

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. My understanding of the creek is based on conversations over the years with long time neighbors of the area, Kenneth T. Lass of Alameda County Public Works and Flood Control (ACFC), and City of Oakland staff. Chimes Creek flows all year long. The headwaters of the creek are located above the Leona Quarry, which is owned by Gallagher and Burk. Once the creek leaves the quarry, it is channeled by culverts under Altamont Avenue, turns northwest near the western end on Altamont Avenue and Hillmont Drive, then daylights at Hillmont Drive and Delmont Avenue. In the 1940's the quarry operators culverted the stream and channeled the water runoff into holding ponds, which served to retain 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 there was no percolation after rainfall. The quarrying continued up until approximately 13 years ago.
5. In the early 1980's, the City of Oakland approved the Ridgemont

Development. The City's approval of the development allowed the runoff from Ridgemont to be channeled into Chimes and Lion Creeks. The runoff was channeled to the quarry, passed through culverts and holding ponds onsite, discharged into the City's stormdrain at the based of the quarry, and then carried through culverts into Chimes Creek. I began to observe drastic changes to Chimes Creek during the Ridgemont Development. The flow of water became heavier, faster, and wider. The presence of frogs and wildlife was diminished. Within three years of moving to the area, I began to notice significant erosion of the creek banks, and a deepening of the channel. As of today, the channel appears to have dropped by 15 feet or more.

6. By 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. The added runoff from Ridgemont and the heavy rainfalls in 1986 caused drastic erosion. The erosion was dramatically illustrated by a mature acacia tree falling straight into the creek, where it caused flows to be directed to the Hillmont side of the creek.

7. After the first major storm event in 1986, neighbors attempted to get help from the City and ACFC, but were not successful. Some of my neighbors even built retaining walls, but due to lack of assistance, these walls failed and had to be removed as they worsened the erosion problem. Others brought rocks in to try to stop the erosion and stabilize the sides of the creek.

8. The development of the Ridgemont neighborhood and the re-channeling of runoff from the development through the quarry and into Chimes Creek along with

the rains of 1986 caused property below Nairobi Place, between Oakdale Avenue and Hillmont Drive, to drastically erode. One of my neighbors, Richard Rodriguez of 6149 Hillmont Drive, lost 110 feet of his backyard to erosion. The County of Alameda held a neighborhood meeting at Burbank Elementary to discuss measures to mitigate the erosion problems along the creek. Mr. Rodriguez ended up bringing a suit against the City in 1987 or 1988, which he won. The County and City made repairs to the Nairobi section of the creek between 1989 and 1990.

9. Despite the repairs to the Nairobi section of the creek, my neighbors have told me they continue to have significant problems with sanitary sewer overflows into their yards. The sewer line along Nairobi Place 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 Drive and the property across from it on Delmont Avenue.

10. After the first incident in 1986, the sanitary sewer lines continued to rupture periodically and dump raw sewage into the creek. I received phone calls from neighbors about discoloration and foul odors coming from the creek. The City's Public Works Agency (PWA) visited the creek once or twice every winter. In years past, I would get calls or emails or just have neighbors, Grace Simmons and Carlos A. Grundwal at 3900 Edgemoor Place, stop by and tell me of the horrible sewer smells coming from the manhole across from their house on Edgemoor and of foul odors

coming from the creek during different times of the year. On February 1, 2006, Mr. Grundwal, an Oakland City Fireman, left me a message that he regularly smells sewage and diesel across the street from his house and that he is certain the sewage empties into the creek. I would tell them to contact Ali Schwartz, who works under Lesley Estes in the City's Environmental Services Division.

11. In the winter of 1988, there was a major break in the sewer line behind 6311 Hillmont Drive and a wash out of nine feet of land and fencing at 6301 Hillmont Drive. The PWA 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; however, the bank continues to erode, and the sewer line is still haphazardly tied to the oak tree. On December 14, 1999, the City sent letters to residents along 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, Assistant Director, PWA, 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 shoot over the banks. Mr. Neary basically said that the City could not do anything because the problem was located on private property. The ACFC representative just looked on and deferred to Mr. Neary.

13. Up until the lawsuit brought by Mr. Rodriguez, Mr. Lass came every year and maintained Chimes Creek. Mr. Lass 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 the 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. Again, Mr. Neary 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. However, I do not understand how the City can designate the creek as part of its storm sewer system and describe it as private property.

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

17. The history of the problems with Chimes Creek is well documented by the PWA and ACFC. I understand that former City Councilman, Carter Gilmore, City

of Oakland, and Nate Miley, County Supervisor, Alameda County, have extensive notes and documentation of the erosion problems that have plagued Chimes Creek since the Ridgemont Development. When the County was still maintaining the creek, I met with City Councilman Gilmore, Terry Roberts, Director, PWA, Mr. Neary and other city staff to discuss why there had not been additional oversight of the impacts the Ridgemont Development would have on the creek. They promised me they would look into the problems, and Mr. 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 did look into the problems.

