
10 Ms. Mann never got any bids for replace -- repairing the
11 slope as advised by GeoTek. The HOA assumed all
12 geological cost to ensure work was done properly.

13 Q. How about 16?

14 A. I wrote is the HOA is responsible for the
15 decision making - reports were submitted during
16 discovery relating to that. Green Horizons did not make
17 any decision.

18 Q. Okay. The HOA relied on GeoTek's findings and
19 recommendations, correct?

20 A. Correct.

21 Q. Did the HOA implement all of GeoTek's findings
22 and recommendations?

23 A. Yes.

24 Q. I'm going to mark next in order Exhibit 4.

25 (Exhibit 4 was marked for identification.)

1 Have you reviewed this document before?

2 A. Yes, I have.

3 Q. And what is Exhibit 4?

4 A. State that again.

5 Q. What is Exhibit 4?

6 A. Exhibit 4 is the report from GeoTek on the scope
7 of their -- of the work to be done on unit -- lot 139.

8 Q. And what is the date of this report?

9 A. The date of this report is July 7th, 2023.

10 Q. And what is the title of the report?

11 A. It says it is the preliminary geotechnical
12 investigation.

13 Q. Is this the report that the HOA used in order
14 to make a determination as to what caused the slope
15 failure?

16 A. Yes.

17 Q. Point to me exactly where does GeoTek state that
18 it was rainfall that caused this slope failure.

19 A. Okay. I'm going to have to read this.

20 Q. Take your time.

21 A. Okay. On page 5.

22 Q. Okay.

23 A. 5.1.2. General. Second paragraph, third line
24 down. Cause of failure appears to have been from
25 saturation of the engineered fill in combination with

1 the claystone geometry of the fill over cut slope
2 condition. Increase moisture content added weight to
3 the fill and the claystone contact probably also
4 contributed to the slope failure.

5 Q. Well, let me pause you there. I'm just going to
6 correct one of your reading. Increased moisture content
7 adds weight to the fill and the claystone contact --

8 A. Okay. I'm sorry.

9 Q. -- probably also contributed to the slope
10 failure.

11 Do you see that language?

12 A. Increase moisture content adds weight to the fill
13 and the claystone contact probably also contributed to
14 the slope failure.

15 Q. Okay.

16 A. Source of water was not clearly evident until
17 investigation and is typically difficult to identify and
18 locate. It should be noted that the rain --

19 Q. Wait, I'm going to pause you there again. I
20 apologize. The sentence reads -- and correct me if I'm
21 wrong -- source of the water was not clearly evident
22 during the investigation and is typical -- typically
23 difficult to identify or locate.

24 Do you see that?

25 A. Yes.

1 Q. And the next sentence which -- well, you can read
2 it out loud.

3 A. It should be noted that the rain season of
4 2022/2023 was approximately 170 to 180 percent of the
5 normal season. In similar conditions, upon repair of a
6 slope failure, perched groundwater is also observed in
7 the backscarp of the failure. Perched groundwater
8 should be anticipated to be encountered during repair
9 operations.

10 Q. Is this the language that the HOA relied on to
11 make the determination as to the slope failure at 139?

12 A. Yes.

13 Q. For the cause of the slope failure?

14 A. Yes.

15 Q. Where in this language does it state what the
16 cause of the slope failure is?

17 A. It was -- from the word there, it seemed that
18 it was the perched groundwater that caused the slope
19 failure.

20 Q. Is that what the document states?

21 A. It says perched groundwater should be anticipated
22 to be encountered. Perched groundwater is also observed
23 in the backscarp of the failure. So there was water
24 below ground down to bedrock. And I mean, that's
25 mentioned later in the report, which is obviously very

1 extensive.

2 Q. What was the cause of the slope failure according
3 to the HOA?

4 A. Excessive rain.

5 Q. Where does this language provide that excessive
6 rain caused the slope failure?

7 A. In this particular document I don't see it right
8 here.

9 Q. Well, take your time. Because the HOA made a
10 determination.

11 A. But I do believe that there is another document,
12 the final.

13 Q. The final?

14 A. I don't have it on me, but --

15 Q. Your testimony five minutes ago was that the HOA
16 made a determination as to the cause of the slope
17 failure based off of this report, Exhibit 4, the July 7,
18 2023 preliminary report by GeoTek; is that correct?

19 A. Correct.

20 Q. Point to me the language that says that it was
21 rainfall that caused the slope failure at 139.

22 A. Directly --

23 Q. You can take your time.

24 A. Okay.

25 Q. Read the entire report if you have to.

1 A. Okay. Okay. In this particular document I do
2 not see it laid out black and white that they said that
3 it was the rain.

4 Q. So let's go back to section 5.1.2. The language
5 that you read into the record upon which the HOA made a
6 determination that it was rain that slope -- that caused
7 the slope failure.

8 Cause of failure appears to have been from
9 saturation of engineered fill in combination with the
10 claystone geometry of the fill over cut slope condition.
11 Increase moisture content adds weight to the fill and
12 the claystone contact probably also contributed to the
13 slope failure.

14 Do you see that language?

15 A. Yes.

16 Q. The HOA decided to assess Ms. Mann and make a
17 determination that it was rainfall that caused the slope
18 failure based off of a preliminary report that indicates
19 that it was probably oversaturation?

20 MR. COMBS: Objection.

21 BY MR. ALEXANDER:

22 Q. Is that right?

23 MR. COMBS: Objection. Mischaracterizes her
24 testimony.

25 ///

1 BY MR. ALEXANDER:

2 Q. Does this document state that source of water was
3 not clearly evident during the investigation and is
4 typically difficult to identify or locate?

5 Is that language present in this document?

6 A. Yes.

7 Q. It should be noted that the rain season of
8 2022/2023 was approximately 170 to 180 percent of a
9 normal season.

10 Do you see that language?

11 A. Yes.

12 Q. Does that language state that that was the cause
13 of the slope failure or is it a note?

14 A. It points to the fact that because of the
15 excessive rain. And plus, it has to be noted that the
16 irrigation in that area and most of the community was
17 turned off from January through March.

18 MR. ALEXANDER: Move to strike as
19 nonresponsive.

20 BY MR. ALEXANDER:

21 Q. Does this language state that rainfall caused the
22 slope failure?

23 A. It said that it was excessive moisture that
24 caused it, correct? No?

25 Q. I'm asking you whether this is a note or is it

1 the causation language that the HOA relied on?

2 A. Can you restate the question?

3 Q. I'm going to re-read the sentence again for you.

4 And we are on Exhibit 4, Section 5.1.2.

5 It should be noted that the rain season of
6 2022/2023 was approximately 170 to 180 of a normal
7 season.

8 Do you see that language?

9 A. Yes.

10 Q. Does this language state that rain caused the
11 slope failure?

12 A. Definitely, no, but it could contribute.

13 Q. That was not your testimony earlier, correct?

14 A. I said that yes, it did cause.

15 Q. So this was the preliminary report, correct?

16 A. Correct.

17 Q. And this is the report that you relied on in
18 order to make a determination as to what caused the
19 slope failure, correct?

20 A. Correct, because we -- something had to be done.

21 Q. Okay. I'm going to mark next in order Exhibit 5.

22 (Exhibit 5 was marked for identification.)

23 Do you have Exhibit 5 in front of you?

24 A. Yes, I do.

25 Q. What is that document?

1 A. This is the as-graded report, slope repair.

2 Q. By GeoTek, correct?

3 A. By GeoTek.

4 Q. What is the date of that report?

5 A. The date of that report is May 22nd, 2024. Okay.

6 I now understand what it means by as-graded report. It
7 means after the work was -- the investigation was
8 completed.

9 Q. Okay. Did you review this report prior to your
10 deposition today?

11 A. Yes, probably a year ago.

12 Q. Okay. Earlier you testified that the contents of
13 this report are the same as the preliminary report,
14 correct?

15 A. Probably more conclusive.

16 Q. And the conclusions of this report you testified
17 are the same as the preliminary report, correct?

18 A. Correct, as far as my knowledge.

19 Q. Let's turn to page 3 of the as-graded report,
20 bullet point 3, conclusions and recommendations.

21 Do you see that language?

22 A. Uh-huh, yes.

23 Q. The report states Remedial grading of the slope
24 failure has been completed in general accordance with
25 the approved geotechnical reports (see references),

1 applicable provisions of the 2022 California Building
2 Code and City of San Marcos guidelines.

3 It continues, The connection of the subdrain
4 system constructed for this slope repair system was
5 observed to be constructed of drain pipe. Based on
6 conversations with the homeowners association board, the
7 drain pipe was installed and directly connected to area
8 drains along the top of the existing retaining wall.

9 Do you see that language?

10 A. Yes.

11 Q. Am I reading it correctly?

12 A. Yes.

13 Q. The intent of the drains was said to collect
14 surface water shedding from the slope face and
15 transporting it away to reduce the potential for the
16 surface water to flow over the existing retaining wall.

17 Do you see that language?

18 A. Yes.

19 Q. However, as the system is currently constructed
20 with perforated drain pipe, surface water that is
21 collected in the drains is being introduced into the
22 subsurface, directly behind the existing retaining wall.

23 Do you see that language?

24 A. Yes.

25 Q. What did you make of that language when you read

1 it upon receiving this report?

2 A. Okay. This particular drain happens to be the
3 French drain that they're referring to, the perforated
4 pipe.

5 Q. And what is the report's conclusion as to the
6 French drain that was installed by the HOA in 2019?

7 A. It could be introducing water into the
8 subsurface, which was basically as I understand what it
9 was supposed to do so that it would alleviate the
10 surface water and mud and debris coming over the hill.

11 Q. Does the report say that it could be doing that
12 or does the report state the system is currently
13 constructed with perforated drain, surface water that is
14 collected in the drains is being introduced into the
15 subsurface?

16 Is that -- did I read that correctly?

17 A. Yeah.

18 Q. So they're not speculating as to what is
19 happening, correct?

20 A. No.

21 Q. What is the condition of -- strike that.

22 What is happening to the water that is being --
23 when it was supposed to be handled by the French drain
24 according to this report?

25 A. It should've been absorbed by the soil. And then

1 if there was any excess water, it should've come out the
2 loopholes.

3 Q. Does it say anywhere in this report that the
4 water should've been absorbed by the slope?

5 A. Well, it has to go somewhere. It just says it's
6 in the subsurface. It's being introduced into the
7 subsurface.

8 Q. What is the current position of the HOA with
9 respect to the causation of the slope failure at lot
10 139?

11 A. Excessive rain.

12 Q. What does it -- what does the HOA base that
13 position on?

14 A. Based it on the geotechnical report.

15 Q. Where in this report is there any mention of
16 excessive rain?

17 A. In --

18 Q. Take your time.

19 A. In the as-graded one or the original?

20 Q. In the as-graded one, Exhibit 5.

21 A. Now this is basically a summary of all the work
22 that was done to remediate the slopes. It doesn't
23 address the cause of the failure.

24 Q. I'm going to mark next in order Exhibit 6.

25 (Exhibit 6 was marked for identification.)

1 Have you seen this document before?

2 A. It looks the same as the one you just handed me
3 prior, Exhibit 5.

4 Q. Look at the date.

5 A. May 22nd. May 23rd. Okay.

6 Q. What is the title of this report?

7 A. As-graded report of slope repair, slope repair,
8 unit 139.

9 Q. And what is the date of the report?

10 A. May 23rd, 2024.

11 Q. Did you review this report prior to filing a
12 cross-complaint against Jill Mann?

13 A. Personally I can't remember if there was any --
14 if there was any difference between the two. I don't --
15 I don't physically remember there being two reports.

16 Q. I'm going to turn your attention to -- well,
17 strike that.

18 It was your testimony earlier that GeoTek's final
19 report was the same as the preliminary report, correct?

20 A. The preliminary report had all of the testing
21 data in it too.

22 Q. So are you changing your testimony?

23 A. Well, no. I'm just saying I don't remember
24 exactly with all the paperwork what report was which. I
25 do know that basically it was the same scope of work

1 that was done. But in the final report it's not --
2 doesn't have all the data to supply the water contents
3 and the type of soil, et cetera.

4 Q. You testified earlier that GeoTek's final report
5 attributed the slope failure to rain, correct?

6 A. Yes.

7 Q. Where in this Exhibit 6 does GeoTek attribute
8 rainfall as the cause for the slope failure?

9 A. Once again, I don't see it anywhere.

10 Q. It doesn't, does it?

11 A. No.

12 Q. There's nothing in this report that attributes
13 rainfall -- strike that.

14 There's nothing in this report that concludes
15 that rain -- excessive rainfall was the cause of the
16 slope failure, does it?

17 A. No. It also doesn't state anything else either.

18 Q. Is there anything in the preliminary report that
19 states that excessive --

20 A. No.

21 Q. -- rainfall caused this slope failure?

22 A. No.

23 MR. ALEXANDER: I'm going to read that --
24 can you repeat my question, please? I want a clean
25 record. Wait for me to ask my question, please.

1 (Whereupon, the record was read back by the
2 reporter as follows:)

3 "Q. Is there anything in the preliminary
4 report that states that excessive --

5 A. No.

6 Q. -- rainfall caused this slope failure?

7 A. No."

8 BY MR. ALEXANDER:

9 Q. So my question is is there anything -- any
10 language in the preliminary report upon which the HOA
11 made a determination -- based upon which the HOA made a
12 determination that excessive rain caused the slope
13 failure 139?

14 Is there any language in the preliminary report
15 that supports that conclusion?

16 A. No.

17 Q. So why did the HOA make a determination that it
18 was excessive rainfall that caused the slope failure?

19 A. Because there was excessive rainfall and there
20 were failures -- slope failures all over the county, and
21 it was a super saturated situation. And the reports do
22 say that the soil was super saturated.

23 Q. At what location?

24 A. At lot 139, which is the only --

25 Q. Where on the slope?

1 What location of the slope?

2 A. I can't tell you exactly. I have to read the
3 whole report then.

4 Q. Let's go back to Exhibit 4.

5 A. Which is?

6 Q. The preliminary report, July 7, 2023.

7 A. Okay.

8 Q. And turn to page 5.

9 A. Geological and soil conditions?

10 Q. Section 5.1.2. Second full paragraph. And I'm
11 reading, quote, The mode of slope failure appears to be
12 a rotational slump, based on the eastern edge of the
13 failure expressing movement, the bulged toe, and the
14 lack of visible movement along the western portion of
15 the failure.

16 Do you see that language?

17 A. Yes.

18 Q. What is the bulged toe of the slope?

19 A. I have no idea.

20 Q. Where was the French drain installed, what
21 location?

22 A. The French drain was installed at least 20 feet
23 below the failure, and it was installed right behind the
24 retaining wall.

25 Q. Is that the toe of the slope?

1 A. I don't know. I don't understand.

2 Q. Is it the bottom of the slope?

3 A. It's the bottom of the slope.

4 Q. As you sit here today is the HOA changing its
5 opinion as to what caused the failure of the slope at
6 139?

7 A. No.

8 Q. Is it still the HOA's opinion that excessive rain
9 caused the failure at slope 139?

10 A. Yes.

11 Q. Based on what?

12 A. Based on observation.

13 Q. Whose observation?

14 A. The landscape people, the committee members and
15 just the general news that, you know, we were in a very
16 intense rain period.

17 Q. Who are the landscape people that you're basing
18 this opinion on?

19 A. Just the Green Horizons.

20 Q. Is Green Horizons a licensed civil engineer?

21 A. No, but they --

22 Q. Are news people a licensed civil engineer?

23 A. No, but --

24 Q. Are you a licensed civil engineer?

25 A. No, I'm not.

1 Q. Is anyone on the board a licensed civil engineer?

2 A. No.

3 Q. So who are you basing the opinion that the
4 rainfall caused the failure of the slope at 139?

5 Give me one specific name who is a civil
6 engineer.

7 A. No, no civil engineer ever -- excuse me. I have
8 to take that back. I do believe that we did have a
9 expert witness that came in and evaluated the slope, and
10 I do believe that he stated that it was excess water.

11 Q. Who is that? Mr. Wang?

12 A. I'm not sure. Is that his name?

13 MR. COMBS: Dr. Gerry Wang.

14 THE WITNESS: Dr. Gerry Wang.

15 BY MR. ALEXANDER:

16 Q. Wang. When did the HOA hire Mr. Wang?

17 A. Timeline. Again, I don't have the exact date.

18 It was probably in 2025.

19 Q. Within the last year?

20 A. I believe so.

21 Q. After the HOA had made a determination that the
22 cause of the slope failure was excessive rain, correct?

23 Is that correct?

24 A. Yes.

25 Q. But as you sit who here today, would you agree

1 with me that nothing in the GeoTek report states that
2 excessive rain caused the slope failure?

3 A. Nothing in the report states that it -- excessive
4 rain caused it, but it also did not give any other
5 reason for why the slope failed.

6 Q. But the HOA made a determination that it was
7 excessive rain, correct?

8 A. Right, because that was the truth. That was what
9 was happening.

10 Q. How did -- how did the HOA make that
11 determination?

12 A. There was so much water on that slope and --

13 Q. That was a speculation by the HOA, wasn't it?

14 A. I don't know.

15 Q. Was -- at the time when -- immediately following
16 the slope failure prior to Mr. Wang, is there any civil
17 engineer report that the HOA is relying on in making
18 that determination?

19 A. No.

20 Q. And yet the HOA has made representations to the
21 community that that was the cause of the slope failure,
22 correct?

23 A. Correct.

24 Q. It has published articles in the Las Brisas
25 newsletter stating that the cause of the slope failure

1 is excessive rain, correct?

2 A. Correct.

3 Q. And those articles were published after 2024 when
4 the HOA board decided that it's going to monitor and
5 approve all articles that are to be published, correct?

6 A. I guess. I believe so. I'm not -- I'm not
7 certain about the timeline.

8 Q. Do you recall Ms. Mann requesting that her side
9 of the story and her evidence be -- strike that.

10 Do you recall that Ms. Mann requested that she
11 publish an article in the newsletter to explain her side
12 of the story?

13 A. I don't recall.

14 MR. COMBS: Counsel, what relevance does
15 this have to any of the causation in this action?

16 MR. ALEXANDER: Everything. She's -- my
17 client is being sued for assessments that were made
18 without the HOA making any -- without the HOA making
19 any informed decisions that were guided by civil
20 engineering.

21 MR. COMBS: Well, I get that line of
22 questioning.

23 MR. ALEXANDER: Okay.

24 MR. COMBS: Although I disagree with the
25 basis of it. But about publishing news letters long

1 after the lawsuit has been filed, what relevance does
2 that have?

3 MR. ALEXANDER: My client has been harassed
4 by all of this. And the HOA, as we're going to
5 establish in a minute, is trying to backtrack on its
6 positions that it took with respect to repairing and
7 paying for the slope.

8 And it is controlling the narrative of how
9 the slope repair is going to be conducted. That's the
10 relevance. And you can instruct her not to answer if
11 you'd like.

12 MR. COMBS: I'm not going to instruct her
13 not to answer. There's -- I just don't see any --

14 MR. ALEXANDER: Okay.

15 MR. COMBS: -- relevance to any of the
16 actions that have been alleged by either the association
17 or Ms. Mann in the action. What relevance is this
18 possibly going to have at trial? Nothing. So I mean
19 you can ask her, but I'm not going to check or tell her
20 not to answer.

21 MR. ALEXANDER: Okay.

22 MR. COMBS: But it's entirely irrelevant.

23 MR. ALEXANDER: Let's mark in order Exhibit
24 Number 7.

25 (Exhibit 7 was marked for identification.)

1 BY MR. ALEXANDER:

2 Q. Have you seen this document before?

3 A. Yes, I have.

4 Q. Within what context did you see this document?

5 A. I don't know if it was -- it was sent to the HOA
6 maybe, to the board.

7 Q. Did you review this document?

8 A. Not prior to this deposition, no.

9 Q. Okay. I'm going to mark next in order Exhibit 8.

10 (Exhibit 8 was marked for identification.)

11 A. It's the minutes of the April 18th.

12 Q. What is Exhibit 8?

13 A. It's the minutes of the Las Brisas board of
14 directors general session Thursday, April 18th, 2019.

15 Q. Okay. Have you reviewed this document prior to
16 your deposition today?

17 A. No.

18 Q. Okay. Were you present at that meeting?

19 A. Yes.

20 Q. What was your position on the board?

21 A. No, I was not present. Sorry. I was absent.

22 Q. Okay. There's a finance committee report.

23 Do you see that at the bottom?

24 A. Yes, I do.

25 Q. Second full sentence, There was \$3500 of reserve

1 dollars spent in March for drainage.

2 Do you see that language?

3 A. Uh-huh.

4 Q. What does that language refer to?

5 A. That refers to the installation of the French
6 drain.

7 Q. I'm sorry?

8 A. That refers to the installation of the French
9 drain on lot 139.

10 Q. Was this money paid for by the HOA?

11 A. Yes, it was.

12 Q. I'm going to mark next Exhibit 9.

13 (Exhibit 9 was marked for identification.)

14 What is Exhibit 9?

15 A. Exhibit 9 is the estimate for the installation of
16 the French drain by Pablo's landscape service.

17 Q. And what is the dollar amount there?

18 A. \$3500.

19 Q. Does that match Exhibit 8?

20 A. Yes, it does.

21 Q. Is this the same amount?

22 A. Yes.

23 Q. Did the HOA pay for this?

24 A. Yes.

25 Q. What is the date of Exhibit 9?

1 A. February 6, 2019.

2 Q. Why did the HOA pay for this service?

3 A. It is my recollection and belief that in 2019 the
4 ownership of the property, the slopes was not really
5 known to the contingency. People did not read their
6 deeds.

7 They did not read that, you know, by the way, my
8 land goes all the way to, you know, the end of the lot
9 or end of the hill. So because of the history of being
10 -- HOA maintaining the slopes, this was considered just
11 a part of maintenance.

12 Q. So slope drainage as identified in Exhibit 8 was
13 considered part of slope maintenance, correct?

14 A. Right. And that was because of -- they didn't
15 realize that it was private property.

16 Q. The HOA did not realize that lot 139 was private
17 property?

18 A. Correct.

19 Q. It was treating it at common area property,
20 correct?

21 A. Right. And that was not only 139. It was all of
22 the slopes that were in the community. Unless people
23 were very observant and looked at their deeds, they
24 wouldn't realize. When I bought my property I knew that
25 I owned all the way up to the top of the hill.

1 Q. And that was the case until the CC&Rs were
2 amended in 2025, correct?

3 A. Correct.

4 Q. I'm going to show you what was previously marked
5 as Exhibit 13 to Mr. Berchiolli's deposition.

6 Have you seen this document before?

7 A. I don't recall that I've seen it. I probably
8 have. Is this the --

9 Q. It's a preliminary report on common area slope
10 behind unit 139 landscape committee chair person.

11 That an accurate statement of as to what the
12 report is?

13 A. Yes, it is. Okay.

14 Q. Did the HOA board receive this report?

15 A. Yes.

16 Q. Did the HOA board review this report?

17 A. Yes.

18 Q. I'll turn your attention to background and
19 history. The fifth paragraph which is a two sentence
20 paragraph reads There is an indication that a French
21 drain was installed on top of the wall to help relieve
22 the water pressure that drains down the wall. Where
23 this French drain allows the water to escape is not
24 known.

25 Do you see that?

1 A. Right.

2 Q. Did you have an understanding that the French
3 drain, it was not known where the water is escaping at
4 that time?

5 A. This is Mr. Berchiolli's opinion.

6 Q. Did the HOA challenge Mr. Berchiolli's opinion?

7 A. I don't recall.

8 Q. I'm going to show you what has previously been
9 marked as Exhibit 3 to Mr. Berchiolli's deposition.

10 Have you seen this document before?

11 A. I probably have, yes.

12 Q. You are one of the recipients --

13 A. Yes.

14 Q. -- of this email, correct?

15 A. Correct.

16 Q. I'll turn your attention to email chain May 1st,
17 2023. Email from Paul Elsesser.

18 Do you see that?

19 A. Oh, okay. Thank you.

20 Q. Do you see that email?

21 A. Yes.

22 Q. It's on the first page, first paragraph. Green
23 Horizons covered the slope behind 139 to protect it from
24 rain predicted for tonight and for Thursday. Kent was
25 there for the start of the project. When the plastic

1 was in place Bill took pictures, sent them to GeoTek,
2 and received verbal approval that we had installed the
3 covering as recommended.

