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October 25, 2004

Deborah Edgerly
City Administrator
One City Hall Plaza, 3rd Floor
Oakland, CA 94612

Re: Leona Quarry Project (October 26, 2004 Agenda Item 1)

Dear Administrator Edgerly:

The Millsmont Homeowners Association writes regarding the approval of the final maps for the Leona Quarry Project, which the City Council will consider on October 26, 2004. Specifically, the City Administrator has forwarded to the Council a recommendation that it approve the "Resolution Authorizing the Director of the Public Works Agency to Enter Into a Subdivision Agreement With DeSilva Group, Inc. For Construction of Certain Improvements In a Real Estate Subdivision Entitled 'Tract 7351,' Leona Quarry Project; Approving the Final Tract Map Numbers 7351 and 7493; Fixing The Amount of the Security to Guarantee the Faithful Performance of Such Agreement and Adopting Plans and Specifications."

We understand the DeSilva Group, Inc. (developer) is ready to proceed with construction. We also understand and support the City's interest in making more affordable housing available to Oakland residents. However, the Homeowner's Association is concerned that the City has not completed its due diligence to assure that the Project will not cause improper damage to the environment downstream from the Project site, which includes Chimes Creek and riparian private properties owned by Millsmont Homeowners. We respectfully request that the City Administrator briefly defer the decision whether to approve the final maps until the City assures that the plans for the Project comply with the Conditions of Approval, as well as applicable State laws which may further condition the development.

The Homeowners Association is an unincorporated group of concerned residents who live in the Millsmont neighborhood in central east Oakland. Chimes Creek is the focal point of our community. We have interests that will be directly impacted by the proposed Leona Quarry Project.

Our letter is organized as follows. Section I provides a background of the Leona Quarry Project and its impacts on Chimes Creek. Section II contains specific comments regarding the adequacy of the final maps, including compliance with the Conditions of

Approval and state law. These comments are restated in the form of separate questions. We respectfully request that the City consider these comments and answer these specific questions, including specific citations to the record, before taking final action.

I. BACKGROUND

The project is located at 7100 Mountain Boulevard, in the Oakland Hills, on 128 acres of land within the headwaters of Chimes Creek. City of Oakland Community and Economic Development Agency, Leona Quarry Draft Environmental Impact Report (2002) (Draft EIR), p. IV.F-1. A Modified Plan for development calls for the construction of 477 residential units in Leona Quarry, along with attendant support structures for the subdivision. City of Oakland Community and Economic Development Agency, Leona Quarry Final Environmental Impact Report (2002) (Final EIR), p. III-7.

Chimes Creek is a natural creek that originates in headwaters located both above and within the Leona Quarry Project. *See* City of Oakland Museum, Lion Creek Watershed Map (1999), *available at* <http://www.museumca.org/creeks/21-OMLion.html>. Its flow is perennial. Today, the creek flows westward across the surface of the Project, both as an expression of surface water and in underground conduits. The creek is culverted as it leaves the Project area, after which it flows under Interstate 580 to form the main trunk of the storm drain network flowing through the Burkhalter neighborhood. A section of the creek daylights behind residential properties on Delmont Avenue, then goes underground to cross Seminary Avenue, and surfaces briefly on the Mills College campus. Chimes Creek then joins Horseshoe Creek to form a part of the Lion Creek watershed, which drains into the Bay. Chimes Creek is defined as “waters of the United States.” *See* Draft EIR, p. IV.B-12. The City has designated it as a Category III Creek, pursuant to the City of Oakland’s Creek Protection, Storm Water Management and Discharge Control Ordinance (Creek Protection Ordinance). *See* Oakland Municipal Code, § 13.16. For work done in and around a Category III creek, a project developer must adhere to the following:

“In addition to normal submittal requirements related to other permits that must be obtained, a site plan must be submitted that shows the relationship and distances between the Development or Work to be conducted and the Top of the Bank of the Creek. In addition, a Creek Protection Plan must be submitted for review and approval that describes the Best Management Practices that will be employed to assure construction activity will not adversely impact Creek Bank, Riparian corridor or water quality.”

Oakland Municipal Code, § 13.16.140(b).

