

# CITY OF OAKLAND

## AGENDA REPORT

OFFICE OF THE CITY CLERK  
2006 SEP 21 11:52:21

TO: Office of the City Administrator  
ATTN: Deborah A. Edgerly  
FROM: Community & Economic Development Agency  
DATE: October 3, 2006

RE: **A Resolution Authorizing An Agreement With Private Property Owners To Abate An Imminent Hazard On 21 Drury Court And Lots 15, 16, 13, And 20 Claremont Knolls In The Oakland Hills, Waiving Further Bidding As Permitted Under Oakland Municipal Code Section 2.04.050.I And Authorizing The City Administrator To Informally Rebid Or Negotiate If Necessary, And Award A Construction Contract In Accordance With Plans And Specifications For Winterization Work Associated With The Alvarado Road Landslide Within Budget In An Amount Not To Exceed Five Hundred Thousand Dollars (\$500,000), Without Return To City Council**

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### SUMMARY

In April 2006 a landslide occurred above Alvarado Road and below Drury Court in the North Oakland hills (see Exhibit A). Although the slide has essentially stopped moving for now, the threat of further downhill movement exists. According to geotechnical experts studying this slide, *"if the landslide is left alone, it will likely reactivate during the next rainy season, if not sooner."*<sup>1</sup> A temporary winterization plan has been approved by the City to provide erosion protection and controlled drainage paths to minimize the impact of additional rainfall this fall, winter and spring seasons. A long term stabilization plan for the hillside is to be completed on or before October 2007. The City has provided the private property owners with adequate time to develop and construct a temporary winterization plan and has approved the permits required to complete the work. However, the actual construction has not begun. The reactivated slide area will potentially threaten the lives and safety of residents who live below and threaten to close a major access for fire and emergency vehicles for the surrounding community. Thus, staff is requesting that the City Council authorize the City Administrator to informally bid, negotiate, and award a construction contract to implement the approved winterization work in an amount not to exceed \$500,000. This amount can increase with future maintenance costs and other liabilities incurred by the city. The authorization requested from the City Council is intended to allow the city to award a contract and implement the work on a time frame faster than the private property owners are currently undertaking to mitigate the threat of the slide remobilizing. In addition, staff is requesting authorization to enter into agreements with the private property owners to construct property improvements on 21 Drury Court and lots 15, 16, 13, and 20 Claremont Knolls to abate a public nuisance.

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<sup>1</sup> Cal Engineering & Geology – Preliminary Landslide Evaluation July 11, 2006

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## **FISCAL IMPACT**

Approval of this resolution will authorize the City Administrator to award a construction contract in an amount not to exceed \$500,000 in fiscal year 2006-07. The cost estimate was produced based on the approved winterization plan for the slide area. In addition to the one time cost to construct certain improvements to implement a winterization plan, such as erosion protection and controlled drainage paths, the city may incur future maintenance costs to repair materials and re-stabilize the slide area. The funding source for this contract has not yet been identified. Potential revenue source for recovering the costs could include liens and penalties assessed against each of the property owners whose property includes the slide area. However, the final amount of liens and penalties and the timeline in which these liens and penalties would be paid to the City is unknown.

## **BACKGROUND**

### *I. Slide Occurrence and City Actions to Date*

Late in the evening of Thursday, April 6, 2006, the City became aware of a landslide above Alvarado Road in the North Oakland Hills (see Exhibit A for Site Map). Based on the recommendation of the City's geotechnical consultant, on Friday, April 7, 2006 the City notified the residents living below the slide area at 1365, 1375 and 1385 Alvarado Road that a slide had occurred and that it presents a potentially imminent danger to their lives and properties ("yellow-tag"). On April 12<sup>th</sup> the property located at 1355 Alvarado was also notified of an imminent danger. Each of the property owners was asked to only enter their premises during day-light hours, not sleep or spend night-time hours and be ready to evacuate on very short notice. The homeowners on Alvarado Road have been provided with regular updates (including emails and informational meetings) regarding the slide movement and activities undertaken by the City to address this issue. Furthermore, the City took action to temporarily close Alvarado Road to vehicular traffic and posted warning and hazard signs to keep the general public from entering the slide area. As rains subsided during late April, Alvarado Road was reopened. However, should the slide remobilize, Alvarado Road would have to be closed again. Such a closure would present a danger by limiting access by fire and emergency vehicles to the surrounding area.

