

Exhibit 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 five years. My property is located on Delmont Avenue, between Hillmont Drive and Nairobi Place in Oakland, California. Chimes Creek runs along the length of my backyard. My property extends to the opposite creek bank, so the creek actually flows through my property.
3. The creek is a prominent part of my backyard. I am able to see it from my house and can easily access it. The creek is very important to my family and it was a large part of why we bought the house. My son used to spend a great deal of time catching tadpoles and dragonfly larvae from the creek.
4. During the 2005-6 rainy season I experienced more erosion in my yard than the previous four years combined. I have lost a tree and approximately four feet of land on one creek bank alone. Before DeSilva started work on the Leona Quarry site Pacific treefrogs were common along the creek. During the rainy season they could be heard regularly at night. I would also regularly see tadpoles in the creek. Since construction began I have not heard one frog nor have I seen one tadpole. I attribute this to the combined increases in silt in the water, sudden, high flows, (essentially flash flooding) and spills from the sewer lines, which I describe below.
5. Since I moved into the neighborhood, I have closely monitored the daylighted reach of Chimes Creek as it runs through the Millsmont neighborhood,

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parallel to Hillmont Drive. While it is easy to watch the creek from my backyard, I have also walked along the entirety of the daylighted reach.

6. On February 4, 2004, I visited the headwaters of Chimes Creek on the Leona Quarry site in preparation for a watershed presentation. Before this I had hiked the site many times and was very familiar with it. At that time the flow of the creek began in the northeast corner of the site and continued in a southerly direction, terminating in the lower portion of the quarry where it continued in a culvert under Interstate 580. I had been up to the site in all seasons and had always seen the flow of surface water. The flow appeared to be perennial, not intermittent. The portion of Chimes Creek in Leona Quarry supported a great deal of cattails, *Juncus* and other reeds, as well as well-established willows and other aquatic and semi-aquatic vegetation. *See* Exhibit 1.1 and 1.2. During my visit in February 2004, I observed hundreds of Pacific treefrog tadpoles, dragonfly larvae and damselfly larvae in the stretch of creek just before it went underground. There were also *Gambusia* (mosquito fish) in the creek, which were probably planted by Alameda County for mosquito abatement.

7. In April 2004, I observed the start of grading activities at the Leona Quarry Project site. Large scrapers and other heavy equipment began moving earth. Coincident with the start of grading activities, I noticed that the creek as it ran through my backyard became opaque with silt. I began to pay greater attention to the pattern and appearance of flows. Flows in the creek would be opaque with silt from about 7 a.m. to 5 p.m. The flows would gradually clear after 5 p.m., but would be silty again

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when grading activities started back up on the project site in the morning. The quarry had stopped operations before I moved to the area, and I had witnessed nothing but clean water coming from the quarry during the dry season previous to construction. Based on my observations since construction began, I would estimate roughly that the creek is turbid 75% of the time during the rainy season, and 30% of the time during the dry season. Based on the relatively clear waters prior to construction activities in 2004, I believe DeSilva's activities are the source of the increases in volume and turbidity of flows in the creek.

8. I called and emailed the City's inspectors on an almost daily basis from April to May 2004 to report the silt in the creek. *See* Exhibit 1.3. I attached photographs to the emails which showed how dark and cloudy the flows in the creek were. *See id.* In response to my calls and emails, the City's inspectors acknowledged that the silty condition of the creek was unacceptable, but said that they were unable to find the source. They seemed to concentrate their investigations outside of the quarry even though the cloudy water coincided with quarry activities, and persisted after other supposed offsite sources were fixed. *See* Exhibit 1.4.

9. When I went up to the site at the end of May 2004, I saw that DeSilva had bulldozed the section of Chimes Creek on the site and removed all the vegetation I had observed during my February 2004 visit. There was a large amount of mud and turbid water around this area and hoses covered in silt connected to the City's storm drain.

10. On May 28, 2004, my neighbor, Chiye Azuma, contacted the Regional Water Quality Control Board (Regional Board) to inform them of apparent discharges of dirty water into Chimes Creek and the lack of response from the City. That same afternoon the City's inspectors found that DeSilva was unlawfully discharging into city storm drains. While DeSilva was fined for the violation on May 28th, no violations were issued for previous days when I observed cloudy water in the creek.

11. During the rainy seasons of 2004 and 2005 the measures implemented by DeSilva to control erosion and reduce runoff into Chimes Creek repeatedly failed to achieve either objective. Between October 2004 and January 2006, *all* of the rainstorms with an inch or more rain in a 24-hour period resulted in some failure of the measures designed and implemented to reduce runoff from the Leona Quarry site to Chimes Creek. I have prepared a graph that displays the pattern of rainfall and pond overflows. *See* Exhibit 1.5. Many smaller storms also resulted in releases of dirty storm water from the site. There have also been a number of instances where the flow in the creek became turbid when there was no rain at all. I have listed these incidents in the "Storm Water Spreadsheet" (Exhibit 1.6), but I describe some incidents in more detail below.

12. 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 surged and turned very silty. *See* Exhibit 1.7. I called Jun Osalbo, Senior Construction Inspector, Public Works Agency (PWA), to report the problem.

He agreed to meet me for a site inspection of the Project area. When we arrived on site

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Kent Payton, DeSilva Gates, assured us that no water was being released from the site. However, when we investigated the outfall from the detention pond 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 DeSilva's contractors that the detention pond was not releasing any water.

13. After this first storm event, it appeared that many of the measures to prevent sediment-laden 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 Exhibit 1.8.* Several large swaths of wattle had failed. The capacity of the baker tanks had been exceeded, causing them to overflow. *See Exhibit 1.9.* Later this same day a city staff person informed a neighbor concerned about the creek that the discharge was not coming from the quarry site. This was after I had witnessed the city staffer being informed by Mr. Osalbo of the discharging water from the detention pond.

14. I emailed city staff several times a week from October to November 2004 to inform them of the silty, turbid condition of the creek and to inquire as to whether the City intended to fine DeSilva for any of these violations.¹

“After the rain earlier this week the silt in the creek released from the quarry settled out but never completely as is normal for the creek before

¹ I will provide complete copies of my email correspondence with city staff upon request.
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construction activities began. Today, after no further rain, the creek has silted up again.

It is my understanding that ‘all water coming off the construction site must be clean.’

This would appear to be yet another violation by the developers of the Terms of Agreement with the City.”

Email to Jun Osalbo (Oct. 29, 2004).

“I understand that you investigated my earlier complaint today around 11:00am or so. I wanted to report that it is now 4:00pm and the water is much worse (extremely turbid).

Could you provide me with a report of what is causing this?”

Email to Jun Osalbo (Oct. 29, 2004).

“Chimes Creek is completely filled with silt again today. There has been no rain. I understand that you have determined that this discharge is coming from the detention pond.

This would appear to be another violation by the developers of the conditions of approval with the City.

Please let me know whether or not the City decides to enforce the fine associated with this type of violation.”

Email to Jun Osalbo (Oct. 30, 2004).

“It is Sunday 10/31 and the Creek is still full of silt for the third day in a row. Please let me know what is causing this. And what is being done to alleviate this problem.

It also appears that water is seeping through the front berm of the detention pond. The road below the detention pond near 580 is inundated and it hasn’t rained for many days.”