Prior to grading work on the Project site, even while quarrying operations continued around the creek, the portion of Chimes Creek that crossed the quarry supported cattails and other reeds, fairly established willows, and other vegetation. *See* Declaration of Mark Brest van Kempen (Oct. 25, 2004), p. 2 (Attachment 1). On February 4, 2004, Mr. Brest van Kempen observed hundreds of pacific tree frog tadpoles, dragonfly larvae and damselfly larvae in the Creek on the Project site. *See id.*

On June 10, 2002, the City of Oakland issued the Draft EIR for the Leona Quarry Project. The Final EIR issued on September 23, 2002. A number of hydrology and water quality impacts were identified in the course of environmental review, including:

- Development of the project site may create localized flooding and contribute to a cumulative flooding downstream.
- Construction activities may result in soil erosion and increase levels of suspended sediments and contaminants in storm water flows, resulting in adverse impacts to downstream water quality.
- Construction dewatering may result in discharge of sediment-laden groundwater or impacts to local groundwater gradients and flow.
- Upon completion of construction activities, the proposed project may result in a long-term increase in storm water runoff contaminant levels, degrading downstream receiving water quality.

Draft EIR, p. II-19.

Given the already fragile conditions of Chimes Creek, these impacts generated concern in the neighborhood. The Draft EIR acknowledged that Chimes Creek was not capable of handling current runoff from the quarry:

“Downstream of the project site, portions of storm drainage pipes that convey Chimes Creek are inadequately sized to handle peak flows. Chimes Creek is currently not capable of handling the quantity of runoff generated by large rainfall events. Flooding ... has occurred on several occasions.... Those stretches of Chimes Creek not enclosed by storm drains have unstable creek banks, suggesting that channel capacity is inadequate to handle peak flow volume. The reach directly above Seminary Avenue was stabilized using an

underground bypass channel and surface lowflow channel. However, channel sections immediately upstream exhibited indications of bank instability and failure. The ACFC recognizes that increased discharge in the creek has led to erosion problems that degrade the creek environment, affect adjacent property owners, and contribute sediment that may interfere with downstream storm drain facilities.”

Draft EIR, p. IV.F-7.

The Homeowners Association has witnessed firsthand the degradation of the creek environment that resulted from the 1986 development of Ridgemont, which is above the quarry. Declaration of Nancy S. Sidebotham (Oct. 25, 2004) (Attachment 2), pp. 2-3. Runoff from the Ridgemont development increased the volume and velocity of flows through Chimes Creek. *See id.* The higher flows rapidly eroded the creek banks and channel. *See id.* In 1986, during the first heavy rains to follow Ridgemont construction, the high flows wreaked havoc on riparian vegetation. *See id.* Full-grown trees fell into the creek. *See id.* Below Nairobi Place, several feet of streambank simply collapsed. *See id.* The high flows exposed sewer lines that previously had been buried in the banks. *See id.* Since that time the sewer lines have ruptured every year, releasing sewage directly into the Creek. *See id.* At 6301 Hillmont Drive, the Public Works Agency supported a sewer pipe by tying it to an oak tree, a stopgap measure that has been in place since 1988. *See id.*

In January 2003, Maureen Dorsey, Burkhalter Neighbors, and Citizens for Oakland’s Open Space filed a Petition for Writ of Mandate alleging that the Final EIR did not adequately address the potential hydrological impacts of the proposed Project. *See Maureen Dorsey et al. v. City of Oakland* (Alameda Superior Court No. RG 03077607). The court issued the Peremptory Writ of Mandate and ordered the City to prepare a Subsequent EIR with regard to hydrological issues. *See id.*

The Final Subsequent EIR was issued January 14, 2004. *See City of Oakland Community and Economic Development Agency, Final Subsequent Environmental Impact Report Limited to Hydrology* (Jan. 14, 2004) (Final Subsequent EIR). The Final Subsequent EIR revised the mitigation measures required to minimize the impacts associated with increased runoff from the Project. *See id.*, p. II-1. The detention basin was enlarged to 15.6 acre-feet, and a surface drainage swale located along the western-most berm slope of the basin was added. *See id.* The Final Subsequent EIR found that constructing a storm water management system that included a larger detention basin and other mitigation measures would minimize flooding impacts to “less than significant.” City of Oakland Community and Economic Development Agency, Draft Subsequent Environmental Impact Report Limited to

Hydrology (Jan. 14, 2004) (Draft Subsequent EIR), at p. II-5. The Draft EIR predicted that mitigation measures would reduce 25-year peak flows from the Project site, into Chimes Creek, from 168 cfs to 163 cfs. *See id.*, p. IV-19.

