

**Attachment 1**

## DECLARATION OF MARK BREST VAN KEMPEN

I, MARK BREST VAN KEMPEN, 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 four years. Chimes Creek runs through my backyard and my property extends on both sides of the creek.
3. I closely monitor Chimes Creek. I also have closely monitored work at the Leona Quarry Project site since it began in April 2004. I have attached photographs that I have taken of both the Creek and the Project site to this declaration. I can provide color copies of the photographs upon request. I have provided captions for the photographs attached to my declaration, which describe the scene as I perceived it.
4. Prior to the grading and pre-construction activities for the Project, there was surface flow from the Chimes Creek headwaters that crossed the Quarry. The flow was perennial, not intermittent. It supported a great deal of cattails *Juncus* and other reeds, as well as fairly well established willows and other vegetation. *See* photographs 1 and 2. On February 4, 2004, while documenting the watershed for a presentation, I observed hundreds of pacific tree frog tadpoles, dragonfly larvae and damselfly larvae in that section of the creek. There were also *Gambusia* (mosquito fish) in the creek, which were probably planted by the county for mosquito abatement.
5. When grading began on the project, Chimes Creek below the site became full of silt. This silting up of the creek would continue through working hours, gradually clear after grading activities stopped at night, and silt up again the next morning when work continued. I called and emailed photos of these violations to City inspectors daily for approximately two months. During that time, inspectors acknowledged that the creek was unacceptably silty, but

said that they were unable to find the source. Finally, in frustration, neighbors contacted the Regional Water Quality Control Board (RWQCB). The same afternoon we contacted the RWQCB, the City inspectors found that the developer was “illicitly discharging into city storm drains.” I do not know if the City inspectors would have cited the developer had it not been for our call to the RWQCB. The developer was not fined for the two months of discharge prior to the inspector’s discoveries.

6. On October 19, 2004, we experienced the first significant rainstorm of the season. Following the rains, Chimes Creek rose consistent with past storm events but then it suddenly turned very silty. *See* photograph 3. I called Jun Osalbo, Oakland inspector for the Leona Quarry Project, to report the problem. He agreed to meet me for a site inspection of the Project area. We 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. This appeared to be a clear violation of the Conditions of Approval for the Project. It also was inconsistent with the assurances my neighbors and I had received from the Project contractors that the detention pond was not releasing any water.

7. After this first storm event, it appeared that all of the measures to prevent dirty water from entering the storm drain system and Chimes Creek had been overwhelmed and/or failed. The rains had washed away a large percentage of the hydroseed. *See* photograph 4. Several large swaths of wattle had failed. The capacity of the baker tanks had been exceeded, causing them to overflow. *See* photograph 5.

8. Later this same day a City Inspector informed a neighbor concerned about the Creek that the discharge was not coming from the Quarry site. This was after I had witnessed him being informed of the discharging water from the detention pond.

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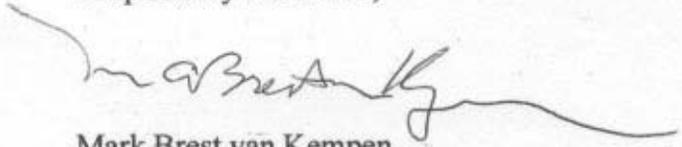
9. From this one day of rain the detention pond had filled up past the point at which it could treat any water from the site. See photograph 6. The developers have assured both the City and the community that contaminates introduced onto the site by the hundreds of cars and the activity of hundreds of residents on the site will be treated by the detention pond. This storm showed that this system, as currently constructed, will be wholly ineffective – any contaminates on the site will be carried by storm water directly into Chimes Creek.

10. I have been disappointed repeatedly by how this Project has proceeded. I am extremely concerned with how the Project will proceed in the future. I have been assured repeatedly by both the City and the developers that this Project won't have any negative impact on the Creek, but I have documented numerous events that I consider to be clear violations of the Project's permits, events that I feel the City has not addressed adequately.

11. 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 the 25<sup>th</sup> day of October, 2004 at 3835 Delmont Ave., Oakland, CA, Alameda County.

Dated: 25 October 2004

Respectfully submitted,

  
Mark Brest van Kempen

## Photograph 1



Leona Quarry on Feb 4 2004, before grading began. This photograph shows portion of Chimes Creek that was destroyed by grading activity.