Email to Jun Osalbo (Oct. 31, 2004).

“It’s Tues 11/2/04. I wanted to report that Chimes Creek is still silty for the fifth day in a row. I understand that you have determined that this silt

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originates from illicit discharges from the detention pond on the Leona Quarry development site.”

Email to Jun Osalbo (Nov. 1, 2004).

“The Creek remains silty today 11/3/04. Is there some solution in sight for this continuing problem. I hope that whatever is causing the discharge can be fixed before more rain exacerbates the problem.”

Email to Jun Osalbo (Nov. 3, 2004).

“The creek is still silty today 11/4/04. This is not from the showers that we had last night. The rain actually cleared the creek up a bit- I assume it diluted the silty water escaping from the detention pond. The creek has since clouded up again to the way that it was yesterday before the showers.

Has the City fined the developer for any of this? I am concerned that the City is not following through on its responsibilities for overseeing this project and waiting for the State to force the developer to comply. I understand that it is the City's responsibility to assure that the developer is complying with laws and agreements.”

Email to Jun Osalbo (Nov. 4, 2004).

“This morning I observed the baker tanks as well as the small detention pond near the baker tanks discharging dirty water into City storm drains. In addition dirty water from surface run off from the site was entering City storm drains. I also understand that dirty water coming off the site on the north western side of the development was entering city storm drains.”

Email to Jun Osalbo (Nov. 11, 2004).

“Chimes Creek is still full of silt today as well as some foamy substance. This is not normal for this long after a rain. This morning I observed what appeared to be a large amount of dirty water entering the storm drain near the entrance gate of the Leona Quarry site.

At the risk of being repetitive, ‘All water coming off the site must be clean.’

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Is it possible that the foamy substance is the flocculant that they are now adding to the water?

Could you also give me the number of events so far that you have determined to be violations?"

Email to Jun Osalbo (Nov. 12, 2004); *see also* Exhibit 1.10.

"As you know the large scale pumping into Chimes Creek from the Leona Quarry development to deal with the increased run off that the construction activities have created has been increasing the flow of Chimes Creek for more than a month. This is evidenced by the creek overflowing its banks in my yard during working hours at the site. A great deal of chemical flocculant has also been introduced into the Creek due to the developer's underestimating of the silt generated from the construction on the site."

Email to Jun Osalbo (Nov. 30, 2004). I continued to regularly correspond with city staff via email during storm events or when I observed other problematic conditions on the creek.

15. On March 22, 2005, there was another possible overflow of the detention pond. I observed quarry-colored water and steady, high flows well after the rain had stopped. I again reported these observations to city staff:

"1-Judging from the sudden increase in turbidity in Chimes Creek during last night's storm, the detention pond in Leona Quarry once again overflowed. The two 36" outlet structures have been reduced to about 1 inch or less and there is more rain in the forecast. This overflow is after all the sub drain water and the water from Ridgemont development are bypassing the pond. I still wonder how this system that was apparently scrutinized so carefully could be so woefully inadequate.

I hate to sound like a broken record but I am very concerned what will happen when things start getting paved and the site starts generating REAL run off."

Email to Jun Osalbo (Mar. 23, 2005).

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16. I also reported my observations of grading and excavation work being carried out near the headwaters of Chimes Creek towards the top of the site known as the Ridgemont Basin:

“2-Also apparently DeSilva was charging ahead with work in the area above the main site where everybody agrees there is a creek. Brush clearing, tree removal, snake fencing is all being done within 100 feet of the Creek. This would seem to be in violation of the City Creek Ordinance as well as Fish and Game regulations. The City has halted this work to determine if a Creek Protection permit would be needed in this area. Why this determination is being made now in the middle of construction I dont [sic] understand.

Since the City apparently made some serious errors in determining the existence of Federally protected waters lower down in the Quarry, I would recommend that the City does not repeat its mistake and this time makes a determination about the upper portion of Chimes Creek that will not be called into question by later legal action.

Furthermore if the plan is to divert the upper portion of Chimes creek into the 72 inch trunk line to the detention pond, I believe an Army Corp of Engineers permit is required. At least thats [sic] the way other cities in the United States do it.”

Id. I was concerned since this work was being carried out near a section of the creek that a city staff person had assured me was federally protected. *See* email from Lesley Estes to Marcel Uzegbu (June 28, 2004) (“Leona Quarry has a creek. It is in the upland portion of noted in the EIR. It is subject to state, federal and local laws.”).

17. I was shocked to find that the City had not issued any Creek Protection Permit prior to the start of the Ridgemont Basin work. The work was subsequently stopped in order to “determine if a Creek Protection Permit was necessary.” Pers. comm. Marcel Uzegbu, CIP Coordinator, PWA (Mar. 2005). On March 23, 2005, I met with Mr. Osalbo to discuss the work in the Ridgemont Basin. He confirmed that

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the City had told DeSilva to stop work in the Ridgemont Basin until the City could determine if a creek permit was needed. However, during a telephone conversation later that day, William Madison, Environmental Program Specialist, PWA, informed me that the City had determined that a Creek Protection Permit was necessary. I then called Mr. Uzegbu to relay and confirm what Mr. Madison had reported, but Mr. Uzegbu said that the City was still studying whether to require DeSilva to apply for a permit.

18. Although I observed DeSilva resume activities in the Ridgemont Basin in July 2005, it was not until August 2005 that the City issued a Category II Creek Protection Permit. Although a Category II permit does not allow any earthwork at all and does not allow any work within 100 feet of the creek, I observed significant earthwork within 100 feet of the creek. The purpose of the work was to install a large concrete vault that captures water from the creek in the rainy season, which required excavation in the actual creek bed.

19. A neighbor informed me that DeSilva had done some grading and paving work within 25 feet of the area described as Area 5 in the Wetland Delineation in late fall 2005. It appears that this work was related to widening and resurfacing the pre-existing fire road. I believe DeSilva also installed some v-ditches in this area. This news was inconsistent with my understanding, based on the EIRs, that no work or fill was to be done in this area.

20. On December 18, 2005, after a day and a half of rain, the detention pond had completely inundated the outlet and had filled the pond to near capacity. The

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weight of the water broke a piece of plywood that DeSilva was using as a weir, releasing a very large surge of extremely muddy water into Chimes Creek. This surge of water carried away two foot bridges located at 3839 and 3855 Delmont Avenue, flooded two houses at 3845 and 3855 Delmont Avenue, and eroded private property all along the creek. *See* Exhibit 1.11. Again, I emailed city staff of my observations of the creek and other impacts, and included photos:

“This resulted in a massive flash flood in our neighborhood of extremely silty water. This water flooded two homes, several yards and carried away at least two small bridges.

Extremely silty water continues to freely exit the detention pond as of 5:00pm Sun. The Creek is totally opaque with silt although it hasn't [sic] rained since this morning.

There were several areas on the site where BMP's were not in place resulting in large mud slides. In other areas BMP's had failed also resulting in mud slides.

These measures that were not in place or had failed contributed to the extremely silty condition of the detention pond.

Today's [sic] events seem to be a clear violation of clean water laws. The irresponsible actions of DeSilva Gates contractors also resulted in property damage.

In addition to the creek flooding neighbors also documented at least two sewer manholes overflowing and spilling raw sewage into Chimes creek. This is the same sewer line that the City assured us was adequate to handle an additional 470 homes from the development.”