4 After Green Horizons left Bill got his drill and
5 auger. And we were able to clean out and get good water
6 flow from all seven French drains on the slope side of
7 the wall.

8 Do you see that language?

9 A. Yes.

10 Q. Why was Bill Katz augering the French drains on
11 slope 139 on May 1st, 2023?

12 A. I would assume that because there was no water
13 coming out of the drain holes, that they were clogged
14 and that he was trying to unclog them.

15 Q. Did the HOA tell Bill Katz not to touch those
16 drains at that time?

17 A. No, there was no conversation. Plus, he was on
18 the board of directors.

19 Q. So the board of directors adopted what Bill Katz
20 performed on the slope as appropriate as far as the HOA
21 is concerned?

22 A. Yes.

23 Q. I'm going to mark next in order Exhibit 10.

24 (Exhibit 10 was marked for identification.)

25 This is an email from you, correct?

1 A. Correct.

2 Q. Dated May 6, 2023, correct?

3 A. Correct.

4 Q. You write I would like -- strike that.

5 I would still like to stay with GeoTek. They
6 know more about geology than Green Horizons.

7 Do you see that language?

8 A. Yes.

9 Q. Why did you make that recommendation to the
10 board?

11 A. Because Green Horizons is not a civil engineer or
12 a geological company.

13 Q. Or a geologist?

14 A. Yeah, a geologist. Okay.

15 Q. What is the importance of having a civil engineer
16 at this time?

17 A. You've been after me about no civil engineers
18 ever being involved in this project. So this is --
19 we're stating that we're using a appropriate company,
20 and not the landscape company to tell us how to
21 remediate the slope.

22 Q. Is GeoTek a civil engineer?

23 A. I presume they must have a civil engineer
24 onboard.

25 Q. Let's go back to Exhibit 6, which is the

1 May 23rd, 2024 as-graded report by GeoTek.

2 A. Which one? 23rd?

3 Q. Yes. And I'm on page 4.

4 A. Okay.

5 Q. It's under section 3.

6 A. Okay. Okay. I've got it right here. Page 3.

7 Oh, you want page 4. Sorry, sorry. Okay.

8 Q. First full paragraph, GeoTek recommends the
9 existing area drain system at the top of the retaining
10 wall cease the transmission of surface water into the
11 subsurface.

12 Do you see that language?

13 A. Yes, I do.

14 Q. This can be performed by different means and
15 methods. The following are options and considerations.
16 Management of surface water is not a geotechnical field
17 of expertise.

18 Do you see that language?

19 A. Uh-huh.

20 Q. And a civil engineer should be consulted upon to
21 provide professional management of surface water.

22 Do you see that language?

23 A. Yes, I do.

24 Q. When you received this report on May 23rd,
25 2023 --

1 A. 2024.

2 Q. 2024. Thank you.

3 Did you question why GeoTek is making
4 recommendations if they're not a civil engineer?

5 A. No.

6 Q. Why not?

7 A. They had the most experience in dealing with
8 instances like this. So we just relied on them to
9 have -- to give us the right direction.

10 Q. Does anything in this report, which is Exhibit 6,
11 indicate that the work to be performed on the slope at
12 139 was completed with respect to stabilizing and fixing
13 the slope?

14 A. Okay. It says the purpose of this report is to
15 present a summary of observations and testing services
16 provided by this firm during the grading of the slope.
17 My question is well, if we were doing this why were we
18 doing it if not to stabilize the slope.

19 Q. My question was different.

20 Does this report state that the work that was
21 performed was final with respect to the stabilization of
22 the slope and the repair that was done?

23 A. Not -- no, it doesn't.

24 Q. It does not, correct?

25 A. Right.

1 Q. In fact, it states that further work should be
2 performed, correct?

3 And again, I will guide you there. Page 4 --
4 it's a continuation of what we were reading. After
5 GeoTek states that management of surface water is not a
6 geotechnical field of expertise and a civil engineer
7 should be consulted upon to provide professional
8 management of surface water.

9 The next full paragraph. The area drains behind
10 the retaining wall can be sealed by means of a
11 watertight cap.

12 Do you see that?

13 A. Yes.

14 Q. This will stop the introduction of surface waters
15 into the wall drain system, and the existing system can
16 remain in place and function as a wall drain system
17 without furth modification. Sealing the area drain will
18 most likely allow surface water, shedding downslope, to
19 flow over the existing retaining wall.

20 Do you see that?

21 A. Uh-huh, yes, I do.

22 Q. So that's one option that GeoTek is providing for
23 future work, correct?

24 A. Correct. And I do know that the drains were
25 sealed.

1 Q. How do you know that?

2 A. It was done. There's a cap on top. You can see
3 it.

4 Q. This is for future work though, correct?

5 A. Well, this was done, yeah, after this report.

6 Q. Who performed that work?

7 A. Again, I don't remember.

8 Q. When was the work performed?

9 A. I don't remember.

10 Q. Who would have that information?

11 A. Whoever did the work.

12 Q. The report continues, Prior to the slope repair,
13 a surface drainage swale ditch -- swale/ditch was not
14 observed along the top of the wall. Swales/ditches are
15 common design/construction technique to collect surface
16 waters shedding down a slope and transfer the water
17 laterally along the top of the wall to reduce the
18 potential for surface water to flow over the top of a
19 retaining wall.

20 Do you see that language?

21 A. Uh-huh, yes, I do.

22 Q. That's not how the French drain was installed,
23 was it?

24 A. No, it's not a swale or a v-ditch.

25 Q. The report continues, a swale or a v-ditch

1 constructed behind the top of wall should help manage
2 surface waters shedding downslope away from flowing --
3 away from flowing over the face of the retaining wall.

4 Do you see that?

5 A. Yes.

6 Q. The new area drains should be constructed of
7 solid conduit and discharged to a suitable location
8 (typically the front of the curb face).

9 Do you see that language?

10 A. Yes.

11 Q. Was the French drain solid or perforated?

12 A. It was perforated.

13 Q. Is the French drain that still exists on slope
14 139 solid or perforated?

15 A. Perforated.

16 Q. That is not in accordance with what your own
17 civil -- geological expert GeoTek was recommending,
18 correct?

19 A. When the excavation was open and GeoTek was there
20 and they observed the French drain, they did not say
21 that it was not the right one. They said that they
22 could cover it back up, that it was fine.

23 Now later when Mountain Movers said oh, by the
24 way, this is a perforated drain, they changed their
25 statement. But at this point the drain was covered.

1 Q. What is the current condition of the drain that
2 was installed by the homeowners association in 2019?

3 A. I don't know. I have no privy knowledge to be on
4 the property.

5 Q. Was it removed?

6 A. No.

7 Q. It still exists, correct?

8 A. Yes.

9 Q. In fact, the HOA connected the top drains into
10 that French drain, correct?

11 A. At the ends, yes.

12 Q. So the HOA is still introducing water into the
13 perforated French drain that it installed in 2019,
14 correct?

15 A. I assume so. I haven't opened it up and
16 investigated it.

17 Q. But GeoTek did, correct?

18 A. Not after the -- it was closed up.

19 Q. So the HOA approved work to reintroduce water
20 back into the French drain as part of its quote/unquote
21 repair of the slope; is that correct?

22 MR. COMBS: Objection. Calls for a expert
23 opinion.

24 THE WITNESS: No.

25 ///

1 BY MR. ALEXANDER:

2 Q. Is that correct?

3 A. I don't -- like I said, we followed their
4 recommendations. And when they said it was okay, we
5 went okay, it's okay. Then when they say it's not okay,
6 you know, which is it? And --

7 Q. So if at any one point GeoTek told you that it is
8 not okay, what does that suggest to you?

9 A. That we would have to go back in and change the
10 French drain or remove it.

11 Q. At whose cost?

12 A. At the cost of this whole remediation, I presume.

13 Q. Who is responsible for changing out the French
14 drain itself?

15 A. I -- now because we know the homeowner owns the
16 property, it would probably be -- fall back on the
17 homeowner.

18 Q. Did the homeowner install the French drain?

19 A. Previous homeowner, no, they did not.

20 Q. Who installed the French drain?

21 A. The HOA.

22 Q. So who is responsible for replacing the French
23 drain?

24 MR. COMBS: Objection. Calls for a legal
25 conclusion.

1 BY MR. ALEXANDER:

2 Q. You may answer.

3 Who installed the French drain?

4 A. I said --

5 MR. COMBS: Objection. Asked and answered.

6 BY MR. ALEXANDER:

7 Q. It was the HOA, correct?

8 MR. COMBS: Objection. Asked and answered.

9 BY MR. ALEXANDER:

10 Q. You can answer.

11 MR. COMBS: You're badgering the witness.

12 BY MR. ALEXANDER:

13 Q. Who is responsible for the French drain?

14 MR. COMBS: Objection. Asked and answered.

15 BY MR. ALEXANDER:

16 Q. You're refusing to answer?

17 A. Yes.

18 MR. COMBS: She's already answered you. She
19 answered you two or three times.

20 MR. ALEXANDER: Not to the question of who's
21 responsible for the French drain.

22 MR. COMBS: Okay. Objection. Calls for a
23 legal conclusion.

24 You may answer.

25 And she already answered you. She said

1 because it's known to be the owner of the lot who is --
2 owns the French drain. That is the person who's
3 responsible. So she already answered your question.

4 BY MR. ALEXANDER:

5 Q. Is that your answer?

6 A. Yes.

7 Q. What your attorney just testified to?

8 MR. COMBS: I didn't testify. That is a
9 mischaracterization.

10 THE WITNESS: I stated --

11 MR. COMBS: Hold on. Hold on. You already
12 answered.

13 She already answered your question. And you
14 answered -- you asked her the same question again. I
15 objected. Okay. So you can move on with your
16 examination.

17 BY MR. ALEXANDER:

18 Q. But the HOA didn't know -- strike that.

19 The HOA didn't make a determination as to who
20 owns the slopes until amending the CC&Rs in 2025,
21 correct?

22 A. No.

23 Q. When did the HOA make a determination as to who
24 owns the slopes?

25 A. Once they realized that if you look at the deeded

1 property, you knew that the slope was owned by the
2 homeowner, not common.

3 MR. ALEXANDER: We've been going for another
4 hour. It's lunchtime.

5 (Lunch recess taken from 11:53 to 12:54.)

6 We can go back on the record.

7 BY MR. ALEXANDER:

8 Q. Ms. Comouche, you understand you're still under
9 oath, correct?

10 A. Yes, I do.

11 Q. Okay. I'll mark next Exhibit 11.

12 (Exhibit 11 was marked for identification.)

13 Are you familiar with this document?

14 A. Uh-huh.

15 Q. And what is this document?

16 A. It's just an update about slope 139. I was
17 thanking Paul Elsesser for the updates and Bill for
18 being prompt in getting people out here, evaluating and
19 et cetera.

20 Q. This was dated May 10th, 2023, correct?

21 A. Yes.

22 Q. Was this before or after GeoTek's preliminary
23 report?

24 A. I don't -- where's the paper?

25 Q. I'll represent to you --

1 A. Can you refresh my --

2 Q. Yeah. That was July 7, 2023.

3 A. Okay. So yes, this is before.

4 Q. Okay. I don't know where it went. If I could
5 turn your attention to the second page of Exhibit 11, we
6 have an email May 10th, 2023 from Paul Elsesser.

7 Do you see that email?

8 A. Yes.

9 Q. He writes -- and you're a recipient, correct?

10 A. Yes.

11 Q. Here is a fast update on the slope problem.
12 Bullet point 1, quote/unquote facts, shared in Jill
13 Mann's email about the repairs in 2019 have been set
14 straight. First, what happened was a surface water
15 problem, not the deep earth slope issue we are -- now
16 face -- we now face.

17 Secondly, professionals were involved in
18 diagnosing the problem. The HOA had a professional
19 excavation company complete the prescribed repair and
20 the installation of French drains above the wall has
21 prevented water from flowing over the wall.

22 Do you see that language?

23 A. Uh-huh.

24 Q. Is that a yes?

25 A. Yes.

1 Q. When you received this email did you adopt
2 Mr. Elsesser's -- strike that.

3 When the HOA board received this email did it
4 adopt Mr. Elsesser's findings as its own?

5 MR. COMBS: Objection. Vague and ambiguous
6 as to adopt. I mean, adopt for what purpose?

7 MR. ALEXANDER: In making its evaluation
8 with respect to the causation of the slope failure.

9 THE WITNESS: Yes. He was our man on the
10 ground.

11 BY MR. ALEXANDER:

12 Q. Did the HOA board ask Mr. Elsesser who the
13 professional excavation company was that completed the
14 French drain installation?

15 A. I have no knowledge. I don't know.

16 Q. If there was a professional excavation company
17 that was hired, that would be reflected in the minutes
18 around that time, correct?

19 A. Yes. I think, however, what he was trying to
20 state was that we hired a professional excavation
21 company to complete the repairs. It had nothing really
22 to do with the installation of the French drain. He
23 never even lived there when the French drain was put in.
24 So he would have no knowledge.

25 Q. So you believe this language refers to the

1 repairs that were performed by Mountain Movers?

2 A. Correct.

3 Q. Okay. And then he writes The plugged drains have
4 been unplugged by Bill Katz.

5 Do you see that?

6 A. Correct, correct.

7 Q. Which drains is he referring to?

8 A. They -- I'm presuming the drains that the -- the
9 outlets for the French drains.

10 Q. I'll mark next in order Exhibit 12.

11 (Exhibit 12 was marked for identification.)

12 Okay. This is top email there is July 4th, 2023,
13 correct?

14 A. Correct.

15 Q. And it's from you?

16 A. It's from me.

17 Q. To the board?

18 A. To the board.

19 Q. We need to know the lawyer's opinion asap as the
20 owner is now here and should be given the information
21 concerning her property and her responsibility.

22 Do you see that language?

23 A. Yes.

24 Q. I'm going to turn your attention to the bottom of
25 the first page, which is an email dated June 24th, 2023.

1 A. Okay.

2 Q. It's from Paul Elsesser. But really the body of
3 the email is on the next page. He writes As promised
4 yesterday here are my thoughts about the main points we
5 should ask the lawyers to incorporate in the letter to
6 Jill Mann, and in the more general communication with
7 the rest of the community.

8 I'm not a lawyer and my own opinions swing day
9 by day. And then he writes Bullet points to include in
10 letter to Jill Mann. Followed by Bullet points to
11 include letter to Las Brisas Pacifica homeowners.

12 Do you see those two?

13 A. Yes.

14 Q. With respect to letter to Jill Mann, second
15 bullet point provides Based on available legal documents
16 (CC&Rs, rules and regulations, bylaws, deeds) the
17 homeowner is responsible for the slope.

18 Do you see that?

19 A. Yes.

20 Q. Was it the HOA's position on July 4th, 2023 that
21 the homeowners were responsible for the slopes based off
22 of the documents identified here?

23 A. Yes. Because I believe they sent a letter to, I
24 mean, the community stating that, you know, the -- the
25 area behind your house, the slope or whatever is not

1 common area. The property belongs to you. You know,
2 because people didn't know.

3 Q. Okay.

4 A. They just all presumed it was common area.

5 Q. And the second header there is -- again, the
6 bullet points to the homeowners. And the first --
7 strike that.

8 The second bullet point provides The problem has
9 been studied by a geologic engineering company.

10 Do you see that?

11 A. Yes.

12 Q. And the first sub bullet point, Cause is
13 attributed to the extremely heavy rain this year.

14 Do you see that language?

15 A. Huh? Yes, I read that.

16 Q. Who is the geologic engineering company in this
17 paragraph?

18 A. GeoTek.

19 Q. And it -- what he's referring to is the same
20 report that we have discussed from the beginning of this
21 deposition, correct?

22 A. Uh-huh.

23 Q. So when he writes Cause is attributed to the
24 extremely heavy rain this year, what portion of the
25 report is he referring to?

1 A. I have no -- no idea because -- he wrote it. I
2 didn't. He's obviously -- like I said, he was man on --
3 right there on the ground. And I -- just probably from
4 evidence that he saw, personal evidence, I mean.

5 Q. He was acting on behalf of the HOA board,
6 correct?

7 A. Uh-huh.

8 Q. Yes?

9 A. Yes. I'm sorry. I keep forgetting.

10 Q. That's okay.

11 And you are here on behalf of the HOA board,
12 correct?

13 A. Correct.

14 Q. So how did the HOA determine that the cause is
15 attributed to the extreme heavy year this year as
16 represented in this bullet point?

17 A. Because looking at the circumstances, there was
18 no other reason for it to be -- to fail. Water was
19 turned off, you know. If it was caused by excessive
20 moisture, the moisture had to come from somewhere. And
21 it didn't come from my irrigation lines. So it came
22 from the rain.

23 Q. So as you sit here today, after everything that
24 we've reviewed, is it still your opinion acting on
25 behalf of the HOA board that the cause of the slope

1 failure was the excessive rain?

2 A. Yes.

3 Q. As identified by GeoTek?

4 A. I can't -- I can't assert that. All I know is
5 that we made a decision that it was caused by excess
6 rain following the -- you know, just the normal of
7 looking at what happened during that period of time and
8 how much rain came down and there was no outside water
9 source.

10 So what caused it? You're looking for an answer,
11 it would be rain. It wasn't, you know, because we
12 watered too much or --

13 Q. Okay.

14 A. -- the pipes -- irrigation pipes broke, you know.
15 By a process of elimination, that's how we came to that
16 decision.

17 Q. So you're changing your testimony?

18 A. No, I'm not.

19 Q. Okay. You're sticking with your testimony that
20 the cause of rain that the HOA identified -- I'm sorry.
21 The cause of the slope failure that the HOA identified
22 in the July 2023 time frame was based on the GeoTek
23 report.

24 You're sticking with that testimony?

25 A. Yes. The way we read it, it seemed like excess

1 rain.

2 Q. I'm going to show you what was previously marked
3 as Exhibit 4 to the Kent Berchiolli deposition. Take a
4 minute to review this email chain. And I have a couple
5 of follow-up questions regarding the July 15th, 2023
6 email from Kent to the board. Let me know when you're
7 done so we can --

8 A. Okay. You're talking about the 11:46 one?
9 Because there's several July 15ths.

10 Q. That's true. That's true.

11 A. Okay.

12 Q. It's titled difficult decision about the job.

13 A. Okay. Yeah. Okay.

14 Q. Okay. Turn your attention to page 2 of Exhibit 4
15 to Mr. Berchiolli's deposition. It's the fourth
16 paragraph that begins with All slopes because of the
17 difficulty of maintenance, continuity of planting and
18 control of slope drainage, correct, if problems have
19 been the responsibility of the landscape maintenance
20 group.

21 Do you see that language?

22 A. Uh-huh, yes, I do.

23 Q. Do you agree that in the history of the
24 Las Brisas HOA this statement is accurate?

25 MR. COMBS: Objection. There's several

1 statements in this paragraph.

2 MR. ALEXANDER: The one that I just read.

3 THE WITNESS: Yes.

4 BY MR. ALEXANDER:

5 Q. Two paragraphs down, If the homeowner is assigned
6 the responsibility to repair problems, it is possible
7 that a lack of funds or their choice of solutions to
8 repair damage has a negative effect on all property
9 owners in the area. Hence a problem could spread if not
10 managed quickly and properly.

11 Do you see that language?

12 A. Yes, I do.

13 Q. Do you agree with that language?

14 A. This is relating to repair of the slope, not --

15 Q. Correct.

16 A. -- the plantings?

17 Q. Yes.

18 A. Yes, I do.

19 Q. He continues a little bit further down, on April
20 28th, 2023, I received an email from Sandra Comouche,
21 our treasurer, stating that our reserves have over
22 98,000 for fences and slope repair work that can be used
23 for unit 139, if needed.

24 Do you see that language?

25 A. Yes.

1 Q. Why did you send an email to Mr. Berchiolli on
2 April 28th, 2023 making that representation?

3 A. Because I presumed that the slope was common
4 area. This is a day after the incident.

5 Q. Because the HOA had an understanding that as of
6 the date of the incident the HOA was treating those
7 slopes as common areas, correct?

8 A. It was being treated that way, yes.

9 Q. And I'm going to show you what was previously
10 marked as Exhibit 1 to Mr. Berchiolli's deposition.
11 Well, it's Exhibit 1 from his deposition.

12 A. Whatever.

13 Q. Is this the same email dated April 28th that
14 Mr. Berchiolli is referencing --

15 A. Yes.

16 Q. -- in Exhibit 4?

17 A. Yes.

18 Q. And again, Exhibit 1 here is an email dated
19 April 28th, 2023 from you to the rest of the board,
20 correct?

21 A. Oh, yeah. Okay.

22 Q. It's at the top of the page.

23 A. Yeah.

24 Q. And you write Once we have a comprehensive
25 analysis of the slope, we can proceed with repairs.

1 Reserved for fences and slopes has 98,000 in it. So
2 money is available. May not be liquid, as some of it is
3 in CDs. And you sign off Sandra.

4 Correct?

5 A. Uh-huh.

6 Q. Is that right?

7 A. Yes, that's correct. And the reason I said that
8 was because I presumed it was common area.

9 Q. You didn't put a condition on this stating we
10 have to first figure out if it's common area or not,
11 correct?

12 A. Well, because it was assumed it was.

13 Q. Okay. And I'm going to mark the next in order in
14 your deposition Exhibit 13.

15 (Exhibit 13 was marked for identification.)

16 Which is the Las Brisas balance sheet as of --

17 A. Financial sheet. Okay. Yeah.

18 Q. -- March 31st, 2023.

19 A. Okay.

20 Q. Is this the most recent balance sheet -- well,
21 strike that.

22 Is Exhibit 13 what you're referring to in your
23 April 28th, 2023 email?

24 A. It could be this balance sheet or it could be the
25 one from April.

1 Q. If we look at Exhibit 13, and we have account
2 number 9630 on the left-hand side column there, do you
3 see it?

4 A. Yes, I see it.

5 Q. Reserves -- reserve - fences.

6 Do you see that?

7 A. Yes, I do.

8 Q. And the dollar amount is \$98,622.99, correct?

9 A. Correct.

10 Q. Is this what you were referring to when you said
11 to the board we have enough for -- in reserves for -- to
12 fix this?

13 A. Yes.

14 Q. Why pull it out of fences?

15 A. These reserve categories are umbrella names. So
16 under them there are several sub categories in each one.
17 And whatever reason, this seemed to be the one that fit
18 the best for the problem.

19 Q. Oh, I see. Okay.

20 A. Yeah. I wasn't going to take it out of roads and
21 I wasn't going to take it out of pool, but --

22 Q. That's where it made sense to take it out of?

23 A. Yeah.

24 Q. Okay. It's not termite?

25 A. Yeah, or termite.

1 Q. Yeah. Okay. All right. And I'm saying that in
2 jest of course.

3 A. Yeah, I know.

4 Q. Okay. All right. Now let's take a look at a
5 couple of more of these balance sheets, and maybe you
6 could explain to me the process a little better.

7 A. Yes, they're quite prolific.

8 Q. Yeah. I'll mark next in order Exhibit 14.

9 (Exhibit 14 was marked for identification.)

10 And these might be a little bit out of date
11 order, but let's see.

12 A. Well, this is 12 -- this is year end for 2022.

13 Q. 2022. So December 31st, 2022 balance sheet,
14 correct?

15 A. Uh-huh, correct.

16 Q. Here we have account number 9620.

17 A. I see, yeah.

18 Q. And what does it say?

19 A. It says landscape slopes.

20 Q. And the dollar amount here is \$14,899.89,
21 correct?

22 A. Correct.

23 Q. The next item is 9630, which is reserve fences?

24 A. Correct.

25 Q. And that's for \$19,477 --

1 A. Correct.

2 Q. -- and seven cents, correct?

3 A. Uh-huh, correct.

4 Q. So if we look at a comparison -- if -- strike
5 that.

6 If we put Exhibit 14 and 13 next to each other,
7 we see that the category of 9620 account number is on
8 14 but not on 13.

9 A. Okay. Because after December of 2022 it was
10 decided that we would condense these categories, which
11 we can do at anytime.

12 Q. Okay.

13 A. And so we put several of them into fences. So it
14 was probably landscape, slope, fences and maybe
15 irrigation controllers.