Photograph 2



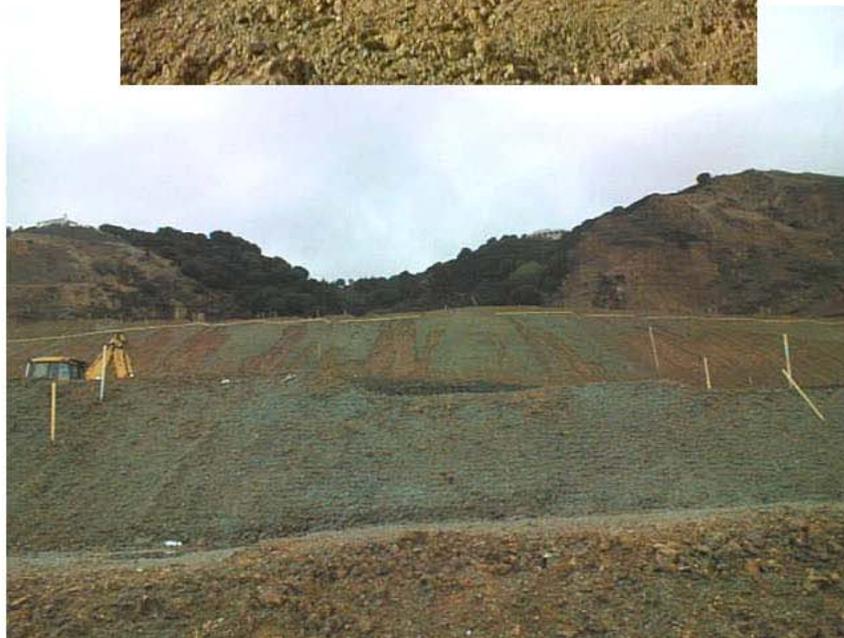
Diagram showing water flow of Chimes Creek in lower Quarry.

### Photograph 3



Chimes Creek as it appeared on October 19 2004.

Photograph 4



Leona Quarry on Oct 19 showing failures of erosion prevention measures.

Photograph 5



Silty water entering City storm drain on Oct 19, 2004.



Same storm drain showing discharge during previous rain in July 2004.

Photograph 6



Detention Pond on Oct 19, 2004 showing section of pond where water is supposed to flow through aquatic plants for treatment completely submerged after one day of rain.

Photograph 7



Chimes Creek flowing onto Quarry site on Oct 19, 2004.



Chimes Creek flowing onto quarry site after being graded over.

## Photograph 8



Photographs showing existing problems with Chimes Creek.  
Above: Flooding damaging house in 2002.  
Right: Sewer Main eroded by excessive run off.





## DECLARATION OF NANCY S. SIDEBOTHAM

I, NANCY S. SIDEBOTHAM, 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 24 years of years. I own five pieces of property adjacent to Chimes Creek on the western side located on Hillmont Drive.
3. When I moved to my current residence in 1980, I could hear many frogs and crickets. I could stand at the bottom of my property and see the clear water, and hear the gurgling noise of the creek.
4. Chimes Creek flows all year long. My understanding, based on conversations with long time neighbors of the area, Kenneth T. Lass of Alameda County Public Works and Flood Control (ACFC), and discussions with City of Oakland staff over the years is that the headwaters of the creek are located above the Leona Quarry. Once the Creek leaves the Quarry, owned by Gallagher and Burk, it is channeled by culverts under Altamont Avenue, turning NW near the western end on Altamont and Hillmont, then daylight at Hillmont and Delmont. In the 1940's the Quarry, culverted the stream and channeled the water runoff into holding ponds, which previously served to keep the heavy flows during the rainy season prior to the Ridgemont Development in 1982. The storage ponds were necessary because the base of the Quarry was at bedrock and when the rains came there was no percolation. The quarrying continued up until approximately 13 years ago.
5. In the early 1980's, Oakland approved the Ridgemont Development. When the City of Oakland approved the development of Ridgemont they allowed the runoff to be channeled into Chimes and Lion Creeks. The channeling into Chimes came through the Leona Quarry, culverts and holding ponds and into the culvert to Chimes. It was at this time that I

began to observe drastic changes to Chimes Creek. The flow of water was heavier, faster, and wider. The frogs and wildlife disappeared. Within three years after moving to the area I began to notice significant erosion of the creek banks, and a deepening of the channel.

