Exhibit 3

DECLARATION OF CHIYE AZUMA

I, CHIYE AZUMA, declare the following:

1. The facts stated herein are known personally to me.

2. I have been a resident of the Oakland Hills area for almost four years, with this past winter being my fourth rainy season. My property is located at 3829 Delmont Avenue, between Hillmont Drive and Nairobi Place, on the downhill side of Delmont Avenue. Chimes Creek flows along the rear of my property, about ten feet from the property line.

3. The presence of this creek was a very important part of our decision four years ago to purchase this property. The creek provides a small but lush riparian corridor that supports a number of native oaks and willows, as well as acacias, ivy, and other shrubs along its banks. The creek is also host to a group of acrobatic squirrels, various species of birds, and in years past, frogs and tadpoles. The gurgling sound of the creek water is a welcome respite from the urban sounds, most notably the roar of the 580 Freeway, which bounces off the hills onto the Millsmont neighborhood. Not only is the creek an attractive, lovely feature of our Delmont Avenue neighborhood, it is also a common thread that has brought the neighbors together.

4. I am currently employed by the City of Fremont as a Landscape Architect in the Engineering Division of the Community Development Department. I am a state-licensed Landscape Architect, with more than 12 years of professional experience. For the past one and a half years, I have been the Development Landscape Architect where my main duties are reviewing and commenting on development applications. I am also responsible for overseeing

Building Permit Applications and final inspections of development projects in the City of Fremont for compliance with its landscape development standards.

5. In recent years, and especially over this past year, I have worked closely with Fremont's Development Engineers and its National Pollutant Discharge Elimination System (NPDES) Coordinator, and in coordination with the Regional Water Quality Control Board (RWQCB), in implementing the requirements of the Alameda Countywide Clean Water Program's Storm Water NPDES Permit. In reviewing and commenting on site plans prepared by civil engineers and architects, I look for consistency with the landscape plans where biofiltration measures such as bioswales and vegetated infiltration areas are called out to mitigate pollution and prevent erosion from storm water runoff.

6. It is with this experience in mind that I reviewed the various plans and permitting requirements for the Leona Quarry Development.

7. Almost as soon as preliminary grading activities began in early April of 2004 at the quarry site, my neighbors and I could see that the creek water was turning muddy and filling with silt. Curious and alarmed that appropriate best management practices (BMPs) were not being followed, I contacted City of Oakland officials and staff. Additionally, I carefully reviewed the following documents, which were prepared for the construction and maintenance of the Leona Quarry Project: (1) Mitigation Monitoring and Reporting Program (MMRP); (2) Conditions of Approval (COA) for Leona Quarry Project, (3) the revised Stormwater Pollution Prevention Plan (SWPPP) dated April 23, 2004, and (4) a copy of the Improvement Plans (Preliminary Plans dated July 8, 2004) for Tract 7493 and Tract 7351 Leona Quarry.

8. Based on my review of the COA and the MMRP, which were attached as exhibits to the City's Resolution approving the vesting tentative maps, I am concerned that onsite storm water management during the past two years since rough grading began at the project site has not been implemented as required in these documents. Furthermore, these documents describe specific studies, reviews and checks that need to be undertaken prior to finalizing key elements of the site development. From the information that has been made available to the public to date, I have seen little evidence that the Leona Quarry Project has met these requirements.

9. During the first phase of site work, and particularly during the site dewatering stage from early April 2004 to the end of May 2004, few BMPs to reduce and eliminate soil erosion were in place, resulting in slope failures and frequent discharge of sediments and contaminants to Chimes Creek. In early April 2004, after work at the Project began, I noticed that Chimes Creek had turned reddish-brown in color, and at times would surge as if being pumped. It was only in late May 2004, after the large holding pond, a site feature leftover from quarry operations, had been pumped dry through two black pipes without any apparent filtration, that DeSilva Gates Construction Company (Desilva) constructed the first filtration pond. By then, muddy, sediment-laden creek waters were a daily occurrence during the work week, only to clear up late Friday and through the weekend.

10. On April 10, 2004, I attended a Town Hall Meeting held by Desley Brooks, City Councilwoman, City of Oakland. In response to my concerns regarding the effects of DeSilva's construction activities on the creek, Councilwoman Brooks told me that I was "confusing apples with oranges," and, "that is how the creek normally appears." She claimed

the activities taking place at the Quarry were just "regular quarrying business." I explained to her that it could not possibly be "normal quarrying activity," because most of the quarry facilities had been removed, including the asphalt parking area at the base of the quarry site.

11. At this time, Councilwoman Brooks assigned her assistant, Toni Cook, to help address my concerns. We agreed to visit the site so that Ms. Cook could understand what was happening. On April 24, 2004, Ms. Cook and I visited the quarry site together where we observed grading activities in progress and the dewatering of the holding pond.

12. Around this same time, April 2, 2004, I contacted William Madison, Environmental Program Specialist, Public Works Agency (PWA), to report the water quality problems at the creek. I also contacted Lesley Estes, Watershed Program Supervisor, PWA, Marcel Uzegbu, CIP Coordinator, PWA, and Jun Osalbo, Senior Construction Inspector, PWA, in an effort to identify the source and to seek relief from this problem.

13. Mr. Madison has a record of complaints he received regarding sediment-laden water in Chimes Creek; he maintains a chronological file entitled, "Chronology of Chimes Creek Illicit Discharge Investigations." His record contains reference to complaints filed on April 6th, 9th, and 29th of 2004. He also conducted investigations in response to complaints made on May 6th, 17th, 19th, 20th, 21st, 26th, 27th, and 28th of 2004. This "Chronology" was prepared in response to my Public Records Request for a "Complaints log regarding pollution in Chimes Creek, starting from first call to Environmental Services, William Madison, on April 2, 2004, to present."[1] From his documented responses, it appears that Mr. Madison had

[1] Copies of my written correspondence with city and regulatory officials and their responses are available upon request.

access to the construction site only for the first two complaints in early April. On April 6, 2004, he wrote that he "observed clean water violations on the construction site, and turbid water flowing off the site. Issued an Order to Abate to DeSilva Group." On April 9, 2004, he wrote, "City staff required DeSilva Group to implement a creek diversion plan on the Quarry construction site." From this point on, however, Mr. Madison's investigations were limited to the stormdrain system and manholes in the Burkhalter and Millsmont neighborhoods (Sunnymere, Altamont, Hillmont, and Delmont Streets). I recall a frustrating telephone conversation that I had with Mr. Madison during this time, in which he said, it was "out of my hands," which I interpreted to mean that the City had determined that the silty discharges were coming from some source other than the quarry site, and Mr. Madison no longer had access to the construction site.

14. In addition to notifying Mr. Madison, I placed phone calls to Mr. Osalbo. On May 14, 2004, Mr. Osalbo came to Delmont Avenue where he observed the muddy flow in the creek. He invited my neighbor, Mark Brest van Kempen, and me to go to the site later that day to see what was happening. However, when he returned that afternoon, Mr. Osalbo informed us that we could not visit the site. Instead, we reviewed the stormdrain map that he brought with him. It is still not clear why he did not wish to visit the site with us that day.

15. On May 20, 2004 I had an extended phone conversation with Mr. Uzegbu. He repeatedly denied that the two black drainpipes could be the source of the silty discharge in Chimes Creek behind my property because the pipes were completely sealed, and were "diverting" Chimes Creek as it came down in the large corrugated pipe from the headwaters above the project site. A few days later, Mr. Brest van Kempen photographed these black

pipes coiled at the bottom of a muddy trench, which was all that remained of the former holding pond. *See* Exhibit 3.1.[2]

16. DeSilva and city staff repeatedly denied this dewatering activity was taking place. The denials continued until we circulated these photos showing drainpipes pumping out muddy groundwater directly into the storm water manhole, and contacted the RWQCB for additional oversight. Email to Keith Lichten, Senior Engineer, San Francisco Bay RWQCB (May 28, 2004). In support of my request for additional RWQCB oversight, I attached a record of the violations of which I was aware. *See id.*

17. In late May 2004, I prepared a list of questions based on the COA for the project, and requested the help of Councilwoman Brook's office to get a written response from Mr. Uzegbu. Shortly thereafter, I received a call from Mica Miro, another assistant to Councilwoman Brooks, who told me Councilwoman Brooks' office would not help us in getting this information, and that I should stop "nitpicking" and "looking over their shoulder." Ms. Miro said the City had "experts" working on this, and she went on to question my motives for requesting this information. In later correspondence she informed me, "Unfortunately, I will not be able to send notes from the weekly construction meetings, as these are private meetings between the City and the Contractors." Email from Mica Miro to Chiye Azuma (July 29, 2004). Ms. Miro also informed me, "The City's role at this point is to ensure that all of the conditions of approval are met … As Marcel said at the meeting, both City staff and three independent consulting teams hired by the City are working diligently to see that this is done. The City will not push for any modifications that are not required under

---

[2] I have provided captions for the attached photographs which describe each scene as I perceived it.

the conditions of approval." *Id.* This was a puzzling statement from Ms. Miro as I had talked to her a number of times by then, each time clarifying that all we were asking for was confirmation that the COA were being met, and that local, state and federal codes and requirements were being followed. I asked Ms. Miro and Councilwoman Brooks to please let us know which of our requests they considered to be "modifications not required under the Conditions of Approval." Email to Mica Miro (July 30, 2004). I never received a response from either Ms. Miro or Councilwoman Brooks.