16 Q. Okay.

17 A. Like I said, because they have sub categories
18 under them.

19 Q. So you combined them --

20 A. Yeah.

21 Q. -- to make it easier?

22 A. Yeah, make it easier.

23 Q. So if we were to add up the dollar amounts of the
24 categories that were combined --

25 A. It would be close.

1 Q. -- it will be close.

2 It will be the final of the combined category?

3 A. There's money going in every month into these
4 reserves.

5 Q. Sure. Okay. I understand. Okay.

6 So that's why when you communicated with the HOA
7 board on April 28th, 2023, you recommended hey, let's
8 take it out of the reserves and out of fences because
9 you knew that slopes got absorbed by fences; is that an
10 accurate summary?

11 A. It is an accurate summary.

12 Q. Okay. And just for the sake of I suppose
13 kicking a dead horse, I'm going to mark next in order
14 Exhibit 15.

15 (Exhibit 15 was marked for identification.)

16 A. Okay. So yeah, obviously you can see the
17 difference immediately.

18 Q. Yeah. So let's lay some foundation for -- this
19 is a balance sheet --

20 A. Year end 2021.

21 Q. Okay.

22 A. Or October 2021.

23 Q. So roughly a year prior --

24 A. Yeah.

25 Q. -- to what we were just discussing, correct?

1 A. Correct.

2 Q. And again, we have the account number 3210, which
3 is reserve - landscape, slopes, correct?

4 A. Correct.

5 Q. That dollar amount got absorbed under fences,
6 correct, or it got recategorized?

7 A. Right.

8 Q. As treasurer how would you describe it?

9 A. We consolidated several of the individual line
10 items into one big one. But it had sub categories in
11 it.

12 Q. Okay. So --

13 A. If you look at the reserve study, you can see
14 where the sub categories fall.

15 Q. It was a consolidation?

16 A. Correct.

17 Q. Okay. All right.

18 A. Can I talk to him? Can I talk to Craig?

19 Q. On a break, yeah.

20 A. Oh, on a break?

21 Q. Do you need to take a break? I'll let you talk
22 to your attorney. Okay. All right. Go ahead.

23 MR. ALEXANDER: We're off the record.

24 (Discussion held off the record from 1:22 to
25 1:24.)

1 We're back on the record.

2 BY MR. ALEXANDER:

3 Q. You understand you're still under oath?

4 A. Yes.

5 MR. ALEXANDER: And off the record Counsel
6 and I spoke.

7 And Counsel, you're giving me permission to
8 ask her what she told you off the record; is that right?

9 MR. COMBS: Yes, you have permission to ask
10 her what she told me off the record. And I want her to
11 tell you what she told me off the record.

12 BY MR. ALEXANDER:

13 Q. Okay. What did you tell your attorney off the
14 record?

15 A. Okay. Prior -- okay. In the reserve study there
16 was a line item that said fences and slopes. And if you
17 went down that it would say slopes and the longevity or
18 whatever was 9999. So, you know, they had no idea how
19 long are slopes supposed to last.

20 There wasn't a year that you could put on it,
21 well, they're going to last 20 years. And the money
22 allocated, that was always zero because the reserve
23 study could not come up with a number that could cover.

24 Q. Okay.

25 A. That would be reasonable.

1 Q. Okay.

2 A. So even though there was slopes in here, it was
3 not funded. And that was only for common area.

4 Q. Where in the HOA records is that reflected?

5 A. In the reserve studies.

6 Q. In the reserve studies?

7 A. Uh-huh.

8 Q. Okay. So you wanted to fund the slopes and put
9 them under fences essentially, correct?

10 A. Well, yeah.

11 Q. Okay.

12 A. I said, you know, if this is the category, and
13 there's this much money in there, and slopes is one of
14 them.

15 Q. Put them together?

16 A. Put them together.

17 Q. Consolidate them?

18 A. Yeah.

19 Q. So it doesn't change your testimony?

20 A. No, it doesn't change anything. But I just
21 wanted you know that basically there was no money in
22 that line item to repair the slopes, common area slopes.

23 Q. Until they were consolidated under fences?

24 A. Even then in the line item it was still zero.

25 Q. Well, okay. But that's not what your email

1 stated on April 28th, and that's not what the
2 consolidated --

3 A. No, I'm just saying because --

4 Q. -- fences item states.

5 A. That it's consolidated. I can take money in
6 there and use it. I can take money from there and move
7 it to another reserve item.

8 Q. Okay. But again, it doesn't change your
9 testimony that the HOA was prepared to pay for slope
10 repair out of the fences?

11 A. Thinking it was common area.

12 Q. Okay. Okay. So your testimony stands?

13 A. Yeah. I just thought that if you knew that, it
14 might make a little bit of difference.

15 Q. No, that's why we're here. It's to explore what
16 happened. Okay.

17 Do you know at what point how far back in time I
18 would have to go to not see the category 3210 reserve
19 landscape and slopes?

20 A. To not see it?

21 Q. Yeah.

22 A. I have no idea. I think it was -- it's been
23 there.

24 Q. At least since 2011 or 2013 when you became --

25 A. Well, probably even before that when I moved in.

1 Q. Okay.

2 A. 2005.

3 Q. Okay. All right. So let's go back to Berchiolli
4 Exhibit 4, which is the difficult decision, tough job
5 email. He continues a board member in 2019 -- oh,
6 strike that.

7 His very next sentence is per Sandra, for some
8 reason this money is now not available.

9 Do you see that?

10 A. Yes, being that this was private property, not
11 common area.

12 Q. So at the time that the incident occurred it
13 was the HOA's position that it was common area, but
14 subsequently the HOA changed its position?

15 A. No, in reality it wasn't common area. It was the
16 owner's property. It was deeded. It was just that that
17 information wasn't readily known.

18 Q. Okay.

19 A. Like I said, again, the HOA doesn't get
20 everybody's deed and looks at the property lines and
21 determines where their property lines are.

22 Q. How would anybody in the HOA have knowledge
23 whether or not the slopes are private versus common
24 area?

25 A. By looking at your deed.

1 Q. Would communications from the HOA taking a
2 position on the issue inform members whether repair
3 responsibilities for private slopes are maintained by
4 the HOA?

5 MR. COMBS: Objection. Calls for
6 speculation.

7 THE WITNESS: You're saying repairs for
8 maintenance?

9 BY MR. ALEXANDER:

10 Q. Slope repairs.

11 A. Okay. There's a difference between maintenance
12 and repair. That line has to be drawn.

13 Q. I would agree with you. Okay. But it doesn't
14 matter what I think.

15 A. No. I mean, but at least we're on the same --

16 Q. Okay.

17 A. So prior --

18 Q. If the HOA is communicating to the membership
19 or to membership that there's both a repair and a
20 maintenance being -- occurring at the -- on a slope,
21 there's a distinction between maintenance and repair,
22 correct?

23 A. Correct.

24 Q. If the HOA wanted to communicate that it's only
25 maintenance, it would use language that says we only do

1 maintenance, correct?

2 A. Correct. However, volunteers, landscape chairs,
3 HOA members, committee board members, they use a word
4 that they want to use. A lot of times repairs was
5 interchanged with maintenance.

6 So they would say I'm going to repair the slope.
7 I'm going to go plant two flats of flowers on it. Well,
8 you're not repairing the slope, you're maintaining it.

9 Q. Has the HOA ever admonished such members for
10 using the wrong terminology?

11 A. Not until after the incident.

12 Q. So up until the incident the HOA drew no
13 distinction between maintenance and repair; isn't that
14 right?

15 A. No, it was always just maintenance -- I mean,
16 it's -- again, it's a word of semantics. Which word do
17 you use. You know, I'm maintaining this or am I
18 repairing it. Well, if I'm just planting new plants,
19 I'm not repairing the slope. I'm just planting new
20 plants.

21 So somebody may think that well, yeah, I'm
22 repairing the damage because these plants are dead. But
23 they're really not repairing anything. They're
24 replacing with new vegetation.

25 Q. Okay. Mr. Berchiolli continues, A board member

1 in 2019 responded to a damage report concerning soil and
2 water spillage over unit 139's retaining wall. The
3 board authorized installation of a French drain system
4 behind the wall as a solution to this problem.

5 That's the French drain installation we've been
6 talking about, correct?

7 A. Yes.

8 Q. No dispute there?

9 A. No dispute.

10 Q. The next paragraph, two sentences down, During
11 the following months the board authorized cleaning of
12 the French drains by the same board member that
13 installed them to ensure that they are now working.

14 Do you see that language?

15 A. Yes.

16 Q. Is it the board's position that the French drains
17 were not working?

18 A. As a board member I didn't know if they were
19 working or not.

20 Q. Okay. Notwithstanding whether you knew or not,
21 the very next sentence states this was done without the
22 knowledge and permission of the homeowner.

23 A. Okay. They just -- they again --

24 Q. Why did the HOA go on a homeowner's property
25 without the knowledge and permission of the homeowner

1 and do this?

2 A. I think again it was just a gesture of goodwill.

3 I'll clean out the drain and it should work now.

4 Q. So they trespassed.

5 The HOA trespassed on a member's property,
6 private slope without the knowledge and permission of
7 the homeowner out of the goodness of its heart?

8 A. Yes.

9 MR. COMBS: Objection. Calls for
10 speculation. Calls for a legal conclusion.

11 BY MR. ALEXANDER:

12 Q. Yes?

13 A. Yeah, I'm just saying yeah, it was like okay, we
14 were all in a state of panic.

15 Q. Why is the HOA in a state of panic over a private
16 slope?

17 A. Again, because we -- at the beginning we didn't
18 know it was private. We assumed it was common. Plus,
19 we were worried about endangering any other homes around
20 if this -- if the damage increased, were we going to
21 be -- who is going to be liable if these homes up above
22 started slipping down.

23 Q. As a result of the French drain installation?

24 A. No, no, as a result of the slippage.

25 Q. So why is the HOA board going in and cleaning out

1 the French drain if they weren't concerned about the
2 French drain?

3 A. I really -- you'd have to ask Mr. Katz who did
4 it.

5 Q. Well, Mr. Katz is not here designated as the PMQ
6 for the HOA.

7 A. I know. I know. But I'm just saying again, it
8 was just a gesture of okay, let me go in there and clean
9 this out.

10 Q. Why didn't the HOA clean out her chimneys?

11 A. Because.

12 Q. Because it's not relevant to the slope, correct?

13 A. Right.

14 Q. Yeah. And the French drain is relevant to the
15 slope, correct?

16 A. Correct.

17 Q. And it's relevant to the slope because the HOA
18 installed that French drain, correct?

19 A. Yes. Again, out of gesture of goodwill.

20 Q. What was the gesture of goodwill?

21 A. The woman that owned the house was having this
22 problem with mud and water coming over. And, you know,
23 she didn't know what to do. So it was like okay, how
24 are we going to remedy this situation for this lady.

25 And it was like the -- I don't -- again, I wasn't

1 really privy on, you know, what to install, how to
2 install it. The other three men were on the board --
3 excuse me.

4 Q. Okay.

5 A. So --

6 Q. So the French drain was installed out of the
7 goodness of the HOA's heart, correct?

8 A. Yeah.

9 Q. Okay.

10 A. A gesture of goodwill.

11 Q. If it had nothing to do with the slope failure,
12 why is the HOA concerned about it being clogged or not?

13 A. I don't think they were really concerned. It
14 wasn't like oh, you know, I've got to get this thing
15 unclogged or else.

16 Q. Well, you just testified that you were in a state
17 of panic, correct?

18 A. Right, about the slippage. The French drain we
19 believe had nothing to do with the slippage.

20 Q. So why is the HOA going in after a slippage and
21 clearing out the French drain?

22 A. Like I said, again, a matter of, you know, being
23 a good neighbor, a Good Samaritan or whatever.

24 Q. Who is responsible for the French drains?

25 A. See, that's a quagmire because at the time we

1 thought it was common area. Then what, four years later
2 we find out it's private property.

3 Q. Well, I'm not asking about the slope itself. I'm
4 asking about the French drain.

5 A. I'm talking about the French drain that was
6 installed. It was installed in '19. And we didn't
7 realize private property until '23. So I mean, it
8 was -- we didn't do it because we knew it was private
9 property.

10 Q. Is it your position that the French drain itself
11 was private property?

12 MR. COMBS: Objection. Calls for a legal
13 conclusion.

14 THE WITNESS: Yeah, I don't -- can't answer.

15 BY MR. ALEXANDER:

16 Q. So as you sit here today on behalf of the HOA as
17 its designated PMQ on the topic, it's your testimony
18 that the French drain had nothing to do with the slope
19 failure, correct?

20 A. Correct.

21 Q. Yet the HOA was augering and trying to clear out
22 the French drain post failure, correct?

23 A. Correct. Mainly because it was still raining and
24 we wanted to make sure that the water came out the weep
25 holes, the drain holes.

1 Q. And this was notwithstanding GeoTek advising that
2 that French drain is reintroducing water back into the
3 slope, correct?

4 A. That information didn't come until July when we
5 got the report.

6 Q. So you made the determination of the causation of
7 the slope failure prior to GeoTek's final report,
8 correct?

9 A. Yes.

10 Q. On the next page he writes Reserve money has been
11 set aside for emergency repair use.

12 Do you see that language?

13 A. Yes.

14 Q. That's the same reserve money we've been talking
15 about, correct?

16 A. Correct. Which basically was non-existent.

17 Q. Except that by the time this rolled around
18 everything was consolidated under one category under
19 fences, and it had \$98,000, correct?

20 A. Uh-huh.

21 Q. Is that a yes?

22 A. Yes. I'm sorry.

23 Q. Okay. I'm going to mark next in order

24 Exhibit 16.

25 (Exhibit 16 was marked for identification.)

1 And this is reserve study review report,
2 September of 2004.

3 Do you see that?

4 A. It is.

5 Q. And the section number that I'm interested in is
6 02825 --

7 A. 028- --

8 Q. It's about halfway.

9 A. Okay. I see now.

10 Q. It's titled irrigation/landscaping improvements
11 and upgrades (i.e., new bed and planter materials,
12 including tree, shrub and mulch replacements, turf
13 renovations, corrective repairs to distribution
14 components, brow ditches, slope erosion controls, et
15 cetera).

16 Do you see that language?

17 A. Yes.

18 Q. How much was in reserves for slope erosion
19 controls in that?

20 A. Okay. 24,5- -- yeah, 500.

21 Q. And this is a reserve study, correct?

22 A. Right. It mentioned replacement cost was 35,000.
23 But we had 24,000.

24 Q. Okay. The dollar amount is not zero, correct?

25 A. But this isn't just slope repair. This is

1 irrigation. This is --

2 Q. But it includes slope repair for this category
3 description?

4 A. Well, it's talking about -- where is the slope?
5 Slope erosion controls. Again, that's common area. And
6 there was no money actually for slope repairs. It was
7 just --

8 Q. Well, in 2004 it was the HOA's understanding that
9 all the slopes are common area slopes, correct?

10 A. No, by '24, no.

11 Q. 2004.

12 A. Oh, 2004. I'm sorry. I would assume. I
13 wasn't -- I didn't live there at the time.

14 Q. Okay. So the reserve study does not show a zero
15 for slope erosion controls, correct?

16 A. Well, because that's -- that particular category
17 still has many components to it. It's talking about new
18 beds, planter material, trees, shrubs, mulch, turf,
19 corrective repairs to distribution components, brow
20 ditches, slope and the slope erosion.

21 So controls. That's still -- that's controls,
22 but not repairs. Because it says improvements and
23 upgrades. It doesn't say repair.

24 Q. Okay. Would a French drain be an upgrade to a
25 slope?

1 A. I don't know. I'm not a landscape person.

2 Q. Okay. Would a French drain improve erosion
3 control of the slope?

4 A. Probably. To my knowledge it would because it
5 would eliminate the water and mud coming over the walls.

6 Q. So the French drain does fall under erosion
7 control, correct?

8 A. I don't know. Monitoring is erosion control?

9 Q. I'm asking you.

10 A. I'm saying it's not.

11 Q. Well, you just offered the testimony that mud
12 flowing over the --

13 A. Muddy water.

14 Q. Muddy water?

15 A. Yeah.

16 Q. That's part of -- managing that water is part of
17 erosion control, correct?

18 A. I really don't know.

19 Q. Okay. It's because you don't have a civil
20 engineering degree, right?

21 A. Thank you. I do not. I have a degree in
22 chemistry though.

23 Q. Oh, okay. Where did you obtain your degree, by
24 the way?

25 A. Huh?

1 Q. How did you use your degree? Were you --

2 A. I worked in the industry. I worked in cooling
3 control for pharmaceuticals. I worked for Merle Norman
4 Cosmetics. I worked for Gillette.

5 Q. Okay.

6 A. And then I took time off to raise my family. And
7 then I went back and got a teaching credential and then
8 taught high school chemistry.

9 Q. Okay. Very nice. Very nice.

10 A. So I used it.

11 Q. I did not use my criminology degree. I'll tell
12 you that much. Okay. All right.

13 Let's mark the next in order which is Exhibit 17.

14 (Exhibit 17 was marked for identification.)

15 Okay. Do you have Exhibit 17 in front of you?

16 A. I do.

17 Q. Do you recall seeing this email chain?

18 A. I'm sure I did.

19 Q. I'll turn your attention to the second page.

20 And it's the first email in the chain, July 18, 2023,
21 10:46 AM from John Moore.

22 Who is John Moore?

23 A. Let me find you.

24 Q. Oh.

25 A. What was the date?

1 Q. July 18th, 2023.

2 A. At 10:26?

3 Q. 46.

4 A. I got 2:05. Oh, okay. Thank you.

5 Q. Yeah. Question pending is who is John Moore?

6 A. John Moore was the -- he worked for the property
7 management company. And he was our, in quotes, property
8 manager. So everything would be directed to him.

9 Q. Is he still your property manager?

10 A. No. He no longer works for the company.

11 Q. Who is your current property manager?

12 A. Ryan Phillips. And his assistant is Anesa --

13 Q. It's okay. I don't need to know the last name.
14 It's the second paragraph.

15 Also, after reading back through the letter, I
16 noticed something which I think should be amended. I
17 spoke with Paul and he agreed. In paragraph five, it
18 states: "You are urged to monitor your slopes and take
19 any mitigation measures that may be necessary to avoid
20 soil movement or other damage." And he continues.

21 I don't think I want to give homeowners carte
22 blanche to "any mitigation measures" without approval
23 from the architectural committee, who currently has
24 control over any changes to grade and drainage on a
25 homeowner's property.

1 Do you see that language?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. I do.

5 Q. Does this accurately summarize the HOA's
6 responsibilities of control over any changes to grade
7 and drainage on a homeowner's property?

8 A. No. It just says that whatever is done has to be
9 approved by the architectural committee. So people
10 can't just carte blanche go and put a gazebo on their
11 hill.

12 Q. Okay. And the HOA agreed with that --

13 A. Yes.

14 Q. -- statement?

15 Last paragraph. Also, it appears all are in
16 agreement to take out either a portion of the entire
17 last paragraph regarding the lack of any legal
18 responsibility of the association regarding slope
19 maintenance. And he continues.

20 Unsure if you want to leave the first two
21 sentences and simply eliminate the last one, which
22 reads: "The board of directors is contemplating whether
23 it is prudent to continue this maintenance going forward
24 and will make that determination in the upcoming weeks."

25 Do you see that?

1 A. Yes.

2 Q. What was the decision of the board after you
3 received these comments from the property management
4 company?

5 A. The board then kind of would not do any kind of
6 planting or tree trimming on private property owned --
7 owned private property, which it had done before.
8 Because again, all of the trees on San Marcos Boulevard,
9 and I think there's -- I don't know -- 20 of them, were
10 always trimmed by the HOA.

11 And it was part of our -- you know, we collected
12 money to do that through dues. And then we get a tree
13 company to come in and do the trimming of them.

14 So because now it was determined that this is
15 private property, it was like, you know, well, we're
16 not going to do any work on it then, but it's their
17 property. But they did continue watering and weed
18 control and stuff like that.

19 Q. Okay. And you write in response Take out the
20 last paragraph completely. Add the statement about the
21 ARC approval regarding the grade and drainage
22 responsibilities. Signed off Sandra.

23 Do you see that?

24 It's your response.

25 A. Okay. It appears -- oh, that last paragraph?

1 Q. Uh-huh, yes.

2 A. That's from John Moore.

3 Q. No, there's a response from you that I just read
4 into the record on July 18th, 2023 at 1:24 PM.

5 A. Okay. I got to find it.

6 Q. It's on page 2.

7 A. July 14th, 2023. Time?

8 Q. 1:24.

9 A. I don't know why I can't find these things in
10 here, but -- okay. I'm sorry.

11 Q. That's okay.

12 You instructed him what to do, right?

13 A. This was sent to John Moore, I'm presuming.

14 Yeah, so I -- well, in --

15 Q. That was your instruction?

16 A. For the board, yeah. We all agree that take out
17 the last paragraph and add the statement about the ARC
18 control.

19 Q. Okay. Did you refer to any governing documents
20 prior to making that instruction?

21 A. I'm sure it had to do with the fact that again,
22 HOA cannot fund private property.

23 Q. Based on what?

24 A. On the CC&Rs.

25 Q. What portion of the CC&Rs?

1 A. Again, I don't have the CC&Rs in front of me. I
2 didn't know I had to memorize them verbatim before I
3 came here.

4 Q. I'm not asking for a verbatim memorization.

5 A. Well, like I said, you've got all of the --
6 you've got our CC&Rs somewhere. And I'm sure you've
7 noted the paragraph, the subtitle.

8 Q. Well, I'm asking for your recollection.

9 A. My recollection is I know it's in there. I've
10 read it many times. But I cannot tell you the -- you
11 know, the chapter and verse.

12 Q. Genesis 1. Yeah. Okay.

13 A. Corinthians or something.

14 Q. Okay. But it is your recollection as you sit
15 here today that the CC&Rs provide that slope repairs are
16 going to be borne by the homeowner, correct?

17 A. Well, it's stated that no reserve money may be
18 used on private property. It doesn't delineate slope
19 repairs or -- I don't know what else it could be.

20 Q. Well, let's take a look.

21 A. See, I knew you had it.

22 Q. I'm going to mark these next in order, 18.

23 (Exhibit 18 was marked for identification.)

24 I'll just note for the record that they were
25 previously marked in Mr. Berchiolli's deposition, I

1 believe. But they're the exact same copy. I just don't
2 have the exact -- anyway --

3 At the time of slope failure were these the
4 operative CC&Rs for Las Brisas homeowners association?

5 A. Yes, they were.

6 Q. At the time that the HOA assessed Ms. Mann were
7 these the operative CC&Rs for the Las Brisas HOA?

8 A. Yes, they were.

9 Q. At the time that the HOA filed its
10 cross-complaint seeking to foreclose on my client's
11 home, were these the operative CC&Rs?

12 A. Yes, they were.

13 Q. I'm going to turn your attention to section 2.4,
14 which is found on page 7. It is titled The Association
15 Easement -- Easements and Right of Entry.

16 Do you see that?

17 A. Yes, I do.

18 Q. And it reads There is reserved to the
19 association, its agent -- agents and employees, an
20 easement in gross over all residential lots as the
21 servient tenement, and easements of entry and access
22 of -- and of access for -- I apologize. And we have a
23 list of what the access and ease of entry is for.

24 2.4.1, The installation of maintenance of sewers,
25 storm drains, drainage facilities, correct?

1 A. Correct.

2 Q. 2.4.2, Landscaping and maintenance of common
3 areas.

4 Do you see that?

5 A. Yes.

6 Q. At the time you testified -- well, strike that.

7 So far you have testified that at the time of the
8 incident it was the HOA's position that the slopes were
9 common areas, correct?

10 A. Yes.

11 Q. As you sit here today, does that explain why the
12 HOA felt like it could go on a private slope and install
13 a French drain?

14 A. I'm sure it is, yes.

15 Q. And does that answer the question also as to why
16 the HOA felt that it could go on a private slope and try
17 to auger the French drain after the slope failure?

18 A. Yes.

19 Q. It is because -- would you agree with me -- it is
20 because it was operating under a set of CC&Rs that gave
21 it the permission to do so?

22 A. Correct.

23 Q. And it was the HOA's understanding that the
24 slopes were common areas, correct?

25 A. Yes.

1 Q. And in fact, after the incident -- and we talked
2 about this a little bit.

3 But after the incident the HOA wanted to make
4 sure that future homeowners are going to have better
5 clarity as to the delineation of duties between
6 maintenance of the slopes and repairs of the slopes,
7 correct?