However, in April 2004, we began to notice that the creek was clouded with silt originating from pre-construction grading and dewatering activities on the Project site. *See* Sidebotham Declaration, p. 7, Attachment 2; Declaration of Chiye Azuma, (Oct. 25, 2004), p. 4 (Attachment 3). The City did not fine the developer in response to a number of complaints filed with the Public Works Agency. *See id.*

On August 4, 2004, the Public Works Agency did cite and fine DeSilva Gates for “an illicit discharge to the Chimes Creek.” Letter to DeSilva Gates Construction, LP, from Ronald Ward Oakland Public Works (Aug. 4, 2004). DeSilva was cited again on August 5th and 6th for “continuous illegal discharge to the City’s storm drain system,” which constituted a violation of the Oakland Creek Protection Ordinance. Letter to DeSilva Gates Construction, LP, from Ronald Ward, Oakland Public Works Agency (Aug. 5, 2004), *see also* letter to DeSilva Gates Construction, LP, from Ronald Ward, Oakland Public Works Agency (Aug. 6, 2004). Further, the notice of violation stated:

“The temporary sediment pond located at the south side of the project site is discharging turbid water into the City’s storm drain. This sediment pond was addressed in a letter to you dated July 1, 2004. The improvements requested in that letter have not been implemented. This discharge could have been avoided with prudent attention to the matter by DeSilva Gates.”

Id.

Given the findings of the Subsequent EIR that downstream impacts would be “less than significant” after mitigation measures were implemented, the Homeowners Association is surprised and alarmed that Marcel Uzegbu, City Engineer, told us at a meeting held on August 10, 2004 that the City likely will condemn private properties along the creek in order to accommodate the increased flows from the Leona Quarry Project. *See* Sidebotham Declaration, pp. 8-9, Attachment 2 (“We will probably have to take some of your land to widen the channel because I don’t think Chimes Creek can handle the volume of water that will be generated from the development.”). In addition, Mr. Uzegbu said the City would likely have to replace the sewer lines that run along Chimes Creek because the current lines were not large enough to carry the additional volume of wastewater the Leona Quarry Project is expected to generate. *See id.* Mr. Uzegbu was unwilling to estimate at that meeting how much property would need to be condemned in order to widen the channel *and* install larger

sewer lines. *See id.* We have requested a meeting to discuss the widening of the creek further, but Mr. Uzegbu has not responded. *See id.*

II. **COMMENTS ON ADEQUACY OF FINAL MAPS**

The Homeowners Association is concerned that the final maps for the Project are not ready for the City Council's approval. The Homeowners Association requests that the City Administrator briefly defer the Council's decision regarding the final maps until the following outstanding issues are resolved.

A. The Final Maps May Not Conform to the Use Permit.

The Agenda Report for the Leona Quarry Project states: "The subdivider will be required to adhere to best management practices during project construction. Measures to control erosion, contamination of storm water runoff, dust, noise, and heavy equipment emissions will be required." Oakland Public Works Agency, Agenda Report (Oct. 13, 2004) at pp. 2-3. We do not believe the record the City has compiled and provided to the public to date supports this statement. For this purpose, City Record means: the permit file for the development, City correspondence with regulatory agencies, and City responses to public comments.