Email to Jun Osalbo and Ron Ward (Dec. 19, 2005). The City opted not to fine DeSilva for this event, but apparently advised DeSilva to “work with property owners that may have suffered damages to their property.” Email from Ron Ward (Dec. 29,

2005). To my knowledge, DeSilva has not offered any compensation for damages from this event to date.

21. About a week and a half later, another rainstorm caused the detention pond to overflow again causing a flash flood that knocked over a tree and caused extensive erosion in my own yard. This overflow also broke the sewer line behind 6301 Hillmont Drive and caused several sewer manholes located on Delmont and Sunnymere Avenues to overflow and spill sewage into the creek. I reported my observations to the City:

“This morning I was awakened by what sounded like a train running through my backyard. The creek was raging with quarry colored water. A tree had fallen from erosion taking a piece of my backyard with it. I have lost more property so far in this season than from the past five years that I have lived here combined.

I went up to the quarry and found, of course, the detention pond overflowing again causing this excessive flow.

It is extremely clear that the capacity for dealing with the run off from the Leona Quarry site is woefully inadequate and the downstream neighbors are paying for it!

The infamous hanging sewer line that neighbors have been complaining about for nearly twenty years and kept breaking last season is completely broken again from major erosion last night and sewage is pouring into the Creek.

Another sewer line on Sunnymere was spewing raw sewage into the storm drain and thus into Chimes Creek- we are talking feces and toilet paper flowing on the street.

After I got home my neighbor knocked on my door to show me that his basement was flooded and the manhole in his backyard was spewing raw sewage directly into the creek. When he called sewer maintenance they said that ‘there was not much that they could do about it but they will send somebody out.’”

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Email to Marcel Uzegbu and Ron Ward (Dec. 31, 2005). The City rejoined the broken sewer line, but did not otherwise respond to my email. After reading the EIR and talking to city staff and the hydrologist for the project, I understood that the 39” pipe was going to regulate flows entering Chimes Creek from the detention pond. However, I believe that the event on December 31, 2005 showed that the detention pond can build up pressure that will force more water through the 39” pipe faster than it would have previously. This increased velocity results in more water and flooding along Chimes Creek.

22. On January 30, 2006, the detention pond overflowed during a predicted rainstorm. On the previous day, which was sunny and fair, I visited the site and found the detention pond full to capacity and nobody on site pumping out the pond or preparing for the oncoming storm in any way. I reported the problems to city staff: “Earlier today I called Jun Osalbo to let him know that the detention pond was overflowing spilling very turbid water into Chimes Creek. I also informed him that the detention pond was overflowing yesterday (Sun 1/29) and at that time there was nobody on site monitoring this overflow.” Email to Ron Ward (Jan. 30, 2006). Later when I inquired whether or not DeSilva had been fined by the City for the event since they had not adequately prepared the site for the storm, I received confusing and contradictory responses. Initially the City stated that DeSilva was not fined because there was no storm predicted on Jan 29th:

“Your assertion today that the rainfall on January 30, 2006 was predicted is contrary to my records. The project uses a standard weather forecast

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to determine when storm preparations need to be in place. That standard weather forecast is the website "weather.com". On January 27, 2006 (Friday) "weather.com" reported the chance of precipitation for January 29 (Sunday) was 20%. In accordance with the approved Storm Water Pollution Prevention Plan for this project, a predicted 40% chance of precipitation triggers the requirements to closely monitor the site. For this reason, no penalties were assessed."

Email from Ron Ward (Mar. 1, 2006). When I pointed out that the storm in question was on January 30th not on the 29th and showed that the storm was predicted, Mr.

Ward's reason for not fining DeSilva changed:

"The 'weather.com' forecast for Monday, Jan. 30, 2006, as predicted on January 27, 2006, was for a 60% chance of showers, and 20% chance of precipitation for the following day, Tuesday. The storm that occurred Saturday night, Jan 28, 2006, was unexpectedly heavy. The contractor was mobilized for the rain event on Monday so there were no fines assessed."

Email from Ron Ward (Mar. 1, 2006). In his initial email Mr. Ward stated, a "40% chance of precipitation triggers the requirements to closely monitor the site."

However, in his second email he suggested that even though this threshold was reached for the storm on January 30th, it was acceptable that no one prepared the site for this predicted storm.

23. On March 6, 2006, I notified Mr. Ward of storm water discharges from the site: "The detention pond at Leona Quarry is overflowing tonight and Chimes Creek is raging with silty water." Email to Ron Ward (Mar. 6, 2006).

24. On March 14, 2006, I again notified Mr. Ward of storm water discharges from the site:

"As you probably know the detention pond is overflowing again this morning 3/14/06. The creek is opaque with quarry colored water after

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another big flash flood. I gather from your previous email this is how the system at Leona Quarry is designed to function although this was not what I was told at many meetings before the project began.”

Email to Ron Ward (Mar. 14, 2006).

25. Additional drainage from the adjoining Ridgemont Development was diverted through the Leona Quarry site during construction and on to Chimes Creek. While the re-routing of flows from the Ridgemont Basin is referenced in the EIR, I am still concerned that this additional runoff will add to an already overburdened system. When I raised my concerns about the impact of the increased runoff to Chimes Creek very early in the public process for this Leona Quarry Project, I was assured by city staff that every opportunity to use swales and other methods to detain and slow runoff would be incorporated into the project. After noticing that some of these elements were not being built according to the plans in the EIR I asked Mr. Osalbo about this. He informed me that during construction several swales and a dry creek bed that would help to slow runoff from the site had been eliminated from the plans. I asked him if the City had approved these changes and he said that the changes were approved by Mr. Uzegbu, who was aware of the problems of excessive runoff into Chimes Creek. I am concerned that no hydrological analysis has been carried out to assess how the elimination of these elements will impact runoff from the site.

26. I am also concerned and perplexed by two sub-drains which appear to carry untreated storm water from the site directly into the City’s storm drains and eventually into Chimes Creek, circumventing the detention pond completely. During the problems in the 2004-05 rainy season I specifically asked Mr. Osalbo if there was

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any drainage from the site that was not being captured by the detention pond. He informed me of two pipes, one buried in the south slope and another one buried in the northern slope that descends from the Ridgemont Basin. Subsequently the MHA obtained a copy of the Interim Subdrain Plans distributed by DeSilva in August 2005, which shows that the subdrains flowing into these two connections are fairly substantial. To my knowledge these subdrains did not appear in the original SWPPP issued by DeSilva. The community was repeatedly assured by city officials as well as the developer that ALL water from the site would be held in the detention pond to be treated and released gradually before entering the City's storm drains. In my review of the environmental documents published for the Leona Quarry Project I have been unable to locate any discussion of these subdrains or their impacts.

27. During these events I have been very confused by the City's standards for determining whether an event constitutes a violation by the developer. For example I was told very clearly by Mr. Ward in October 2004 that if DeSilva released water at night it would be a violation. Later when one of the City's inspectors found that DeSilva had released water at night it was determined not to be a violation. Mr. Ward also told me that if the detention pond overflowed releasing turbid water into the City's storm drains that it would constitute a violation. Later, after it became clear that the detention pond would regularly overflow during storms, the City determined that the overflows were not violations because DeSilva could not do anything to stop it. See email from Ron Ward (Dec. 29, 2005). This would appear to be a design flaw that

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should be corrected, not an excuse for poor performance, but to my knowledge the City has not requested that DeSilva reevaluate the design.