18. Later on, in response to my Public Records Request for notes or minutes from the weekly construction meetings, Mr. Uzegbu, on behalf of Councilwoman Brooks and Claudia Cappio, Deputy Director City Planning, Community & Economic Development Agency, responded, "The agenda of the meetings from April 2004 to September 2004 showing the action points discussed at the meetings are attached. There are no minutes." Letter from Marcel Uzegbu (Oct. 1, 2004). I found this response difficult to believe. For a project of this scope and public controversy it would seem appropriate for Mr. Uzegbu, as the CIP Coordinator, to maintain notes or minutes to keep track of the issues and actions discussed during this critical phase of the project.

19. On July 10, 2004 the project site was flooded with a broken water main from the hills above.

20. On July 19, 2004, the RWQCB requested that the developer provide a "detailed update regarding the corrective actions taken" in response to the July 10, 2004 water main break. *See* email from Laurie Taul, Environmental Scientist, RWQCB, to David Chapman, Project Manager, DeSilva (July 19, 2004). I have not been able to confirm with any of the

staff at RWQCB or with the City that the developer responded to this request. With regard to the monitoring requirements that the RWQCB requested from the developer during the June 8th inspection, Mr. Uzegbu had assured us that he would provide us this information "as soon as it became available." He has not provided this information to date.

21. During the months of August and September 2004, I reviewed the draft Improvement Plans dated July 26, 2004 to confirm that BMPs had been incorporated into the site design, per MMRP paragraph F.4a. The Site Improvement Plans for the Leona Quarry Project should have included BMPs such as grass strips and grassy swales throughout the development, roof drains that drain to natural surfaces or swales, permanent energy dissipaters for drainage outlets, design details for the detention basin that provide effective water quality control measures, maintenance schedules that will ensure the long-term effectiveness of the detention basin. In my opinion the plans did not adequately integrate site BMPs such as grassy swales and vegetated swales. Moreover, the details of how the main detention pond would function to provide "effective water quality control measures" remained unclear. In my experience, even where the developer does not expect to install BMPs such as grassy swales and strips until later phases of construction, the plans will still clearly identify such BMPs.

22. About a week after the Final Map was approved by City Council on April 19, 2005, I called Mr. Uzegbu on behalf of the MHA to arrange for us to review the Final Maps and the Site Improvement Plans. On May 4, 2005, I received a phone message that the plans were available at the City's offices. Upon arriving at the Engineering Counter, however, the receptionist asked us to pay a copying charge of more than $570, or $5.50 per sheet in exchange for a set of the plans. Mr. Uzegbu was not available and had not left any

instructions with the receptionist to make the plans available for review at the City's offices as we had requested. As we were not prepared to make this payment, we left without reviewing the plans. Subsequently, I tried to access a copy of the plans filed with the County Recorder's Office, but I could not find a record of the plans for Tract #7351 and Tract #7493 being filed with the County until July 19, 2005.

23. On September 19, 2004, a short, but sudden downpour left the intersection of Mountain and Edwards at the 580 Freeway onramp flooded with mud and creek banks scoured by a rapid current.

24. On October 5, 2004, I reviewed a copy of the DeSilva's SWPPP dated April 23, 2004. I had expected to review a SWPPP that had been revised since April 2004, which the Developer was required to submit to the City by September 23, 2004. Email to Nancy Nadel, City Councilwoman, City of Oakland, from Mike Neary, Assistant Director, PWA (Sept. 21, 2004). Further, it was my understanding based on a phone conversation I had with Mr. Lichten in June 2004, that the RWQCB had requested a revised SWPPP. Mr. Neary stated, "once the revised SWPPP is prepared, reviewed and accepted by the City, I would like to provide a summary of it on the website for information." *See id.* To my knowledge this information, while filed by DeSilva's consultants with the RWQCB, has not been posted on the City's website to date. The latest revision date for the SWPPP that is posted at the City's Leona Quarry website (http://www.oaklandnet.com/leonaquarry/) remains April 23, 2004 in its front pages and its Amendment Log. This is just one example of how the City has made it difficult for concerned residents to access documents and plans related to this development.

25. In October 2004, the rainy season began.

26. On October 19, 2004, as I was driving home on I-580, I could see that the inside slopes of the detention basin had melted away from the runoff from the first rainfall of the season. Much of the hydroseed had washed away, and the "impermeable" clay liner did not look as if it was holding up very well either. The photos that Mr. Brest van Kempen took at the site on October 19 show a corrugated standpipe in the detention pond next to the outlet riser. The standpipe had multiple perforations from which the muddy water was discharging into the storm drain. This pipe was not included in the Site Improvement Plans of July 2004. According to Mr. Osalbo, the addition of the pipe and its design recently had been approved by Mr. Uzegbu. It appeared to me that by allowing the water to drain through the holes in the standpipe, the purpose of the detention (or retention) pond was defeated. Further, this set-up appeared inconsistent with COA 23, which requires that, "the detention basin shall meet the new Alameda County NPDES permit provision C3 requirements." I was unable to obtain information from the City regarding the purpose of the low standpipe, or whether its design had been peer-reviewed and approved by Phil Williams and Associates, the City's consultants. I was frustrated by Mr. Uzegbu and Kent Peyton's, Project Manager, DeSilva, assertions that there was no runoff escaping from the detention basin, assertions that contradicted my direct observations.

27. What I have come to understand during the past two winters is that DeSilva has retrofitted the permanent detention basin to function as a sediment basin, at least during the construction phase, in order to meet the clean water requirements. The City and DeSilva have proudly pointed out the "state-of-the-art" facilities, such as the baker tanks and use of flocculent and monitored pumping that they have installed to meet turbidity and discharge

restrictions set by the RWQCB. However, these facilities were not contemplated in the original SWPPP approved by the City. In other words, the construction plans that were approved by the City did not include BMPs that would minimize the impacts of storm and non-stormwater discharges during construction – a period that a construction site is most vulnerable to runoff and erosion. *See* Exhibit 3.2 (April 11, 2004) (cloudy water in Chimes Creek behind 3835 Delmont Avenue); Exhibit 3.3 (April 24, 2004) (siltation fences used to control mud at the construction site); Exhibit 3.4 (May 30, 2004) (filter fabric wrapped around a storm drain inlet at Mountain Boulevard); and Exhibit 3.5 (May 30, 2004) (siltation pond with dirty water resembling descriptions by downstream residents of silty flows in Chimes Creek).

28. By October 23, 2004, we observed that DeSilva had re-hydroseeded the slopes of the project site to replenish the previous application that had washed away earlier in the week. Mr. Neary wrote to Councilwoman Nadel, "none of the hydro seeding .... had been done prior to this past weekend, since they are not required yet. The hydro seeding ... will be complete by October 15." Email to Councilwoman Nadel from Mr. Neary (Sept. 21, 2004). Based on my professional experience, I knew that it would take a couple weeks, if not more, for the seeds to germinate, and perhaps another month or so for the roots to develop before the hydroseed would work as an effective erosion control measure, so I was puzzled by DeSilva's decision, and the City's apparent approval of the decision, to wait until just before the start of the rainy season to apply the hydroseed. This schedule and definition of "completion" appeared to be inconsistent with the list of works that should be completed under Construction Phase B (Site Preparation) (*see* COA, p. 11).

29. Further, it did not appear to me that the detention basin was functional by October 2004, as required by COA 23(c) which states: "The final plan for the detention basin (Parcel A) shall incorporate: detailed landscaping and other specifications so that a water treatment area can be established within the basin including a planting plan based on the recommendations of a qualified hydrologist and biologist regarding contours that can support the proposed planting and not interfere with the design and detention capacity." Even today it still appears that the detention basin is not completed or fully-functional. I have not been able to confirm the existence of any reviews or recommendations of a qualified hydrologist and biologist regarding the interface of the planting and the design and detention capacity of the detention pond.

30. At the beginning of November 2004, the City responded to residents' complaints of continued turbidity in the creek although it had not been raining for close to a week. Mr. Osalbo reported on November 1, 2004 that they had found dirty water leaking from the detention pond, and that this would be corrected. While the creek remained dirty for the fifth day in a row, on November 2, 2004 the RWQCB issued a Notice of Non-Compliance to DeSilva. Among the various violations cited in the Notice, the RWQCB noted: "The primary detention basin at the bottom of the site is not adequately designed to facilitate effective settling of sediment inputs. This has resulted in significant discharges of heavily sediment-laden storm water to the downstream storm drain, and thence to Chimes Creek."

31. Even after the citation issued by the RWQCB, we continued to see silty, turbid water downstream in the creek through the rest of the rainy season. Coinciding with DeSilva's use of Chitosan on the project site, a flocculent to help settle the fine clay particles in the

holding ponds, we started to see large clouds of foam forming in the creek, particularly in areas where the creek bed drops several feet. *See, e.g.,* email from Mark Brest van Kempen to Jun Osalbo (Nov. 12, 2004).

32. On December 8, 2004, Ron Ward, Supervising Civil Engineer, PWA, responded to questions we had posed regarding the function of the detention basin:

> "the Project is utilizing a detention basin to store storm water runoff and groundwater collected from the Project. The detention basin has the capacity to store approximately 2" of rainfall before overflowing into the storm drain system leading to Chimes Creek. None of the storms during the past month have overflowed the detention basin into the storm drain system. Instead, the stored water is pumped into a settling and filtration system to clean the water of any sediments, and then released into the storm drain system and Chimes Creek."

33. Mr. Ward's response contradicted what Mr. Brest van Kempen and I had observed during a visit to the site on November 11, 2004. We observed and documented overflow from DeSilva's filtration facilities. Mr. Brest van Kempen's photographs show the main detention pond and the dark ring marking how high the water rose before the contractor started to pump the water into the temporary siltation pond and into the baker tanks. *See* Album: "Leona Quarry Nov 11, 2004," *available at* http://community.webshots.com/user/chimescreek. Additionally, we documented the temporary siltation pond being overwhelmed and starting to spill over while the baker tanks were discharging unfiltered dirty water into the City's storm drain because they too were unable to keep up with the inflow from the subdrains and from the main detention pond. *See id.*

34. Mr. Brest van Kempen also responded to Mr. Ward, advising him that on the day of Mr. Ward's communication asserting no overflow, the City's construction inspector had

documented a "discharge from the pond thru the square opening." On December 8, 2004, Mr. Osalbo noted that the discharge "at this location will probably continue until it stops raining," indicating that DeSilva was unable to control the flow and turbidity during this storm event.