The final maps should incorporate all the requirements listed in the Conditions of Approval. To date, City staff have not responded to our requests for confirmation that the final maps do indeed incorporate all the requirements listed in the Conditions of Approval.¹ *See* Azuma Declaration, pp.3-12, Attachment 3. Members of the Homeowners Association have not been allowed to see the most recent final maps; the City has not made a copy of the final maps available to us since July 2004. *See id.*, p. 2. Chiye Azuma, one of our members, has requested to view the most recent final maps in both written document requests and phone calls to City officials. *See id.* Based on our inspection of the site, it appears that a number of the hydrology-related conditions either have not been fulfilled, or necessary preparations have not been undertaken to ensure that conditions will be fulfilled in a timely manner. *See id.*

Conditions of Approval, paragraph 23, describes the Hydrology and Drainage Requirements for the Project. It requires that final grading and improvement plans for the Project include the following information, analysis, and requirements:

¹ Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments, as required by CEQA. *See* CEQA Guidelines § 15126.4.

- a. “A master site drainage and grading plan that: (i) incorporates one of the following detention basin system, (ii) meets the published design criteria set forth in ... “Hydrology and Hydraulics Criteria Summary for Western Alameda County” (1989) ... (iii) is consistent with the information, standards and requirements as set forth in the MMRP ...
- b. The Project Applicant shall meet the revised Clean Water Act requirements as established by the Regional Water Quality Control Board ...
- c. 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.
- d. Other specifications for the detention basin (Parcel A) ... including measures for sediment storage, design of fencing, access, and clean out maintenance specifications, liner monitoring specifications and repair procedures....
- e. The site drainage plan shall include detailed measures to detain storm water run-off to the maximum feasible degree, given geotechnical and other constraints through infiltration opportunities, bio-swales or grassy swales, and creating a vegetated swale in the Village Green area.
- f. A hydrologic review and confirmation of seasonal wet weather conditions for conveyance of the storm water.
- g. A review and recommendations pertaining to the creation of a perennial creek through the site that drains into the lower detention basin, consistent with condition of Approval No. 19.
- h. A geotechnical investigation, including soil borings as necessary, of the stability of the detention basin (Parcel C-C)....
- i. Applicant shall fund the cost to prepare detailed construction documents and all construction costs to redirect existing storm drainage in Ridgement Drive

away from the Leona Street basin and to connect it to the Project's drainage system.

j. Provisions for an inspection, monitoring, certification and maintenance process throughout the course of grading, construction and post construction to assure that the approved drainage plan and other measures are functioning properly....”

The City Record does not confirm that the primary detention basin has been constructed to industry standards, consistent with Conditions of Approval, paragraph 23, sub-section (a).

As a result of the first seasonal rainfall, the inside slopes of the detention basin partially have “melted away.” *See* Azuma Declaration, at p. 7, Attachment 3. This is inconsistent with the requirement that the detention pond be lined with an impermeable clay liner, and then hydroseeded to prevent erosion. On October 19, 2004, after the first major storm, Chimes Creek was again running “muddy.” *See* Brest Van Kempen Declaration, at p. 1, Attachment 1. Mr. Brest van Kempen called Jun Osalbo, and accompanied him on a site inspection. *See id.* They found that a great deal of silty water was being released from the detention pond directly into the City's storm drain system, and then into Chimes Creek. *See id.*, at p. 2. A large percentage of the hydroseed washed away, several large swaths of wattle were compromised by mudslides and excessive wash-out, and the baker tanks that were previously used to filter runoff were overflowing. *See id.*; Azuma Declaration, at p. 8, Attachment 3; Brest van Kempen Declaration, at p. 2, Attachment 1.

The City Record does not confirm the existence of any correspondence or other documentation that grassy swales or other bio-filtration measures have been incorporated into the final maps, consistent with Conditions of Approval, paragraph 23, sub-section (e). *See* Azuma Declaration, at p. 8, Attachment 3. Grassy swales had not been adequately incorporated in the final maps when one of our representatives was allowed to inspect them in July 2004. *See id.*

The City Record does not confirm that a review and recommendations regarding the creation of a perennial creek have been completed, consistent with Conditions of Approval, paragraph 23, sub-section (g). *See id.*

The City Record does not confirm that an effective inspection, monitoring, and maintenance program is in place, consistent with Conditions of Approval, paragraph 23, sub-section (j). *See* Azuma Declaration, p. 3 Attachment 3; Brest van Kempen Declaration, p.2, Attachment 1. Given the number of complaints from the community, and the fact that

investigations only seem to be initiated in response to complaints, it appears that the City has not implemented an effective monitoring, inspection, and maintenance program.