18. In 1998 the Drainage Task Force (DTF) was formed. In 1997, prior to the DTF, Mr. Miley asked the PWA to make Chimes Creek a priority and to add it to the Planning and Review Division of the PWA. Under the supervision of then City Engineer Mr. Neary, the PWA made two site visits to photograph and survey the damaged properties. In 1998, Mr. Neary, two PWA staff members, and two representatives from ACFC walked the creek in a very heavy rainstorm. Again, I am not aware that these efforts led 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 the Rainbow Recreation Center to discuss community concerns. Over fifty neighbors of Chimes Creek showed up to the meeting to discuss creek-related problems and to ask for assistance. In August 1999, Joseph Levine, Construction Inspector Supervisor, PWA, 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. Lesley Estes, Watershed Program Supervisor, PWA, came out a couple of times, the last being in 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, Leslie Gould, Director of City Planning, Community and Economic Development Agency (CEDA), and Calvin Wong, Director of Building Services, CEDA, 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 many of my neighbors, have attended numerous City meetings. Over the years, we spoke to public servants working for the City of Oakland or County of Alameda, including: City Councilman Gilmore, Mr. Miley, Elihu Harris, former mayor of Oakland, Mr. Roberts, Mr. Neary, Mr. Lass, Mr. Wong, Ms. Gould, Ms. Estes, and Claudia Cappio, Deputy Director City Planning, CEDA. I appreciated their taking the time to listen to our concerns and to visit the site, and their acknowledgement of the seriousness of the problems Chimes Creek faces. However, I am frustrated that more than 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. I believe that construction at the Leona Quarry Project has worsened this already 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 additional runoff from the Ridgemont Development 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.

24. Since April 2004, when the grading for the Leona Quarry Project started, there has been an increase in runoff and silty discharges into Chimes Creek. During the first significant storm in September 2004, the rain caused a major washout from the quarry site, and some of my neighbors lost about a foot of land.

25. Today the creek is deeper and the channel is wider. The trees look like they are in the swamp areas of the deep south, with their roots completely exposed. The trees are falling because there is not enough soil to support their roots.

26. One of my neighbors, Ms. Simmons, who lives at 6441 Hillmont Drive, has been steadily losing part of a 30-foot stretch of her land that runs along the creek. She told me that the fence in her backyard was built in 1981, and originally was set back a foot or more from the creek bank. Due to erosion over the past year, the fence is now falling into the creek. She told me that during a rainstorm in the fall of 2004 her dog almost slipped under the fence into the creek when the bank gave way. Ms. Simmons emailed me on December 18, 2005 to report that the boards she had put up to block the gap between the bottom of the fence and the eroding bank had washed away during the storm that day. She had put up the boards to keep the yard secure for the dog and to block the heavy flow of the creek, as well as to protect the loss of more land. Ms. Simmons asked about sand bags, but we decided that the flow that comes

shooting out of the culvert just south of her property probably would be so heavy that the bags would be washed away. She wrote, "I really need some expert advise [sic] as it is dangerous for anyone or animals to walk near this side of the creek."¹

27. I believe the construction has also contributed to more breaks in the exposed Nairobi sewer line during 2004 and 2005. As far as I know, the City has not resolved how to repair the lateral sanitary sewer line and secure it so it does not hang in mid air. I was asked in the fall of 2004 to flush yellow dye down my toilet so that City employees could find out where the break was down the line. I am not sure what the point of the dye test was because the break in the exposed sewer line is clearly visible from the creek bank.

28. On August 10, 2004, I attended a meeting with Marcel Uzegbu, CIP Coordinator, PWA, who is overseeing the Leona Quarry Project, a Sewer Department staff member from PWA, 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 would have little or no input on the project because the City had an easement. The city officials said the work would be done by outside contractors who would need to come on each of our properties. 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 expected the Leona Quarry Project to generate. In my opinion putting in the sewer lines and digging up on either side of the creek would only

¹ I would be happy to provide copies of my email correspondence with Ms. Simmons upon request.

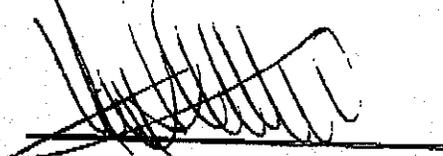
exacerbate the weakening of the channel and the erosion problem. We urged the City to be prudent and integrate creek restoration into the plans for replacing the sewer lines. At the August 10th 2004 meeting, I asked Mr. Uzegbu if the City was going to go back to the City Council and tell them that the city staff underestimated the impacts of the quarry development and the re-channeling of Ridgemont's runoff on Chimes Creek. Mr. Uzegbu responded, "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 Mr. Uzegbu 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 Leona Quarry Project, but he has not responded.

29. Whether Chimes Creek could handle the impact of the new sewer lines and the Ridgemont development has been a major focal point at all of the public meetings as well as the Planning Commission meetings. There are letters in the EIR questioning the impact on both the sewers and Chimes Creek. Yet, these impacts still have not been addressed adequately.

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 28th day of March, 2006 at 6375 Hillmont Drive, Oakland, CA, Alameda County.

Dated: 28 March 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nancy S. Sidebotham', written over a solid horizontal line.

Nancy S. Sidebotham