In addition to the properties on Alvarado Road, the owners of the property further uphill where the landslide occurred were notified on April 7<sup>th</sup> and again on April 12<sup>th</sup> regarding the existence of the slide on their properties and the need for immediate action. The slide encompasses several different properties and two different owners (see Exhibit B). The first owner is Mr. James Potter and his property includes a developed parcel (single family home) located at 21 Drury Court. The second owners are Y&H Company, who own several vacant undeveloped parcels

(Lot 15, 16, 13, and 20 Claremont Knolls) in the slide area. The actions requested of each private property owner included the need to retain geotechnical engineers to (a) monitor the slide and notify the City in case of slide mass failure, such that the residents on Alvarado could be evacuated, and (b) assess the slide itself to determine causation and characteristics of the slide. On April 19<sup>th</sup> a meeting was held with the geotechnical engineers retained by each of the property owners to discuss monitoring requirements along with determination of actions required to stabilize the slide.

Data from monitoring equipment in the slide area between April 19<sup>th</sup> and April 28<sup>th</sup> indicated that the slide area has virtually stopped moving and although the slide remains a hazard, it was downgraded from an imminent hazard. This determination, along with the recommendation of the City's geotechnical consultant, led the Building Services Division to revise the notices (yellow-tag warnings) to homeowners on Alvarado Road to allow use of their properties during both day and night-time hours. Homeowners were cautioned that the slide continues to present a hazard and that they should be prepared to evacuate on short notice, should the slide area reactivate again.

## *II. Need to Secure Site for 2006-2007 Winter Season*

During continued discussions with geotechnical engineers and City staff/consultants between April to June 2006, it became apparent that the preparation of a long term stabilization plan for the slide area would have to include a causation analysis. This causation analysis would take a significant amount of time to complete (more than 6 months). Subsequently, it was determined that a temporary winterization plan would be required to minimize the possibility of the slide mobilizing during the upcoming (2006-2007) rainy season.<sup>2</sup> Winterization plans are defined as temporary erosion control and drainage plans to move much of the surface and subsurface water and rainfall away from the slide area, in addition to removal of exiting debris and falling trees in the slide area. The objective of the winterization plan is to minimize slide mobilization during the rainy season while providing time for the causation analysis and the development of a long term stabilization plan to be constructed prior to the beginning of the 2007-2008 rainy season.

According to the National Weather Service, the rainy season for the Bay Area generally begins on or near October 15<sup>th</sup> of each year. Based on this weather pattern, the requirement for access by fire and emergency vehicles (as defined by California Fire Code, Article 9, Section 902) on Alvarado Road and the reports submitted by the geotechnical engineers for each of the private property owners, the Building Official declared that a public nuisance (as defined by California Civil Code Section 3479 and 3480) is present and a Notice to Abate was sent on July 21<sup>st</sup> to both Mr. Potter and Y&H Company. (See Exhibit D) This Notice established a timeline to develop, review, approve and construct adequate winterization plans before the start of the 2006 rainy season. Both private property owners have filed an appeal with the City against this

<sup>2</sup> Cal Engineering & Geology – Preliminary Landslide Evaluation July 11, 2006

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determination. The hearing for both private property owners has been set for September 28<sup>th</sup>. The result of the hearing will be provided to the City Council during oral presentation of this report by staff.