Question 1. Has the City performed a comprehensive review of work on the Project, including onsite inspections and review of correspondence and reports to date, to ensure that the Project is in compliance with each and every requirement listed in the Conditions of Approval? If yes, please describe the City's specific findings.

Question 2. Has the City reviewed the final maps to ensure that they conform to the requirements contained in the Conditions of Approval, CEQA Mitigation Monitoring and Reporting Plan, and the Storm Water Pollution Prevention Plan? If yes, please describe the City's specific findings.

Question 3. How will the City require the developer to adhere to best management practices during Project construction? What is the City's standing policy for site inspections to ensure compliance with the Conditions of Approval?

B. It Is Premature to Approve the Final Maps Prior to the Issuance of All Necessary Permits Required by State Laws.

The City Record does not confirm that the Project has obtained all the necessary permits. It is premature for the City to approve the final maps prior to regulatory agencies with jurisdiction over public resources exercising their statutory authority. Neither the Final EIR nor the Subsequent Final EIR provide a rational basis for allowing the Project to proceed without necessary permits. Some of the permits that appear to be missing from the City Record would otherwise require additional mitigation conditions for the Project.

1. Water Quality Permits

The City Record confirms that the developer has not obtained a dredge-and-fill permit under Clean Water Act (CWA) section 404, 33 U.S.C. 1344, or a water quality certification under CWA section 401, 33 U.S.C. § 1341, as implemented by the San Francisco Regional Water Quality Control Board (RWQCB) under the Porter-Cologne Act, Cal. Water Code §§ 13000-14958 (2002). The developer has also not obtained a waiver.

The people own the State's waters. *See* Water Code § 102. Use of that water is of public concern. *See id.* § 104. All waters shall be managed for the greatest public benefit. *See id.* § 105. Chimes Creek is public waters. According to the San Francisco Regional Water Quality Control Board (RWQCB):

“Should the [Leona Quarry] project include work in jurisdictional waters of the United States, ... then it could likely require a [dredge-and-fill] permit ... pursuant to Section 404 of the federal Clean Water Act (CWA). Such permits also require a project proponent to apply and receive Water Quality Certification from the Water Board pursuant to Section 401 of the CWA.”

Letter from Keith H. Lichten, Water Resource Control Engineer, RWQCB, to Claudia Cappio, City of Oakland (Dec. 4, 2003). In response, the City asserted that while Chimes Creek is a “water of the United States,” it does not meet the federal definition of wetlands. Final Subsequent EIR, p. IV.E-1. The City concluded that a CWA Section 404 permit was not necessary for the Project. Since the RWQCB has permitting jurisdiction under CWA section 404, it must decide whether this development requires such a permit. The Homeowners Association has not been able to find any record of the City requesting the RWQCB to make such a determination, or requesting the RWQCB to concur with the City’s determination.

Similarly, the decision regarding applicability of CWA section 401 certification lies exclusively with the RWQCB. We have not been able to find any record of the City requesting the RWQCB to make such a determination regarding the applicability of section 401 to the Project, or requesting the RWQCB to concur with the City’s determination.

Question 4. Has the City requested that the RWQCB determine that section 404 permitting requirements do not apply to the Project, or requested that the RWQCB concur with the City’s conclusion that section 404 does not apply? If the City did not request such determinations, under what authority was the City acting when it decided a section 404 permit was not required?

Question 5. Has the City requested that the RWQCB determine that section 401 permitting requirements do not apply to the Project, or requested that the RWQCB concur with the City’s conclusion that section 401 does not apply? If the City did not request such a determination, under what authority was the City acting when it determined that a section 401 certification was not required?

2. Fish and Game Code Section 1603 Streambed Alteration Agreement

The City Record does not confirm that the developer has obtained a Fish and Game Code section 1603 Streambed Alteration Agreement.

The Department of Fish and Game (DFG) has jurisdiction to regulate taking of fish and wildlife, and modifications of their respective habitats. *See* 14 CCR § 783.1.

“The protection and conservation of the fish and wildlife resources of this state are hereby declared to be of utmost public importance. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state as well as providing a significant part of the people’s food supply and therefore their conservation is a proper responsibility of the state.”