6. In 1986, the Ridgemont Development was nearly complete. When the heavy rains arrived, the effects of the increased runoff from Ridgemont into the creek were devastating. I witnessed trees fall into the creek due to the increased erosion of the banks: a full-grown acacia tree just dropped into the creek. The added runoff from Ridgemont and the heavy rainfalls in 1986 caused drastic erosion and the undermining of at least one mature acacia tree which fell straight down into the creek and changed the channel flow of the creek to the Hillmont side.

7. After the first major storm event in 1986, neighbors attempted to get help from the City of Oakland and Alameda Flood Control, but we were not successful. Some of my neighbors even built retaining walls, but because of lack of assistance and/or knowledge, these failed and had to be removed because they were contributing to the worsening erosion problem. Others had rocks brought in to try to stop the erosion and stabilize the sides of the creek.

8. With the development of Ridgemont and the rechanneling of runoff waters from the development through the Quarry and into Chimes Creek along with the rains of 1986 caused property below Nairobi, between Oakdale and Hillmont, to erode to the point where one of my neighbors, Richard Rodriguez of 6149 Hillmont Drive, lost 110 feet of his backyard. The County of Alameda held a neighborhood meeting at Burbank Elementary to discuss measures to mitigate the erosion problems to the Creek. Mr. Rodriguez ended up bringing a suit against the City in 1987 or 1988 and won. Repairs were made to the Nairobi section and below by the County and the City around 1989-90. Neighbors at the Nairobi section of Chimes Creek have told me they continue to have significant problems with overflow into their yards.

9. Sewer lines became exposed. The Nairobi sewer line became exposed around 1986. When sewer lines were installed, Chimes Creek was the lowest point on the topography of the area and the City sunk two sewer lines on either side of the Creek between Delmont and Hillmont. All the street storm drains were configured to also dump into Chimes Creek down an easement along the side of 6391 Hillmont and the property across from it on Delmont.

10. After the first incident in 1986, the sewage lines continued to rupture periodically and dump raw sewage into the creek. I would get phone calls about discoloration and foul odors coming from the creek. Public Works would come up once or twice every winter.

11. In the winter of 1988, there was a major break sewer line behind 6311 Hillmont Drive and wash out of nine feet of land and fencing at 6301 Hillmont Drive. . The City's Public Works Agency came and attempted to fix the problem by tying the sewer pipe to an oak tree, but this caused further erosion. Since that time, the City has come out every year to repair the same break; land continues to be lost, and the sewer line is still tied to the oak tree. On December 14, 1999, the City sent letters to neighbors of Chimes Creek stating that the City was going to rehabilitate the sanitary sewers above Nairobi Place. To date the City has not performed this work.

12. In 1999, Mike Neary and a representative from ACFC came out in the pouring rain and we stood out under the bay tree behind 6391 Hillmont Drive and watched the massive flow of water and how it was over shooting the banks. Mike Neary basically said that the City couldn't do anything because the problem was located on private property. The county representative just looked on and deferred to Mike.

13. Up until the lawsuit brought by Mr. Rodriguez, Kenneth T. Lass with ACFC Public Works came every year and maintained Chimes Creek. Ken and his crew cleaned, cut

vegetation, and removed debris that impacted the flow of the creek. After the lawsuit, ACFC refused to take any responsibility for the creek, and the City assumed this role.

14. The City previously had not been involved with the maintenance of the Creek. Despite what may have been good intentions on the part of the City, the community did not approve of the City's initial maintenance measures. It appeared the City had little experience with maintaining small, urban creeks. First, the City tried bulldozing a creek. This disturbed a good section of the wildlife habitat and riparian vegetation. The year following the bulldozing, the City sprayed pesticides to remove weeds, and not surprisingly, harmed riparian vegetation and wildlife.

15. Property owners continued to try to get the City and County to take effective action to stop, or at the very least stem, the erosion problems for the entire stretch of the daylighted Chimes Creek. Mike Neary, who is the Chief City Engineer today, and was an engineer in the 80's and 90's, stated that there was nothing the City could do because the creek was on private property. This seemed to become a standard response to our requests for help.

16. For the next several years, the pattern of erosion and flooding steadily worsened. Occasionally there would be severe, isolated events. For example, in 2000/2001, there was a massive break in one of the holding ponds located on the Quarry. The water flooded down and across Interstate 580 unto some of the backyards of homes on Sunnymere.