35. On December 17, 2004, Mr. Ward wrote that he had "forwarded my e-mail to Fuad Sweiss for response."

36. On January 1, 2005, Mr. Osalbo informed us, "The Leona Quarry detention pond is functioning as designed and intended: water will discharged [sic] at a level where the concrete opening will allow. The size of the opening was designed to prevent any excess runoff to leave the development site. Excess runoff was defined as any runoff that is more than what the 39" Storm Drain pipe under I580 can handle which is also equivalent to the runoff leaving the site prior to the development." Email from Jun Osalbo to Mark Brest van Kempen (Jan. 1, 2005).

37. On February 8, 2005, Fuad Sweiss, Manager, PWA, presented a response to our inquiries. *See* Exhibit 3.6. For the first time, the City acknowledged in writing that the detention pond has been used as a retention facility and that the SWPPP was modified to that end. In arguing that the Leona Quarry Project would actually benefit the creek environs, Mr. Sweiss stated, "The hydrologic modeling conducted for the Leona project determined that the restoration of the quarry site would reduce peak discharge and total runoff from the site even with the construction of the residential units." *Id.* Mr. Sweiss also stated that "Currently all surface runoff from the Leona site drains to the new detention pond. .... The effect of the detention basin is to hold the surface runoff from the developed site and discharge the volume over an extended period of time without exceeding the historic runoff conditions prior to

development." However, a review of the Interim Subdrain Plans shows that there are at least three additional drain inlets on this project site that drain runoff from subdrains and concrete v-ditches criss-crossing the project site. *See* DeSilva, "Interim Subdrain Plans," (August 9, 2005). All of these inlets appear to be connected directly to the 39" City storm drain, and not to the detention pond. *See id.* Mr. Lichten of the RWQCB confirmed in his email of March 17, 2005, that the Board is only aware of two 6-inch subdrains that convey storm water directly into the city storm drains without entering the detention basin. There is also the additional runoff from Ridgemont that DeSilva agreed to drain as part of the COA – and it all adds up to a significant burden on the downstream environment. I still cannot determine whether all of these flows were included in the City's hydrologic modeling of downstream drainage capacity.

38. On February 21, 2005, Chimes Creek experienced flash flood-like conditions. The creek water rose rapidly and high, taking down the hanging sewer main at 6311 Hillmont and lifting the manhole cover and spewing sewage for hours at 6120 Oakdale. And yet, according to Mr. Brest van Kempen, the detention pond did not fill up as it would even in a fairly mild storm. It would appear that the temporary weirs were removed as the turbid water was flowing freely through the openings in the detention pond. Due to the Presidents' Day holiday, DeSilva staff was not present at the project site. There was no one onsite to monitor the flow or turbidity or pumping, or the damaging flows to Chimes Creek. *See* Exhibit 3.7.

39. On March 22, 2005, Frank Codd, Flood Control Engineer, Alameda County Public Works Agency, sent me an Excel file of data obtained from the flow gage in the storm drain at the junction of Lundholm and Oakdale Avenues. *See*

http://chimescreek.info/wst_page4.html#ACWD%20data. The County refers to this stretch as Line J-1, known to us more familiarly as Chimes Creek. *See id.* The data covered the period from October 18, 2004 thru February 9, 2005, and recorded the flow in cubic feet per second (cfs) at 5 minute intervals. Mr. Codd had called me earlier in March when he noticed a peculiar anomaly in the flow data readings at Chimes Creek. He had noted at least two distinct periods lasting about two weeks each during which the flow volume would gradually increase starting at around 6 p.m., peaking at around midnight, and then gradually tapering off to a higher-than-normal baseline flow by 7 a.m. The resulting hydrograph has an unnatural oscillating wave pattern; I have never heard of a naturally occurring pattern of storm events that begin and cease on a regular time schedule every night for a period of two weeks. *See* Exhibit 3.8. The first period began on November 18, 2004 and lasted through December 6, 2004. The second cycle was shorter, starting on January 10, 2005 and lasting for about a week.

40. On March 30, 2005 Mr. Brest van Kempen sent an email to Mr. Osalbo to share these findings, requesting an investigation into the nighttime releases of water into the creek. In this email, Mr. Brest van Kempen also noted that on March 26, 2005 he had observed increased flow in the creek during the night. Email from Mark Brest van Kempen to NHI (April 5, 2005). In response to our inquiries, Mr. Peyton denied any unusual discharges, but allowed that it may have correlated with "approved bypasses of the detention basin due to the water being 'clear.'" I was unaware that either the City or DeSilva was authorized to bypass the detention basin in any circumstance, regardless of whether discharges appeared "clear." In all the communications that we have had with the City, the engineers have always denied that

they had ever permitted storm water to bypass the detention pond. As I understand it, their hydrologic modeling predicts that channeling all surface flows into the detention pond will reduce peak runoff. It seems that bypassing the detention pond would negate the finding that the Project would reduce peak runoff from the site. Bypass of flows also contradicts Mr. Sweiss' statements to me in February that all runoff was directed into the pond.

41. In summer 2005, my neighbor, Nancy Sidebotham, called to let me know that she had seen very large pipes, approximately 24 inches to 36 inches in diameter being installed at the site. One pipe was installed on the south slope off of Rifle Lane, and the second, much longer pipe was installed on the northerly slope descending from the Ridgemont Development. *See* Exhibit 3.9. Later I asked her to visit the outskirts of the site with me to point out where she had seen the pipes buried. I compared our visual inspection to the Interim Subdrain Plans distributed by DeSilva in August 2005. *See* Exhibit 3.10. The subdrains appear to be installed at very steep grades, and appear to function as solid (as opposed to perforated) collector pipe. The Interim Subdrain Plans clearly shows that both pipes connect directly to the City's storm drain system without entering the detention basin.

42. December 2005 was not a good month. On December 1, 2005, we had approximately 1.6" of rainfall. Mr. Brest van Kempen met with Mr. Osalbo to discuss turbid discharges in the creek. On December 2, 2005, I noticed evidence of a sanitary sewer overflow at the manhole at 6120 Oakdale Avenue, a problem I discuss in more detail below, and sent an email to city staff with an attached image of a manhole cover with a condom hanging out. On December 17th and 18th, we had 3.2" of rainfall. DeSilva released water from the detention basin, which caused flash flood conditions along Chimes Creek and a

sanitary sewer overflow at the manhole located at 6120 Oakdale. On December 29th, the manhole at 6120 Oakdale continued to overflow even though it had stopped raining two days before.

43. On December 30th and 31st, we had 3.6" of rain. Increased storm runoff from the project site caused the sewer line behind 6301 Hillmont Drive to break, another problem which I discuss in more detail below. I observed evidence of erosion up and down the creek. There was a sanitary sewer overflow, this time at the manhole located at 3855 Delmont Avenue. On January 2, 2006, these problems were the subject of a segment on the local Channel 2 news.

44. As I became more involved in chronicling the impacts of DeSilva's construction activities on Chimes Creek, I began to understand better the cumulative impacts of development on Chimes Creek.

45. Steve Leikin and I purchased this property in August of 2002 from the previous owner who had lived here for more than 22 years. As one of the needed improvements to the property, we hired a tree surgeon in December 2002 to remove a dead acacia tree in the back of the house. I had taken a photograph of one of the workers at that time, showing the back of our property towards the creek. *See* Exhibit 3.11. Visible in the photograph are a simple wood gate and wire fence installed by the previous owner to keep her dogs from entering the creek. Although the gate and fence have since been removed, the fence line can still be located by the stepping stones that were placed on the other side of the gate, leading down to the creek. The photograph also shows a redwood bench that had been placed just on the other side

of the fence (partially hidden by the worker holding the chainsaw) so that one could go and sit by the creek.

46. Two and a half rainy seasons later, which included the large surge of water released from the project site on December 18, 2005, the embankment has caved in, and the once dense mat of ivy is now hanging in mid-air, the ground having washed away. The earth underneath the top stepping stone placed at the gate has now slipped away, tugged by the ivy and the saturated embankment. There are several other stepping stones still hanging on at a perilous angle along the eroding slope. The bottom stepping stones are mostly lost, carried away by the increased flow of the creek. Last fall, before the winter rains began, I had noted a large railroad tie hanging on in a tangle of ivy at this embankment. Presumably this was part of an embankment header placed here years ago by the previous property owner. The next time I looked, after the storms in late December 2005, the railroad tie was no longer there, most likely carried away by the creek which had been flooded repeatedly.

47. When told of the December storms, the previous owner of 3855 and 3859 Delmont Avenue, who had lived there 26 years prior to moving last year, reported that he had never seen the creek rise to the level it did on December 18, 2005. So it would appear that there is a flaw in the assurances that DeSilva and the City have been making to the residents that the construction of the detention pond and the Leona Quarry Development would reduce peak runoff and benefit – or at a minimum, not bring further harm to – the creek downstream.

48. In talking to city engineers familiar with Chimes Creek about the progressive erosion of the creek banks, our concerns have been summarily dismissed because, in Mr. Neary's words, creek incision and bank erosion are part of a "natural process." As part of the

"natural process," in March 2004, a large and leaning acacia tree that had been growing on the opposite bank of the creek succumbed to the soft and saturated soil and came to rest within eight feet of our back door. *See* Exhibit 3.12. The base of the tree was still intact, and we left the stump at the edge of the creek bank in the hopes that it would help to prevent further erosion.