### **DELAY IN IMPLEMENTING WINTERIZATION PLAN**

Parallel to the public nuisance determination by the City and the appeal of the nuisance declaration, both property owners have been working toward the production of a temporary winterization plan. Due to the fact that the slide area covered parcels owned by both Mr. Potter and Y&H Co. and that each owner required cooperation from the other in order to construct a winterization plan, both owners and their geotechnical engineers agreed to submit a joint winterization plan for review and approval by the City. Both private property owners (Mr. Potter and Y&H Co.) were requested to submit their winterization plans to the City on June 30, 2006. The final design of the winterization plan and its related construction requirements depended on negotiations Mr. Potter was having with one of his neighbors<sup>3</sup>. This negotiation was necessitated because Mr. Potter required authority to access the neighbor's property to construct a temporary road to bring the required construction equipment for completion of the winterization plan. In addition, Y&H Co. has been in contact with their insurance provider for plan review before executing any contracts for the winterization work to be constructed.

Due the length of time required for these negotiations, a final winterization plan was submitted to the City on August 9<sup>th</sup>. Based on the review and recommendation of the City's geotechnical consultant the winterization plans were approved on August 24<sup>th</sup>. However no actual construction work has been initiated due to on-going negotiations between Mr. Potter and Y&H Co., and Y&H Company's negotiations with contractors to construct the approved plans. These are critical delays and potentially effect the timely completion of this work. Current estimates for the winterization construction are that it would take 4 to 6 weeks to complete this work. Therefore, staff anticipates that the winterization plans will not be complete prior to the beginning of the rainy season. The authorization requested from the City Council is intended to allow the City to award a contract and implement the work on a time frame faster than the private property owners are currently undertaking to mitigate the threat of the slide remobilizing during the impending rainy season.

### **CITY'S LIMITATIONS**

Since the slide area is confined to private property, the City does not have any mandatory duties to act to mitigate the slide. Although both private property owners have been informed of the

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<sup>3</sup> A neighbor other than Y&H Company.

existence of the slide and the need to stabilize the area, the City is constitutionally prohibited<sup>4</sup> from entering their properties and taking action until such time that the property owners complete their due process for appealing the City's public nuisance determination and Notice to Abate. A hearing has been set for September 28<sup>th</sup>. But there is not a specific date by which the final decisions will be rendered by the hearing officer. Furthermore, the City is limited in its ability to expend public funds for repairing damages on private property. Such an action can only take place if there is a nexus between the proposed work and benefits enjoyed by surrounding community or public at-large. Therefore, the City must first provide reasonable time for the due process rights of each property owners to be observed. Should this process reach its conclusion without the approved winterization plan being constructed, then the City would have to determine whether a nexus exists between the expenditure of public funds and benefits received by the community.

### **SUSTAINABLE OPPORTUNITIES**

Economic: There are no identified economic sustainability opportunities for this project.

Environmental: The construction of a temporary winterization plan for the slide area can potentially improve drainage problems and sedimentation present in the water outflows.

Social Equity: The citizens below the slide area and those using Alvarado Road would benefit from the winterization plan and continued access of a public roadway.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

The proposed winterization plan provides a mechanism for reducing damage and obstruction to Alvarado Road. Therefore, disabled or senior citizens using this access road would benefit from continued public access.

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<sup>4</sup> 4<sup>th</sup> Amendment, US Constitutional protections

## RECOMMENDATION(S) AND RATIONALE

The *Preliminary Landslide Evaluation* report completed by Y&H Company's geotechnical experts (Cal Engineering & Geology) states that "if the landslide is left alone, it will likely reactivate during the next rainy season, if not sooner" and recommended that the "hazard be temporarily mitigated by installing short term measure." Furthermore, in a letter dated May 5, 2006, the City clearly indicated to both private property owners that they would need to initiate negotiations with firms for constructing the eventual winterization plans in order to "minimize any delays between the time the City approves stabilization plans and the actual construction and implementation of said plans." (See Exhibit C) Even though the City has reviewed, approved, and completed the permitting process for the winterization plan, actual construction work has not begun. Delays in constructing the winterization plan would likely result in the slide area remaining unprotected with uncontrolled drainage. Without winterization plan constructed, Alvarado Road and the downhill properties would be threatened with damage. Thus, the immediate construction of the approved winterization plan is required because:

1. It is estimated that it will take 4 to 6 weeks to complete the construction of winterization plans;
2. The rainy season normally starts on or before October 15<sup>th</sup>. This start date has varied significantly in the past few years and there is a possibility that significant rainfall can begin before this date. Although the exact cause of the slide is unknown at this time, there is a consensus between all geotechnical experts studying this slide that the presence of additional rainfall will reactivate the slide movement;
3. The slide threatens to force the closure of Alvarado Road. This road is a major access road for a large number of homes in the Claremont Knolls area and is heavily used by fire and emergency vehicles<sup>5</sup>; and
4. The city has provided adequate time and has approved the necessary permits for each private property owner to construct temporary winterization plans.