17. The history of the problems with Chimes Creek is well documented by the City of Oakland's Public Works Department, Environmental Services, and ACFC. I understand that former Councilperson Carter Gilmore, and County Supervisor Nate Miley, a former Councilperson, have extensive notes and documentation of the erosion problems that had plagued Chimes Creek since the Ridgement development. Back when the County was still

maintaining the Creek, I met with Carter Gilmore, Terry Roberts, Mike Neary and other City staff to discuss why there had not been additional oversight over the impacts the Ridgmont development would have on Chimes Creek. They promised me that they would look into the problems, Nate Miley even joked about the volumes he had on the Chimes Creek problems. I never saw any results of their investigations, and cannot confirm that they ever did look into the problems.

18. In 1998 the Drainage Task Force (DTF) was formed. In 1997, prior to the DTF, Nate Miley asked the Public Works Department to make Chimes Creek a priority and add it to the Planning and Review Division of Public Works. Under the supervision of then City Engineer Mike Neary, the Public Works Department made two site visits to photograph and survey the damaged properties. In 1998, Mike Neary, two Public Works staffers, and two representatives from ACFC walked the creek in a very heavy rainstorm. Again, I am not aware that these efforts lead to any tangible changes in the City's management of the Creek.

19. On July 17, 1999, the Service Delivery Team held a public meeting at Rainbow Recreation Center to discuss community concerns. Over 50 neighbors of Chimes Creek showed up to the meeting to discuss the creek's problems and ask for assistance. In August 1999, Joseph Levine, Construction Inspector Supervisor for Public Works, representing the SDS Team for District 5, walked the creek with me, took pictures, and promised to take some action. I am not aware that this visit resulted in any action by the City.

20. Leslie Estes, City of Oakland's Environmental Service, came out a couple of times, the last being 2001, to walk the creek and document the problems. To my knowledge those visits did not result in any actions by the City.

21. In the summer of 2002, the Zoning and Planning Department, headed by Leslie Gould and Calvin Wong, took a bus ride around the City to identify major problems. Chimes Creek was one of their stops. To my knowledge this visit did not result in the City taking any actions to resolve the problems at Chimes Creek.

22. I, as well as a number of my neighbors, have attended numerous City meetings. We have spoken to public servants such as: Carter Gilmore, Nate Miley, Elihu Harris, Terry Roberts, Mike Neary, Kenneth Lass, Calvin Wong, Leslie Gould, Leslie Estes, Claudia Cappio, to name a few, over the years, all working for the City of Oakland or County of Alameda. I have appreciated them taking the time to listen to our concerns and visit the site, and appreciated their acknowledgement of the seriousness of the problems with Chimes Creek. However, I am frustrated that ten years have passed and neither the City nor the County have developed a plan for preventing further degradation to Chimes, Creek, let alone a plan for restoration.

23. Today the Creek is deeper, the channel wider. The trees look like they are in the swamp areas of the deep south, with their roots completely exposed. The trees are falling over from lack of soil.

24. I am concerned the Leona Quarry Project will worsen this bad situation. I have closely followed the project since it was first proposed. I understand that in addition to the increased runoff from the Leona Quarry Project, the development plans call for all of Ridgemont's runoff to be channeled down through the quarry via the new development's culverts into a new 14-acre holding pond, and then on to Chimes Creek.

25. Since April 2004, when the grading for the Leona Quarry Project started, there has been constant runoff and dumping into Chimes Creek. In the first major rain in September

2004, the rain caused a major washout at the Project site, and some of my neighbors lost about a foot of land.

26. I expect the problem with exposed sewer lines breaking to occur this winter. As far as I know, the City has not resolved how to repair the pipe and secure it so it does not hang in mid air. I was asked this last winter to put yellow dye down my toilet so that City employees could find out where the break was down the line.

27. On August 10, 2004, I attended a meeting with Marcel Uzegbu, City Engineer overseeing the Project, a sewer department staff member from Public works, and neighbors Chiye Azuma, Mark Brest van Kempen and Paul Richards from Friends of Two Creeks and Mills College. We were told that the City was going to put in new sewer lines along either side of the Creek. We were told we have no choice because the City has an easement. The work will be done by outside contractors and they will come on each of our properties to do this. We were told that the new lines were needed because the current sewer lines were too old and not large enough to carry the additional volume that the City expects Leona Quarry Project to generate. Putting in the sewer lines and digging up on either side of the creek would only add to the weakening of the channel and add to the erosion problem. So, we asked, if the City were to redo the sewer lines, wouldn't it be prudent to also integrate creek reclamation at the same time?