49. Our property has another acacia tree, just beyond the gate opening tottering on the edge of the creek banks. By the time we had moved here, half the rootball was exposed to the creek and the tree itself appeared to be growing at least three feet below the natural grade of the creek banks. I would later find out from my neighbor, Nancy Sidebotham, that some 10 or 12 years ago when she was in her backyard, she had heard and felt a huge thud when this acacia tree slipped down and came to rest at this lower elevation.

50. On March 14, 2005 I walked the length of the daylighted creek with Mr. Brest van Kempen. The photograph I took then of the acacia tree roots would be the last time I saw this tree standing upright. *See* Exhibit 3.13. By the end of the week, the acacia tree broke off at its base and keeled over onto the opposite side of the creek. *See* Exhibits 3.14, 3.15. One year later, the acacia remains where it came to rest, continuing to crush down on the branches of other trees that were hanging over the creek. As the creek water rises and ebbs with the periodic pumping from the project site, the acacia tree appears to have slumped down further and the creek bank has noticeably destabilized over the past few storms.

51. I believe that the unstable, incising banks and channel of the creek are the result of the City's permitting of development without adequate measures to reduce runoff and erosion. About two years ago in April 2004, I attended an Alameda County Waste

Management Authority sponsored training entitled, "Bay-Friendly Landscaping." In the introductory remarks, the attendees were asked if they knew what the number one pollutant is to the Bay. Not one of us was able to come up with the correct response: Sediments washed off the hills from erosion. I believe erosion caused by runoff from the hills of Leona Quarry is certainly polluting Chimes Creek, which is tributary to the Bay.

52. During the creek walk that I undertook with Mr. Brest van Kempen on March 14, 2005, we noted exposed sanitary sewer manholes and pipes along the creek on both sides. *See* Exhibit 3.16. There are a number of areas along the creek where sewer odor can be detected year-round, indicating old and leaky pipes. In between 3829 (my property) and 3835 Delmont Avenue (Mr. Brest van Kempen's property) is a brick manhole, which is entirely exposed to the creek on one side. *See* Exhibit 3.17. Each time the creek rises beyond a certain level, the porous brick walls appear to allow a free exchange of fluids with the creek. During the warm summer days there is often a pungent odor emanating from this manhole. *See* Spreadsheet of Observed Sanitary Sewer Discharges (Exhibit 3.18).

53. I have only recently become aware of the sewer manhole behind 3855 Delmont Avenue, a property recently acquired by Phil McGill. This manhole, #83-400-65 on the City's Sewer Map, has a rim elevation that is about two feet above the creek bed. *See* Exhibit 3.19. When DeSilva released the stored storm water from the detention pond on December 18, 2005 causing massive flooding in the downstream community, this property was completely inundated. The water reached as high as the middle of the hubcap on the red pickup truck parked next to the manhole cover. *See* Exhibit 3.20. While the City's engineers have been quick to blame illegal hookups and leaky sewer pipes for the recurring sanitary sewer

overflows (SSO) downstream at 6120 Oakdale Avenue (*see* Exhibit 3.21) it also would appear that there is plenty of storm water infiltration from low lying manholes such as this, not to mention the porous exposed manholes at 3829/3835 Delmont discussed above.

54. The City has not made clear whether the scope of sewer rehabilitation work scheduled to occur in the spring of 2006 will include the replacement or repair of these pipes or manholes. None of the residents along the creek are aware that any surveys or studies have been undertaken to address these problems.

55. The recurring SSO at 6120 Oakdale Avenue was discussed at the February 2005 sewer meeting attended by Councilwoman Brooks and city engineers. The City did not invite any residents from Oakdale Avenue or Nairobi Place to attend this meeting, even though these properties were within the scope of the sanitary sewer project. It was my impression that the engineers were not familiar with the area, as they seem surprised that these two streets also contained properties facing onto Chimes Creek.

56. In response to our inquiries regarding the manhole at 6120 Oakdale Avenue, Gus Amirzehni, CIP Coordinator, PWA, brushed aside such concerns, saying the problem was due to a clogged main, and that the City had resolved the problem. Two weeks later, we notified city staff that the manhole at 6120 Oakdale Avenue overflowed for hours during the storm on February 21, 2005. We informed them that the manhole overflowed on repeated occasions, usually when there was a heavy storm. On December 29, 2005, as we all stood by the gushing manhole at 6120 Oakdale, Mr. Uzegbu, Mr. Ward and Mr. Osalbo told me that they had no idea that this manhole regularly overflowed. Mr. Uzegbu told me that they had to find the "nexus." Mr. Uzegbu's comment makes me doubtful that the City can determine how

to repair this and other sanitary sewer problems in time for comprehensive repairs to begin this year. *See* Exhibit 3.22.

57. At the February 10, 2005 sewer meeting, the city engineers gave a presentation on the sewer main replacement that they had planned for the lines along Chimes Creek. According to the schedule they discussed at the meeting, the City would begin work in September or October of 2005. One of the residents noted that work in the sensitive creek bed would not be appropriate during the rainy season and suggested that they reschedule the work to avoid the rainy season. City engineers readily concurred and promised that work would be scheduled to begin in the spring of 2006.[3]

58. On February 1, 2006, almost one year later, the City held a follow-up meeting. I thought it was curious that during this meeting Mr. Amirzehni felt it important to point out that the schedule was delayed by a year "at the request of the community." The City currently plans to begin the much needed sewer repair sometime in May or June, or as Mr. Neary tried to clarify, "sometime this summer."

59. Community members attending the sewer meeting took advantage of the opportunity to remind the PWA staff of the various problem areas along the creek that needed attention. Again, the recurring SSO at 6120 Oakdale Avenue was brought up for discussion. Previously, Mr. Amirzehni had responded that the sanitary sewer lines along Chimes Creek are tributary to this manhole, and thus this problem would be resolved once his project was completed. He had also assured us more than a year ago (just before a major SSO occurred on February 21, 2005) that rocks had been removed from the line, and that the problem was

---

[3] I would be happy to provide an audio recording of this meeting upon request.

resolved. At the meeting, I asked if he would consider bolting down the cover, given his confidence that the problem would be fixed by his project. My idea seemed to make many of the engineers in attendance uncomfortable. Their hesitancy made me doubt that the planned project would indeed end the overflows.

60. During this discussion about the SSO at 6120 Oakdale, I was greatly disappointed by Councilwoman Brooks' response that it was "inappropriate" for us to bolt down a sewer manhole without the homeowner's consent. Her comment demonstrated a lack of understanding of the problem and my point that one of the City's objectives in undertaking the project should be to end overflows such that manholes could be bolted down. The Councilwoman and city engineers seem to have little regard for the sewage overflow and creek contamination that has been occurring at this property over the past several years.

61. I do not understand why years pass in between the meetings convened by the City to discuss the problems with the sanitary sewer system. The City has not explained why almost six years elapsed between the public meeting held in 1999 and the meeting held in 2005. Further, I am concerned that, to date, the meetings have not yielded action by the City to remedy the problems. It seems to me that an ongoing pattern of sanitary sewer discharges into the creek, which is tributary to the Bay, is a problem that warrants an urgent response. However, based on the number of years for which the problem has persisted, the City has shown little interest in seeking a permanent solution to the ongoing discharges. It does not appear that the City has even notified the RWQCB of the discharges. Michael Chee, SSO Coordinator, RWQCB, has no record of anyone from the City ever filing a report on this SSO. Email from Michael Chee (Dec. 13, 2005). Further, based on my review in March 2006, it

appears that Raul Godinez II, Director, PWA, has not included these discharges in his ongoing Incident Reports. *See* http://www.oaklandpw.com/Page691.aspx.

62. The neighbors along Chimes Creek have been documenting and keeping a wary eye on the exposed sewer pipes at Nairobi Place and the pipe behind 6301 Hillmont Drive for the past 20 years. *See* Exhibit 3.15. My neighbor, Nancy Sidebotham, has told me that the sewer junction at Nairobi became exposed around 1986. *See id*. The sewer main behind 6301/6311 Hillmont Drive became exposed during the winter of 1988 when nine feet of land and fencing behind 6301/6311 Hillmont Drive was washed out. When the sewer main at 6301 Hillmont Drive broke open in 1988, the City responded by tying the pipe to an oak tree. Since that time, the sewer main has continued to break open every year, and each time the City would add more rope and ties and even a trestle structure to support the pipe. *See* Exhibit 3.23, http://chimescreek.info/Sewer/SewerMain.html and http://community.webshots.com/album/227277344aQTADO. I am not aware that city staff has ever taken affirmative measures to clean up following the discharges. The waste is usually carried downstream by the creek.

63. On December 4, 2004, the sewer main behind 6301 Hillmont Drive had pulled apart and was dumping raw sewage into the creek. Sewer Maintenance came and flushed out the system and reconnected the pipe by the following day. Later on, I was able to find a Complaint Record dated December 4, 2004 (*see* http://chimescreek.info/Sewer/SewerMain.html) on file at City Maintenance for this job where the sewer main is referred to as the "temporary eight-inch plastic line," which would indicate that a "permanent" fix has been due for over 16 years. On January 4, 2005, I learned from

Mr. Lichten that the City intended as a permanent fix to move this main to the nearby road (Hillmont Drive) and that the work would be completed during the summer of 2005. However, I was never able to obtain a confirmation of this information from any of the city staff.

64. On January 6, 2005 a number of residents saw and reported a lateral line failure behind 6301 Hillmont Drive. This time, the sewer main held together but had pulled away from the lateral line connecting from 6301 Hillmont Drive. City maintenance crews came and performed a quick fix, but the lateral again disengaged from the main sewer line the following day. Maintenance crew noted in the Work Record that, "the hill is moving."