8 A. Correct.

9 Q. And to that end, the HOA held a vote to amend the
10 CC&Rs, correct?

11 A. Correct.

12 Q. And I'm going to mark next in order Exhibit 19,
13 which is the amendment to the CC&Rs.

14 (Exhibit 19 was marked for identification.)

15 Is this a true and correct copy of the amendment
16 to the CC&Rs?

17 A. Yes.

18 Q. And when did this amendment take place?

19 What year?

20 A. 2025.

21 Q. After the slope failure, correct?

22 A. Yes.

23 Q. And after the association filed its
24 cross-complaint against my client, correct?

25 A. Yes.

1 Q. If we turn to page 2, we have paragraph 2, which
2 is titled repairs. And it is defined as Repair refers
3 to corrective actions the homeowners take to fix damage.
4 Failures or structural issues that impair the slope's
5 functionality, safety or appearance. It is reactive and
6 aimed at restoring the slope to its original condition.

7 Architectural approval in accordance with
8 Article V of the declaration is required. Examples
9 include a), fixing and/or stabilizing areas of the slope
10 that have eroded or collapsed.

11 Do you see that?

12 A. Yes.

13 Q. Prior to this amendment there's no language in
14 the CC&Rs that puts the onus on the homeowner to conduct
15 such repairs; is that correct?

16 MR. COMBS: Objection. Calls for a legal
17 conclusion.

18 THE WITNESS: Yeah, I would --

19 BY MR. ALEXANDER:

20 Q. Well, let me ask you a different way.

21 A. It was --

22 Q. There's no language in the original CC&Rs that
23 provides for the repairs that are outlined in the
24 amendment, correct?

25 MR. COMBS: Objection. Calls for a legal

1 conclusion.

2 BY MR. ALEXANDER:

3 Q. Is that correct?

4 He's not instructing you not to answer.

5 MR. COMBS: You can answer to the extent you
6 understand and can answer.

7 THE WITNESS: Okay. Restate the question.

8 MR. ALEXANDER: Madam Court Reporter, I'm
9 sorry, can you re-read the question back.

10 (Whereupon, the record was read back by the
11 reporter as follows:)

12 "Q. There's no language in the original
13 CC&Rs that provides for the repairs that
14 are outlined in the amendment, correct?"

15 THE WITNESS: Correct.

16 BY MR. ALEXANDER:

17 Q. So earlier, about five minutes ago you testified
18 that there is language in the CC&Rs that restricts the
19 use of reserve funds?

20 A. Correct.

21 Q. Where is that language?

22 A. Do you know?

23 MR. ALEXANDER: Can we go off the record?

24 (Discussion held off the record from 2:05 to
25 2:08.)

1 We're back on the record.

2 MR. COMBS: Okay. We're back on the record.

3 So let him ask you a question.

4 BY MR. ALEXANDER:

5 Q. My question stands.

6 A. Okay. The information was not in the CC&Rs, but
7 it is in the bylaws.

8 Q. Where in the bylaws?

9 A. Section 8.14.

10 Q. And what does that section read?

11 A. A general -- between my eyes, I don't know where
12 to go. Okay. A general statement setting forth the
13 procedures used by the ward in the calculation and
14 establishment of reserves to fray the cost of repair,
15 replacement or additions to major components of the
16 common area and facilities for which the association is
17 responsible. So it's just the common area.

18 Q. In which the association is responsible, correct?

19 A. Yes, to use reserve or to set up a reserve
20 account.

21 Q. Okay. And that's why on April 28th, 2023, you
22 told the board we have reserves because we're
23 responsible for this common area, correct?

24 A. Correct.

25 Q. Okay. I'm going to mark next in order

1 Exhibit 20.

2 (Exhibit 20 was marked for identification.)

3 This is a document dated May 8th, 1995.

4 Do you see that?

5 A. Were you born yet?

6 Q. I was in fifth grade.

7 A. Okay. I'm close. I'm close.

8 Q. Close. You're getting close. You're getting
9 close. And I was on the other side of the world at that
10 time.

11 A. Okay.

12 Q. But what was happening on this side of the world
13 on May 8th, 1995 is a letter from the HOA to the unit
14 owner at 163 who at that time was Claire Slaton.

15 Do you see that?

16 A. Yes.

17 Q. And bullet point 2, the HOA is answering a
18 question from the homeowner.

19 Do you see that?

20 A. Uh-huh.

21 Q. Is there a Las Brisas Pacificas plot plan for
22 common areas and/or easements?

23 And the answer is -- this is in '95 -- There are
24 three legal documents that govern which areas the
25 association is obligated to maintain. They are a)

1 The original as-built landscape blueprints, b) The
2 association's CC&Rs; specifically Section 2.4 and
3 Section 6.1.

4 Do you see that?

5 A. Yes.

6 Q. No mention of bylaws, correct?

7 A. No. This is talking about common areas and
8 easements.

9 Q. But this is the same Section 2.4 we read together
10 from the CC&Rs, correct?

11 A. Okay.

12 Q. It's the same section?

13 A. Yes. I'm sorry, I didn't --

14 Q. And this letter also refers to Section 6.1 of the
15 CC&Rs, which let's turn to that. And 6.1 provides All
16 common areas, including private streets, parking areas,
17 recreation areas, clubhouse, easements, walkways and
18 drainage areas shall be maintained by the association
19 and used as determined by the association as set forth
20 in the rules and regulations.

21 Do you see that?

22 A. Uh-huh.

23 Q. Yes?

24 A. I do.

25 Q. It doesn't differentiate private slopes, does it?

1 A. No, it doesn't mention them at all.

2 Q. That differentiation happened in '25, in 2025
3 with the amendments, correct?

4 A. Yes, in the CC&Rs it did.

5 Q. Okay. Going back to 2024, I'm going to mark next
6 in order Exhibit 21.

7 (Exhibit 21 was marked for identification.)

8 Make sure that -- yeah.

9 We have an email from you, March 15th, 2024. The
10 Ides of March. You write I know we are funding this
11 project. Does Jill Mann understand that we're not
12 taking responsibility for the failure? The legal case
13 is not over unless we assume responsibility and change
14 the CC&Rs to state in the future slope failure is the
15 responsibility of the legal owner.

16 Do you see that?

17 A. Yes.

18 Q. That is exactly what happened, isn't it?

19 A. Yes.

20 Q. So why isn't this case over?

21 A. Because Ms. Mann will not agree to pay for the
22 repair.

23 Q. Why is the association changing the CC&Rs and
24 assuming responsibility, per this email?

25 MR. COMBS: Objection. Mischaracterizes the

1 amendment to the CC&Rs.

2 And you can answer.

3 THE WITNESS: Okay. It says the legal case
4 is not over unless we assume responsibility and change
5 the CC&Rs to state -- okay. The responsibility we're
6 assuming is to make the change, not to repair the slope.

7 BY MR. ALEXANDER:

8 Q. So you assume the responsibility to make the
9 change to the CC&Rs, correct?

10 A. Yes.

11 Q. And the CC&Rs were changed and consistent with
12 this email to state that the future slope failure is the
13 responsibility of the legal owner, correct?

14 A. Correct.

15 Q. So why is the HOA maintaining its case against
16 Ms. Mann if both of these things occurred?

17 A. I am not following you.

18 Q. That was the condition precedent for the case to
19 be over, correct?

20 A. This was in March of '24. The incident occurred
21 in April of '23. So we're almost a year later. And if
22 we hadn't acted we felt that nothing would be done.
23 Ms. Mann never went out and got a bid or got a different
24 geology report or anything to say that okay, you know,
25 you're wrong or this is what I think should be done.

1 Q. Why would Ms. Mann go out and get a bid if
2 everyone's understanding, including the HOA's at the
3 time of the incident, was that the slopes are the HOA's
4 responsibility?

5 A. No, that was wasn't the understanding.

6 Q. You have been testifying all day --

7 A. No, the understanding is the slopes were
8 maintained. Again, there is a difference between
9 maintenance and repair.

10 Q. Well, I think your testimony stands on its own up
11 to this point.

12 A. Well, I follow through it's maintenance versus
13 repair.

14 Q. But it's the HOA's testimony today that up until
15 the incident the HOA treated the slopes as common areas,
16 correct?

17 A. For maintenance, maintenance, yes, for taking
18 care of the vegetation. You've got to remember prior
19 to this incident nothing had ever occurred in 30 some
20 years.

21 Q. Nothing meaning what?

22 A. No -- there was no failure or anything that we
23 had to -- that somebody had to go in and repair the
24 slope structurally.

25 Q. I'm going to mark next in order Exhibit 22.

1 (Exhibit 22 was marked for identification.)

2 We have an email dated August 26, 2023 from
3 Frank Helmlinger.

4 A. Helmlinger.

5 Q. He's a board member, correct, current?

6 A. Current board member. He wasn't a board member
7 then.

8 Q. Okay. He writes Dear Board of Directors.

9 And you're a recipient, correct?

10 A. Yes.

11 Q. We have lived in Las Brisas since October 2005.
12 I served on the board for three years and on the finance
13 committee another seven or eight. During all this time,
14 the question of slopes has been dealt with mostly by
15 tribal knowledge: "We have always done it this way,"
16 or Dominic told me. Or Webb said, et cetera. He's
17 giving --

18 A. Yeah.

19 Q. He continues. The CC&Rs need to be revised to
20 define the areas maintained by the association: Ground
21 cover, tree pruning, irrigation lines, et cetera. I
22 realize this will cost money, but in the long run it
23 will avoid legal expenses for homeowners and the HOA.

24 Do you see that language?

25 A. Yes.

1 Q. And you agreed with that language when you
2 proposed their revisions, correct?

3 A. Correct.

4 Q. Because up to that point the slopes were being
5 treated again as common areas?

6 A. Well, this is August of '23.

7 Q. After the slope failure?

8 A. After the slope failure.

9 Q. Okay. So after the slope failure the HOA started
10 considering amending the CC&Rs, correct?

11 A. Correct.

12 Q. Not prior?

13 A. No.

14 Q. I created a double negative.

15 The HOA did not consider amending the CC&Rs prior
16 to the slope failure, correct?

17 A. Correct.

18 Q. I'm going to show you what was previously marked
19 as Exhibit 6 to Mr. Berchiolli's deposition.

20 This is on letterhead from your counsel, correct?

21 A. Correct.

22 Q. To all members, correct?

23 A. Yes.

24 Q. Is this the letter that the HOA was editing
25 through the property management company and John in the

1 email exchanges?

2 A. I believe it is, yes.

3 Q. Prior to this letter going out on July 19, 2023,
4 the HOA had reviewed the contents of this letter,
5 correct?

6 A. Yes.

7 Q. And they had adopted the contents of this letter
8 as its own, correct?

9 A. Yes.

10 Q. In bold we have The geotechnical investigation
11 attributed the slope failure to saturation likely as a
12 result of the heavy rain experienced in the 2023 --
13 2022/2023 season, correct?

14 A. Correct.

15 Q. That's an accurate reading, right?

16 A. Yes.

17 Q. But we know now that this is false?

18 A. Well, they said it was likely a result of the
19 heavy rain.

20 Q. Well, we're going to read it again.

21 The geotechnical investigation attributed the
22 slope failure to saturation?

23 A. Correct.

24 Q. Where in the GeoTek report does it say likely as
25 a result of the heavy rain experienced in the 2022/2023

1 season?

2 A. Just by simple deduction that it was a rainy
3 year, we had a lot of water, a lot of rain came down.
4 Where did the saturation come from, it came from the
5 rain.

6 Q. The next emphasis in this letter is underlined.
7 There is no evidence to suggest that any other slope is
8 in imminent danger or similar danger. However, there is
9 no easy way to assign such probability.

10 Do you see that?

11 A. Yes.

12 Q. How did the HOA make that determination?

13 A. From April till July there was no movement. It
14 stopped raining. But if you read the next sentence, it
15 says You are urged to monitor your slopes and with
16 written approval to the architectural committee, take
17 any mitigating measures that may be necessary to avoid
18 slope movement.

19 Q. So now the HOA is absolving itself of any
20 responsibility prior to making a CC&R amendment,
21 correct?

22 MR. COMBS: Objection. Misstates the CC&Rs.
23 Misstates the position of the HOA board at the time.

24 You can answer if you understand his
25 question.

1 THE WITNESS: I really don't understand the
2 question.

3 BY MR. ALEXANDER:

4 Q. That's okay.

5 A. All they were doing was trying to tell the people
6 that okay, nothing's happened. You know, everybody is
7 not going to panic, my slope is going to fall into my
8 house. There was no movement. Things were drying out.

9 And it said okay, now you have to be vigilant
10 though because we don't live in your house and we don't
11 see your slope. So if you notice anything, you know,
12 please, you know, let the architectural committee know.

13 Q. How does the HOA not see the slopes if Green
14 Horizons is actually the one that discovered the slope
15 failure on my client's property?

16 A. Okay. I don't see the slopes. I don't go to
17 everybody's house and look in their backyard.

18 Q. Who is Green Horizons hired to be -- whose vendor
19 is that?

20 A. They're our vendor. Okay.

21 Q. The HOA?

22 A. Yeah. But again, they're not there every day
23 with the 19 acres we have. They're in different spots
24 all the time. You know, one week they're in this area,
25 this area. So, again, they don't have a vigilant view

1 of every slope every day or 24 hours. If you live in
2 that house you see it every day.

3 Q. Okay. And it is expected of the homeowners to
4 report any issues with the slopes to the HOA, correct?

5 A. Yes. If there's an irrigation break, again, we
6 don't see it, Green Horizons doesn't see it. The
7 homeowner sees it. So as soon as they report it an
8 action is taken to remedy it.

9 Q. I'm going to show you what was previously marked
10 as Exhibit 9 to Mr. Berchiolli's deposition. It's an
11 email from Paul Elsesser to Kent Berchiolli, CC --

12 A. Board.

13 Q. -- the board. Kent, we want Green Horizons to
14 continue as they have been doing. And appreciate your
15 efforts on behalf of the community as chairman of
16 landscaping committee and want you to continue.

17 Why did the board instruct him to continue as he
18 has?

19 A. Because he was threatening to resign as landscape
20 chair.

21 Q. And you wanted Mr. Berchiolli --

22 A. Well, we needed somebody, and he was a
23 knowledgeable person. So it's like, you know, when we
24 don't have a chairperson, especially for a committee
25 like landscape, it turns into a debacle.

1 Q. What is the board's opinion of Mr. Berchiolli in
2 general?

3 Is he qualified for that position?

4 A. Yes. He -- well, you know from his deposition
5 that he was -- you know, he was involved with nurseries,
6 but more with the sale of plants and, you know, type of
7 plant that go -- what goes well where. So he's not a
8 arborist or a -- I don't know what else would you call
9 somebody who is into plants.

10 Q. Next in order, 23.

11 (Exhibit 23 was marked for identification.)

12 This email highlights what you just described
13 to me with respect to Mr. Berchiolli. Second page.
14 July 26, 2023.

15 A. Okay.

16 Q. Who is Glenn Wargo?

17 A. Glenn Wargo was the acting president at the time.
18 I believe Mr. Berchiolli resigned after, like, two
19 months on the board. And Mr. Wargo assumed the position
20 of president.

21 Q. He writes I believe Kent, should be brought into
22 solving this problem. For years Kent has been involved
23 with this community. He has the experience of working
24 with/for landscaping company/contractor.

25 Do you see that language?

1 A. Yes.

2 Q. Do you agree with Mr. Wargo's assessment of
3 Mr. Berchiolli's experience?

4 A. Yes.

5 Q. Next in order, 24.

6 (Exhibit 24 was marked for identification.)

7 And contemporaneously I'm going to mark 25 as
8 well.

9 (Exhibit 25 was marked for identification.)

10 Let's take a look at Exhibit 24 first.

11 A. Okay. That's the email.

12 Q. That's the email, correct. August 1st, 2023.

13 A. Yes.

14 Q. From Mr. Berchiolli.

15 Is it Berchiolli or Berchiolli?

16 A. Berchiolli.

17 Q. Berchiolli. I've been -- okay. From
18 Mr. Berchiolli. He writes Remarks and concerns after
19 reviewing geotechnical's investigation report dated
20 July 7th, 2023 -- bullet point 6. The cost of this
21 repair, as laid out in the report, will well exceed the
22 homeowner's ability --

23 A. I'm not with you. Tell me where you're reading
24 this.

25 Q. Bullet point 6.

1 A. Oh, 6. Okay. Thank you.

2 Q. Uh-huh. Will well exceed the homeowner's ability
3 to perform, and possibly the community as well.

4 Number 7. There are over 90 slopes in this
5 community that are deeded to a homeowner, and have been
6 repaired, maintained, weeded, planted, and watered for
7 about 35 years with no cost to the homeowner.

8 Do you see that language?

9 A. Well, that's not true because they pay for that
10 in their assessment, their HOA dues.

11 Q. He continues further down, The paragraph that
12 follows was provided by John --

13 A. McJunkin.

14 Q. -- McJunkin, and has been provided to all
15 residents as part of their initial paperwork. The title
16 of the article is Las Brisas Pacificas, Inc. obligations
17 regarding association common area. The paragraph is as
18 follows.

19 Unless and otherwise provided in the
20 association's governing documents, an association is
21 responsible for maintenance of common areas. Common
22 areas can either be areas owned and maintained by the
23 association or they may be areas owned by an individual
24 homeowner within the association and maintained by the
25 association.

1 In either case, the board of directors, and
2 committees, is discharging their duty to the
3 association, must adhere to the laws and rules that
4 apply to these areas.

5 Do you see that language?

6 A. I see that, but I have to see it in the --

7 Q. We'll get to that in a second.

8 A. In context.

9 Q. Here we have a definition of a common area that
10 is provided to every member when they purchase their
11 property, correct?

12 A. I'm sorry, I was --

13 Q. Here we have a definition of a common area that
14 is provided to every homeowner when they purchase their
15 property, correct?

16 A. All they are given is the CC&Rs, the bylaws and
17 the rules and regs. Now I don't --

18 Q. Well, let's take --

19 A. Who created this document?

20 Q. Well, that's what we're here to ask. It was part
21 of the HOA's document production.

22 A. Because it's not signed anywhere.

23 Q. Do you see the Bates number at the bottom, LBF --

24 A. Yeah.

25 Q. -- 3999 -- 3996 through 3997?

1 A. Yes.

2 Q. I will represent to you that that Bates number is
3 a document production from the association.

4 A. Okay.

5 Q. Okay. And we're looking at Exhibit 25. It's a
6 long document. And at the top right-hand corner it
7 provides homeowner information.

8 Matter of fact, I'm going to mark Exhibit 26 at
9 the same time. This will inform whether it was prepared
10 by the HOA or somebody else.

11 (Exhibit 26 was marked for identification.)

12 A. Okay. I see a date on it now.

13 Q. Exhibit 26, the top right-hand corner states
14 confidential draft - for BOD review only.

15 A. Okay.

16 Q. Does that inform you as to the entity that
17 prepared this document?

18 A. Well, if I go back to the original, I now see up
19 on the top at the second page, page 2 of 2, 1/14/03, LBP
20 maintenance obligations. So this was created in 2003.

21 Q. By what entity?

22 A. I don't know. I wasn't a resident.

23 Q. Okay. As you sit here today do you have any
24 reason to believe that this was not prepared by the HOA?

25 A. No.

1 Q. As you sit here today do you have reason to
2 believe that Mr. Berchiolli was misrepresenting on
3 Exhibit 24 that this is the Las Brisas, Inc.'s
4 obligations regarding association common areas that is
5 provided by -- to homeowners?

6 A. Okay. What I'm -- what I surmise from all this
7 is this isn't the document that was shown. It was this
8 document from '25. Because I know that Mr. Berchiolli
9 and Mr. McJunkin were not residents in 2003.

10 Q. How does -- how does that inform you whether or
11 not they --

12 A. Where did they get this information is what I'm
13 saying. They got it from this, not the original one.
14 This one is different. It's longer.

15 Q. Well, Exhibit 26 is a draft, correct?

16 A. Correct.

17 Q. We have a final version in Exhibit 25.

18 A. No, the final version is dated 2003.

19 Q. Where is that?

20 A. On the top of page 2. Page 2. 1/14/03.

21 Q. So since at least 2003 these have been the
22 Las Brisas Pacificas maintenance obligations, correct?

23 MR. COMBS: Objection. Hold on. Objection.
24 Mischaracterizes the document. And calls for a legal
25 conclusion.

1 THE WITNESS: I think the original document
2 dated 1/14/03 has more to do with the fact that
3 homeowners are not allowed to construct something on the
4 slope. They're not allowed to put in plants that may
5 not be -- may not fit with the community. That's how --
6 that's my take on it.

7 BY MR. ALEXANDER:

8 Q. Based on what?

9 A. Based on just what I've read.

10 Q. Which part?

11 A. I would say the second to the last paragraph.

12 Q. What language?

13 A. The board of directors for Las Brisas, Incorp. is
14 committed to preventing a potential problem before it
15 occurs -- is allowed to occur, whenever possible. The
16 architectural committee prudently reviews architectural
17 applications and protects the association by not
18 allowing encroachments of any type to occur during the
19 architectural application process.

20 The board of directors and committee attempt to
21 work in a cooperative spirit to educate homeowners
22 regarding the association's responsibilities and
23 limitations, and the board of directors and committees
24 have developed policies to ensure that the governing
25 documents are enforced to the benefit of all homeowners.

1 It is difficult to tell a homeowner that he or
2 she does not have the right to construct something on
3 their properties -- the homeowner's property or tell
4 them no when they make a request that is not within the
5 association's scope of authority to authorize. However,
6 when the board, committees, and homeowners work as a
7 team, the job becomes easier and results positive.

8 Q. Okay. So that language is respect to
9 constructing something on the --

10 A. Constructing or putting anything on there, yeah.

11 Q. Okay. Let's go back to page 1. And this is --
12 we have the second full paragraph, which I will
13 represent to you is the same paragraph identified in
14 Mr. Berchiolli's email.

15 A. Okay.

16 Q. You can take the time and compare it if you'd
17 like.

18 A. Again, referring back to the '02 document, at
19 that point they didn't realize that a lot of these areas
20 were property owned by the owner and not common area.

21 Q. Okay. But the way that this Exhibit 25 defines
22 common area, it states Common area can either be areas
23 owned and maintained by the association or they may be
24 areas owned by an individual homeowner within the
25 association and maintained by the association.

1 A. Okay. The key word there is maintained.

2 Q. I cannot argue with you over legal conclusions.

3 Maintained in this context, would you agree with
4 me is included in the definition of a common area when
5 it says or they may be areas owned by an individual
6 homeowner within the association and maintained by the
7 association?

8 In other words, an area that is an individual
9 property owner's that is maintained by the association
10 for the purposes of this document is a common area
11 because it falls under either or category here?

12 A. Common areas are common areas. Property owned by
13 individuals is private property.

14 Q. But this document provides a definition of what
15 the HOA considers a common area and --

16 A. Either -- it can be either areas owned and
17 maintained by the association or it may be areas owned
18 by an individual homeowner within the association and
19 maintained by the association. So I don't see how
20 they're linking individual homeowners with common areas.

21 Q. So areas that are maintained by the association
22 that are owned by an individual homeowner under this
23 definition for the purposes of the HOA are common areas,
24 correct?

25 A. I don't read it that way.

1 Q. Isn't that consistent with how the HOA was
2 treating these slopes up until the slope failure at 139?

3 It was treating it as a common area, correct?

4 A. Yes.

5 Q. And this is consistent with that statement, isn't
6 it?

7 A. Well, and by 2025 --

8 Q. It changed?

9 A. Well, this is 2025. The second one is 2025.

10 Q. Well, I'm looking --

11 A. So either it wasn't --

12 Q. -- at Exhibit 25. I'm not looking at a draft.
13 I'm looking at in 2003.

14 A. That was the first one.

15 Q. Correct, yeah.

16 A. Okay.

17 Q. In 2003 -- the definitions are identical.

18 A. Yeah, I know they are.

19 Q. Yeah.

20 A. So I can't --

21 Q. So up until 2025 this was the HOA's definition of
22 a common area, wasn't it?

23 A. I really -- I really don't think they had a
24 definition. I mean, the definitions were the areas
25 owned by the HOA and maintained by the HOA. That was

1 common area. Clubhouse, surrounding areas, you know,
2 there's certain --

3 Q. Okay. Well, the HOA here provides clarification
4 in the next paragraph. What does this mean or what does
5 that mean. Sorry. It means, quote -- well, strike
6 that.