28. At the August 10<sup>th</sup> meeting, I asked Marcel Uzegbu if the City was going to go back to the City Council and tell them that they (City Staff) had made a mistake on the original analysis about the impact the quarry development and the re-channeling of all of Ridgemont's runoff would have on Chimes Creek. Marcel then turned to me and stated, "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." I was shocked. I

stated, "Over my dead body and a lot of money." I have requested to meet with Marcel and discuss the City's plans to widen the creek and replace the sewer lines in order to accommodate the storm water runoff and wastewater from the Project, but he has not responded.

29. This had been a major focal point at all of the public meetings as well as the Planning Commission meetings, regarding the sewer capacities and whether Chimes Creek could handle the impact of this development and Ridgemont. There are letters in the EIR questioning the impact on both the sewers and Chimes Creek. Yet, these impacts have still not been addressed.

30. 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 the 25<sup>th</sup> day of October, 2004 at 6375 Hillmont Drive, Oakland, CA, Alameda County.

Respectfully submitted,

Dated: 25 October 2004

Nancy S. Sidebotham

**Attachment 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 two years, with this coming winter being my third rainy season by Chimes Creek. My property is located at 3829 Delmont Avenue, between Hillmont Drive and Nairobi Place, on the hillside of Delmont Avenue. Chimes Creek flows along the rear of the property, about ten feet (10') from the property line.
3. The presence of this creek was a very important part of our decision two 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 Development and Environmental Services Department. I am a state-licensed Landscape Architect, with more than 10 years of professional experience. I manage park development and maintenance projects. In addition to design and project management duties, I spend about 40 percent of my time reviewing tract development plans, as well as site development plans submitted to the City of Fremont for Building Permit Review. For Building Permit review, I am part of a team of reviewers, typically consisting of a planner, engineer and landscape architect.

*Declaration of Chiye Azuma  
Leona Quarry Project*

5. In recent years, and especially over this past year, I have had an expanded role in these plan reviews because local agencies have been exploring landscaping techniques which help to implement the National Pollution Discharge Elimination System (NPDES). I have been reviewing and commenting on plans prepared by civil engineers and architects relating to site development. These plans often incorporate biofiltration techniques (e.g., bioswales, vegetated infiltration areas, and modifications to the site design) to minimize pollution and erosion from stormwater runoff.

6. In addition to contacting City officials and staff, I carefully reviewed the following documents, which were prepared for the Project: (1) Mitigation Monitoring and Reporting Program (MMRP); (2) Conditions of Approval (COA) for Leona Quarry Project, and (3) the revised Stormwater Pollution Prevention Plan (SWPPP) dated April 23, 2004. I was also able to obtain a copy of the Improvement Plans (Preliminary Plans dated July 8, 2004) for Tract 7493 and Tract 7351 Leona Quarry. I have not been able to see any subsequent versions of the Improvement Plans or its details, despite my repeated requests to do so.

7. Based on my review of these documents I am concerned that onsite stormwater management during the past 6 months 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 this project has met these requirements.

8. Per MMRP paragraph F.4a, the approved Improvement Plans should show where Best Management Practices (BMPs) have been incorporated in the site design. The required BMPs include grass strips and grassy swales throughout the development, roof drains that drain

*Declaration of Chiye Azuma  
Leona Quarry Project*

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. I have not been able to obtain a copy of or even view the Improvement Plans that the City Council is scheduled to approve on October 26, despite my numerous requests. On July 26, 2004, Mr. Uzegbu did provide me a set of the Improvement Plans dated July 8, 2004. The July plans do not adequately integrate site BMPs such as grassy swales and vegetated swales; moreover, the details of the main detention pond remain sketchy and unclear.

9. Per MMRP paragraph D5a, the project applicant is required in all phases of construction to implement BMPs to reduce and eliminate soil erosion. The Erosion Control Plan submitted as part of the Grading Permit show a number of erosion control measures including hydroseeding, straw wattles/rolls, etc. However, during the first phase of site work and particularly during the site dewatering stage, not many of these measures were in place, resulting in slope failures and frequent discharge of sediments and contaminants to Chimes Creek.