65. On February 21, 22 and 23, 2005 the sewer main broke apart from the large and swirling volume of storm water in the creek. Perhaps due to continuing high water conditions, it took the crew over several days before the sewer mains were secured to prevent further spillage.

66. The sewer main appeared to be holding up through the months of October, November and December, but on the last day of December 2005, the supporting trestle structure, along with the temporary eight-inch pipe, was completely swept away by the flood waters in the creek.

67. At the most recent Sewer Meeting held for the community on February 1, 2006 the City revealed plans involving the placement of large boulders to help support the eight-inch sewer main. My understanding is that the pipe will remain exposed, as the sewer repair work does not cover creek bank rehabilitation. A number of residents expressed concern that the increased flow and volume of water in the creek be taken into account for the sizing of

boulders or any structures to be built in the creek bed. Also, the engineers indicated that the Environmental Services Division had determined that the walnut tree stump should not be disturbed and remain near the exposed sewer pipes. *See* Exhibit 3.24. In the past we have observed creek bank gouging where eddies have formed from tree branches and other obstructions in the creek. It is not clear if or how the city engineers intend to stabilize the north bank (Line N) and prevent such gouging or accelerated "cave ins."

I declare under penalty of perjury of the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed on the 27th day of March, 2006 at 3829 Delmont Avenue, Oakland, CA, Alameda County.

Respectfully submitted,

Dated: 28 March 2006

Chiye Azuma

Exhibit 3.1

Photographs by Mark Brest van Kempen on May 27, 2004 of black drain pipes at the bottom of a muddy trench of the former holding pond.

Exhibit 3.2

Photograph by Mark Brest van Kempen on April 11, 2004 of Chimes Creek behind 3835 Delmont Ave.

Exhibit 3.3

Photograph by Chiye Azuma on April 24, 2004 of the siltation fences used as a mud barrier at the Leona Quarry construction site. A drain inlet connecting directly to the City storm drains is at the center of this photograph.

Exhibit 3.4

Photograph by Chiye Azuma on May 30, 2004 of filter fabric wrapped around a storm drain inlet at the Leona Quarry construction site. The roadway on the other side of the fence is Mountain Blvd.

Photograph by Chiye Azuma on July 10, 2004 of sediment pond and mud piled halfway up the drain inlet at the Leona Quarry construction site. The roadway on the other side of the fence is Mountain Blvd.

Exhibit 3.5

Photograph by Chiye Azuma on May 30, 2004 of a new siltation pond constructed at the Leona Quarry site next to the Mountain Blvd. drain inlet. The plastic liner for the pond has already peeled away and the ponding water resembles the dirty water observed by downstream residents in Chimes Creek (*See* Exhibit 3.2).

Exhibit 3.6

LEONA DETENTION POND

Edwards Avenue has had a history of flooding on a yearly basis. This year with all the record rain that we have experienced, only one incident of minor flooding has occurred in which water flowed onto Edwards Avenue, early in the Leona Quarry grading operations. This occurred after an unexpected storm prior to the October 15th (start of the rainy season) and was a result of a failure of a temporary sedimentation pond intended to remove silt from the water during construction.

Since the initiation of grading work at the site of the Leona Quarry, there have been complaints about runoff from the site, and some statements from residents along Chimes Creek have implied that the flows coming off the site have greatly exceeded typical winter flows.

Specifically, in some emails, Ms. Chiye Azuma questioned whether the detention pond is functioning as designed and intended and questioned the impact of the introduction of baker tanks and temporary filtration pond on the outflow from the Leona site[eu1]. In another correspondence, Mr. Mark Van Brest Kempen claimed that "the developer can't control run off on their site", "the creek has been roaring, full of silt and eroding the banks", and that "all the measures introduced by the contractor were not called for in the original SWPPP and have failed".

In many of the emails and discussions concerning storm water flows from the Leona Quarry, the issues of water quality and water quantity have been discussed interchangeably. To accurately address recent storm water runoff concerns I would like to focus on two main aspects of the "surface runoff" from the Leona Development, "Quantity" and "Quality".

The following description of runoff conditions is to mainly clarify whether there has been an increase or decrease in volume in Chimes Creek since the beginning of the project.

In the most basic sense, the amount of surface runoff (Quantity) in a given watershed is directly related to the area or size of the watershed, how much rain falls in a given amount of time, and how much of that rain will infiltrate into the ground before it has a chance to leave the site. The amount of rainfall that can infiltrate into the ground is primarily a function of the drainage area, land use, soil type, and ground slope. [eu2][eu3]

The accumulation of the surface runoff from the Leona site increases during a rainfall event up to a "peak flow" at which time the surface runoff will begin to decline. The peak flow during a rainfall event is typically observed in our creeks during the highest water surface elevation. Peak flow may be controlled by use of detention facilities, which are designed to allow stormwater runoff to be stored temporarily and released gradually.. The hydrologic modeling conducted for the Leona project determined that the restoration of the quarry site would reduce peak discharge and total runoff from the site even with the construction of the residential units.

The City and Alameda County and Flood Control and Water Conservation District (ACFC) insisted on requiring a detention basin at the Leona site mainly to control the amount of flow entering the existing 39" SD pipe under I-580. ACFC also required that the development at Leona would not adversely impact downstream property by increasing the flood hazard.

Currently all surface runoff from the Leona site drainsto the new detention pond. The pond is sized to capture the 100-year storm runoff volume. The pond outfall structure has one 18" orifice at the

base that will restrict the amount of water leaving the pond and flowing through the 39” SD pipe under I-580. The outfall structure also regulates the peak discharge to the 39” culvert up to the 100-year event. The effect of the detention basin is to hold the surface runoff from the developed site and discharge the volume over an extended period of time without exceeding the historic runoff conditions prior to development.

In Chimes Creek, according to Mr. Kempen, water in the creek typically overflowed to his porch. This has not happened this year. This has demonstrated that the detention pond has been effective at attenuating the peak volume of runoff during these recent storms.

Because the project is still under construction, the slopes are not completely vegetated, and the storm drainage system is not completely done, the project’s Storm Water Pollution Prevention Plan (SWPPP) was modified to utilize the detention pond as a *retention* basin to allow sediments to settle and storm water to be filtered/treated before being discharged into the City’s Storm Drain system. A retention basin is used to store water for a longer period of time to allow sediments to drop out before allowing the stormwater to enter into the downstream pipes and creek.

The retention basin was used for adaptive management to improve the quality of water leaving the site. In order to achieve this, the 18” orifice at the base was temporarily plugged for the duration of the grading operations and the 3 feet square opening in the vertical concrete structure was covered with a board to act as a weir to increase the capacity of the basin. The weir was raised twice in late December based on observations at the site as to the most effective weir level [eu4]to achieve the maximum desired retention. At the built out condition, it is anticipated that the detention pond will receive surface runoff with less suspended sediments from the fully developed and re-vegetated basin. [eu5]

With regard to runoff quality during construction, the SWPPP in effect for the Leona Quarry project requires the contractor to construct best management practices (BMPs) to prevent erosion and discharge of sediment laden waters from the site. The contractor is also required to keep turbidity of discharge waters below a target level set by the State. A caveat to these requirements is that measures taken are limited to an effort by the contractor that is considered the "maximum extent practicable" (MEP). MEP is generally accepted to mean the highest level of effort and technology that is economically feasible and is typically utilized to control erosion in projects of this size in areas of similar rainfall amounts.

So if the turbidity standards are exceeded in the discharge water, the contractor is first required to identify the cause of the high turbidity. If further BMPs are identified as an effective way to reduce the turbidity, the contractor is then responsible for implementing those BMPs. The baker tanks, temporary upper bowl and filtration system were introduced as additional measures to minimize the turbidity of the water before it is discharged into the storm drain system.

The level of effort that went into designing the detention facilities has shown to be effective at reducing the potential flood hazards at Chimes Creek and to properties downstream. Efforts to improve the quality of runoff have exceeded the contractor’s initial requirements under SWPPP. There has been extensive ongoing monitoring of the site related to hydrology, geology, noise, dust and water quality. These reports are available for anyone to examine.

Page: 1
[eu1]Is she questioning its operation or necessity? Is she questioning hungry water?
Page: 1
[eu2]Rational Method confuses the issue since it was not used for this project.
Page: 1
[eu3]Emily – 10-year & 100-year for storm sewer design
Page: 2
[eu4]What is meant by opening size? Does this refer to the weir?
Page: 2
[eu5]Assumes the basin is not functioning adequately now.

Exhibit 3.7

Photographs by Mark Brest van Kempen on February 21, 2005 of Chimes Creek at 3835 and 3839 Delmont Ave.