7 "It means that the association has an obligation
8 to repair and maintain the components on the common
9 areas that it is responsible for, and it also means that
10 the association is legally responsible to enforce the
11 rules and regulations relating to the use and enjoyment
12 of those common areas.

13 In exerting architectural control of those areas,
14 the association is legally and ethically obligated to
15 ensure that the common areas remain unaltered by
16 homeowners, whether the association owns them or whether
17 an individual homeowner owns them.

18 Do you see that language?

19 A. Yes.

20 Q. That's consistent with how the HOA was treating
21 the slopes, isn't it, up until 2025?

22 A. Yeah, because it be whether they be owned or
23 individually owned. They had to be unaltered.

24 Q. Okay. The association's board of directors and
25 its committees are charged with ensuring the integrity

1 of all common areas.

2 That's consistent with how the board was acting
3 up until 2025, correct?

4 A. Well, then if the definition of common areas is
5 everybody's backyard, then everybody should have access
6 to that because it's a common area.

7 Q. They're also charged with ensuring that all
8 homeowners enjoy equal access and enjoyment of those
9 common areas and that no homeowner encroaches on the
10 common area for his or her personal use.

11 Do you see that?

12 A. Yes.

13 Q. Is that why the HOA is able to go on privately
14 owned slopes and install French drains?

15 A. The question is beyond my scope. I have no idea.

16 Q. Is that why the HOA is able to go on private
17 slopes and fix broken sprinklers?

18 A. That's part of the easement in the CC&Rs that
19 they do the maintenance of the irrigation and all that.

20 Q. Is that why the HOA is able to go on private
21 slopes, and in this case my client's private slope and
22 auger out a French drain that it installed previously?

23 A. They may not have the right, but I said it was a
24 gesture of goodwill.

25 Q. Without the permission or knowledge of the

1 homeowner?

2 A. That I have -- I don't know. Maybe she wasn't
3 home. Because I know at the time of the incident she
4 wasn't in California.

5 Q. Well, we're talking about augering the drain
6 after --

7 A. Yeah.

8 Q. -- the --

9 A. I don't know if she was here or not.

10 Q. So the HOA went on her property without her
11 knowledge because --

12 A. Again, I don't think it was -- again, it was
13 meant as a gesture of goodwill, not as a detriment.

14 Q. Is that how the Las Brisas owners association
15 treat a gesture of goodwill, by assessing its members
16 for repairs performed on items that were installed by
17 the HOA and then threatening foreclosure on the member's
18 home?

19 MR. COMBS: Objection. Mischaracterizes her
20 testimony. Mischaracterizes the facts.

21 You can answer if you understand.

22 THE WITNESS: Okay. First of all, we had to
23 do something.

24 BY MR. ALEXANDER:

25 Q. To the French drain?

1 A. No, to the damage on the slope. The French drain
2 is a whole nother article.

3 Q. Did Mountain Movers do any work related to the
4 French drain?

5 A. I know they uncovered it.

6 Q. Why?

7 A. Because they --

8 Q. If it had nothing to do with the slope failure --

9 A. Because --

10 Q. -- why did they uncover it?

11 MR. COMBS: Stop talking over each other.

12 THE WITNESS: Okay. I'm sorry.

13 MR. COMBS: No, he interrupted you.

14 So Counsel, why don't you re-ask your
15 question so she can answer it.

16 BY MR. ALEXANDER:

17 Q. Why did Mountain Movers open up the French drain
18 if the French drain had nothing to do with the slope
19 failure?

20 A. I believe -- again, I'm not a geologist, I'm not
21 a civil engineer. I believe they did that so that they
22 could see if they could tie into it with the -- all the
23 new drainage they put on that slope.

24 Q. Why?

25 A. Well, where were they going to connect it? The

1 drainage pipes. I mean, they did put extra drainage
2 pipes on that slope.

3 Q. And they connected it to the French drain?

4 A. Well, all I know is the French drain is so many
5 feet long and this connection was made at the ends. And
6 the ends was where the water was supposed to come out
7 the holes. That's my knowledge of it.

8 Q. Okay. So you don't know as you sit here today?

9 A. No.

10 MR. ALEXANDER: Let's take a ten minute
11 break.

12 (Recess taken from 2:51 to 2:58.)

13 Let's go back on the record and get through
14 this.

15 BY MR. ALEXANDER:

16 Q. You understand you're still under oath?

17 A. Yes.

18 Q. Next in order, 27.

19 (Exhibit 27 was marked for identification.)

20 Email from Bill Katz September 7, 2023. Provides
21 a summary there.

22 Have you seen this email before?

23 A. I'm sure I have.

24 Q. Do you recall this email?

25 A. I can't recall it verbatim, no.

1 Q. He writes that -- there's no breaks in this. So
2 I think it's sentence 3.

3 A. French drains.

4 Q. The association is and was responsible for
5 watering of the slopes, the French drain --

6 A. Okay.

7 Q. -- was done because she was experiencing erosion,
8 mud coming over her wall. The board installing French
9 drains to help out a resident that was experiencing
10 erosion from the association's watering was the correct
11 thing to do in my opinion.

12 Do you see that?

13 A. Yes.

14 Q. Does the HOA disagree with that opinion?

15 A. No, I don't -- the only thing that I'm not sure
16 of is that it was due because of our watering.

17 Q. He writes we had the geologist come out and make
18 sure there was no problem with the slope which there was
19 not.

20 A. Okay. So they did have a geologist.

21 Q. Well, that's what he's stating.

22 A. Yeah, I don't think he would lie.

23 Q. Where would I find -- what part of the
24 association's records would I find who this geologist
25 was?

1 A. I don't know. I would say go back to the GeoTek
2 and ask them.

3 Q. And ask them?

4 A. Yeah.

5 Q. Okay.

6 A. That would be the least encumbering.

7 Q. He is critical of the board -- several sentences
8 after that. The board should make sure that the
9 attorney that is representing this association has the
10 correct facts. Evidently they're not getting the
11 correct information if from Paul's statement, "when Bill
12 Katz did that French drain it was not a good thing."

13 Do you see that?

14 A. Just keep going.

15 Q. Did Paul make a statement to the HOA board being
16 critical of Bill Katz installing a French drain?

17 A. It may have been a comment.

18 Q. Okay. Are you critical of Bill Katz installing
19 the French drain?

20 A. I couldn't care one way or the other.

21 Q. You're speaking for the HOA board?

22 A. No, I'm speaking for myself. You said am I
23 critical.

24 Q. Okay.

25 A. So I'm the --

1 Q. You personally are not critical?

2 A. No.

3 Q. All right. Has the HOA board ever expressed
4 criticism with installation of the French drain?

5 A. Not to my knowledge.

6 Q. So as you sit here today the HOA stands by its
7 decision to install a French drain on the private slope
8 of unit 139?

9 A. Yes.

10 Q. Next in order, Exhibit 28.

11 (Exhibit 28 was marked for identification.)

12 All right. This is an email from John Moore,
13 Wednesday, January 24th, 2024.

14 A. Okay.

15 Q. Do you recall an advisory committee being formed
16 related to slope 139?

17 A. Yeah, it really wasn't a true committee because
18 there was only one person.

19 Q. And that person was Paul Elsesser, correct?

20 A. Correct.

21 Q. And the responsibilities were gather quotations
22 from and communicate with qualified excavation companies
23 regarding the remediation of slope 139, correct?

24 A. Correct.

25 Q. Provide recommendations to the board and Ms. Mann

1 on which company they would approve as their vendor of
2 choice.

3 Do you see that?

4 A. Yes.

5 Q. So the association was picking which vendor,
6 correct?

7 A. Because Ms. Mann was not doing anything.

8 Q. Does this state that Ms. Mann was not doing
9 anything or was Mr. Elsesser's responsibility to make
10 recommendations to Ms. Mann?

11 A. No, it -- I mean, if this is already January 1st
12 of '24, so what, eight months, seven months had gone by
13 and there was no action on her part. Again, we felt we
14 had the responsibility in the community to repair that
15 slope.

16 Q. Is there any communication from the HOA to
17 Ms. Mann saying Ms. Mann, this slope is your
18 responsibility and you shall be the one to repair it?

19 A. That was the initial notice to her that this is
20 your property and you're responsible.

21 Q. Dated when?

22 A. I don't have the date. It would have to be right
23 after. Between April of '23 and probably -- I don't
24 know -- December of '23, sometime in there.

25 Q. Is that the July 19th, 2023 letter that was

1 prepared by your counsel?

2 A. Correct. Okay. You got it. Yeah.

3 Q. That's the same letter that the board edited,
4 correct?

5 A. Edited?

6 Q. Yes, reviewed and made edits prior to it going
7 out.

8 A. Yes.

9 Q. So prior to July of 2023 the association had not
10 made any overture to Ms. Mann for her to repair the
11 slope, correct?

12 A. Because it was her responsibility as the
13 homeowner.

14 Q. Based on what?

15 A. Based on the deed.

16 Q. What deed?

17 A. The deed of her property.

18 Q. Because it was a private slope?

19 A. Yeah, because it was her slope, being maintained
20 by the HOA.

21 Q. But up until that point, and in fact up until the
22 amendments the HOA was treating the slopes as common
23 areas, correct?

24 A. No. As soon as -- in July, whenever the letter
25 went out to everybody saying, you know, be aware, this

1 is your property, even though we maintain it, we're not
2 responsible for repairs.

3 Q. I'm going to mark next in order Exhibit 29.

4 (Exhibit 29 was marked for identification.)

5 Email from Paul Elsesser dated January 29, 2024
6 to Connie Laughlin.

7 Who is Connie Laughlin?

8 A. Connie Laughlin, again on my years I don't
9 remember. This is 2024?

10 Q. Yeah.

11 A. So she would be on the board.

12 Q. Okay. So one board member to another?

13 A. Paul wasn't on the board then.

14 Q. Okay. He was the liaison --

15 A. Yeah.

16 Q. -- or the committee chair for this slope?

17 A. Yes.

18 Q. Hi Connie, This morning Jill Mann and I met with
19 another potential slope repair vendor, John Niven of
20 Soil Engineering of Encinitas.

21 Do you see that?

22 A. Uh-huh.

23 Q. So Ms. Mann was meeting with companies to perform
24 slope repairs, correct?

25 A. No. Did she initiate the meeting or was it Paul

1 who initiated the meeting?

2 Q. Does this state or does it simply state that
3 Ms. Mann met with another -- another potential slope
4 repair vendor?

5 A. Of course I interpreted it as Paul got the vendor
6 and they met with her so that she could be part of the
7 process of --

8 Q. The opposite interpretation is equally viable,
9 isn't it?

10 A. Yes.

11 Q. That Ms. Mann is the one who contacted him and
12 brought Paul Elsesser onboard, correct?

13 A. Okay. You'd have to talk to Mr. Elsesser about
14 that. He would know if he initiated it or she did.

15 Q. But as you sit here today in the HOA, as of
16 January 29, 2024, it is not accurate to say that
17 Ms. Mann had not contacted another potential slope
18 repair vendor?

19 A. No, I can't say that because I don't know.
20 Again, the way it's written, both of them met with a
21 potential. It didn't say they met with Ms. Mann's
22 potential.

23 Q. So at best the HOA did not know whether or not
24 she is meeting with other vendors, correct?

25 A. I presume, yes, correct.

1 Q. Yet the HOA's making the affirmative statement
2 that Ms. Mann has refused to repair her slope, correct?

3 A. Because we reached no -- she's not given us any
4 information as to the scope of the work or, you know,
5 whether it would be approved.

6 Q. Paul Elsesser was there for this meeting,
7 correct?

8 A. Which meeting?

9 Q. The meeting that we're just talking about.

10 A. This is an email. Oh, the meeting for the slope,
11 yes, yes.

12 Q. So the HOA knew.

13 There's nothing for Ms. Mann to provide to the
14 HOA because the HOA's liaison was there during the
15 meeting, correct?

16 A. Yeah. So that meant that he initiated it.

17 Q. Well, that meant that he was present.

18 A. Okay. We have a difference of opinion.

19 Q. I thought we had an agreement that at best you
20 don't know who initiated it.

21 A. Okay. We can say we don't know. But you can't
22 say that Ms. Mann --

23 Q. But certainly we cannot say that Ms. Mann was not
24 making contacts and seeking to repair her slope?

25 A. Okay. But there was -- she gave no evidence of

1 that to the HOA.

2 Q. Well, the HOA's liaison Paul Elsesser was there,
3 correct?

4 A. I know. This is -- but I mean this is already in
5 January of '24. So this is eight or nine months after
6 the incident.

7 Q. Let's mark next in order 30.

8 (Exhibit 30 was marked for identification.)

9 At the bottom of Exhibit 30 we have January 31st,
10 2024. Paul Elsesser writes John Niven of Soil
11 Engineering, which is the same one that Jill Mann met
12 with.

13 A. Okay. Yeah.

14 Q. Has agreed to prepare a quote without a
15 topographical survey, but needs an accurate cross
16 section.

17 Do you see that?

18 A. Yes.

19 Q. He follows that up on February 6th. I just heard
20 from John Niven of Soil Engineering. He won't have a
21 proposal available for you -- for your meeting on
22 Thursday.

23 A. Okay. So that to me says that Paul Elsesser was
24 the one who contacted John Niven because he was asking
25 or giving all the information to Paul.

1 Q. Where does that language suggest that Paul
2 Elsesser contacted?

3 A. I'm just saying if -- it says John Niven has
4 agreed to prepare a quote without the topographical
5 survey. Well, he's preparing the quote for us, not for
6 Ms. Mann. Does she have evidence that she has a quote
7 from him?

8 Q. I'm not being deposed here.

9 A. No, I asked the question. I'm not deposing you.

10 Q. On February 6th you write at the top of that
11 email I recommend that we postpone the meeting on
12 Thursday. This bid is important to determine the cost
13 of repair to the slope. This gives Soil Engineering a
14 week to compile the bid. We have waited this long,
15 another week is insignificant to moving forward.

16 A. Okay. Is there anything I said that was wrong?

17 Q. Why are you postponing your meeting?

18 A. It may have -- again, it doesn't refer to what
19 kind of meeting it was. It could be an executive
20 meeting. It could be a meeting just to discuss the
21 quote.

22 Q. Was Ms. Mann as a homeowner allowed to do any
23 changes to the slope without an architectural approval?

24 A. No.

25 Q. So any vendor that she's contacting to do -- to

1 perform work has to go through the HOA, correct?

2 A. No. She can get the bid, present it to
3 architectural, architectural will look over it and
4 present it to the board.

5 Q. So the fact that communications are being made
6 regarding a third party vendor who Ms. Mann met with and
7 the fact that those communications are being conveyed to
8 the board doesn't necessarily mean that she didn't
9 contact anyone?

10 A. Again, we have no proof of that.

11 Q. Okay.

12 A. You know, I have four bids, here's your three,
13 let's compare them.

14 Q. Next in order, 31.

15 (Exhibit 31 was marked for identification.)

16 Email dated February 13th, 2024. This is about a
17 week after you recommended that the meeting be
18 postponed, correct?

19 A. Yeah.

20 Q. Paul Elsesser writes to Chris Livesey from
21 GeoTek, Hi Chris, We are getting close to making a
22 decision regarding the slope repair. Please prepare a
23 proposal for GeoTek's inspection/oversight of the
24 excavator contractor.

25 A. Okay.

1 Q. Right?

2 A. Correct.

3 Q. So an excavator contractor was already hired by
4 the HOA?

5 A. Not necessarily because no matter who the
6 excavator was, GeoTek was still going to be -- to do
7 an inspection and oversight. It was not -- it didn't
8 depend on who got --

9 Q. All right. So you don't know the identity of the
10 excavator contractor at this time?

11 A. Right.

12 Q. Okay. But Ms. Mann was still talking to Soil
13 Engineering, correct?

14 A. I have no idea.

15 Q. Okay. All right. That's fair.

16 Paul Elsesser was involved on those meetings
17 though, right?

18 A. I think he only met with them that one time.

19 Q. You're speculating as to that?

20 A. Huh?

21 Q. You're speculating as to that?

22 A. Yes, I am.

23 Q. Next in order, 32.

24 (Exhibit 32 was marked for identification.)

25 Second page, March 15th, 2024.

1 A. Okay.

2 Q. Paul Elsesser to Eli Njaa at Mountain Movers.
3 Hello Eli, The homeowner and the board are very pleased
4 to inform you that Mountain Movers has been selected to
5 make the slope repairs at Las Brisas Pacificas, 139.

6 Do you see that?

7 A. Huh?

8 Q. That's the language, correct?

9 A. Yes.

10 Q. He's indicating that the homeowner has agreed as
11 well, correct?

12 A. Yes. I'm presuming he said we want to start work
13 on this. And I don't know if she had any input as to
14 which bid she took. But at least she was knowledgeable
15 that something was going to happen.

16 Q. So in February of 2024, mid February, the HOA's
17 postponing meetings while Ms. Mann is talking to a third
18 party, and at the same time is making, you know, within
19 the month a decision to hire Mountain Movers?

20 A. Because we had gotten those bids previous. We
21 had gotten the bids from the three -- the three that we
22 had and this Solis one was going to be a fourth bid.

23 Q. So while Ms. Mann was talking to a third party
24 the HOA had already received bids and was moving forward
25 on one of them, correct?

1 A. No. It just received the bids.

2 Q. When did the HOA receive the bid from Mountain
3 Movers?

4 A. Well, I don't know when we received the bid. But
5 we chose them. Okay. Here we go. January 3rd, 2024
6 received a quote from Mountain Movers. Monday, January
7 22nd, received a quote from Dakini E.G.C. Oh, and prior
8 to that, December 21st, 2023, they received a quote from
9 RNM Construction.

10 Q. Okay.

11 A. And then there was another quote. December 12th,
12 there was no response from Robert Bass.

13 Q. Okay.

14 A. So we were getting quotes in. It was very
15 difficult because you realize this is already December.
16 And we decided to --

17 Q. Well, let me pause you there.

18 How were you getting the -- how were you finding
19 those companies?

20 A. I believe Paul went through GeoTek and asked for
21 names. I think maybe Paul went on the internet,
22 checked -- it had to be somebody local.

23 Q. Maybe the property management company?

24 He was getting assistance, correct?

25 A. I don't think it was the property management

1 company myself.

2 Q. Okay. So he was communicating at the very least
3 with GeoTek, to your knowledge?

4 A. Yes.

5 Q. Okay.

6 A. Because they were --

7 Q. So Mr. Elsesser who was in charge of the
8 committee, correct -- well, he was the -- he was the
9 committee?

10 A. He was the committee.

11 Q. Yeah. He's trying to track down vendors who
12 would perform the repair?

13 A. Correct.

14 Q. The actual excavation?

15 A. Right.

16 Q. Right. And he is having a difficult time, and
17 all he can get are three bids, correct?

18 A. In the end, yes, three.

19 Q. Okay. While at the same time Ms. Mann is
20 reaching out with Paul Elsesser present to another
21 company?

22 A. Okay. We're in disagreement there as who the
23 other company was.

24 Q. Okay. But Ms. Mann was present?

25 A. Okay.

1 Q. And that bid was being negotiated at the same
2 time?

3 A. Correct -- well, it was being considered, yeah.

4 Q. Okay.

5 A. Okay. That bid I think included we have to get a
6 survey and it had a lot of extracurricular things
7 attached to it.

8 Q. Well, where is that?

9 A. It was mentioned in here somewhere. I just read
10 it.

11 Q. Are you referring to Exhibit 31, which is dated
12 February 13th, we're getting close to making a decision
13 regarding the slope repair?

14 A. No, this is -- okay. This has to be -- because
15 on January 31st of '24 it says John Niven of Soil
16 Engineering has agreed to prepare a quote without the
17 topographical survey but needs an accurate cross
18 section. So they had to contact -- oh, here it is.
19 1/29/24, the one to Connie Laughlin.

20 Q. Okay.

21 A. Okay.

22 Q. Exhibit 29. This morning Jill Mann and I --

23 A. Yeah. Okay. If you go down approximately
24 halfway down it says Prior to submitting a quote John
25 Niven has asked for a topographical survey of the slope

1 involved. That is a detailed view of the mapping of
2 elevation cross and down the slope needing repair.

3 John has recommended a surveyor and John's
4 estimate in the cost would be less than \$4,000. I can
5 push back on the necessity of providing this
6 information, but I doubt John would give us a quote
7 without it. Proper course of action would be get three
8 to five quotes.

9 Okay. And then we -- then get a survey out
10 there. And then time to the report and finally time
11 needed for Soil Engineers to prepare the quote.
12 Alternately, we can make a decision based on the three
13 quotes.

14 Q. Which is what the board did, right?

15 A. Which -- yeah.

16 Q. So the board cut Ms. Mann out of the decision?

17 A. Again, we don't know if she initiated it. Like I
18 said, I'm sticking to my it could be Paul that initiated
19 it.

20 Q. But again, we're in agreement that at best we
21 don't know?

22 A. Why is Paul dealing with him in all these areas
23 then about --

24 Q. Well, you tell me.

25 A. I don't know. That's why I'm saying if he didn't

1 initiate the quote, why would he be dealing with him?

2 Q. Could it be because all the decisions have to go
3 through the board and he's the board liaison?

4 Is that a possibility?

5 A. It might be.

6 Q. Let's mark next in order 33.

7 (Exhibit 33 was marked for identification.)

8 All right. We have an email dated March 23rd,
9 2024. Paul Elsesser writes to John Moore Inspection
10 complete. No evidence of drains flowing onto slope.

11 Do you know what he means by this?

12 A. Say that again.

13 Q. Do you know what he means by this?

14 A. Yes.

15 Q. What does he mean by this?

16 A. Okay. There were -- I don't know -- three or
17 four houses above the property because of -- it's a
18 large area. And a couple of them had drain pipes that
19 were coming out of their property pointing down towards
20 the slope.

21 Q. So they are overlooking the slope. And there's
22 some drain pipes from those homes that --

23 A. Could potentially have added water to the --

24 Q. To the slope at 139?

25 A. Yes.

1 Q. Okay. All right. So okay. Go back to putting
2 this into context.

3 What inspection is he talking about?

4 A. He's talking about inspecting these properties
5 above. Putting water through the pipe and seeing
6 whether it's coming out or not.

7 Q. And his conclusion was?

8 A. There was no drainage.

9 Q. In other words?

10 A. They were either -- they were old, they were
11 blocked. One obviously had a cap on it.

12 Q. Okay.

13 A. So there was -- otherwise you would've seen
14 erosion just from the water flowing out of the pipe
15 also.

16 Q. In other words, the upslope neighbors were, based
17 off of Paul Elsesser's observations, not adding water to
18 the slope?

19 A. Correct.

20 Q. Next in order, 34.

21 (Exhibit 34 was marked for identification.)

22 Email from Paul Elsesser dated April 11th, 2024.

23 A. Okay.

24 Q. Language I'd like to focus on is on the second
25 paragraph, second sentence -- third sentence. I'm

1 sorry. The slope failure was not due to the 2019
2 drains.

3 A. All right. I got to find it. Second paragraph.

4 Q. Yes, third sentence.

5 A. Oh, okay. Thank you. Okay.

6 Q. Quote again, The slope failure was not due to the
7 2019 drains. Those drains were addressing a surface
8 water condition leading to water and mud flowing over
9 the wall and onto the patio on the bottom of the slope,
10 not high moisture at the top portion of the slope.

11 The drains are designed to capture surface water
12 and then to control the water flow out onto the patio
13 where the patios drains would then direct it to the
14 streets.

15 And he concludes that paragraph with Rain falling
16 on the slope was puddling and flowing over the wall, and
17 this repair removed the surface water and directed it
18 through the wall but still on the patio.

19 Do you see that language?

20 A. Uh-huh.

21 Q. How did Paul Elsesser come to these conclusions?

22 A. Okay. It isn't Paul. You know, this was all
23 Chris from Mountain Movers and Efram -- I mean from
24 GeoTek, and Efram from Mountain Movers. And he says,
25 you know, they're giving a similar account. The slope

1 failure was not due to the 2019 drain.

2 And then it goes on. And then they concluded
3 that the design of the 2019 system, while adequate,
4 would've been better if the pipe running laterally at
5 the bottom was a solid pipe rather than a perforated
6 pipe. Better still would've been to direct the water
7 into the patio drains rather than out onto the patio.