28. DeSilva has assured both the City and the community that the detention pond will treat contaminants introduced onto the site by the addition of approximately one thousand cars and the activities of a thousand or more residents on the site. Any floating contaminants on the site will be carried by storm water directly into Chimes Creek. Although the detention pond during construction is configured to act as a silt pond, the rainstorms showed how quickly this very steep-sided pond will fill up. For biological filtration of pollutants to be effective, contaminated water must be allowed to infiltrate the root systems of plants where bacteria break down pollutants. Based on past function of the pond, I believe that any lighter than water contaminants such as oil, soap and fertilizer from the development will be carried directly to the pond's outlet without treatment and will be transported directly into Chimes Creek. If this proves to be the case, it would contradict repeated statements by the City that the development would be held to standards necessary to assure that it "would not worsen Chimes Creek".

29. In addition to problems with the storm water sewer system, the City's sanitary sewer system, specifically the lines located on both banks of Chimes Creek between the culvert outfall below Delmont Avenue and the existing Alameda County Flood Control inlet near Nairobi Place, has been in poor repair for several years. *See* Exhibit 1.12. The flash-flooding during the 2004-2005 rainy seasons accelerated the erosion of the banks and exposed additional sections of the sewer main. Pipes broke

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repeatedly in 2004 and 2005, dumping large amounts of untreated sewage directly into Chimes Creek. There were more spills due to erosion during 2004/2005 than there were in previous years. *See id.* There are days, even during dry conditions, when the entire area surrounding the creek smells strongly of sewage.

30. On several occasions I witnessed a sewer main broken by erosion spewing raw sewage directly into Chimes Creek behind 6301 Hillmont Avenue. On July 8, 2004, I witnessed the sewer main behind 3805 Delmont Avenue, which will be used by the Leona Quarry project residences, break and release a very large amount of raw sewage into Chimes Creek. The creek downstream of this spill became virtually opaque and thick with feces and sewage.

31. During December 2005, sewage was repeatedly discharged from a manhole located at 6120 Oakdale Avenue into Chimes Creek. On December 29, 2005, sewage spewed from this manhole for two days into the creek leaving a ten-foot-wide trail of toilet paper and condoms that the City never cleaned up. It is my understanding that this is the same line that will convey all the sewage from the 470 new units in Leona Quarry.

32. Although the City is planning to fit the sewer lines with sleeves to minimize leaks, I believe the increased erosion from development runoff will continue to destroy the lines unless measures are implemented that reduce the erosion of the creek banks.

33. I have been disappointed repeatedly by how this project has proceeded. I am extremely concerned with how the project will proceed in the future and the impact

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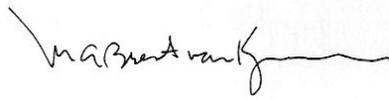
that it will have on Chimes Creek. Despite repeated assurances by both the City and DeSilva that the Leona Quarry Development will not have any negative impact on the creek, I have documented numerous events caused by DeSilva's activities and the City's inadequate oversight that have already significantly degraded the creek. I have also documented events that seem to be clear violations of the permits issued to DeSilva for the project. I have repeatedly voiced my concerns to city staff and the City Council, but I feel that the City has not addressed these concerns adequately.

34. It is also very frustrating to see how this project, which presents an opportunity to rectify some of the degradation of Chimes Creek created by poor planning in the past is actually adding to the problems rather than solving them.

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 28th day of March, 2006 at 3835 Delmont Avenue, Oakland, CA, Alameda County.

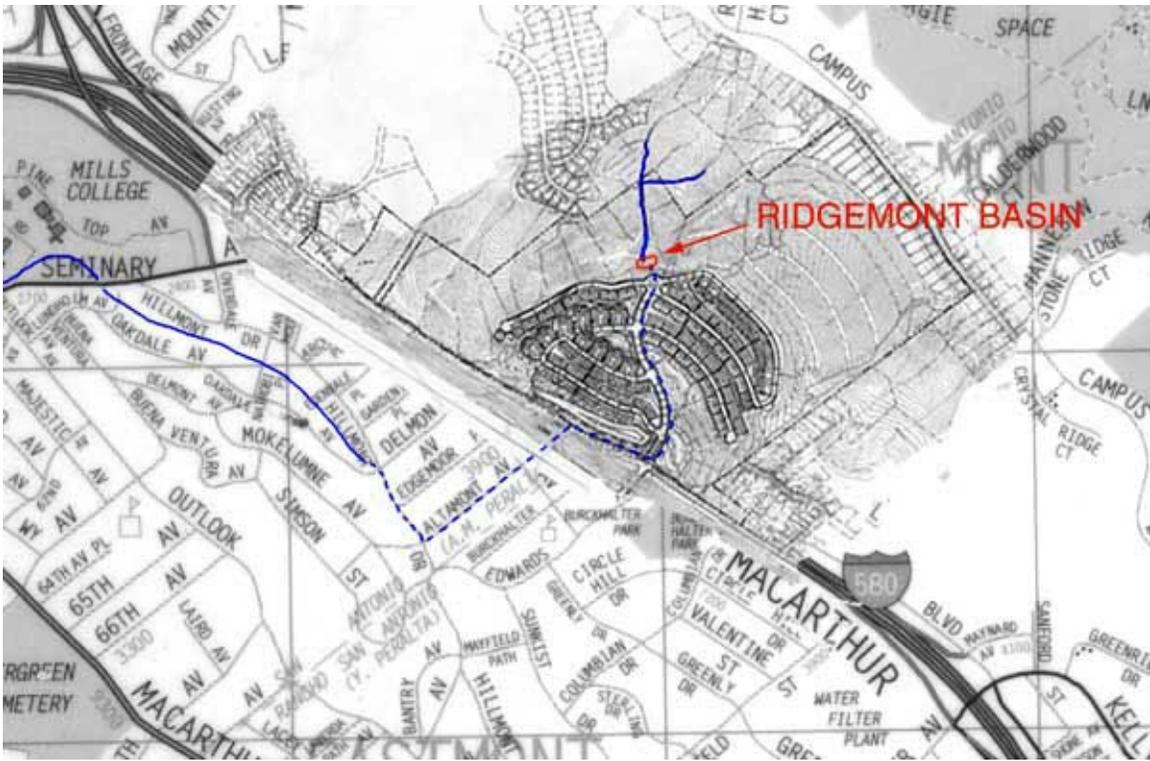
Respectfully submitted,

Dated: March 28, 2006

A handwritten signature in black ink, appearing to read "Mark Brest van Kempen", written over a light blue rectangular stamp.

Mark Brest van Kempen

Exhibit 1.1



Map of Ridgemont Basin.

Exhibit 1.2



Flows to outfall that carries Creek under 580 connects to creek on Delmont Ave.

Photograph by Mark Brest van Kempen on February 4, 2004 of pond in Leona Quarry with cattails and other aquatic plants. This section of Chimes Creek has since been graded over.