Exhibit 3.8

J-1. FLOW GAGE DATA
11/20/04 - 11/26/04

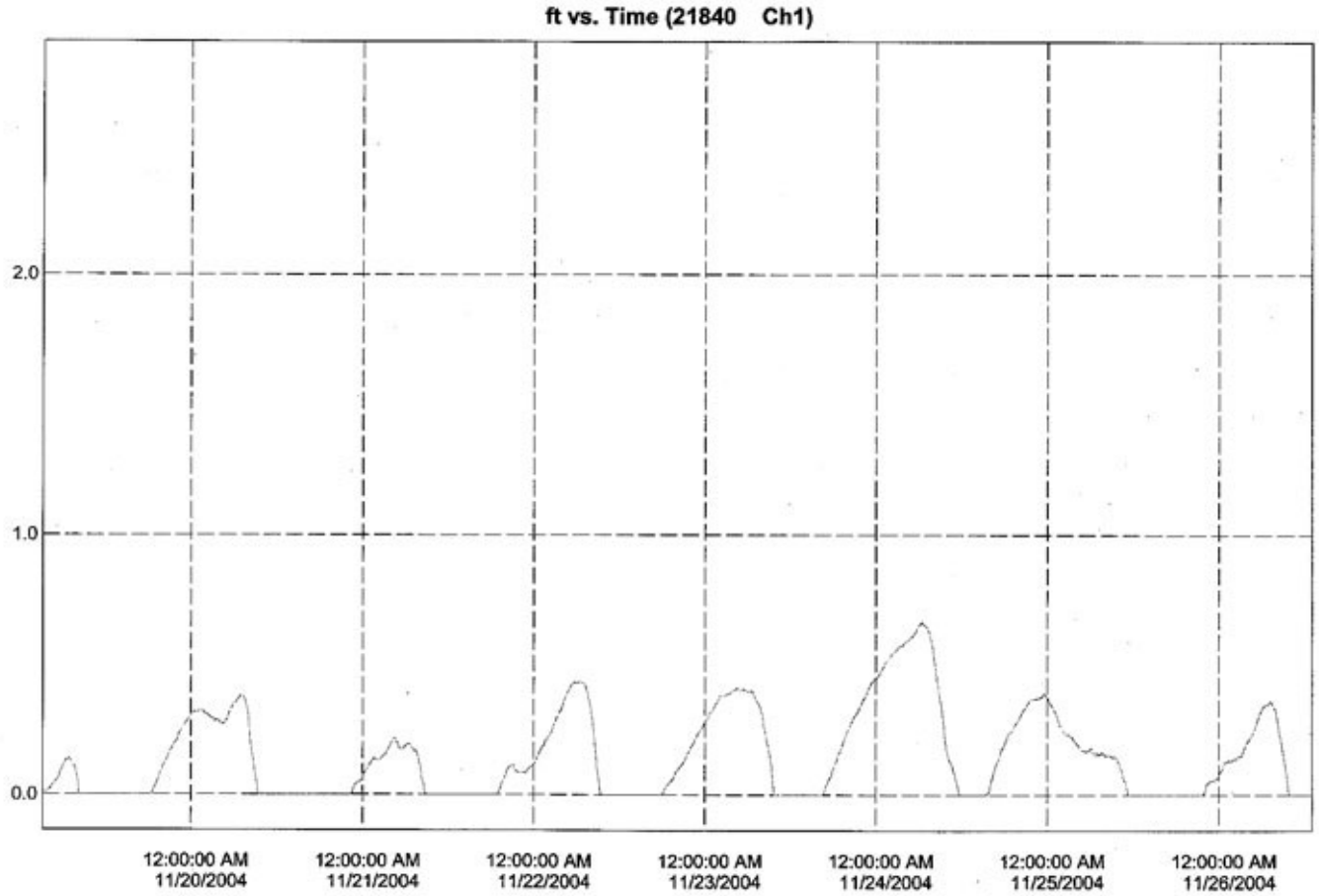
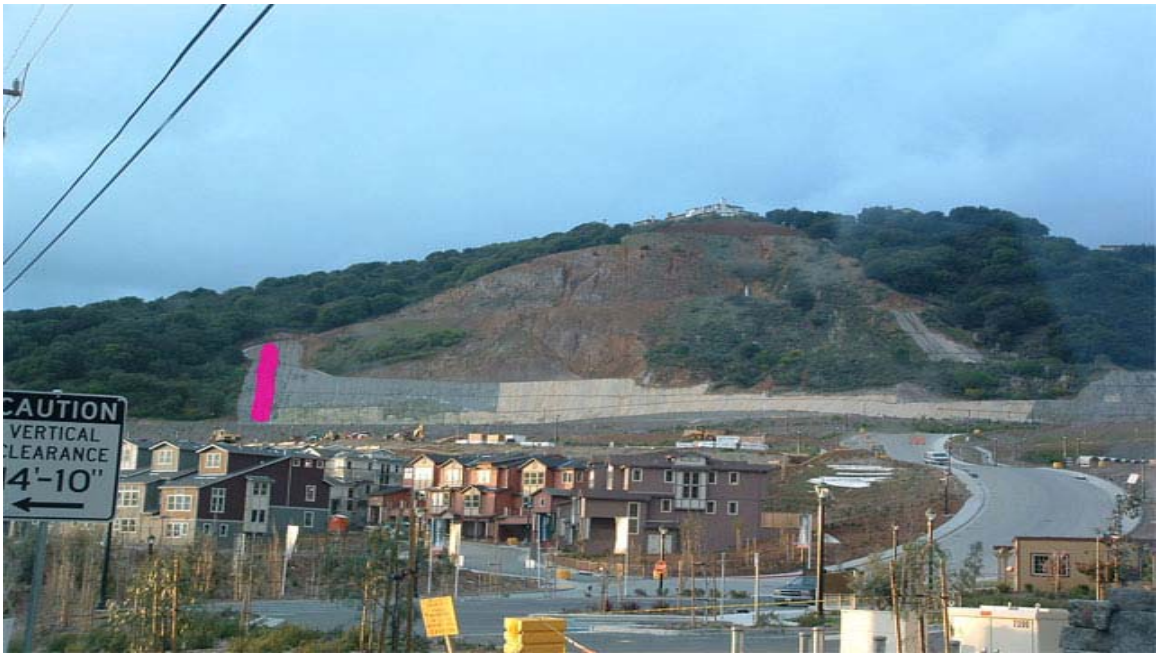


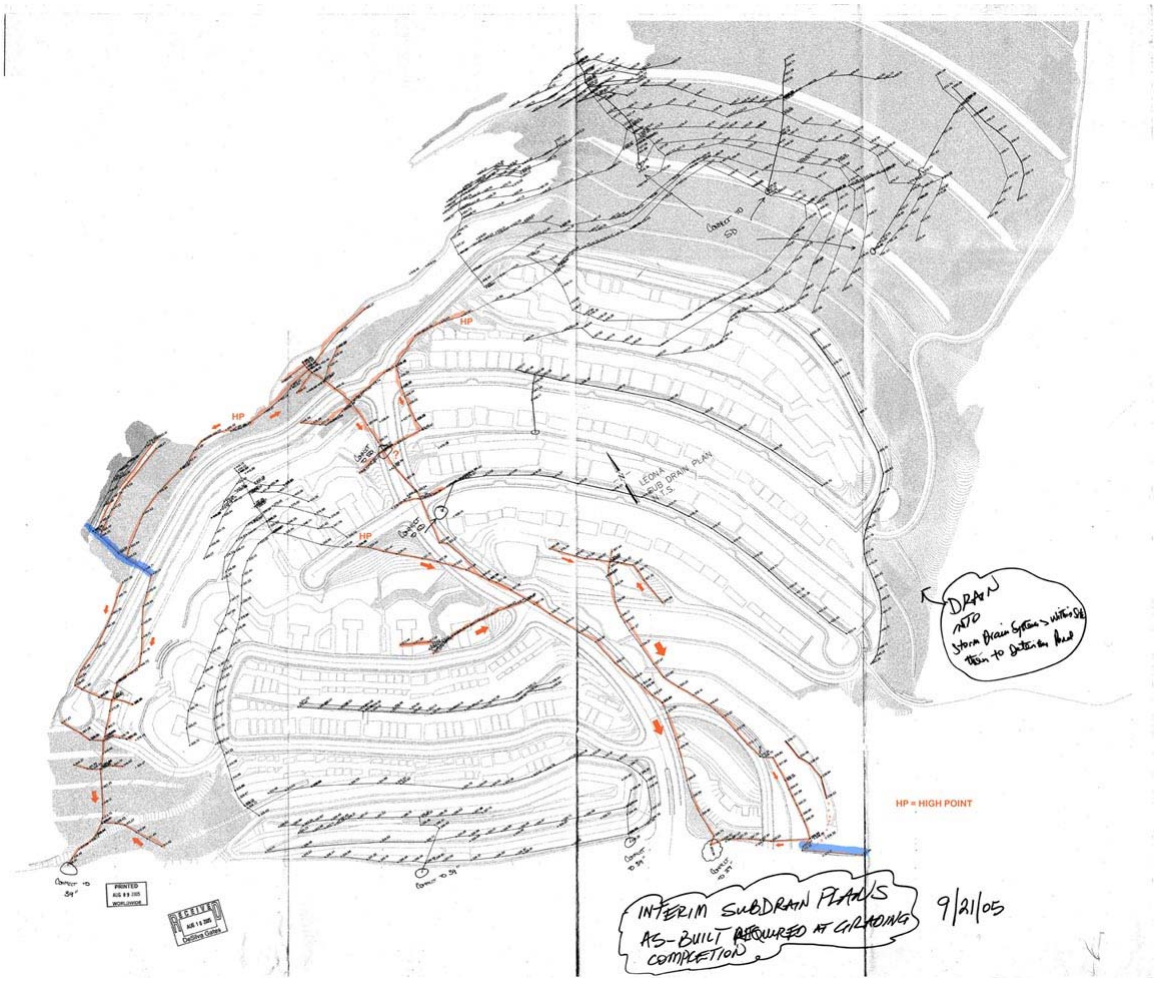
Exhibit 3.9



Photograph by Chiye Azuma on March 10, 2006 of steep slope under the Ridgemont Development. The magenta line represents the pipe that Nancy Sidebotham saw being buried in the slope during the summer of 2005.

Photograph by Chiye Azuma on January 7, 2005 of the same steep slope under the Ridgemont Development. The Leona Quarry construction site and detention pond is in the foreground.

Exhibit 3.10



Interim Subdrain Plans dated September 21, 2005, provided by the City of Oakland to MHA in response to a Public Records Request. Coloring added by Chiye Azuma. The orange lines represent subdrains that appear to drain directly into the City's storm drain system, bypassing the detention pond. The two short blue lines mark the location of the large diameter pipes observed by Nancy Sidebotham (*See* Ex. 3, ¶ 41).