8 It's important to keep this perspective. Rain
9 falling on the slope was puddling and flowing over the
10 wall. This repair removed the surface water and
11 directed it through the wall but still on the patio.
12 Now I think they're referring here to the 2019
13 situation.

14 Q. Okay.

15 A. Not the 2023. Because I know I was -- I think I
16 was on our property twice. And I know by visuals that
17 there was no mud on her patio. If it was coming over
18 the wall there would've been mud on the patio.

19 Q. Okay.

20 A. There would've been mud coming out of the pipes.

21 Q. So it's your opinion here that he's referring to
22 the 2019 conditions?

23 A. Yes.

24 Q. And he's basing that on his conversation with
25 Chris Livesey from GeoTek and Efram from Mountain

1 Movers, correct?

2 A. Correct.

3 Q. Neither of whom are civil engineers, to the best
4 of your knowledge?

5 A. I know GeoTek does have civil engineers. So
6 whether -- I don't think Chris is one. But they do
7 have -- their company does employ a civil engineer.

8 Q. Okay. Next in order, 35.

9 (Exhibit 35 was marked for identification.)

10 A. Oops. You going to give me the one with the
11 number on it?

12 Q. We'll take it back. I only have two copies.

13 Do you recall receiving this email from Paul
14 Elsesser dated April 13, 2024?

15 A. I know I received it, but I can't say I recall
16 receiving it on that date.

17 Q. Okay. He writes thanks for your report. I'll
18 have some significant changes to make for the sake of
19 clarity. I've inserted the corrections in the body of
20 your report, which I have copied here. My additions are
21 in italics, and my deletions are in strikethrough.

22 Meaning that Paul Elsesser was making corrections
23 to a report, correct?

24 A. Yeah. Sally was the secretary at the time.

25 Q. So he's correcting Sally's report of her

1 findings, correct?

2 A. I don't -- I don't -- she wasn't physically
3 involved. This was already after everything was done.
4 This was just a report that she was compiling.

5 Q. Okay. But Mr. Elsesser is changing the content
6 of the report by adding his comments in italics and
7 making strikethroughs, correct?

8 A. Right.

9 Q. So wherever we see an italic in this edit it is
10 Paul Elsesser's edits, correct?

11 A. Correct.

12 Q. Similar with the -- or likewise with the
13 strikethroughs?

14 A. Right.

15 Q. So he added Original system wall weep holes was
16 appropriate for the time, circa 1990.

17 A. Okay. That's when the property was built.

18 Q. Okay. But those are his additions, correct?

19 A. Well, I don't think he made them up.

20 Q. Well how do you know that?

21 A. Maybe, you know, he researched it.

22 Q. Does it show where --

23 A. You have to ask Mr. Elsesser.

24 Q. Well, you're here on behalf of --

25 A. I know that. But I don't know everything that

1 everybody did.

2 Q. Do you think it appropriate to make an addition
3 like this without providing the source of the
4 information?

5 A. Okay. He's saying that first of all, this is
6 GeoTek's findings with a meeting with Chris Livesey.
7 And I think he said original system because maybe weep
8 holes was there. So to just define the -- what was
9 there. Okay. So what else are we going to do? Go on?
10 Just read it?

11 Q. Okay. So then he adds additional italics. When
12 Chris later talked to Efram from GeoTek he immediately
13 changed his position. Perforated pipe at the base
14 behind the wall could distribute surface water
15 collection down behind the wall.

16 Do you see that?

17 A. Yes. Because originally Chris said it's fine,
18 cover it up. Then Efram from Mountain Movers talked to
19 him or something. And then he changed his mind and said
20 oh, it should be perforated.

21 Q. Is this before or after GeoTek's final report?

22 A. This is before.

23 Q. He makes an addition regarding the Mountain Mover
24 findings from April 11th, 2024. He strikes out current
25 and some other language and adds italics. The final

1 language that Paul Elsesser submits is the 2019 system
2 is with perforated pipe which is not typically used.

3 Do you see that language?

4 A. This is from Efram, yes.

5 Q. He had no concerns about tying the 2024 slope
6 drainage system into the 2019 piping or else he would've
7 raised concerns at the time.

8 Is he referring to Efram not having concerns?

9 A. This is -- yeah, because this is a meeting with
10 Efram.

11 Q. Efram is not a civil engineer though, right?

12 A. No, he's -- works for Mountain Movers.

13 Q. Mountain Movers, yeah.

14 A. Okay. But I'm sure he has had experience dealing
15 with situations.

16 Q. Okay. And then we have immediately underneath
17 Next steps proposed: cap the 2019 system so there is
18 less mud flowing through the 2019 system and onto the
19 patio and authorize Mountain Movers to remove yards of
20 soil at \$225 per cubic yard. A new drain can be redone
21 later.

22 A. Continue.

23 Q. 2019 drain had nothing to do with the slide.

24 A. Thank you.

25 Q. Okay. Where is Paul Elsesser drawing the

1 conclusion the 2019 drain had nothing to do with the
2 slide?

3 What is he basing that off of?

4 A. Because it -- because it only dealt with surface
5 water. It was taking the surface water away at the
6 bottom of the hill. It wasn't doing anything for the
7 area where the slide occurred.

8 Q. But GeoTek made a determination that the French
9 drain was taking surface water from the surface of the
10 slope and reintroducing it into the toe of the slope at
11 the bottom of the slope?

12 A. Okay. Well, that's like --

13 Q. Isn't that right?

14 A. -- if the slide was right above the toe, I would
15 say yes, it could be a contributor. But the fact that
16 the slide was up the hill, not near the bottom of the
17 slope, it's hard to say that because there was water at
18 the bottom how come the slope gave way on top.

19 Q. And that's your layman opinion, correct?

20 A. Well, no, it's not -- it's also just -- to me
21 it's logical. If the water -- the saturation of the
22 water got so great that -- and when it hit the bedrock
23 the water had nowhere to go. So it literally just came
24 out. It didn't soak back down because it reached
25 bedrock.

1 So it -- that -- it didn't get down to the
2 bottom. And if you go through the geological reports
3 they'll tell you, you know, the depth and how much water
4 there was there and, you know --

5 Q. Okay. But water certainly was not being carried
6 away from the slope?

7 A. Well, it should've been released through the weep
8 holes.

9 Q. That was the intention, correct?

10 A. Uh-huh.

11 Q. Is that right?

12 A. That's correct.

13 Q. But what ended up happening as GeoTek observed in
14 its final report is that the water that was meant to be
15 collected and taken away from the slope so we don't end
16 up with this kind of condition was actually being
17 reintroduced at the toe of the slope, correct?

18 A. And it should've been released.

19 Q. But it wasn't, correct?

20 A. That's because the drains were clogged because
21 nobody had maintained them.

22 Q. Well, that's not what the GeoTek report stated.
23 And we could pull that up again if you'd like.

24 A. Okay.

25 Q. Would you like me to?

1 A. No. What did they say?

2 Q. I will represent to you that what we read into
3 the record earlier was that the water was intended to be
4 taken away, but what ended up happening is the water was
5 being reintroduced at the bottom of the slope. And we
6 have elevated moisture and the bulged toe that was a
7 contributing factor.

8 A. Okay. I don't know about the bulged toe.

9 Q. Which is what we discussed earlier.

10 A. Yeah, because that's what I didn't know what it
11 was.

12 Q. Okay. So as we sit here today and we look at
13 Exhibit 35, Efram is not qualified, is he?

14 A. To do what?

15 Q. To offer this opinion that he had no concerns
16 about tying the 2024 slope drainage system into the 2019
17 piping.

18 A. Well, I would think that because he works for the
19 excavation company, I don't know what his qualifications
20 were. But I don't think he would say that unless he
21 believed that it wasn't -- not a problem.

22 Q. But critically Paul Elsesser writes a new drain
23 can be re-done later, correct?

24 A. Yeah.

25 Q. Okay.

1 A. Doesn't mean that it has to be done.

2 Q. Okay.

3 A. Just says it can be done.

4 Q. It can be done.

5 And if -- as you sit here today, on behalf of the
6 HOA, if it's GeoTek's recommendation that a new drain
7 must be installed, would you agree with that?

8 A. I would have a problem with GeoTek.

9 Q. Why?

10 A. Because at first they said the pipe was fine,
11 cover it up. And then they go back and say oh, no, it's
12 perforated. So the onus is on them, not us. We went by
13 their recommendation. And by the time they said, you
14 know, it should be re-done, it was all filled back in
15 again.

16 Q. Are you critical of the way that GeoTek made its
17 recommendations?

18 A. In what respect?

19 Q. Well, with the report you just described.

20 A. Well, that's the only instance that I know of
21 that, you know, like, okay, you said it was okay. And
22 then you turn around and say it's not okay. Well, which
23 is it. I mean, and in the meantime work is progressing.

24 Q. Okay. Has the HOA considered bringing in GeoTek
25 as a cross-defendant?

1 A. Not to my knowledge.

2 Q. Without revealing attorney-client.

3 A. Not to my knowledge.

4 Q. Okay. As you sit here today, do you have second
5 thoughts about that?

6 A. Yeah.

7 Q. Okay. How about with respect to Pablo's
8 landscaping who installed the initial drain?

9 A. Pablo just installed the pipe. Okay.

10 Q. The French drain?

11 A. Yeah, the French drain.

12 Q. Which is reintroducing water into the toe of the
13 slope.

14 A. Well, but it did take away the surface water.
15 There was no longer mud coming over the top. So the
16 reason it was put in was to get rid of the surface
17 water.

18 Q. But the intention certainly wasn't to cause the
19 slope to fail?

20 A. No, no, no. And again --

21 Q. That's called negligence though, isn't it?

22 A. Well, no. We didn't know. I mean --

23 Q. So why should my client be held responsible for
24 that?

25 A. For what?

1 Q. For the installation of a French drain that's
2 reintroducing water back into the slope.

3 A. She's not being held responsible. She's only
4 being held responsible for the putting back together her
5 slope. That's all we want.

6 Q. Which was damaged by what?

7 A. Was damaged by excessive amount of moisture
8 entering the soil. And even though it's --

9 Q. As a result of what?

10 A. As a result of a very wet winter.

11 Q. Where in the GeoTek --

12 A. It doesn't -- it just says --

13 Q. It doesn't say that.

14 A. It just states --

15 MR. COMBS: Stop. You're talking over each
16 other.

17 THE WITNESS: It just says that we have a
18 very wet winter.

19 BY MR. ALEXANDER:

20 Q. I apologize. Okay.

21 So the conclusion to fine my client and do an
22 assessment was not based on a GeoTek recommendation?

23 A. Well, they recommended that we get the slope
24 fixed. And they said this is what you have to do. This
25 is how you re- -- take it out, you know, put in new

1 drainage pipes, put in -- you know, change some of the
2 elevation, et cetera. So yeah, we followed their
3 recommendation because we had -- we felt it was imminent
4 that we had that slope repaired.

5 Q. But nowhere in their reports did GeoTek conclude
6 that it was excessive rain that caused the slope
7 failure, correct?

8 A. GeoTek didn't, but we had another consultant who
9 did.

10 Q. Who is that?

11 A. Mr. Wang.

12 Q. Are you talking about your retained expert?

13 A. Yes.

14 Q. As of 2025?

15 A. Yes. He inspected the property and whatever --

16 Q. But he was not your expert at the time when this
17 slope failed, correct?

18 A. No, but he is a very knowledgeable man. And this
19 is his job. This is what he does.

20 Q. Okay.

21 A. So we retained him. He checked the property out.
22 And in his document he states that it was the excess
23 rain that caused it. Now Ms. Mann had a expert witness
24 there the same day. Now we have not received any report
25 from him as to what his findings were.

1 I don't know, you know, why or why not. I mean,
2 we've given everything to you. But we have not gotten
3 anything back.

4 Q. There's procedural steps that need to be taken.
5 I will represent that we have not exchanged expert
6 reports and expert depositions have not taken place yet.
7 Those are forthcoming. But I can ask you this. What
8 does your expert -- strike that.

9 In his expert findings does your expert account
10 for the introduction of water by the French drain at the
11 toe of the slope?

12 A. Yes, he said that did not cause the failure.

13 Q. Okay. Does he have an explanation as to why
14 GeoTek and Mountain Movers were exposing the French
15 drain if it had nothing to do with the slope failure?

16 A. Because they were moving the dirt on that whole
17 hill. And then at the bottom, whatever you call the
18 bulged toe or whatever it is, they removed dirt so that
19 the slope wasn't as steep so it kind of curved out. So
20 obviously the pipe was in the vicinity.

21 Q. Prior to today had you heard the term bulged toe?

22 A. No. I mean, it was in the report, but I didn't
23 know what it meant.

24 Q. Okay. All right. Next in order, 36.

25 (Exhibit 36 was marked for identification.)

1 And this is along the same lines of what we've
2 been discussing. We have an email from Paul Elsesser,
3 April 16, 2024. That's the bulk of Exhibit 36.

4 Do you see that?

5 A. Okay.

6 Q. We'll start at the second page, bullet point 2.
7 He writes Chris is recommending that a surface water
8 collection system be installed near the ground surface,
9 mentioning 12 inches to 18 inches down, and then run
10 laterally to some unnamed outlet.

11 He would then remind us that he is a geologist
12 and not a civil engineer, or in other words, he wasn't
13 designing the system. Chris and Efram were in agreement
14 that the slope failure that occurred in April 2023 was
15 unrelated to the 2019 drainage system.

16 When did Mr. Elsesser have a conversation with
17 Chris and Efram to draw these conclusions?

18 A. During the whole process I believe of -- I can't
19 give you a date.

20 Q. Again, this is prior to GeoTek issuing its final
21 report, correct?

22 A. This is April of 2024. Yes. And that was
23 actually -- the slope was completed on April 18th,
24 according to my timeline. And they may have mentioned
25 it then at that point. Because it was Mountain Movers,

1 Chris, Paul and Ms. Mann at that meeting.

2 Q. On the first page we have bullet point 1. It is
3 recognized that the perforated pipe at the bottom of the
4 wall installed in 2019 was a poor engineering choice.
5 It continues, Surface water captured by the atrium
6 drains could potentially create problems for the wall,
7 but there isn't any evidence that any damage has
8 occurred.

9 There also isn't evidence that the soil at the
10 bottom of the wall is saturated. The new system should
11 never have water flowing into it, so there won't be any
12 water from up the slope flowing out to the perforated
13 pipe at the bottom of the slope.

14 Do you see that?

15 A. Okay.

16 Q. How can drains that are connected -- that are
17 collecting water from the top of the slope and are
18 connected to the French drain not be introducing water
19 to the French drain?

20 MR. COMBS: Objection. Calls for an expert
21 opinion.

22 BY MR. ALEXANDER:

23 Q. If you know.

24 A. It just says the new system should never have
25 water flowing into it. And like I said, the new system,

1 I know the pipes came down at each end and then the
2 pipes went out. So in order for the water to go back
3 into the French drain, they would have to be backed up
4 from the flow going down.

5 Q. Is the French drain connected to that new system?

6 A. I don't know. I really can't tell you.

7 Q. Okay. Next in order, 37.

8 (Exhibit 37 was marked for identification.)

9 This is an email from Sally Lee to Robyn
10 Richardson, April 17th, 2024. She's asking a couple
11 questions. But then her conclusion is Robyn, Personally
12 I feel that we should just take care of the drain if the
13 cost is not over the top.

14 It seems to be her major focus and I don't want
15 this to come back to the board if any of her concerns
16 turn out to be valid, as with what happened with GeoTek.
17 But if doing so has a potential liability on the
18 community or CC&Rs for the majority of the residents, I
19 will go along with what the lawyers say.

20 Do you see that language?

21 A. Yes.

22 Q. Who is Sally Lee?

23 A. Sally Lee was on the board. She was the
24 secretary.

25 Q. Was there anybody else on the board who shared

1 her sentiment that the board should take care of this?

2 A. Not to my knowledge.

3 Q. So she was the only one?

4 A. Right. And again, she said personally. This was
5 her opinion so...

6 Q. I understand.

7 MR. ALEXANDER: Let's take a ten minute
8 break.

9 (Recess taken from 3:52 to 3:58.)

10 MR. ALEXANDER: We're going back on the
11 record.

12 Next in order is going to be Exhibit 38,
13 which is a video media file.

14 (Exhibit 38 was marked for identification.)

15 Total length is 18 minutes and 33 seconds.
16 We're not going to watch the whole thing. This is a --
17 I'll represent to you that this is a video footage from
18 Ms. Mann's patio security camera. And the date of the
19 video is April 18th, 2024. I have paused it currently
20 at 11 minutes and 21 seconds.

21 BY MR. ALEXANDER:

22 Q. Ms. Comouche, do you recognize any of the
23 individuals in this still frame?

24 A. Chris, I believe.

25 Q. Chris Livesey?

1 A. Yes.

2 Q. And what is he wearing?

3 A. He's wearing the gray jacket. He's between the
4 two other gentleman.

5 Q. Okay. If the top part of the video is 12:00
6 o'clock, the bottom is 6:00, roughly at what time is
7 Chris Livesey located?

8 A. 2:00 o'clock.

9 Q. 2:00 o'clock. Okay.

10 And do you recognize the gentleman in the red,
11 maroon kind of shirt?

12 A. It might be Kent Berchiolli.

13 Q. Do you recognize the gentleman behind Mr. Livesey
14 wearing a hat?

15 A. No.

16 Q. And do you recognize the woman --

17 A. That's me.

18 Q. -- at 7:00 o'clock? That's you.

19 So you were present for this meeting, correct?

20 A. Yeah.

21 Q. Do you know who the gentleman is standing behind
22 Ms. Mann who is drinking a cup of coffee?

23 A. It was her friend.

24 Q. Okay. As you sit here looking at this still
25 frame, do you recall this meeting?

1 A. Yeah, I think, yeah.

2 Q. And what was the meeting about?

3 A. One of many.

4 Q. One of many.

5 A. I mean, this is probably the meeting where Efram
6 and Chris and we got together. And, you know, what was
7 in that email we were talking about.

8 Q. Okay. The name of the video is board sign-off
9 MM, for Mountain Movers, _GeoTek_2019 drain.

10 Does that refresh your recollection as to what
11 this meeting was about?

12 A. No.

13 Q. Okay.

14 (Video plays.)

15 And for the record, I'm going to play the video,
16 and we're going to listen in on the conversation that
17 you had. Okay?

18 Can you hear the audio okay?

19 (Video plays.)

20 And I'm going to pause it at 12 minutes and 9
21 seconds. A gentleman just walked into the frame.

22 Do you know who that is?

23 A. Paul Elsesser.

24 Q. Okay. I'm going to continue playing.

25 (Video plays.)

1 So I'm pausing at 16 minutes and 15 seconds,
2 following a discussion between Chris Livesey of GeoTek
3 and Paul Elsesser for the HOA board.

4 Would you agree with me that the two of them are
5 discussing the status of the system up to that date,
6 April 18, 2024?

7 A. Yeah.

8 Q. And would you agree with me that GeoTek is
9 recommending further work to be performed on the
10 French drains in the entire system?

11 A. They're recommending it.

12 Q. And are those recommendations consistent with
13 their final report, which came a couple of weeks after,
14 which we already --

15 A. Again a, recommendation is not a order.

16 Q. Okay.

17 A. So yeah, they recommend it, but they didn't say
18 you must replace this drain.

19 Q. Because the HOA contacted any third party
20 vendors -- well, strike that.

21 Because the HOA communicated with GeoTek
22 regarding this additional work?

23 A. Not to my knowledge.

24 Q. Has the HOA communicated with anybody else
25 regarding providing bids for this additional work?

1 A. No. All I know is that they did cap the vents,
2 the pipes.

3 Q. So to your knowledge the HOA did cap the system?

4 A. Uh-huh, and I think it was just our landscape guy
5 that went in there and just put the caps on them.

6 Q. And what is the importance of capping those?

7 A. So no water would be going down.

8 Q. And if the current condition of those drains is
9 that they're not capped, do you have an opinion as to
10 that?

11 A. Well, if they weren't capped, then there could be
12 surface water going in.

13 Q. And what would be the effect of that as you
14 understand it?

15 A. As I understand it, it would go into the French
16 drain. And because it's perforated, it would penetrate
17 down.

18 Q. Be reintroduced into the slope, correct?

19 A. Right. Again, it depends on the quantity of
20 water. I mean --

21 Q. But any amount of water would be reintroduced?

22 A. Any amount can be introduced, but it doesn't mean
23 that it's going to saturate the slope.

24 Q. If the -- strike that.

25 If the drains were capped, where in the HOA

1 records would that process be captured and reflected --
2 or documented, is a better --

3 A. It could be documented in the landscape report.
4 I really don't know. Or it may not be documented. Just
5 like here, just put the caps on.

6 Q. Did the HOA demand that Green Horizons show proof
7 that it capped these drains?

8 A. They didn't have to demand it. They could -- you
9 know, you could see that they put the caps on.

10 Q. Have you been out to the property?

11 A. I haven't personally.

12 Q. Okay. Are all the drains currently capped?

13 A. To my knowledge, they are currently capped.

14 Again, I have not had a visual.

15 Q. How did you obtain that knowledge?

16 A. Through emails.

17 Q. Who made the representations to you --

18 A. Probably Paul.

19 Q. Well, let me finish my question. I know you're
20 anticipating.

21 Who made the representations to you that the
22 system was indeed capped per GeoTek's recommendation?

23 A. Paul.

24 Q. And I'm going to continue playing the video at
25 16:19.

1 (Video plays.)

2 And I'm going to pause again at 16:50.

3 Is it a fair summary that Paul Elsesser
4 recognizes that a cap is a temporary solution?

5 A. Yes.

6 Q. I'm going to hit play again.

7 (Video plays.)

8 I'm going to pause here again. We're at 18:59,
9 19 minutes.

10 Is it a fair summary that the group agreed the
11 short term -- capping the drains is a short term
12 solution?

13 Is that a fair summary?

14 A. Yeah, yes.

15 Q. And the way that they define short term versus
16 long term, as Kent Berchiolli stated, long term is six
17 months because there's no rain projected for six months.

18 Is that an accurate summary of what the
19 discussion was?

20 A. I don't know about what long term and short term.
21 I wouldn't say six months was long term.

22 Q. Does the HOA agree, do you agree that capping the
23 drains and doing nothing more is a short term solution
24 to this problem?

25 A. Yes.

1 Q. So something more needs to be done in order to
2 fully remediate the slope, correct?

3 A. Correct.

4 Q. I'm going to hit play again.

5 (Video plays.)

6 So I'm pausing again at 19:58.

7 In the last segment that we just heard is it a
8 fair summary that the HOA board approved the capping of
9 the drains as a short term solution?

10 A. Yes.

11 Q. And Chris Livesey is representing that GeoTek is
12 going to be providing its final report, correct?

13 A. Correct.

14 (Video plays.)

15 Q. I'm pausing again at 21:08.

16 Is it a fair summary that Chris Livesey of GeoTek
17 represented to the board that the official GeoTek report
18 is the final report?

19 A. Yes.

20 Q. I'm hitting play again.

21 (Video plays.)

22 I'm going to pause again at 22:14. There's
23 chatter going back and forth.

24 But in the background you and Mr. Elsesser are
25 signing off on the Mountain Movers scope of work,

1 correct?

2 A. Correct. And that's what was agreed upon,
3 that -- okay. It's okay. We can sign off.

4 Q. On the temporary cap repair?

5 A. No, on the work on the slope. Mountain Movers
6 didn't put in the caps, they didn't do anything there.
7 It was just the slope work.

8 Q. You're signing off on the work that Mountain
9 Movers did up to date?

10 A. Yeah, the excavation up to date, the drainage
11 pipes, et cetera.

12 Q. So subsequently is when the HOA decided to adopt
13 the temporary repair of the cap on the drains, correct?

14 A. Yeah, I don't know exactly how soon, the timeline
15 on that.

16 Q. Okay. Let's mark next in order 39.

17 (Exhibit 39 was marked for identification.)

18 A. Goodness.

19 Q. This is a document entitled Las Brisas Pacificas,
20 Inc. landscape maintenance requirements and
21 specifications.

22 A. 1994.

23 Q. 1994, correct. The second sub heading there we
24 have work to be performed includes but is not limited to
25 maintenance of common areas, bank slopes, lawns, flower

1 beds and pathways.