Exhibit 1.3

From: Mark Brest van Kempen [mbvk@sbcglobal.net]
Sent: Thursday, March 02, 2006 12:15 PM
To: Julie Gantenbein
Subject: FW: Chimes Creek



043.jpg

From: Mark Brest van Kempen <mbvk@sbcglobal.net>
Date: Thu, 20 May 2004 10:36:08 -0800
To: <wmadison@oaklandnet.com>
Cc: <fosalbo@oaklandnet.com>, <muzegbu@oaklandnet.com>
Subject: Chimes Creek

William

Thank you for coming out yesterday and calling this morning. As I mentioned in my voice message to you the creek is clearing out so far today (as of now 10:20). This is the first workday that it has not been cloudy all week.

Although it would be impossible to track the source today, it might be helpful to see what the construction workers are NOT doing today that they were doing all the rest of this week to identify a possible area in the site that might be causing the problem.

I am attaching a shot from yesterday showing the foam and a shot from today showing relatively clear water (its normally clearer but you can clearly see the bottom in the pic).

Thanks again for updating me. I will be in touch.

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Mark Brest van Kempen
3835 Delmont Ave
Oakland CA 94605
510 568 6889

Exhibit 1.4

From: Mark Brest van Kempen [mbvk@sbcglobal.net]
Sent: Thursday, March 02, 2006 12:15 PM
To: Julie Gantenbein
Subject: FW: leona quarry /creek

From: "Madison, William" <wmadison@oaklandnet.com>
Date: Wed, 26 May 2004 08:27:18 -0700
To: "'Mark Brest van Kempen'" <mbvk@sbcglobal.net>
Cc: "Uzegbu, Marcel" <MUzegbu@oaklandnet.com>, "Osalbo, Faustino Jun" <fosalbo@oaklandnet.com>
Subject: RE: leona quarry /creek

Mark:

I am still investigating. What I found out that I think is a major contributing factor is the 3 inches of mud that is in the manhole at Hillmont and Delmont. I also found out that the water flow from the quarry varies throughout the day. This changing water flow may stir up the mud in the storm pipe at Hillmont and make the water flowing in the creek behind your house turbid. I have no evidence of turbid water leaving the quarry site despite several weeks of investigation.

I am working with maintenance regarding removing the mud from the storm pipe.

William Madison
Environmental Program Specialist
City of Oakland
Public Works Agency
www.oaklandpw.com
(510) 238-6544
(510) 238-7286, fax

-----Original Message-----

From: Mark Brest van Kempen [mailto:mbvk@sbcglobal.net]
Sent: Tuesday, May 25, 2004 8:31 PM
To: wmadison@oaklandnet.com
Cc: muzegbu@oaklandnet.com; fosalbo@oaklandnet.com
Subject: leona quarry /creek

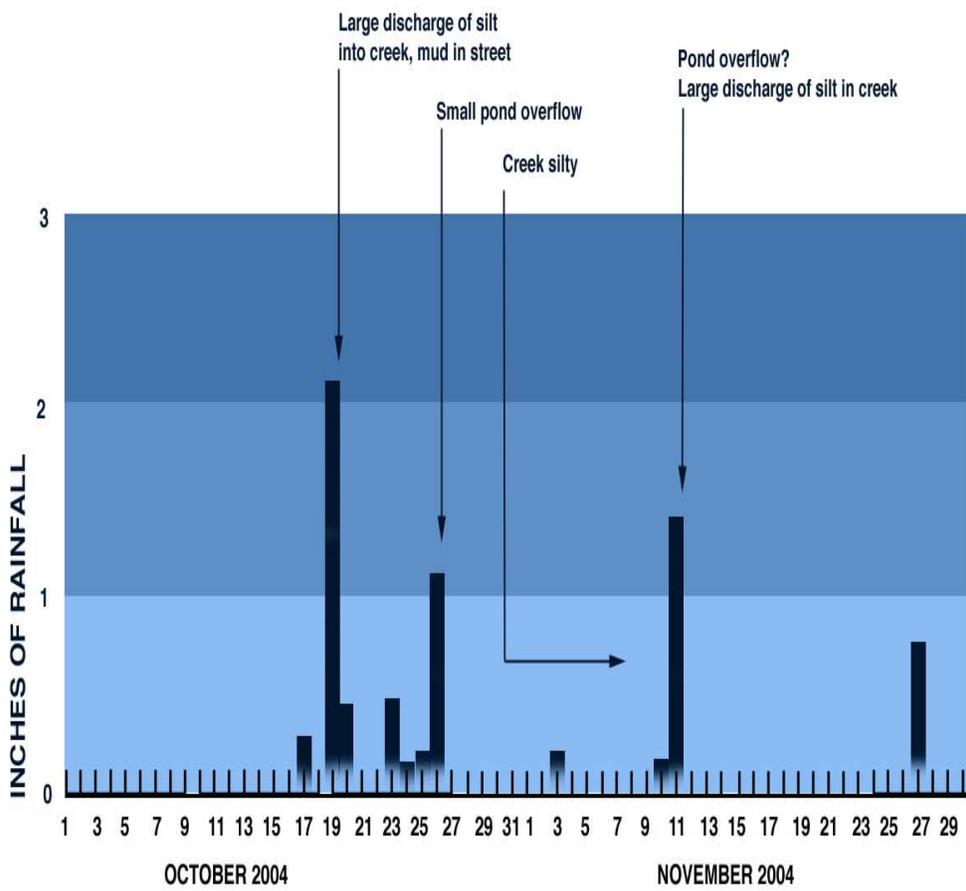
William

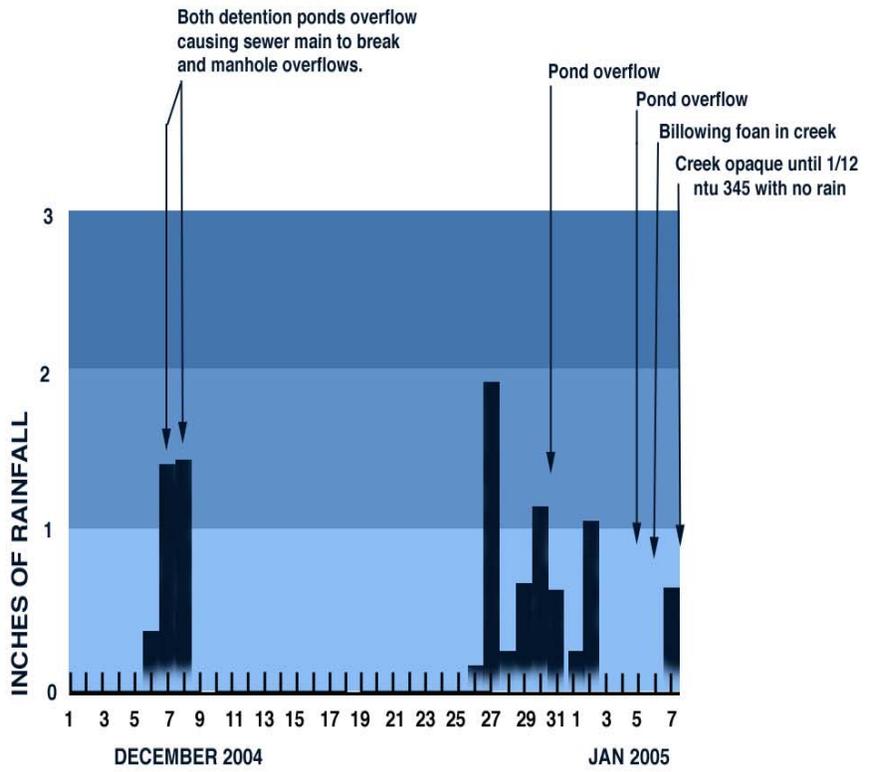
The creek was semi opaque today during work hours. Have you been able to find anything out. I understand that the project gets fined \$5,000 a day for violations. By my calculations thats at least \$200,000 so far that theyre not paying. Heres the picture of the day. Tomorrow Im calling Fish and Game and the Water Quality Board, do you have any contacts there that might help?