Exhibit 3.11

Photograph by Chiye Azuma on December 12, 2002 of backyard of 3839 Delmont Ave. facing Chimes Creek. Two rainy seasons after construction began at the Quarry, the creek banks have eroded to the extent that the earth supporting the wood gate, wire fencing and redwood benches is lost.

Exhibit 3.12

Photograph by Chiye Azuma on March 3, 2004 at 3829 Delmont Avenue of acacia tree.

Exhibit 3.13

Photograph by Chiye Azuma on March 14, 2005 of acacia tree along Chimes Creek.

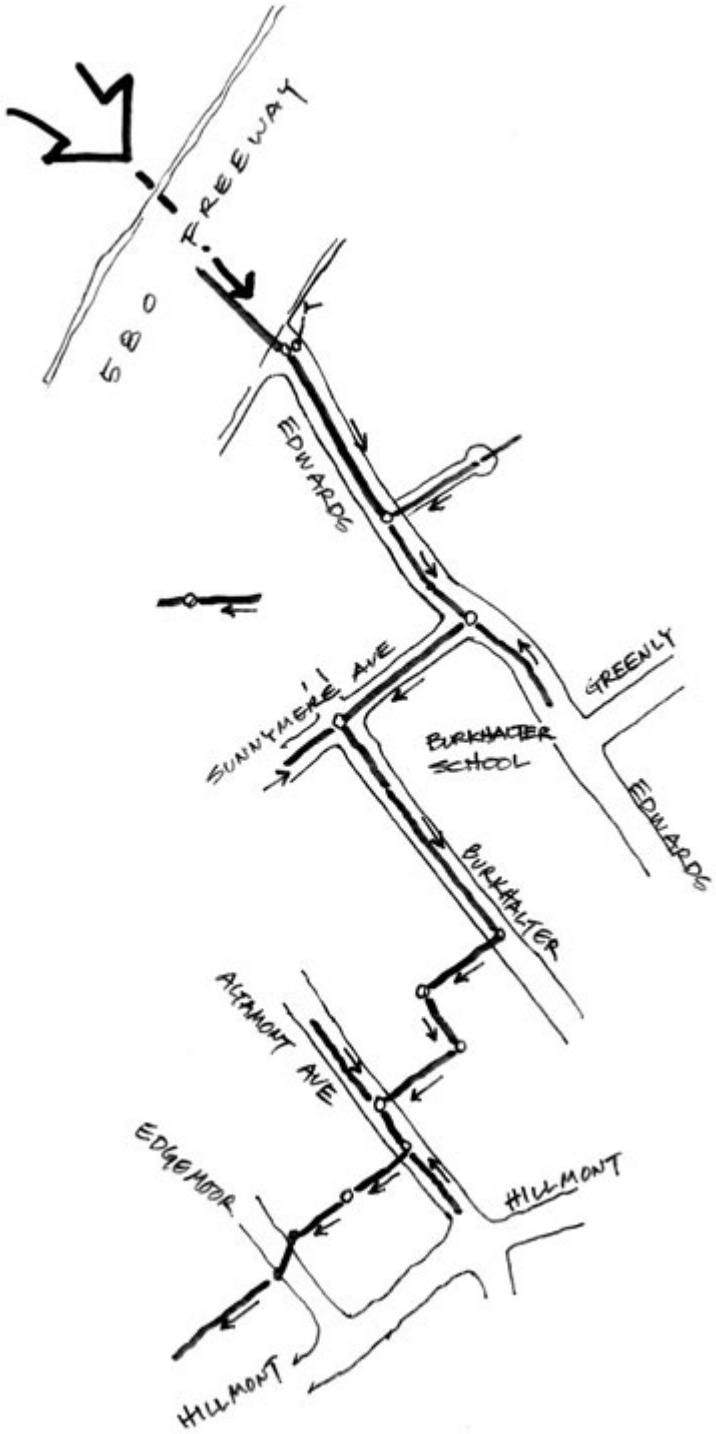
Exhibit 3.14

Photograph by Chiye Azuma on March 19, 2005 of fallen acacia tree facing Chimes Creek.

Exhibit 3.15

Photograph by Chiye Azuma on March 19, 2005 of acacia tree fallen over Chimes Creek.

Exhibit 3.16



Sanitary Sewer Diagram by Chiye Azuma.

AVENUE
EDGEMO
ALTAMO
RCKHALTER
MONT AVE
AVENUE
PATH

Exhibit 3.17

Photograph by Chiye Azuma on March 14, 2005 of the exposed brick manhole along Chimes Creek between 3829 and 3835 Delmont Ave. The concrete mortar patch on the left half of the manhole structure points to past efforts to seal the porous joints.

Exhibit 3.18

Date	Location	Description of Discharge	Notice to City	Other Information	Observer
11/?/02 - Cannot confirm	Behind 3835 Delmont Ave	Overflowing manhole into Creek			
5/1/2003	Behind 6251 Hillmont Dr. (opposite creek from 3801 Delmont)	Broken sewer main near manhole, possibly caused by hillslide.	Sewer maintenance called	Complaint Record on file: Found broken main sewer on easement behind 6251 Hillmont near manhole. Sill slide possibly caused break in main sewer. Made work order.	Mark Brest van Kempen
6/19/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called		Mark Brest van Kempen
6/20/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called		Mark Brest van Kempen
6/21/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called		Mark Brest van Kempen
6/22/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called		Mark Brest van Kempen
6/23/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called	Complaint Record on file: Found sewage running into creek from storm line. Sewage coming from main sewer plugged on easement at 3924 Edenvale Pl.	Mark Brest van Kempen
7/31/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called	Complaint Record on file: Main sewer on easement at 3924 Edenvale Pl and 3947 Gardenia Pl was checked for blockage.	Mark Brest van Kempen
8/1/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called		Mark Brest van Kempen
8/2/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called		Mark Brest van Kempen
8/3/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called		Mark Brest van Kempen
8/4/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called		Mark Brest van Kempen
8/5/2003	Behind 3839 Delmont Ave	Sewage in rear yard and creek (from storm drain)	Sewer maintenance called	Leak stopped. Dead Pacific Treefrog tadpoles noted.	Mark Brest van Kempen
3/26/2004	Behind 3835 Delmont Ave	Overflowing manhole into Creek. Foamy substance in creek.	Sewer maintenance called		Mark Brest van Kempen
4/6/2004	Behind 3809 Delmont Ave	Sewage in the Creek. Main sewer was found overflowing on the easement behind 3809 Delmont. Main sewer was rodded from the manhole at the end of Nairobi Pl.	Sewer maintenance called	Complaint Record on file: An old shed and tree fell down in the rear of this location and possibly caused the break. Televise main sewer recommended.	Mark Brest van Kempen
6/19/2004	Behind 3835 Delmont Ave	Sewage getting into creek	Sewer maintenance called	Complaint Record on file: Checked creek area behind property - found sewage running in creek from storm line. Traced it down - found main sewer plugged. Rodded and flushed main of heavy grease. Also dumped a load of water and disinfect in storm inlet on Edenvale Pl.	Mark Brest van Kempen

Date	Location	Description of Discharge	Notice to City	Other Information	Observer
6/22/2004	Behind 3809 Delmont Ave	Sewage leaking into creek.	Sewer maintenance called	Complaint Record on file: Dye test was made from 3819 Delmont and from 3805 Delmont. Dye test could not be made from 3809 Delmont.	Mark Brest van Kempen
7/8/2004	Behind 3809 Delmont Ave	Sewer main failure - huge discharge of sewage in creek	Sewer maintenance called	Complaint Record on file: Rodded main sewer on easement to clear stoppage of possible roots.	Mark Brest van Kempen
7/9/2004	Behind 3809 Delmont Ave	Nozzle trapped in main sewer	(Continued work from previous day)	Complaint Record on file: Crew attempted to retrieve hydroflusher nozzle caught in main sewer on easement. Unable to dislodge nozzle. Construction crew was called onsite to dig out main sewer on easement.	
12/4/2004	Behind 6301 Hillmont Dr	Sewer main fell apart and raw sewage is dumping into creek.	Sewer maintenance called	Complaint Record on file: Checked and found temporary 8" plastic line pulled apart causing water from pipe to go into creek. Turn over to construction.	Mark Brest van Kempen, Doug Polentz, Chiye Azuma
12/5/2004	Behind 6301 Hillmont Dr	Broken sewer main	(Continued work from previous day)	Complaint Record on file: follow up on previous day's repair. Flushed temporary Main Sewer on easement over 600 ft of roots, grease, rocks and other debris in creek area. Assisted Construction Crew.	
12/9/2004		Request for Sewer Maintenance records	Eldridge Persons	Requested sewer maintenance records and service log from the City's Maintenance Dept. Per the City Attorney's directive, all records are purged after 3 years.	Chiye Azuma
1/4/2005	Behind 6301 Hillmont Dr			Keith Lichten with the SFRWQCB writes that the City has assured the Board that: the City intends as a permanent fix to move the pipe to the nearby road, and this fix is expected to be completed in summer 2005.	Email to C Azuma from K Lichten, 1/4/05
1/6/2005	Behind 6301 Hillmont Dr	Lateral line failure	Sewer maintenance called	Complaint Record on file for 1/7/05: Checked and found sewer (lateral) at 6311 Hillmont Dr. pulled apart from main sewer. Called Sewer Dept. to have Construction make repairs.	Mark Brest van Kempen, Doug Polentz, Chiye Azuma, NHI
1/6/2005	Behind 6120 Oakdale Ave	Manhole overflow.	Sewer maintenance called	Homeowner John Harris says that the manhole cover lifts up and spews raw sewage across his lawn and into the creek whenever there is heavy rain. He said that he calls the City; the crews come out and replace the lid; and that is all they do. He has been in this house since the mid 90's.	John Harris, Chiye Azuma