2 Do you see that language?

3 A. What?

4 Q. Do you see that language?

5 A. Oh, yes, I do.

6 Q. All right. So let's turn to the next page. Top
7 paragraph, first sentence. Clean and maintain all
8 drainage lines and catch basins as necessary.

9 Do you see that language?

10 A. Yes.

11 Q. We continue, contractor shall take steps as
12 necessary to eradicate snails and gophers from
13 cultivated areas and shall furnish labor and materials
14 for this purpose.

15 Is it fair to say that the scope of the landscape
16 maintenance committee, their scope of work has not
17 changed since 1994?

18 A. This is the committee or is this the landscape
19 company?

20 Q. Company. I'm sorry.

21 A. Okay.

22 Q. Yeah. Thank you.

23 A. Yeah, basically it's stayed the same.

24 Q. Okay.

25 A. We no longer have lawn. So, you know, that kind

1 of stuff is gone, but --

2 Q. But they still maintain the common areas?

3 A. Yes.

4 Q. Bank slopes?

5 A. Yes, because the ravine we have there's banks
6 that go down on the side.

7 Q. And they clean and maintain all drainage lines?

8 A. Again, what they mean by that I'm not sure. I
9 know the culverts and the, you know -- the ditches, they
10 clean out for leaves and stuff. But as to the drainage
11 lines, I can't tell you.

12 Q. Okay. It says all drainage lines. It doesn't
13 distinguish --

14 A. I don't know which ones they're talking about.

15 Q. Okay. And also they're responsible for the
16 gophers, right?

17 A. For the?

18 Q. Gophers, the pests.

19 A. Well, we have a -- we have a pest control company
20 that does that.

21 Q. Oh, that's separate?

22 A. That's separate, yeah.

23 Q. Okay. But the HOA does?

24 A. Trim -- gopher control.

25 Q. Perform gopher control --

1 A. Yeah.

2 Q. -- duties on --

3 A. Yeah.

4 Q. -- all slopes, including the private slopes?

5 A. Right.

6 Q. Okay. Do you have an understanding as to whether
7 or not gopher holes diminish the stability of the slopes
8 at Las Brisas?

9 A. Yes, of course they do.

10 Q. So if there's a gopher problem on the slopes --

11 A. It has to be reported, and then it's dealt with.

12 Q. And the reason being is because the stability of
13 the slopes --

14 A. Well, not only that, but they're eating the
15 plants.

16 Q. So it's twofold?

17 A. Yeah. It's to maintain the --

18 Q. Aesthetic?

19 A. Aesthetic. And of course, you know, you don't
20 want holes all over either so...

21 Q. When gophers destroy plants, does that also
22 contribute -- well, strike that.

23 Plants contribute to the stability of the slope
24 itself, correct?

25 A. Correct.

1 Q. If gophers destroy those plants, the plants are
2 no longer contributing to the stability of the slope,
3 correct?

4 A. Uh-huh. That's why the homeowner if they notice
5 it has to report it.

6 Q. Okay.

7 A. Again, because we don't have eyes all over.

8 Q. I understand.

9 A. Yeah.

10 Q. Okay. Are you aware that historically gophers
11 have been a problem all over Las Brisas?

12 A. They're a problem all over anywhere.

13 Q. Okay. All right. I'm going to show you what was
14 previously marked as Exhibit 30 to Bill Katz's
15 deposition. I'll turn your attention to Bates number
16 13360.

17 A. Okay.

18 Q. And I should've done this when I handed you the
19 exhibit. This is the Las Brisas Breeze newsletter,
20 correct?

21 A. Correct.

22 Q. And it's dated September 1998, correct?

23 It's on the front page.

24 A. Yes.

25 Q. Okay. So let's go back to 13360, paragraph

1 titled common areas.

2 Do you see that?

3 A. Okay.

4 Q. Common areas in Las Brisas are owned by
5 individual property owners. However, due to insurance
6 stipulations, homeowners are not permitted to plant
7 anything, nor to attempt to maintain these areas.

8 They are maintained by the gardeners by contract
9 with the homeowners association. Certain homes in the
10 north slope of Las Brisas are not covered by the
11 maintenance and insurance provisions.

12 Do you see that language?

13 A. Yes.

14 Q. So in 1998 the association is reminding the
15 homeowners that common areas are actually owned by
16 individual property owners, correct?

17 A. Again, yes. It's a poor use of words, but yes.

18 Q. Well, there --

19 A. How can common areas be individually owned?
20 It's -- you can't have the same.

21 Q. Well, this is I think the issue that your
22 community has been experiencing. And up until this
23 slope failure at 139, everybody understood that the
24 private slopes are common areas because these
25 representations are repeatedly being made by the HOA.

1 But that's my summary of it.

2 A. Okay.

3 Q. You don't have to agree with it.

4 A. No.

5 Q. But at least part of the reason why common areas
6 were being defined as -- or strike that.

7 At least part of the reason why individual
8 property owners are included in the common area is due
9 to insurance stipulations.

10 Do you see that?

11 A. And that they don't want the homeowners crawling
12 on the hills.

13 Q. Okay.

14 A. I mean, if our land was flat I think there would
15 be a whole nother situation. But because everything is
16 on a slope, you don't want 80-year-old people trying to
17 pull weeds on their slope.

18 Q. That's not what it says though.

19 A. No, I'm just stating a fact though. We have
20 90 slopes in our community.

21 Q. Yeah.

22 A. And some homes have no -- basically no backyard.

23 Q. Yeah.

24 A. So, you know, that was so people don't decide to
25 do something irrational.

1 Q. Next I will show you Exhibit 29 to the Bill Katz
2 deposition. And I'll turn your attention to -- strike
3 that.

4 This is a Las Brisas Breeze February 2005,
5 correct?

6 Let's go to Bates LBF 12639, please.

7 We have a paragraph that provides an update to
8 the community. It states Green Horizons has submitted
9 proposals of repair and cost of rain damaged slopes,
10 which were costly. It was decided to wait until after
11 the rainy season was over to make these repairs.

12 Do you see that?

13 A. Yeah. They don't define what these -- what the
14 repairs are and what the damage is.

15 Q. But these are repairs done to the slopes as a
16 result of rain damage, correct?

17 A. Correct. But it could just mean that because of
18 erosion or something. It's just dirt that was being
19 moved by the water, erosion.

20 Q. That's not what it says though.

21 A. I know, but it doesn't say that it was also that
22 they went in there and dug the hole -- everything up and
23 redid it.

24 Q. What we do know, however, would you agree with
25 me, is that in 2005 there was rain damage to private

1 slopes for which --

2 A. Again, it doesn't say private slopes. It just
3 says slopes. Green Horizons submitted proposals for
4 damaged -- it says slopes.

5 Q. Okay.

6 A. So --

7 Q. But we have already agreed that within that time
8 frame the HOA was treating all slopes as common area
9 slopes, correct?

10 A. Yes.

11 Q. Okay. So it makes no difference whether it's
12 private or --

13 A. Okay.

14 Q. Okay. All right.

15 A. But like I said, it doesn't delineate the extent
16 of what they were talking about, are they just going to
17 put new plants in. Like I said, to my knowledge, this
18 is right before I moved in.

19 Q. That's okay. I understand.

20 A. So I don't have, you know, one-on-one with this.
21 But nobody ever said that oh, we had this terrible rain
22 and oh, these slopes are falling and the houses were in
23 danger, et cetera, et cetera. That was never ever
24 mentioned.

25 Q. Would you agree with me that that goes to the

1 scope of the damage, but not as to who assumed
2 responsibility for that damage?

3 A. Yes. But then they said they were going to wait
4 till the rainy season was over. So I don't know if they
5 ever really did the repairs and what were they.

6 Q. Okay. So really here we're talking about the HOA
7 was going to repair the slopes that were damaged by the
8 rain, which the HOA reflects were costly, correct?

9 A. Uh-huh. Again -- **Remind them: this in 2005! The HOA did private slope
repair work as a result of rain damage in 2005.**

10 Q. Costly is a relative term?

11 A. That's what I was going to say, what's the
12 definition of costly.

13 Q. Okay. But that does not mean that the HOA has
14 never repaired slopes damaged by rain at the Las
15 Brisas --

16 A. Again, the term repair many times is misused
17 instead of maintenance.

18 Q. I'm going to mark next in order Exhibit 40.
19 (Exhibit 40 was marked for identification.)

20 MR. COMBS: Madam Court Reporter, are you
21 keeping time on how long the deposition has been going?

22 MR. ALEXANDER: This is a PMQ depo.

23 MR. COMBS: It doesn't matter. She's a
24 natural person.

25 THE REPORTER: I can calculate it if you

1 want me to.

2 MR. COMBS: Okay.

3 MR. ALEXANDER: Well, who else is it going
4 to be other than a natural person? I'm not deposing her
5 in her individual capacity. She's here as a PMQ. I
6 don't have a time limit. This deposition is going to
7 continue until I'm done.

8 MR. COMBS: Not necessarily. But you can go
9 on for now.

10 MR. ALEXANDER: There is no way for a
11 corporation, Counsel, to speak through anyone other
12 than a natural person. I'm not deposing her in her
13 individual capacity. She's here as a PMQ. And we're
14 going to be done within a reasonable time. I can
15 promise you that.

16 BY MR. ALEXANDER:

17 Q. Exhibit 40, Ms. Comouche. We have meeting
18 minutes of the Las Brisas Pacificas dated February 9th,
19 2005, correct?

20 A. Yes.

21 Q. This is the same February 2005 as the Las Brisas
22 Breeze, correct?

23 A. Correct.

24 Q. I'll turn your attention to the landscape
25 committee report. It states The landscaping committee

1 representative discussed proposals for pre-emergents and
2 slope repairs.

3 Do you see that language?

4 A. Yes.

5 Q. Doesn't say maintenance, does it?

6 A. No. Again, like I said, the term repairs was
7 used interchangeably with maintenance.

8 Q. It continues, the committee with the landscaper
9 -- strike that. The committee met with the landscaper
10 and conveyed that the proposals would be entertained
11 further after the rainy season had concluded.

12 Do you see that?

13 A. Yes.

14 Q. This is consistent with what the HOA reported to
15 the community through the newsletter?

16 A. The Breeze, right.

17 Q. So --

18 A. But it would be interesting if you could then
19 research and find out what did they do so...

20 Q. What did they do?

21 A. I don't know. Because they said they were going
22 to entertain further after the rainy season has
23 concluded. So now that's another area that I don't know
24 what they did. Do you know what they did? I'm sorry.
25 I'm not supposed to question you.

1 Q. No, that's okay. That's okay. I understand the
2 passion. And I think you can understand my client's
3 passion here because we have language that states slope
4 repairs following rain and it's excessive damage.

5 A. Again, a relative term.

6 Q. So the association, whether it's a dollar damage
7 or a million dollars, it's not dispositive of the issue
8 of whether or not the HOA had made repairs to the slopes
9 following a rainstorm; isn't that right?

10 A. Yes.

11 Q. Next in order, 41.

12 (Exhibit 41 was marked for identification.)

13 Meeting minutes dated January 17th, 2019, yes?

14 A. Yes.

15 Q. Sorry, I didn't mean to come across aggressive on
16 that. Turn to page 2. Landscape and garden committee.
17 The committee reported on the landscaping goals for
18 2019, which will include the bare slopes, thinning and
19 shaping the trees --

20 A. Where are you?

21 Q. And install --

22 A. The committee reports that there have been
23 project delays due to rain. However, weather permitting
24 planting on the hillsides will take place in the coming
25 weeks. Rodent control has been improving and the

1 committee requests the residents to remove weeds in
2 their yard. That's what mine says.

3 Q. Give that back. Yeah, you're looking at a
4 different version than mine. So let's mark what you
5 just read as Exhibit 41. And let's go back to where you
6 just read.

7 The committee reported there have been project
8 delays due to rain. However, weather permitting
9 planting on the hillsides will take place in the coming
10 weeks. Okay. Rodent control has been improving and the
11 committee requested that residents remove weeds in their
12 yards as needed. Okay. All right.

13 Now let's mark Exhibit 42.

14 (Exhibit 42 was marked for identification.)

15 A. Okay. This is another meeting.

16 Q. January 17th, 2019.

17 A. This one says February 21st, 2019.

18 Q. I don't know what my printouts are here. Okay.
19 I will reprint these for you. But 42 is the one that
20 I'm looking at, January 17, 2019.

21 We're looking at landscape and garden committee
22 report January 17th, 2019, correct?

23 A. February 21st?

24 Q. Forget this one. I'm not marking this. This is
25 42. I apologize.

1 A. Okay.

2 Q. It was smooth up until right now. Okay.

3 A. Okay. All right. Now what are we doing?

4 Q. This is my only copy so I have to hover over you.

5 A. That's okay. That's all right.

6 Q. It makes it easier actually. Exhibit 42,
7 January 17, 2019, landscape and garden committee.

8 A. Okay. Committee reported on the landscape goals
9 for 2019, which will include bare spots, thinning and
10 shaping trees, and installing more succulent plants to
11 help reduce water consumption.

12 The committee also provided an update on gopher
13 infestation and asked members in attendance to report
14 any gopher activity so that the problem can be addressed
15 as soon as possible before it gets out of hand.

16 Q. Okay. Is this consistent with what we have been
17 discussing with respect to the gophers being an issue at
18 Las Brisas?

19 A. Yes. And that they were being treated.

20 Q. Okay.

21 A. So --

22 Q. Now I'm going to mark 43, which is the
23 February 21st, 2019 meeting minutes.

24 (Exhibit 43 was marked for identification.)

25 And if you can read the landscape and garden

1 committee report, please, into the record.

2 A. The committee reported that there have been
3 project delays due to rain. However, weather permitting
4 planting on the hillsides will take place in the coming
5 weeks. Rodent control has been improving and the
6 committee requests that residents remove weeds in their
7 yard as needed.

8 Q. Okay. So in the 2019 time frame there was gopher
9 rodent control taking place --

10 A. Yes.

11 Q. -- in the community, correct?

12 A. Yes.

13 Q. Okay. Is this your recollection as well?

14 A. Yes.

15 Q. Okay.

16 A. Yeah, they would come out and bait the holes,
17 whatever.

18 Q. Okay. We're going to continue with the theme.

19 Exhibit 44.

20 (Exhibit 44 was marked for identification.)

21 On May 16, 2019 --

22 A. Okay. We got a discrepancy already. My minutes
23 say April 18th, 2019. The front cover page says May,
24 but the minutes say April 18th, 2019. Yeah, but this
25 one says May 16.

1 Q. I have the same discrepancy on my version.

2 A. Okay.

3 Q. This is how it was produced by the HOA.

4 A. Okay.

5 Q. I don't know if it's a typo. Quite frankly, the
6 specific date doesn't really matter. In the April or
7 May time frame of 2019 we have landscape and garden
8 committee report that provides in the last sentence The
9 committee has also been working diligently on gopher
10 control, and requested those in attendance to report any
11 problems if they are seen.

12 A. Correct.

13 Q. And that is again consistent with the HOA
14 experiencing issues with gophers within the community,
15 correct?

16 A. Correct.

17 Q. I'm going to show you what was previously marked
18 as Exhibit 18 to the Bill Katz deposition.

19 This is Las Brisas Breeze newsletter dated
20 September 2022, correct?

21 A. Correct.

22 Q. If I can turn your attention to Bates 10275.

23 A. 10275?

24 Q. Yeah.

25 A. Okay.

1 Q. Here we have a landscape committee report by
2 Kent Berchiolli, correct?

3 A. Correct.

4 Q. First bullet point, slope repair and plant
5 replacement program.

6 A. And again, they used the word repair when they
7 were going to fix the slope. And that meant by either
8 replacing plants, you know, putting new plants in,
9 whatever.

10 Q. Well, this is in the conjunctive, isn't it?
11 Slope repair is separate from plant replacement?

12 A. I know that. But I know I was -- I was there. I
13 know that there was no slope repair.

14 Q. Again, I'm going to show you Exhibit 19. It was
15 Exhibit 19 to the Bill Katz deposition. Las Brisas
16 Breeze July 2022.

17 Do you see that?

18 A. Uh-huh. Now this one doesn't have any dates on
19 it so...

20 Q. Turn your attention to Bates 10299.

21 A. Okay.

22 Q. And again, we have a landscape committee report
23 by Kent Berchiolli, correct?

24 A. Uh-huh.

25 Q. Is that a yes?

1 A. Yes.

2 Q. His third bullet point, slope repair and plant
3 replacement.

4 Do you see that?

5 A. Yes, I do.

6 Q. Again, in the conjunctive, correct?

7 A. Okay. And again, it explains it, two plant
8 replacements slopes were completed.

9 Q. Well, that's part of the plant replacement that's
10 identified, correct?

11 A. Yeah, but they -- what slope repair was there.
12 They didn't identify it because there wasn't any.

13 Q. Well, that's what I'm asking.

14 A. Yeah, that's what I'm saying. You know, I
15 remember that in 2022 there was never an issue with
16 repairing the slopes. There was never a earth movement
17 or whatever. And that's -- I mean, I lived it. So I
18 know that it wasn't. There was no repair.

19 Q. Okay.

20 A. Again, it's the use of the word.

21 Q. So we are identifying two plant replacements.
22 But in addition, the HOA is responsible for slope
23 repairs. It just so happens that were no repairs
24 performed in that report?

25 A. Again, unfortunately Mr. Berchiolli used the word

1 repair repetitively. Instead of saying just maintenance
2 he would use the word repair. So you'll see this in
3 every one of his reports.

4 Q. So where there is a report that says replanting,
5 there's an item that states what the planting was.

6 But there were no repairs performed on the -- on
7 any particular slope; is that right?

8 A. That is correct.

9 Q. But the repairs were part of the maintenance
10 committee?

11 A. No, they weren't.

12 Q. So why is Mr. --

13 A. Because it's his use of the word. And nobody at
14 that time -- they weren't concerned about the semantics,
15 what word are you using, is it repair or maintenance.

16 Q. Because it didn't make a difference, correct?

17 A. It didn't make a difference. So that was just --
18 like I said, you'll see it over and over and over again.

19 Q. So if there was anything -- if there were any
20 issues with the slopes at that time up until 2025,
21 whether it was a repair or maintenance, it made no
22 difference to the HOA how it was classified?

23 A. How it was classified, correct.

24 Q. But the fact that the HOA was doing work on the
25 slopes is documented throughout the HOA's history,

1 correct?

2 A. They did maintenance work on the slopes, yes.

3 They planted, they weeded, they did the irrigation work.

4 Q. Well, that happens to be what was --

5 A. Is that repair?

6 Q. -- needed at the time.

7 A. Well, that's a constant need.

8 Q. But the HOA made no distinction whether that's a
9 maintenance or a repair, correct?

10 A. Correct.

11 Q. So if there was water damage, as we saw, and
12 there was a need for repair, the HOA reflected, yeah,
13 there was water damage and we need repairs and it's
14 costly?

15 A. However, there will be nothing in any of the
16 financial reports that work was done and this is what it
17 costs because it didn't happen.

18 Q. Well, they elected not to do the work.

19 That doesn't mean they didn't have the
20 responsibility to do the work, correct?

21 A. What, in 2022?

22 Q. At anytime before 2025.

23 A. Well, again, it's the use of the word repair.

24 Q. Simple semantics?

25 A. Yes.

1 Q. I'm going to show you Exhibit 22 of Mr. Katz's
2 deposition.

3 This is Las Brisas Breeze May of 2022, correct?

4 A. Correct.

5 Q. At Bates 10319.

6 A. Okay.

7 Q. We have landscape report by Kent Berchiolli.

8 A. Okay.

9 Q. Item 1 is pest control service?

10 A. Correct.

11 Q. Correct. So he reflects that Thrasher Termite &
12 Pest Control are -- is the vendor --

13 A. Correct.

14 Q. -- who does control pest services, correct?

15 A. Correct.

16 Q. And they visited two units where there were
17 gopher and ground squirrel infestations, correct?

18 A. Correct.

19 Q. Was the HOA sensitive to the use of poison for
20 pest control?

21 A. Well, yeah, because people have pets. So you
22 don't want to leave bait out somewhere that your cat or
23 your dog is going to eat. So...

24 Q. What method did the HOA use to control gophers on
25 the slopes?

1 A. Like I said, I really -- I know I had gophers on
2 my slope. I reported it. They came in. And I think
3 they put poison into the holes. Okay. And where the
4 gophers were. But my slope you can't get on it because
5 it's six feet up and it goes up another ten feet. So
6 it's not like, you know, if I had an animal that it
7 could get up there and eat everything so...

8 Q. In item 2, slope repair --

9 A. Again.

10 Q. -- and plant replacement continued with units
11 108, 109 and 157. Additional planting will be done on
12 unit 73 and unit 111.

13 A. Okay.

14 Q. Would you agree with me that there is specificity
15 as to the plant replacement scope of work?

16 A. Right. Because if plants are dead you have to
17 replace them.

18 Q. Okay.

19 A. If you're adding additional plants, you're adding
20 more plants to an existing situation.

21 Q. But there's no item for slope repair because none
22 were needed, correct?

23 A. Correct.

24 Q. Okay. But if they were needed, that would've
25 been part of the landscape committee?

1 A. Again, it's a matter of semantics. I'm saying
2 the word repair. And like I said, you'll see it in
3 every one of his reports.

4 Q. Exhibit 21 to Mr. Katz's deposition is next.
5 March 2022, Las Brisas Breeze, correct?

6 A. Right. There it is again.

7 Q. Okay. Let's see. If I can turn your attention
8 to 10345, please.

9 A. Yes, I've got it.

10 Q. Mr. Berchiolli is president this time, writes
11 your legal title of ownership will show the size of your
12 property.

13 A. Where are you?

14 Q. I'm sorry, it's president's reports.

15 A. Okay. Well, that's a different report. Give me
16 the page number.

17 Q. 345.

18 A. Okay. I got it.

19 Q. Okay. Second full paragraph there.

20 A. Yes.

21 Q. Your legal title of ownership will show the size
22 of your property. In many cases, over 30 years ago the
23 developer decided for ease of maintenance, uniformity of
24 appearance, and ease of installing sprinklers, slopes
25 were declared common area, even though many are included

1 in your legal title.

2 Do you see that?

3 A. Again, that is a statement by Mr. Berchiolli
4 and --

5 Q. In what capacity?

6 A. He was the president at the time.

7 Q. Did you challenge Mr. Berchiolli's statement that
8 was issued --

9 A. No.

10 Q. -- to all the members?

11 A. No, I didn't.

12 Q. Why not?

13 A. I -- well, at that time we only -- again, it was
14 common property owned. We did all the maintenance on
15 it. So he was just informing people that oh, by the
16 way, your -- if you check your property, some of it is
17 yours.

18 Q. And it's because up until the slope failure,
19 right up until the amendments really the HOA was
20 treating the slopes as common areas?

21 A. For maintenance, yes. Maintenance, uniformity of
22 appearance, sprinklers, gophers.

23 Q. They were considered common area, weren't they?

24 A. They were considered, but they were not common
25 area as defined by property owned by 169 homes in the

1 community. Common area is divided between each of the
2 persons in the community.

3 Q. But the --

4 A. So in that case that meant that we owned 169th
5 of -- or I own 169th of Jill Mann's property if it was
6 common area.

7 Q. But the HOA treated each one --

8 A. They treated it as such.

9 Q. As such what?

10 As common area, correct?

11 A. They treated it as such, yes.

12 Q. As common area?

13 A. Yeah.

14 Q. Yes?

15 A. Well, yeah, for maintenance purposes.

16 Q. And the HOA made no distinction up until the
17 slope failure between maintenance and repair, correct?

18 A. Correct, because it was never a problem with
19 having to repair a slope.

20 Q. So the issue is not that the HOA was not
21 responsible for all slopes as common areas.

22 It's just that there wasn't an issue to address
23 at that time?

24 A. Correct.

25 Q. So the first time that there was a major issue,

1 what did the HOA do?

2 A. They checked with I guess legal. We checked
3 with, you know, GeoTek, et cetera. And, you know, to
4 find the problem and figure out how to fix it. And --

5 Q. And then amended the CC&Rs, correct?

6 A. Right, to reflect what actually is the statement.
7 Now I don't know. Again, I don't have -- I can't read
8 it anywhere. But I do know there is a statement that
9 says that reserve funds cannot be used on the common
10 property -- private property.