10. Per MMRP paragraph F.2, mitigation measures require, “BMPs selected and implemented for the project will be in place and operational prior to the onset of major earthwork on the site.” However, these BMPS were not installed in April or May. 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.

11. On April 2, 2004, I contacted William Madison, City of Oakland Environmental Services Division, to report the water quality problems at the creek. On April 10, 2004, I attended a Town Hall Meeting held by my local Councilwoman, Desley Brooks. In response to my concerns regarding the effects of Project activities on the creek, Ms. Brooks told me that I

*Declaration of Chiye Azuma  
Leona Quarry Project*

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 the Quarry had already removed a number of its facilities, including the asphalt parking area at the base of the Quarry.

12. At this time, Ms. Brooks assigned her assistant, Toni Cook, to help with my complaint. 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.

13. During the months of April and May of 2004, my neighbors and I observed muddy, sediment laden water flowing down the creek. I contacted William Madison, Lesley Estes, Marcel Uzegbu, and Jun Osalbo in an effort to correct the problem.

14. William Madison of the City’s Environmental Services Division 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 6<sup>th</sup>, 9<sup>th</sup>, and 29<sup>th</sup>. He also conducted investigations in response to complaints made on May 6<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 26<sup>th</sup>, 27<sup>th</sup>, and 28<sup>th</sup>. 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.”<sup>1</sup> From his documented responses, it appears that Mr. Madison had access to the construction site only for the first two complaints in early April. On April 6, he wrote that he “observed clean water violations on the construction

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<sup>1</sup> Copies of my written correspondence with City and regulatory officials and their responses are available upon request.

site, and turbid water flowing off the site. Issued an Order to Abate to DeSilva Group.” On April 9, 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,” meaning the City had determined that the silty contamination was coming from some source other than the Quarry, and Mr. Madison no longer had access to the construction site.

15. In addition to notifying William Madison, I placed phone calls to Jun Osalbo, the designated Construction Inspector for the project. 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 go. 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.

16. On May 20, I had an extended phone conversation with Mr. Uzegbu. He repeatedly denied that the two black drainpipes could be the source of the contamination because they were completely sealed, and were “diverting” the creek that was coming down in the large corrugated pipe from the headwaters above. A few days later Mark 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.

17. The developer 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 stormwater manhole, and contacted the RWQCB for additional oversight. *See* email to Keith Lichten, San Francisco Bay RWQCB, from Chiye Azuma (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.*

18. In late May, I prepared a list of questions based on the Conditions of Approval for the project, and requested the help of Councilwoman Brook's office to get a written response from Mr. Uzegbu, the Overseeing Engineer for the Leona Quarry Project. Shortly thereafter, I received a call from Mica Miro, Councilwoman Brooks' assistant, who told me Ms. 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.

19. Mica Miro, Assistant to Councilwoman Desley Brooks, 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." *See* email to Chiye Azuma from Mica Miro (July 29, 2004). 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 Planning Director Claudia Cappio, 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." I find this response difficult to believe. For a project of this scope and public controversy, it would seem appropriate for Mr. Uzegbu, as the Overseeing Engineer, to maintain notes or minutes to keep track of the issues and actions discussed during this critical phase of this project.

20. Ms. Miro also informed me, "The City's role at this point is to ensure that all of the conditions of approval are met (you can find full text of the Conditions of Approval at <http://www.oaklandnet.com/exchange/>). 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 the conditions of approval." See email to Chiye Azuma from Mica Miro (July 29, 2004). 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 Conditions of Approval 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 what it was of our requests that they considered "modifications not required under the Conditions of Approval." See email to Mica Miro from Chiye Azuma (July 30, 2004). I never received a response from either Ms. Miro or Councilwoman Brooks.

21. In addition to the unmitigated discharge of groundwater during dewatering, there were two major incidents in which the lack of adequate erosion control measures on site resulted in great damage to the downstream environment. The first of these events occurred on July 10, 2004 when the Quarry site was flooded with a broken water main from the hills above.