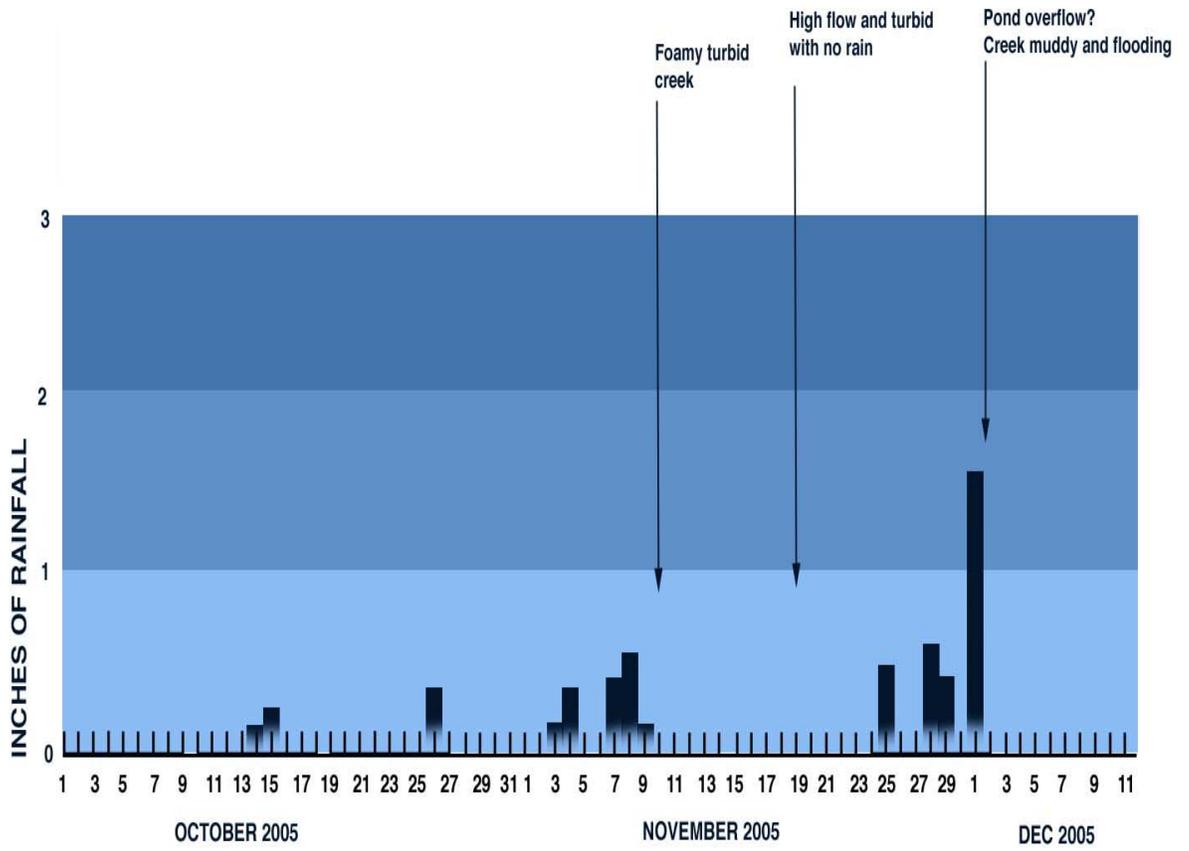
Mark

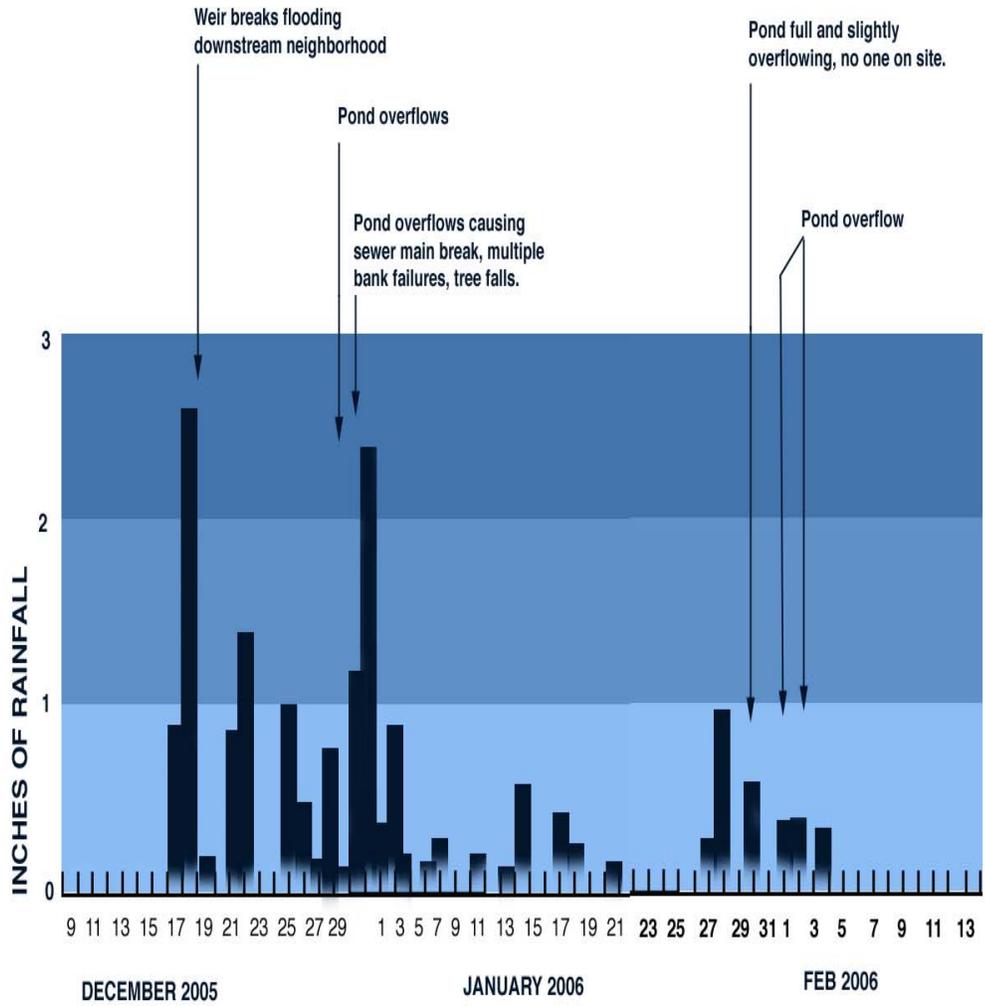
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Mark Brest van Kempen
3835 Delmont Ave
Oakland CA 94605
510 568 6889

Exhibit 1.5









Graphs by Mark Brest Van Kempen of rainfall and pond overflow between October 2004 and February 2006.