11 So we could not use funds to repair our slope.
12 Now yes, we could -- I guess we could do a special
13 assessment to do it. But then people are going to say
14 well, that's her property, why am I paying for it.

15 Q. Next is Exhibit 22 to Mr. Katz's deposition. Las
16 Brisas Breeze 2022 February, correct?

17 A. Yes.

18 Q. Turn your attention to the second page, reserve
19 accounts, item 2.

20 A. Hang on. Okay.

21 Q. It's at the bottom.

22 A. Yeah.

23 Q. Item 2, 1,197 was spent from reserve account,
24 3210 landscape/slope, is step one of master plan for
25 slope repairs/plant rejuvenation.

1 Do you see that?

2 A. Yes. And again, I know there were no slope
3 repairs. Again, the use of the word. And this was a
4 major project that Mr. Berchiolli undertook. And he did
5 it in segments. So this was like the first payment.
6 And because it was replacing plants, it came out of
7 reserves.

8 Q. This language though for slope repairs/plant
9 rejuvenation, that's not coming from Mr. Berchiolli, is
10 it?

11 A. No, it was coming from -- because that was the
12 common vernacular that -- what they use.

13 Q. Because you guys made no distinction between it?

14 A. Right. But there was no slope repair.

15 Q. And this is coming from Paul Elsesser, who is the
16 same Paul Elsesser who was the liaison regarding the
17 slope 139 failure, correct?

18 A. Of course, yes, yeah. And I was the same,
19 treasurer.

20 Q. Next we'll take a look at Exhibit 24 to
21 Mr. Katz's deposition.

22 Las Brisas Breeze, July of 2021, correct?

23 A. Yes.

24 Q. If I can turn you attention to Bates number
25 10445.

1 A. 445?

2 Q. Yes, please.

3 A. Okay.

4 Q. Fourth full paragraph from the top.

5 A. Okay.

6 Q. The committee recommends to the board discuss
7 removing the red apple ground cover and replacing it
8 with one that has deeper root structure. Perhaps slow
9 growing Acacia where necessary. At the toe -- at the
10 top of the slope behind 113 through 123 and 77 through
11 88 to reduce erosion which could cause structural damage
12 to the walls and patios of those units.

13 Do you see that language?

14 A. Yes, yes.

15 Q. Is the HOA taking responsibility for slope
16 stability on those units?

17 A. I can tell you that they did not replace the
18 plants up near the walls and stuff because there had
19 to be an area that was open for the Green Horizons
20 maintenance to walk through. You're talking steep
21 slopes. So they have to have an access area to get.

22 Q. So it's not that the HOA did not have the
23 responsibility for the slope stability.

24 It's because they didn't have access at the time,
25 correct?

1 A. Okay. This erosion was caused by age.

2 Q. What do you mean by that?

3 A. Okay. The slopes were 30 some years old. And
4 just by attrition if you're up here and the slope goes
5 down. So the water removes the plants and dirt comes
6 with it. So that's what you call erosion.

7 Q. Okay.

8 A. Okay.

9 Q. Does that destabilize the slope?

10 A. It doesn't destabilize the slope.

11 Q. How do you know that?

12 A. Because it wasn't that great. I mean, it was
13 just the fact that there were no plants up there. Plus,
14 you want to stay away from the walls because you don't
15 want anything to be destructive to the walls that --

16 Q. Which walls?

17 A. The walls that define the areas of the houses.
18 You know, the back -- what would be the end of their
19 patios. Okay.

20 Q. The retaining walls?

21 A. Yeah, their retaining. But some of them are
22 only, you know, three feet high, two feet high.

23 Q. So the HOA should not be messing with those?

24 A. No, they're not. They're not. And that's why
25 they're saying we don't want plants growing up into them

1 or over them.

2 Q. That's the same retaining wall that the HOA
3 installed a French drain next to, correct?

4 A. It's not the same retaining wall. It's somebody
5 else's retaining wall. The retaining wall is up here.
6 The homes are up here. And the slope goes down.

7 Q. Yes.

8 A. So their retaining wall is at the back.

9 Q. Where the patio is, correct?

10 A. Where the patio is. And it's not four feet high.
11 It's only, like, two feet high. It's just like two
12 cinder blocks.

13 Q. Okay. So why is it important not to disturb
14 those retaining walls?

15 A. Because you don't want -- I mean, they're a
16 retaining wall for a reason.

17 Q. Okay.

18 A. You don't want the patio to go down. You don't
19 want anything to go down. Those retaining walls are the
20 stabilization at that end.

21 Q. So how is that different from Ms. Mann's
22 retaining wall?

23 A. Hers again is, yeah, at the bottom of the hill
24 though. It's a whole -- a different scenario of --

25 Q. What you described is exactly the same.

1 A. But her wall -- there's nothing wrong with her
2 wall. And it's been stated that there was nothing --
3 there was no damage done to the wall. The wall is just
4 fine. And --

5 Q. So in this case units 113 through 23 and 77
6 through 88 the HOA made a determination that ultimately
7 it should not do anything on the slopes that's --

8 A. Well, not anything.

9 MR. COMBS: Just let him --

10 BY MR. ALEXANDER:

11 Q. That is close to the retaining wall, correct?

12 A. Correct.

13 Q. But in Ms. Mann's case it installed a French
14 drain reintroducing water back into the slope, correct?

15 A. Again, it's a whole different scenario.

16 Q. How is it different?

17 A. The physical aspects of it when you look at it,
18 okay, you're dealing with something up here. We're not
19 going to put a French drain on the top of the slope,
20 correct. French drains collect water. Water goes
21 downhill. Okay.

22 Q. Okay.

23 A. In her case the French drain is at the bottom of
24 the slope and happens to be next to the retaining wall.
25 So we -- I don't think we did any harm. We didn't harm

1 the wall at all.

2 Q. Did you harm the slope?

3 A. No, we don't believe we harmed the slope either.

4 We thought we were helping it to get rid of surface
5 water.

6 Q. Did it get rid of the surface water?

7 A. Yes, it did.

8 Q. How?

9 A. It took the water --

10 Q. How, Ms. Comouche?

11 How did it --

12 A. It took the water and it went through the pipe
13 down into the wall and out the homes.

14 Q. But that is not what GeoTek found, correct?

15 A. Okay. So, you know, nobody cleaned those drains
16 out. And again, that was supposedly a responsibility of
17 the homeowner to keep those clean.

18 Q. Based on what?

19 A. History.

20 Q. I think we've established that -- well, I'm not
21 going -- I'm not going to be argumentative.

22 A. Okay. I mean, I -- that's all I know is that,
23 you know, okay, this is --

24 Q. Are you able to point to me to any document that
25 we have reviewed today that states that when the HOA

1 installs any item, in this case a French drain, onto
2 private property it is the responsibility of the private
3 property owner to maintain that item, in this case the
4 French drain?

5 A. Okay. And as -- to my knowledge, this is only --
6 this is the only French drain that was ever installed by
7 the HOA.

8 Q. That's not my question.

9 A. I know that. But I'm just saying so --

10 Q. My question stands.

11 Can you point to me anywhere in any of these
12 documents --

13 A. Okay. No, I can't point to any document.

14 Q. Because it doesn't exist, correct?

15 A. Okay. But, you know, there's a lot of things
16 that happen that are just part of.

17 Q. Let me run a hypothetical.

18 A. Okay.

19 Q. And I know I'm going to draw an objection that
20 it's incomplete and you're not an expert and everything
21 else. But I'm going to make it simple for both of us.

22 Okay. Let's say that the HOA is permitted to use
23 Ms. Mann's garage to park -- I don't know -- a vehicle.
24 And in the process of parking that vehicle instead of
25 hitting the stop pedal the HOA accelerates and goes

1 through her wall.

2 Who is responsible for that damage?

3 MR. COMBS: Objection. Irrelevant. A
4 hypothetical.

5 You can answer if you want. It's completely
6 pointless.

7 THE WITNESS: The driver of the vehicle.

8 BY MR. ALEXANDER:

9 Q. Okay. Who was the driver of the vehicle in the
10 installation process of the French drain?

11 MR. COMBS: Objection.

12 BY MR. ALEXANDER:

13 Q. Who installed --

14 MR. COMBS: Unintelligible.

15 THE WITNESS: Yeah, that doesn't make sense.

16 MR. ALEXANDER: Okay. Strike that.

17 BY MR. ALEXANDER:

18 Q. Who installed the French drain?

19 A. Pablo's landscaping.

20 Q. On whose order?

21 A. On HOA orders.

22 Q. I'm going to show you Exhibit 26 next. This
23 was to the Bill Katz deposition again. Las Brisas
24 July 2019, correct?

25 A. Correct.

1 Q. I'll turn your attention to Bates 10745, please.

2 A. Okay.

3 Q. And we have a landscape and garden report by
4 Rose Capella and Pam Holland who are co-chairs, correct?

5 A. Okay. Yes.

6 Q. Item 4, they report we're also working on other
7 ways to finish the slope on the west side, the gopher
8 habitat.

9 Do you see that language?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes.

13 Q. Was it the HOA's understanding that the west side
14 of the Las Brisas community was quote/unquote the gopher
15 habitat?

16 A. Yes. Matter of fact, one of the reasons was the
17 property behind us had the gophers, and they didn't --
18 they didn't care about property lines.

19 Q. Right, right.

20 A. So they came over. So yes. And I mean, there
21 was the constant Thrasher Termite people out there
22 trying to get rid of gophers, which are not easy to get
23 rid of.

24 Q. What side of the community is Jill Mann's
25 property?

1 A. On the west side.

2 Q. In the gopher habitat?

3 A. I don't know for sure. I just know that the
4 property is on the other -- on the --

5 Q. On the west side?

6 A. No, but on the north side of the west side.
7 Okay.

8 Q. It's called the northwest.

9 A. Yeah. This is west and this is north. The
10 property here over here on the north side. Because of
11 their proximity to the other community, they were the
12 ones who had got the most.

13 But yes, it could be anywhere. And as long as it
14 was reported it was dealt with. Again, we don't -- we
15 can't do things without people telling us.

16 Q. But the west side of the Las Brisas community
17 was --

18 A. Yeah.

19 Q. -- affectionally --

20 A. Gopher.

21 Q. -- ironically called the gopher habitat?

22 A. Yes.

23 Q. Okay.

24 A. Not by plan.

25 Q. I'm sorry?

1 A. Not by plan.

2 Q. Not by plan. That's just -- it stuck. Okay.

3 Exhibit 27 to the Katz deposition.

4 What is this?

5 These are -- are these meeting minutes?

6 A. This is I think the Breeze.

7 Q. This is the Breeze, yeah. This is the --

8 A. Yeah.

9 Q. -- the July edition of the Breeze. I'm trying to
10 figure out --

11 A. A little different format.

12 Q. Yeah, yeah. What year is this?

13 A. 2018.

14 Q. 2018. Okay. So July 2018 Las Brisas, correct?

15 A. Yes.

16 Q. All right. Let's go to 10920, please.

17 A. 920?

18 Q. Correct.

19 A. Okay.

20 Q. This says routine/recurring business.

21 Do you see that?

22 A. Yes.

23 Q. There were \$40,127 of reserve money used in May
24 to fund major repairs for slopes, fences and mainly the
25 pool.

1 Do you see that?

2 A. Yes, because we had the pool resurfaced.

3 Q. Okay.

4 A. And again, the usual work on the fences surround
5 the pool. And the slopes again was maintenance and not
6 repair.

7 Q. But that's what it says, does it?

8 A. I know what it says. But the use of that word
9 was just -- that's what they used.

10 Q. But this one does not differentiate between slope
11 repair and replanting, which is what we saw earlier,
12 right?

13 These are major repairs for slopes?

14 A. Right, because it was done to -- the main money
15 was used on the pool. I mean, we totally resurfaced the
16 whole pool and the deck and everything.

17 Q. But the language states major repairs for slopes,
18 correct?

19 A. Well, that just happens to be the way -- the
20 sequence of order of whatever they wrote. I don't think
21 they put it in order of prominence.

22 Q. And this is by Ann Allison, chairperson, correct?

23 A. Correct.

24 Q. So she also does not know the difference between
25 repair and --

1 A. Of course, because that was the word that
2 everybody used.

3 Q. Because there was no difference, correct?

4 A. Right, repairs meant maintenance.

5 Q. Okay. Next we're going to take a look at
6 Exhibit 28 to the Katz deposition. And this is Las
7 Breeze --

8 A. Brisas.

9 Q. Las Brisas Breeze January 2017, correct?

10 A. Okay. Yes.

11 Q. I'm going to turn your attention to Bates number
12 11141.

13 A. Okay.

14 Q. Okay.

15 A. Okay.

16 Q. This is -- that page is actually a continuation
17 of the garden committee report by Rose Capella and
18 Pam Holland, again as cochairs, continuing from 140.

19 A. Okay. I see the previous page.

20 Q. But the language that I'm interested in is the
21 second to last paragraph where they write members are
22 reminded that we or residents should not make requests
23 to Luis directly. All requests should be directed
24 through Kent. The landscape committee is responsible
25 for the slopes, for maintenance or problems.

1 A. Yeah. That just meant that individual people
2 couldn't go up to the -- in quotes -- our gardener Luis
3 and say oh, I need you to come to my house, I need you
4 to do this. Because he was on a schedule.

5 Q. Sure.

6 A. So that's all that's stating.

7 Q. That's the first part of it, correct?

8 A. Yes.

9 Q. The language I have highlighted is that the
10 landscape committee is responsible for the slopes --

11 A. For maintenance or problems.

12 Q. -- or problems.

13 A. Could be gophers.

14 Q. Could be slope failure, correct?

15 A. It wasn't.

16 Q. Is slope failure a problem for a slope?

17 A. The only time it was a problem was in 2023.

18 Q. But that is a problem, correct?

19 It just so happens to be the first major problem?

20 A. It didn't exist until then for us.

21 Q. So the moment it existed that the HOA tried to
22 wash its hands of it, correct?

23 A. No.

24 Q. Well, initially you were prepared to pay for that
25 slope repair out of your reserves?

1 A. No, we were paying for it because of the --
2 because we felt that to be fiduciary responsible to the
3 community we had to get that slope repaired. Because if
4 anything else -- if it slipped more it would cause more
5 damage to more property.

6 Q. Yeah, but on April 28th, 2024, your email
7 reflecting that there were reserve funds available for
8 this repair --

9 A. Again, because at that point we did not know that
10 that property was individually owned.

11 Q. If that property at that point you found out that
12 it was individually owned, what was the need to amend
13 the CC&Rs if it was so clear that they're individually
14 owned?

15 A. Okay. It was to again clear up the fact that if
16 there is repair that needs to be -- structural repair to
17 the slope that needs to be done, it is the homeowner's
18 responsibility because reserves cannot be used on the
19 homeowner's property.

20 Q. My question is if that was so clear and you were
21 able to make that determination, what was the point of
22 having an amendment?

23 A. To make it perfectly clear. Because otherwise it
24 was ambiguous. Again, it just said, you know, we're
25 responsible for, you know, the maintenance, da, da, da.

1 But it didn't state okay, where does maintenance stop
2 and where does repair begin.

3 Q. Because there was no distinction, correct?

4 A. Yes, there was.

5 Q. Well, you testified --

6 A. Maintenance is maintenance. Repair is repair.

7 The fact that we never had to do a repair was great, but
8 the fact that it happened is unforgettable.

9 Q. So notwithstanding the HOA was reporting to the
10 community for over 35 years that there were repairs
11 performed on the slope --

12 A. Again, it's a matter of --

13 MR. COMBS: Let him finish his question.

14 THE WITNESS: Sorry. I thought he was done.

15 BY MR. ALEXANDER:

16 Q. So the fact that there were reports by the HOA
17 for over 35 years of slope repairs, including as a
18 result of rain damage, as you sit here today it is still
19 the HOA's position that it had never done any repairs on
20 the slopes prior to --

21 A. Structural repairs, correct.

22 Q. Is there any distinction of -- from anything that
23 we have looked at today that distinguishes between what
24 could be a minor repair versus a major repair?

25 A. Well, a major repair is calling in and having

1 earth moved, you know, reconfiguring the slope back to
2 the original design. Whereas otherwise it could just
3 be, well, I had to plant some more plants up there. Or,
4 you know, the -- okay, the irrigation line probe, was
5 that -- is that a repair or is that a maintenance?

6 Q. So for 35 years the HOA has essentially taken the
7 position that we're going to repair everything until
8 it's going to cost us too much to do so, correct?

9 MR. COMBS: Objection. Mischaracterizes her
10 testimony.

11 THE WITNESS: Yeah, no, no, not at all.

12 BY MR. ALEXANDER:

13 Q. I'm going to show you the last exhibit for today,
14 which is Exhibit 29 from the Katz deposition. And this
15 is Las Brisas Breeze February of 2005.

16 A. Okay.

17 MR. COMBS: That's redundant, but --

18 (Discussion held off the record.)

19 BY MR. ALEXANDER:

20 Q. February 2005, correct?

21 A. Correct.

22 Q. Did we look at this one already?

23 A. Yes, I was going to say this was already --

24 Q. We already looked at this one.

25 A. Okay. That's enough of this one.

1 MR. ALEXANDER: That's enough of this one.
2 Okay. That's enough of this one.

3 Let's take a five minute break. I want to
4 just go over my notes very quickly, and I think we're
5 going to be done.

6 (Recess taken from 5:21 to 5:22.)

7 All right. Let's go back on the record.

8 BY MR. ALEXANDER:

9 Q. Ms. Comouche?

10 A. Yes?

11 Q. I have no further questions. Thank you so much
12 for your time. I appreciate you driving up and doing
13 this in person.

14 MR. COMBS: I have a few questions.

15 EXAMINATION

16 BY MR. COMBS:

17 Q. Okay. Regardless of the cause of the slope
18 failure, whether it was --

19 MR. ALEXANDER: Objection. Leading.

20 BY MR. COMBS:

21 Q. -- whether it's the -- regardless of the cause of
22 the slope failure, whether it was a French drain or
23 whether it was rain, the HOA made the repairs to the
24 slope?

25 A. Correct.

1 MR. ALEXANDER: Objection. Leading.

2 BY MR. COMBS:

3 Q. And the HOA repaired the slope because Ms. Mann
4 refused to repair her own slope, correct?

5 MR. ALEXANDER: Objection. Leading.
6 Misstates testimony.

7 THE WITNESS: Yes. I mean, we had no
8 evidence that she was doing anything to remediate the
9 situation.

10 BY MR. COMBS:

11 Q. And were the repairs made to protect the
12 properties of others?

13 A. Yes.

14 MR. ALEXANDER: Objection. Leading.
15 Misstates testimony. Ask her a non-leading question.

16 BY MR. COMBS:

17 Q. Did the association incur the costs of
18 engineering and slope repairs?

19 A. Yes.

20 MR. ALEXANDER: Same objection.

21 BY MR. COMBS:

22 Q. Was there any indication whatsoever in the GeoTek
23 reports that you've reviewed that HOA negligence caused
24 the slope failure?

25 MR. ALEXANDER: Objection. Leading.

1 THE WITNESS: Do I answer?

2 MR. COMBS: Yeah.

3 THE WITNESS: Okay. I just -- not quite
4 sure. No, there was no evidence that it was caused by
5 neglect.

6 MR. ALEXANDER: Calls for a legal
7 conclusion. It's a belated objection.

8 BY MR. COMBS:

9 Q. Was there any indication in the GeoTek report --
10 well, strike that.

11 Is there anything in the GeoTek report that says
12 it was the French drain that caused the slope failure?

13 MR. ALEXANDER: Objection. Leading.
14 Document speaks for itself. Calls for a legal
15 conclusion. Calls for expert opinion.

16 THE WITNESS: It did not state that the
17 French drain was a cause.

18 BY MR. COMBS:

19 Q. Is there anything in the GeoTek reports, any of
20 them, that says broken irrigation lines caused the slope
21 failure?

22 MR. ALEXANDER: Same objections.

23 THE WITNESS: There's no indication broken
24 lines caused the problem.

25 ///

1 BY MR. COMBS:

2 Q. Okay. Let's take a look at just one of those
3 GeoTek reports. I think I have one in mind.

4 Do you have one here?

5 A. Oh, I do somewhere in this mass of --

6 Q. Okay. In every GeoTek report we have -- and this
7 is the -- this is marked as Exhibit 6. The report is
8 signed by Edward R. Cunningham.

9 Edward R. Cunningham, do you see what it says
10 above his -- that stamp, do you see what it says?

11 A. Registered professional engineer, State of
12 California.

13 Q. So a registered professional engineer did sign
14 off on this report dated May 23rd, 2024, correct?

15 MR. ALEXANDER: Objection. Leading.
16 Document speaks for itself.

17 MR. COMBS: Okay. Documents don't speak for
18 themselves.

19 MR. ALEXANDER: Of course not.

20 BY MR. COMBS:

21 Q. So does a -- did a --

22 MR. ALEXANDER: Ask her a non-leading
23 question.

24 BY MR. COMBS:

25 Q. Did a registered professional engineer sign off

1 on this report?

2 A. Yes.

3 MR. ALEXANDER: Objection. Leading. Calls
4 for a legal conclusion.

5 THE WITNESS: Yes, they did.

6 BY MR. COMBS:

7 Q. Okay. We're looking at the --

8 A. Preliminary.

9 Q. July 7th, 2023 preliminary geotechnical
10 investigation. I'm looking at page --

11 A. The last page.

12 Q. The very last page. I don't see a signature.
13 That seems odd. Okay. We don't have it on this one.
14 My point being that there were -- there was a
15 registered --

16 MR. ALEXANDER: Are you offering testimony,
17 Mr. Combs?

18 BY MR. COMBS:

19 Q. Okay. Here is the May 22nd, 2024 --

20 A. Yeah. Okay.

21 Q. -- summary of geologic --

22 A. As-graded report. Okay.

23 MR. ALEXANDER: I believe that was
24 Exhibit 5.

25 THE WITNESS: Again, it has the seal of --

1 BY MR. COMBS:

2 Q. Okay. Let me ask a question.

3 On page 6 do you see the seal of Edward R.
4 Cunningham?

5 A. Yes, I do.

6 Q. And what is the title of above his signature in
7 this stamp?

8 MR. ALEXANDER: Document speaks for itself.

9 MR. COMBS: Documents don't speak for
10 themselves. Okay. That's a -- that objection is
11 frivolous.

12 MR. ALEXANDER: How about my leading
13 objections? Are those frivolous?

14 BY MR. COMBS:

15 Q. What does it say above?

16 A. Okay. It says registered professional engineer,
17 State of California. And it's got a number. And the
18 expiration date as listed below is 3/31/26.

19 Q. Okay. So this document is also signed by a
20 registered professional engineer, correct?

21 A. This is the final document.

22 MR. COMBS: Okay. That's all.

23 MR. ALEXANDER: Are we done?

24 MR. COMBS: We're done.

25 MR. ALEXANDER: Okay.

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MR. COMBS: Certified copy.

MR. ALEXANDER: Rough.

(Whereupon, Plaintiff's Exhibits 1-44 were marked for identification by the Certified Shorthand Reporter, copies of which are attached hereto.)

(THE DEPOSITION ENDED AT 5:28 PM.
DECLARATION UNDER PENALTY OF PERJURY ON THE FOLLOWING
PAGE HEREOF.)

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I, SANDRA COMOUCHE, do solemnly declare under penalty of perjury, under the laws of the State of California, that the foregoing is my deposition under oath; that these are the questions asked of me and my answers thereto; that I have read same and have made the necessary corrections, additions, or changes to my answers that I deem necessary.

In witness thereof, I hereby subscribe my name this day of _____, 2026.

WITNESS SIGNATURE

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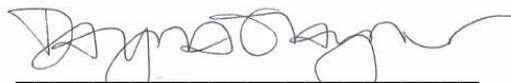
CERTIFICATE
OF
CERTIFIED SHORTHAND REPORTER

The undersigned certified shorthand reporter
of the State of California does hereby certify:

That the foregoing deposition was taken
before me at the time and place therein set forth, at
which time the witness was duly sworn by me.

That the testimony of the witness and all
objections made at the time of the deposition were
recorded stenographically by me and thereafter
transcribed, said transcript being a true copy of my
shorthand notes thereof.

In witness whereof, I have subscribed my
name this date: February 11, 2026



CSR Number 13079

RPR, CRR Number 28081