22. The second incident took place on September 19, 2004 after 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.

23. I have not been able to confirm that the Applicant has complied with MMRP paragraph F.3a, which requires the applicant to, "obtain a discharge permit from ACFC or the RWQCB," prior to discharge of groundwater generated during site dewatering activities. Nor

have I been able to determine whether the City required the Applicant to submit a construction dewatering plan. As stated previously, during the months of April and May, while the holding ponds were being drained and groundwater was being disposed of through unfiltered drain pipes, residents along Chimes Creek repeatedly notified the City of muddy, sediment laden water and periodic surges in the creek

24. COA 23 (g) requires the Developer include in the final improvement plans 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.” I have requested this information from Mr. Uzegbu on a number of occasions, including twice in a Public Records Request on behalf of the Millsmont Homeowners Association. Mr. Uzegbu initially told me that this item was superseded by the “Settlement,” which was strongly denied by Maureen Dorsey, one of the plaintiffs in this lawsuit. Later on, during our visit to his office on August 10, 2004, Mr. Uzegbu declared that Item 23 was superseded by Item 22 (Geology, Seismicity, and Mineral Resources) in the COA. To clarify this in writing, however, Mr. Uzegbu promised to provide a written response to this question by September 13, 2004, as he was scheduled for a vacation the following week. I did not receive any such communication by September 13, as promised, and in the documents package delivered on October 5, 2004, Mr. Uzegbu listed “Item 2. The recommendations from Berloger pertaining to the creation of perennial creek are enclosed.” This item was, however, missing from the package.

25. The Developer was expected to submit a revised SWPPP to the City by September 23, 2004. *See* email to Councilwoman Nancy Nadel from Mike Neary, Assistant Director, Design and Construction Services Dept., City of Oakland (September 21, 2004). I have no confirmation that the Developer complied with the City’s request. On August 25, 2004, I

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requested a copy of the revised SWPPP from Mr. Uzegbu. In a phone conversation I had with Keith Lichten, RWQCB, in June, after Laurie Taul's visit to the site, I was told that the RWQCB has requested a revised SWPPP. However, the copy made available to me on October 5, 2004 was dated April 23, 2004. 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 has not been posted to date. The SWPPP that is posted at the City's Leona Quarry website (<http://www.oaklandnet.com/leonaquarry/>) remains dated April 23, 2004 according to its Amendment Log. Section 200, SWPPP Amendments (Page 8) of the COA, clearly states, "This SWPPP shall be amended:

- If any condition of the Permits is violated or the general objective of reducing or eliminating pollutants in storm water discharges has not been achieved. If the RWQCB determines that a Permit violation has occurred, the SWPPP shall be amended and implemented within 14-calendar days after notification by the RWQCB;
- Annually, prior to the defined rainy season."

26. On July 19, 2004, the RWQCB requested that the developer provide a "detailed update regarding the corrective actions taken" after the July 10, 2004 water main break. *See* email to David Chapman and Kent Peyton, DeSilva Gates, from Laurie Taul, San Francisco Bay RWQCB (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 8<sup>th</sup> inspection, Mr. Uzegbu had assured us that he would provide us this information "as soon as it became available." Mr. Uzegbu has not provided this information to date.

27. On Tuesday, October 19, 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 Mark 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 the site inspector, Jun Osalbo, the addition of this pipe and its design was recently approved by Marcel Uzegbu, the Overseeing Engineer, City of Oakland. By allowing the water to drain through the holes in the standpipe, the purpose of the detention pond appears to be defeated. What is the purpose of this low standpipe? Was there a peer review and approval of this design by PWA? Why do Mr. Uzegbu and the DeSilva Gates Project Manager Kent Peyton continue to assert that there is no runoff escaping from the detention basin when it has been visually confirmed that it is otherwise? How do these anomalies comply with Item 23 of the Conditions of Approval?

28. By Saturday, October 23, 2004, we could see from the Millsmont neighborhood that the slopes in the Quarry had been re-hydroseeded to replenish the previous application that had washed away. Given that it will take a couple weeks, if not more, for the seeds to germinate, and perhaps another month or so for the roots to develop to work as an effective erosion control measure, why did the Developer wait until just before the start of the rainy season to apply the hydroseed? Mike 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 Mike Neary, Oakland Assistant Director for Design and Construction Services (September 21, 2004). Is this scheduling and definition of “completion” consistent with the list of works that should be

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completed under Construction Phase B (Site Preparation), page 11 of the COA, and with 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.” It would appear that the detention basin, as it stands now, is far from completion and its functionality very questionable. 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.

29. 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 the 25 day of October, 2004 at 3829 Delmont Avenue, Oakland, CA, Alameda County.

Respectfully submitted,

Dated: 25 October 2004

Chiye Azuma