Date	Location	Description of Discharge	Notice to City	Other Information	Observer
1/6/2005	Easement behind Nairobi Place	Evidence of manhole overflow	Sewer maintenance called	Dislodged manhole cover replaced	Mark Brest van Kempen, Chiye Azuma
1/7/2005	Behind 6301 Hillmont Dr	Lateral line disengaged from main. The repair work applied the previous day failed to hold up.	Sewer maintenance called	Complaint Record on file for 1/7/05 (2): Flush main sewer on easement. Lots of rocks in this temp line. The hill is moving. The hose got hung up 100 ft. in the temp line - had to make a repair on the temp line. The Main is running at this time.	Chiye Azuma, Mark Brest van Kempen
1/9/2005	Behind 6120 Oakdale Ave	New evidence of manhole overflow since 1/06/05. Fresh trail of raw sewage from the partially opened manhole to the creek.	Sewer maintenance called.	Dislodged manhole cover replaced. Note: Sewer Maintenance does not have any "Record" cards from 6120 Oakdale probably because the only response they can make is to replace the manhole cover so there is no "work order" that is generated. Michael Chee with the RWQCB confirms that the City of Oakland has never reported the SSO at this location.	Chiye Azuma
1/13/2005			City Engineers send out a notice to residents for a meeting to discuss sewer repair "alternatives"	Chiye Azuma sent email to Fuad Sweiss advising him of the various problem areas along the creek, including the recurring SSO at 6120 Oakdale. Almost a year later, Ron Ward and Marcel Uzegbu would stand by the manhole and claim they did not know of this problem.	
1/14/2005	Behind 6120 Oakdale Ave	Homeowner on Oakdale reports his backyard has been filling up with "ka-ka" every day with the recent rain storms.		Homeowner tells Tom Vacar, Channel 2 reporter that work on the Leona Quarry is what started the sewer backup in his yard.	John Harris, Renee Kintl
2/10/2005		Community meeting re sewer rehab work near Chimes Creek		City Engineers gave presentation on rehab work. Project schedule called for work to begin in Sep/Oct but was postponed to begin in spring of 2006 after the rainy season ended. Until pointed out by the community, the Engineers had not taken into account that work will be taking place in the creek bed and would require appropriate permits and restrictions on work in the creek bed.	Chiye Azuma, Nancy Sidebotham, Mark Brest van Kempen, Steve Leikin, Steve Luntz, Anita, Barbara
2/22/2005	Behind 6301 Hillmont Dr	Hanging sewer main broke from flash flood conditions in creek, sewage dumped into creek	Sewer maintenance called	Complaint Record on file: Hydro flushed main sewer - cleared rock and dirt stoppage	Mark Brest van Kempen

Date	Location	Description of Discharge	Notice to City	Other Information	Observer
2/22/2005	Behind 6120 Oakdale	Owner reports that manhole cover lifted up and raw sewage was spewing up in air 6' high. Trail of raw sewage and toilet paper could be tracked down to the creek.	Sewer maintenance called	Dislodged manhole cover replaced - Property and creek banks remain soiled and polluted with sewage.	John Harris, Chiye Azuma
2/23/2005	Behind 6301 Hillmont Dr	Hanging sewer main broke from flash flood conditions in creek, sewage dumped into creek	(Continued work from previous day)	Crew came out to fix pipe. Repair not completed yet and will return the following day.	Nancy Sidebotham
3/16/2005	Behind 6301 Hillmont Dr	Old sewer pipes and various construction debris abandoned in creek by Public Works	Calls and emails to Gus Armezheni and RWQCB	City Engineer initially argued that removal of these items would require environmental review by a creek expert. Pipes and construction debris was eventually cleared out of the creek bed after Keith Lichten (WB) talked to City engineers.	Chiye Azuma
3/30/2005			email from Gus Amirzehni to Chiye Azuma	Gus Amirzehni (City engineer) confirms they will be required to obtain a Cat 4 Creek Protection Permit and that he would keep us posted with the progress of their work. (The next update the community received was on February 1, 2006)	
12/3/2005	Behind 6120 Oakdale	Evidence of sewer overflow - manhole cover dislodged and sewer contents spilled in vicinity.	Emailed City Engineering and Keith Lichten at RWQCB, called Sewer Maintenance	City Engineer says to call Sewer hotline. (Gus Amirzehni email to Chiye Azuma, 12/6/05)	Chiye Azuma
12/13/2005	Behind 6120 Oakdale		Email from Michael Chee, SSO Coordinator with RWQCB	Michael Chee wrote: "I am the SSO coordinator at the Regional Water Board. Can you provide information as to who was contacted at the City of Oakland for the SSO at 6120 Oakdale? No SSOs were reported to our SSO database in February of this year from the City of Oakland nor any SSOs on Oakdale."	Chiye Azuma
12/18/2005	Behind 6120 Oakdale and all along the creek	SSO at this manhole. Also, all exposed manholes along the creek were submerged under the high flows of the creek water. At 3859 Delmont, the manhole was completely submerged under the flood water causing raw sewage to mix in with the flood water covering the yard.	Email to Keith Lichten and Michael Chee at RWQCB, email to City engineers	Jaime Heredia (City of Oakland, Operations Mgr, PWA) reports on the results of televising this line on 12/6, 12/8 and flushing operations on 12/12. (email to Chiye Azuma, 12/19/05) No mention of the SSO on 12/18/05 was included in this email.	Chiye Azuma, Phil McGill, Mark Brest van Kempen, Steve Leikin
12/28/2005	Behind 6120 Oakdale	SSO at this manhole, spewing raw sewage into creek. (observed at 7 am, 12/28/05)	Email to City Engineers	No response	Mark Brest van Kempen, Chiye Azuma

Date	Location	Description of Discharge	Notice to City	Other Information	Observer
12/29/2005	Behind 6120 Oakdale	SSO at 6120 Oakdale continues although there has not been any rain in the past 36 hours (SSO was still continuing at 5 pm)	Email to City Engineers	Marcel Uzegbu, Ron Ward, Jun Osalbo (Oakland PWA) make a site visit and concede they were not aware of this problem at this address. They call the Sewer Hotline but no crews are available immediately.	Mark Brest van Kempen, Chiye Azuma, Ron Ward, Marcel Uzegbu, Jun Osalbo
12/30/2005	Behind 6120 Oakdale	Manhole cover remains open and raw sewage covers the backyard, trailing down to the creek.	Email to Marcel Uzegbu	Per Marcel Uzegbu's email to Mark Brest van Kempen, dated 12/30/05, " Sewer Maintenance staff were at the site yesterday, and stopped the overflow," and advises us in the future to "call the Public Works Agency's Call Center for any overflows at (510)615-5566."	Chiye Azuma
12/31/2005	Behind 6301 Hillmont Dr and all along the creek and on Sunnymere	Hanging sewer main behind 6301 Hillmont broke off and swept away in the high waters of the creek; SSO on Sunnymere - feces and toilet paper in the street; SSO at 3859 Delmont causing sewage to flow into creek and back yard	Email to City Engineers, calls to Sewer Hotline	When resident called Sewer Hotline about SSO at 3859 Delmont, they said there was not much they could do about the SSO but would send a crew out. Crew came after the SSO had subsided (creek flow had decreased by the late afternoon) and opened the manhole for a visual check. There was no blockage.	Mark Brest van Kempen, Chiye Azuma, Phil McGill
1/1/2006	Behind 6301 Hillmont Dr			City Maintenance crew was out working to rebuild the trestle structure for supporting the sewer main that has remained exposed for the past 16-18 years.	
2/1/2006	Behind 6120 Oakdale	Site visit to see if any cleanup had been made		Manhole lid was on. The area around the manhole is deeply gouged and eroded from the repeated overflows of the previous month. Sewer debris and sludge remain on site. The downhill side of the manhole is now exposed from the erosion.	Chiye Azuma
2/1/2006		Community meeting re sewer rehab work near Chimes Creek.	Community advised City Engineers of various overflow problems and problem spots along Chimes Creek.	City Engineers took notes.	Chiye Azuma, Nancy Sidebotham, Mark Brest van Kempen, Steve Leikin, Tiffany and Diana (owners of 6311 Hillmont Dr.)

Exhibit 3.19

Photograph by Chiye Azuma on December 31, 2005 of manhole #83-400-65 behind 3855/3859 Delmont Ave. During high flow conditions, this manhole is completely submerged by creek waters.

Exhibit 3.20

Photograph by Chiye Azuma on December 31, 2005 behind 3855 Delmont Ave. facing Chimes Creek. The sewer manhole is located next to the black pipe on the ground. On December 18, 2005, the creek waters flooded this back yard, rising to the center of the truck's hub cap.

Exhibit 3.21

Photograph by Chiye Azuma on December 30, 2005 of the aftermath of a two-day sanitary sewer overflow at 6120 Oakdale Ave. Although a City Maintenance crew was sent out to stop the overflow, no attempt was made to clean up fecal matter trailing down to the Creek or to reseat the dislodged cover.

Exhibit 3.22

Photograph by Chiye Azuma on December 29, 2005 of overflowing manhole at 6120 Oakdale Ave. Raw sewage continued to bubble out of this manhole by the Creek even though it had stopped raining two days before.

Exhibit 3.23

Photograph by Florence Negherbon in January 1997 of sewer pipe tied to fence and wood plank with rope behind 6301 Hillmont Drive along Chimes Creek.

Exhibit 3.24

Photograph by Chiye Azuma on December 18, 2005 of walnut tree stump and hanging sewer pipe behind 6301 Hillmont Drive along Chimes Creek.