Fish and Game Code § 1600. To fulfill this purpose, DFG has authority to regulate any diversion or obstruction of natural flow or other modification of a streambed. *See id.*, at § 1603. Section 1602 of the Fish and Game Code requires that a project sponsor notify DFG before commencing any substantial diversion or obstruction of the natural flow of a stream, or any substantial change to the streambed, bank, or channel. If DFG determines that such modification will substantially divert or obstruct natural flow or substantially change the bed, channel or bank of any river, stream or lake, the owner and DFG will undertake to reach an agreement which includes any measure necessary to protect fish and wildlife. *See id.* The activity may commence only after the agreement is final.

For purposes of DFG’s jurisdiction, a stream is defined broadly as, “a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.” *See* 14 CCR § 1.72. Fish is defined broadly to include, wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any part, spawn, or ova thereof. *See* Fish and Game Code § 45. It appears that the surface flow from the Chimes Creek headwaters that crossed the quarry prior to construction, and supported cattails, reeds, willows, frogs, and damselflies, meets these criteria. *See* Brest van Kempen Declaration, p. 1.

We have been unable to confirm whether the City has required the developer to contact DFG regarding the effects of earth-moving activities on the portions of Chimes Creek in the Project area. Based on our review of DFG’s comments on the Draft EIR, it does not appear that the applicability of Fish and Game Code section 1603 was ever addressed. *See* letter to Claudia Cappio, Oakland Community Economic and Development Agency, from Robert W. Floerke, DFG (July 16, 2002).

Question 6. Has the City required the developer to contact DFG regarding the effects of earth-moving activities on the portions of Chimes Creek in the Project area? If not, what is the basis of the City’s decision not to include such a requirement?

3. Creek Protection Permit

In addition to permitting requirements under State laws, the developer must comply with all City of Oakland rules and regulations. *See* Draft EIR, at p. II-20. The City Record does not confirm that the developer has complied with the Oakland Creek Protection Ordinance, which prohibits non-storm water discharges and increases in flow to the City storm sewer system. *See* Oakland Municipal Code, § 13.16.070(A). It also prohibits any person from “commit[ting] or caus[ing] Development or Work within the boundaries of a creekside property, or within the public right of way fronting a creekside property, unless a Creek Protection Permit has first been obtained from the Chief of Building Services.” *Id.*, § 13.16.120. Thus, under the Creek Protection Ordinance, the developer must (1) obtain a Category III Creek Protection Permit for construction on the project site, and (2) submit a Creek Protection Plan to the City to ensure continued preservation of the creek. *See* Draft EIR, at p. IV.B-23. De Silva’s Creek Protection Plan must be submitted for review and approval, and include a description of the Best Management Practices that will be employed to assure construction activity will not adversely impact the creek bank, riparian corridor, or water quality. *See* Oakland Municipal Code, § 13.16.140(c).

Approval of a Creek Protection Permit, as required for the Leona Quarry Project, is contingent on the following considerations:

- (1) Whether the proposed activity may discharge Pollutants into the Creek;
- (2) Whether the proposed activity may result in modifications to the natural flow of water in the Creek;
- (3) Whether the proposed activity may deposit new material into the Creek or cause bank erosion or instability; and
- (4) Whether the proposed activity may result in the alteration of the capacity of the Creek.

See id., § 13.16.200(a). In addition, the project may not result in the following: (1) Degradation of the visual quality and natural appearance of the riparian corridor; and (2) Danger to public or private property. *See id.*, § 13.16.200(c), (e).

For Category III Creeks, the Creek Protection Ordinance requires permit applicants to post notices of their applications “in clear public view on the subject property and within a 300

foot radius of the subject property,” “ten calendar days before a decision is made on the application.” *See id.* at § 13.16.180. The Creek Ordinance also requires the Oakland Chief of Building Services to issue a written decision granting or denying a Creek Protection Permit. This decision must be mailed to “each Person who commented on the application,” and who provides necessary postage. *See id.* at § 13.16.210.