Exhibit 1.6

Stormwater Pollution Discharge Record at Chimes Creek

<u>Date</u>	<u>Location</u>	<u>Description of Discharge</u>	<u>Notice to City</u>	<u>Other Information</u>	<u>Observer</u>
4/2/2004	Chimes Creek at Delmont Ave.	Brown silt, creek opaque.	Calls to City	Email to William Madison 4/28/04.	Mark Brest van Kempen
4/6/2004	Chimes Creek at Delmont Ave.	Brown silt, creek opaque. Foam appeared later in day.	Calls to City	Email to William Madison 4/28/05.	Mark Brest van Kempen
4/14/2004	Chimes Creek at Delmont Ave.	White foam on surface.	Calls to City	Email to William Madison 4/28/06.	Mark Brest van Kempen
4/22/2004	Chimes Creek at Delmont Ave.	Brown silt, creek opaque.	Calls to City	Email to William Madison 4/28/07.	Mark Brest van Kempen
4/27/2004	Chimes Creek at Delmont Ave.	Brown silt, creek opaque. Water level fluctuation. Minor flooding.	Calls to City	Email to William Madison 4/28/08.	Mark Brest van Kempen
4/28/2004	Chimes Creek at Delmont Ave.	Continued brown silt. Creek opaque. Water level fluctuation.	Calls to City	Email to William Madison 4/28/09.	Mark Brest van Kempen
4/29/2004	Chimes Creek at Delmont Ave.	Continued brown silt. Creek opaque. Water level fluctuation.	Calls to City	Per Mark Brest van Kempen's notes.	Mark Brest van Kempen
5/7/2004	Chimes Creek at Delmont Ave.		Email to Marcel Uzegbu.		Mark Brest van Kempen
5/11/2004	Chimes Creek at Delmont Ave.		Email to Marcel Uzegbu.		Mark Brest van Kempen

Stormwater Pollution Discharge Record at Chimes Creek

<u>Date</u>	<u>Location</u>	<u>Description of Discharge</u>	<u>Notice to City</u>	<u>Other Information</u>	<u>Observer</u>
5/14/2004	Chimes Creek at Delmont Ave.	Brown and muddy.		Per Mark Brest van Kempen's notes.	Mark Brest van Kempen
5/20/04 thru 5/24/04	Chimes Creek at Delmont Ave.	Cloudy, opaque, dirty.		Per Mark Brest van Kempen's notes.	Mark Brest van Kempen
5/27/2004	Chimes Creek at Delmont Ave.			City finds the source of the pollution.	
6/1/2004	Chimes Creek at Delmont Ave.	Creek is dirty again.	Email to Marcel Uzegbu.		Chiye Azuma
6/10/2004	Chimes Creek at Delmont Ave.	Foamy water, opaque.	Email to Marcel Uzegbu.	Marcel Uzegbu responds they are waiting for test results from DeSilva of water leaving the site. He promises to forward the data as soon as possible, but never did.	Mark Brest van Kempen
6/18/2004	Chimes Creek at Delmont Ave.	Surge and murky water.	Email to Jun Osalbo.	Jun Osalbo responds baker tank capacity not sufficient.	Mark Brest van Kempen
6/21/2004	Chimes Creek at Delmont Ave.	Surge and water turned gray.	Email to Jun Osalbo.		Mark Brest van Kempen

Stormwater Pollution Discharge Record at Chimes Creek

<u>Date</u>	<u>Location</u>	<u>Description of Discharge</u>	<u>Notice to City</u>	<u>Other Information</u>	<u>Observer</u>
6/22 thru 6/23/2004	Chimes Creek at Delmont Ave.	Still murky.	Email to Jun Osalbo.		Mark Brest van Kempen
7/10/2004	Chimes Creek at Delmont Ave.	Muddy and high flow.		Water main break above the Quarry - described as "freak" accident, but City concedes the site was not prepared.	Mark Brest van Kempen, Chiye Azuma and other residents.
8/5/2004	Chimes Creek at Delmont Ave.	Creek is dirty and smelly for several days.		Email from Grace Simonds to Nancy Sidebotham	Grace Simonds
9/19/2004 Sunday	Chimes Creek at Delmont Ave.	High turbidity, very silty, high flow, muddy water running onto Edwards and into storm drain.		First storm of the year - no bmps on site, no staff, no inspector on site because it's a Sunday. Mike Neary promises that the site will be ready when rainy season begins on Oct 15.	Mark Brest van Kempen, Chiye Azuma and other residents. Photo documentation.
10/19/2004	Chimes Creek at Delmont Ave.	Official First Rain of the Season. After rain subsided, the creek was still very turbid, very silty. High flow conditions continued as water was being released from the detention pond.	Email to Desley Brooks.		Mark Brest van Kempen and Kelly Newman

Stormwater Pollution Discharge Record at Chimes Creek

<u>Date</u>	<u>Location</u>	<u>Description of Discharge</u>	<u>Notice to City</u>	<u>Other Information</u>	<u>Observer</u>
10/21/2004	Chimes Creek at Delmont Ave.	Silty conditions continue.	Email to Desley Brooks.		Mark Brest van Kempen
10/25 thru 10/27/04	Chimes Creek at Delmont Ave.	Silty conditions continue; temporary siltation pond overflows.	Email to Jun Osalbo.		Mark Brest van Kempen
10/29/2004	Chimes Creek at Delmont Ave.	Creek turns silty again. Turbidity worsens at 4 pm, towards the end of the work day.	Email to Jun Osalbo.		Mark Brest van Kempen
10/30/2004	Chimes Creek at Delmont Ave.	Creek is full of silt (altho there is no rain).	Email to Jun Osalbo.		Mark Brest van Kempen
10/31/2004	Chimes Creek at Delmont Ave.	Thurd d day that Creek is full of silt, opaque.	Email to Jun Osalbo.		Mark Brest van Kempen
11/2/2004	Chimes Creek at Delmont Ave.	Fifth day that Creek is silty.			Mark Brest van Kempen
11/3/2004	Chimes Creek at Delmont Ave.	Creek is still silty. Kelly Newman sends in JTU measurements taken on 10/25, 26, 29, and 11/2.	Email to Jun Osalbo.	Email also to Friends of 2 Creeks.	Kelly Newman and Mark Brest van Kempen
11/4/2004	Chimes Creek at Delmont Ave.	Creek is still silty and opaque.	Email to Jun Osalbo.		Mark Brest van Kempen

Stormwater Pollution Discharge Record at Chimes Creek

<u>Date</u>	<u>Location</u>	<u>Description of Discharge</u>	<u>Notice to City</u>	<u>Other Information</u>	<u>Observer</u>
11/5/2004	Chimes Creek at Delmont Ave.	Creek is still cloudy.	Email to Jun Osalbo.		Mark Brest van Kempen
11/11/2004	at Quarry site	Rain from early morning on. Both detention ponds appeared to be close to overflowing by 10 am. Observed dirty discharge into City drains.			Mark Brest van Kempen, Chiye Azuma, Jun Osalbo and other residents
11/12/2004	Chimes Creek at Delmont Ave. and at Quarry site	Creek is full of silt and foam, observed dirty water entering storm drain at Quarry.	Email to Jun Osalbo.	Flocculant introduced to baker tank to help settle sediments.	Mark Brest van Kempen
11/13/2004	Chimes Creek at Delmont Ave.	Foamy substance in creek; other indications that discharge is being pumped to the creek during the night.	Email to RWQCB.		Mark Brest van Kempen
11/30/2004	Chimes Creek at Delmont Ave.	Overall assessment of damage to creek banks from the increased constant flow from the constant pumping.	Email to Jun Osalbo.		Mark Brest van Kempen
12/7 and 12/8/04	Quarry site	Both detention ponds overflow causing sewer main to break open and manholes to blow out.		Ron Ward states all is working fine and as intended.	Mark Brest van Kempen