We have not been able to confirm that the City has issued a Creek Protection Permit for the Project. The Final EIR and Final Subsequent EIR do not contain reference to a Creek Protection Plan, and we have found no record of a Creek Protection Permit on file. Given the increased sedimentation and flows in the creek since work at the Project began, it would appear that any Creek Protection Plan that may have been submitted is not adequate to prevent degradation prohibited by the Creek Protection Ordinance. *See* Azuma Declaration, pp. 2-3, 5, Exhibit 3; Brest van Kempen Declaration, pp. 1-2, Exhibit 2. Further, we have found no record of public notice regarding the issuance of a Creek Protection Permit.

Question 7. Has the City issued a Creek Protection Permit to the Leona Quarry Project for work done in and around Chimes Creek? If yes, did the City comply with the public review comment procedures for such a permit application?

C. The CEQA document Does not Address Foreseeable Impacts and May Need to Be Supplemented.

Under the California Environmental Quality Act (CEQA), an EIR should address identify significant impacts on the environment of a project that are reasonably foreseeable. *See* Pub. Resources Code § 21002.1. A lead agency is required to recirculate an EIR when significant new information is disclosed after public review. *See* CEQA Guidelines § 15088.5.

The draft Resolution finds, “the actions authorized by this Resolution will not involve any new or more severe significant impacts, there are no substantial changes with respect to the circumstances under which the project was approved that involve new or substantially more severe significant environmental impacts, and no significant new information has come to light that would indicate new or more significant impacts” Based on Mr. Uzegbu’s statements at the August 10, 2004, meeting, we disagree.

According to Mr. Uzegbu’s statements, it appears the City has been aware for some time that the Project will result in flows that exceed the current capacity of Chimes Creek and the sewer system. *See* Sidebotham Declaration, p. 8. His statements are inconsistent with the Draft Subsequent EIR finding that mitigation measures would reduce 25-year peak flows from the Project site, into Chimes Creek, from 168 cfs to 163 cfs. *See* Draft Subsequent EIR, p. IV-19. The possibility of widening the creek to accommodate higher flows generated by the

Project was not disclosed in three years of environmental review; it was not mentioned in the four iterations of the EIR that were prepared for the Project. Similarly, the possibility of installing larger sewer lines to accommodate increased volume of wastewater from the Project was not disclosed. *See* Sidebotham Declaration, p. 8. Both are significant impacts that should have been vetted in environmental review.

Based on Mr. Uzegbu's statements at the August 10, 2004 meeting, it appears that the City may be allowing the developer to proceed without requiring proper management of storm water and wastewater from the Leona Quarry Project. If this is the case, it would seem that the City is impermissibly protecting the rights of upstream private property owners, both future Leona Quarry property owners and current Ridgemont property owners, at the expense of the public trust in Chimes Creek and of downstream property owners.

Question 8. Did the EIRs disclose that the City may need to condemn private property in order to widen the channel of Chimes Creek so it could accommodate the increased runoff from the Leona Quarry Project?

Question 9. Did the EIRs disclose that the City may need to condemn private property along Chimes Creek in order to install larger sewer lines that will be necessary to handle the increased wastewater from the Leona Quarry Project, why was this action not disclosed during environmental review?

Question 10. Given the City staff's belief that the Leona Quarry Project will be the direct cause of the increased storm water into Chimes Creek and wastewater into the City's sewer system, who will be responsible for paying to widen the creek and/or install new sewer lines, taxpayers or DeSilva Gates?

Question 11. Is condemnation of downstream private property, in order to accommodate increased flood flow or to install larger sewer pipes for the benefit of upstream private property, a potentially significant impact under CEQA?

CONCLUSION

We respectfully request that the City Council DEFER APPROVAL OF the final maps for the Leona Quarry Project until the City resolves the issues raised in this letter, and specifically confirms that the Project will comply with the Conditions of Approval and other applicable requirements of law. We request that the City convene a meeting of the developer, RWQCB, DFG, and the Neighborhood Association in an effort to collaboratively resolve the issues raised by this letter.

Administrator Deborah Edgerly
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Thank you for considering these comments. If you have any questions regarding the content of this letter, please contact Nancy Sidebotham, (510) 635-2678, Chiye Azuma, (510) 632-6210, or Mark Brest van Kempen, (510) 568-6889.

Respectfully submitted,

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