Stormwater Pollution Discharge Record at Chimes Creek

<u>Date</u>	<u>Location</u>	<u>Description of Discharge</u>	<u>Notice to City</u>	<u>Other Information</u>	<u>Observer</u>
12/30/2004	Quarry site and Chimes Creek at Delmont Ave.	Both detention ponds overflowing. The creek is roaring and full of silt.	Email to Jun Osalbo.		Mark Brest van Kempen
1/5/2005	Quarry site	Detention pond overflows.			Mark Brest van Kempen
1/3/2005	Chimes Creek at Delmont Ave.	Creek reading 117 NTU, large release of turbid water.		NTU measurement by Jun Osalbo.	
1/5/2005	Chimes Creek at Delmont Ave.	Billowing foam.	Email to Jun Osalbo.		Mark Brest van Kempen
1/8 thru 1/12/05	Chimes Creek at Delmont Ave.	Creek is opaque, NTU reading of 345 despite no rain.		NTU measurement by Jun Osalbo.	Mark Brest van Kempen
2/7/2005	Chimes Creek at Delmont Ave.	Creek is opaque.			Mark Brest van Kempen
2/15 and 2/16/05	Chimes Creek at Delmont Ave.	Creek is opaque.			Mark Brest van Kempen
2/21 and 2/22/05	Chimes Creek at Delmont Ave.	Big rain. Creek very turbid, silty and heavy flows. Sewage spills from manhole covers and geysers.	Email to Jun Osalbo.	Email also to Friends of 2 Creeks.	Mark Brest van Kempen and Chiye Azuma

Stormwater Pollution Discharge Record at Chimes Creek

<u>Date</u>	<u>Location</u>	<u>Description of Discharge</u>	<u>Notice to City</u>	<u>Other Information</u>	<u>Observer</u>
2/24/2005	Chimes Creek at Delmont Ave.	Turbid on and off. NTU reading 568.		NTU measurement by Jun Osalbo.	Mark Brest van Kempen
3/2/2005	Chimes Creek at Delmont Ave.	Cloudy all the time due to constant pumping on weekdays.			Mark Brest van Kempen
3/22/2005	Chimes Creek at Delmont Ave.	Flash flood condition - erosion and sudden turbidity.			Mark Brest van Kempen
5/4/05 thru 5/8/05	Chimes Creek at Delmont Ave.	Rain - Creek turned quarry colored after rain started on 5/4/05 and remained turbid for 5 days.			Mark Brest van Kempen
5/11/2005	Chimes Creek at Delmont Ave.	Pumping causes creek to turn brown and opaque. Pumping continues into the evening.	Personal notice to Jun Osalbo.	Mark Brest van Kempen and Jun Osalbo went to the site to investigate the source of the turbid water and discovered the unmanned pump left on and pumping. DeSilva came and turned off pump at 9 pm, and said it was mistakenly left on.	Mark Brest van Kempen
6/8/2005	Chimes Creek at Delmont Ave	Opaque quarry colored water.	Call to City.	Inspector couldn't verify.	Mark Brest van Kempen

Stormwater Pollution Discharge Record at Chimes Creek

<u>Date</u>	<u>Location</u>	<u>Description of Discharge</u>	<u>Notice to City</u>	<u>Other Information</u>	<u>Observer</u>
6/27/2005	Chimes Creek at Delmont Ave	3 times normal flow. No rain.	Call to City.		Mark Brest van Kempen
7/11/2005	Chimes Creek at Delmont Ave	3 times normal flow. No rain.	Call to City.	Contractor will pump 1 day every two weeks.	Mark Brest van Kempen
11/9/2005	Chimes Creek at Delmont Ave	Foamy, turbid. No rain.	Call to City.	Contractor will pump 1 day every two weeks.	Mark Brest van Kempen
11/18/2005	Chimes Creek at Delmont Ave	High flow, turbid.	Call to City.	Contractor will pump 1 day every two weeks.	Mark Brest van Kempen
12/2/2005	Chimes Creek at Delmont Ave	Opaque quarry colored water.			Mark Brest van Kempen
12/18/2005	Chimes Creek at Delmont Ave. Quarry site	Weir breaks. Houses flooded, bridges lost.	Call to City.	Site visit.	Mark Brest van Kempen
12/28/2005	Quarry site	Detention pond overflow NTU 480.	Call to City.	Site visit.	Mark Brest van Kempen
12/30/2005	Quarry site. Chimes Creek at Delmont Ave	Detention pond overflows. Multiple bank failures. Tree falls. Sewer line breaks.	Call to City.	Site visit.	Mark Brest van Kempen
1/29/2006	Quarry site.	Detention pond overflowing no one on site. No Rain. Rain forecast for tomorrow.	Call to City.	Site visit.	Mark Brest van Kempen
1/30/2006	Quarry site. Chimes Creek at Delmont Ave	Detention pond overflows. Very turbid water released.	Call to City.	Main inspector took day off. He informed his superior Ron Ward.	Mark Brest van Kempen

Stormwater Pollution Discharge Record at Chimes Creek

<u>Date</u>	<u>Location</u>	<u>Description of Discharge</u>	<u>Notice to City</u>	<u>Other Information</u>	<u>Observer</u>
3/5/2006	Quarry site. Chimes Creek at Delmont Ave	Detention pond overflows. Very turbid water released.	Call to City.		Mark Brest van Kempen
3/6/2006	Quarry site. Chimes Creek at Delmont Ave	Chimes Creek very turbid. Sewer manhole overflow into creek at 3855 Delmont.	Call to City.		Nancy Peterson and Phil McGill
3/14/2006	Quarry site. Chimes Creek at Delmont Ave	Detention pond overflows. Very turbid water released.	Call and email to City.		Mark Brest van Kempen

Exhibit 1.7



Photographs by Mark Brest van Kempen from the summer of 2005 and October 19, 2004 at 3835 Delmont Avenue comparing the normal flow of Chimes Creek with flooding during a rainstorm.

Exhibit 1.8



Photograph by Mark Brest van Kempen on October 19, 2004 of hydroseed washed away from a rainstorm at the Leona Quarry construction site.

Exhibit 1.9



Photograph by Mark Brest van Kempen on October 19, 2004 of muddy water entering the City storm drain.

Exhibit 1.10



Photograph by Mark Brest van Kempfen on November 11, 2004 of four foot high plume of foam in Chimes Creek.

Exhibit 1.11



Photograph by Mark Brest van Kempen on December 18, 2005 of flooded yard at 3855 Delmont Avenue.

Exhibit 1.12



Photograph by Mark Brest van Kempen on December 29, 2005 and March 26, 2004 of sewage spills into Chimes Creek from manholes at 6120 Oakdale Avenue and 3835 Delmont Avenue.