For the reasons cited above, staff requests that the City Council identify funds and authorize the City Administrator to informally bid, negotiate and award a construction contract in accordance with plans and specifications for winterization work associated with the Alvarado Road landslide in an amount not to exceed \$500,000, without returning to City Council. Staff is also requesting the City Council to authorize the City Administrator to enter into agreements with the subject property owners to construct property improvements on 21 Drury Court and lots 15, 16, 13, and 20 Claremont Knolls in the Oakland Hills area to abate a public nuisance.

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<sup>5</sup> California Fire Code, 2001, Article 9, Section 902

## **ALTERNATIVE RECOMMENDATIONS**

No Action: The City can opt to take no action at this time and allow negotiations between Y&H Company and its possible contractor(s) to continue until such time that a contract has been executed for the construction of the winterization plans. This action will not help to temporarily stabilize the slide area during the rainy season; therefore, the life safety threat will continue and potentially grow worse during the fall and winter seasons.

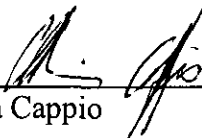
Secure Alvarado Road Only: The City can choose to focus only on providing a barrier between the slide area (on private property) and Alvarado Road (public right of way). This option requires the City to place barriers for protecting the slide mass and debris from entering Alvarado Road and does not include any action by the City to enter private property and construct the winterization work. This option is not feasible because should the slide area mobilize, barriers of more than 8 to 10 feet would have to be constructed to stop the flow of mud and debris on Alvarado Road. Such a construction is cost prohibitive and cannot be completed without significantly deterring public access on Alvarado Road itself. For example, the construction of a barrier wall would have to take place on the public right of way portion of Alvarado Road (as opposed to work being completed on private property). This action will narrow the available width of the street required for vehicular access, especially for fire and emergency vehicles.

Take No Direct Action, Bring Suit Against Private Property Owners To Take Action: The City can choose to take no direct action at this time to construct the approved winterization plan and instead focus on issuing fines and penalties and/or to bring a lawsuit to get a court order mandating the private property owners to construct the improvements. As to fines and penalties, following the determination of the hearing officer after the September 28, 2006 hearing, the City could begin to issue fines for each property owner. Such fines can include, but are not limited to, injunctive relief or fines up to \$1,000 per day. This option can delay the start of the construction work for the winterization plan for an unknown period because staff cannot determine when the hearing officer will issue his final determination. This option limits the liability of the city and reduces actual costs (both construction and future maintenance).

**ACTION REQUESTED OF THE CITY COUNCIL**


Staff recommends that the City Council approve the resolution to authorize the City Administrator to informally bid, negotiate and award a construction contract in accordance with plans and specifications for winterization work associated with the Alvarado Road landslide in an amount not to exceed \$500,000, without returning to City Council.

Respectfully submitted,

  
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Claudia Cappio  
Development Director  
Community & Economic Development Agency

Prepared by:  
Maziar Movassaghi  
Community & Economic Development Agency

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
\_\_\_\_\_  
Office of the City Administrator

Attachments:

- Exhibit A: Map of Slide area and location
- Exhibit B: Parcel Ownership information for slide area
- Exhibit C: Letter dated May 5, 2006 sent to both property owners outlined required work
- Exhibit D: Substandard Declaration and Notice to Abate letter, dated July 21, 2006, sent to both property owners

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## **Exhibit A:**

### **Map of Slide area and location**



FROM THOMAS BROTHERS MAPS 2002

...060910-SiteLocationMap.dwg



CAL ENGINEERING & GEOLOGY

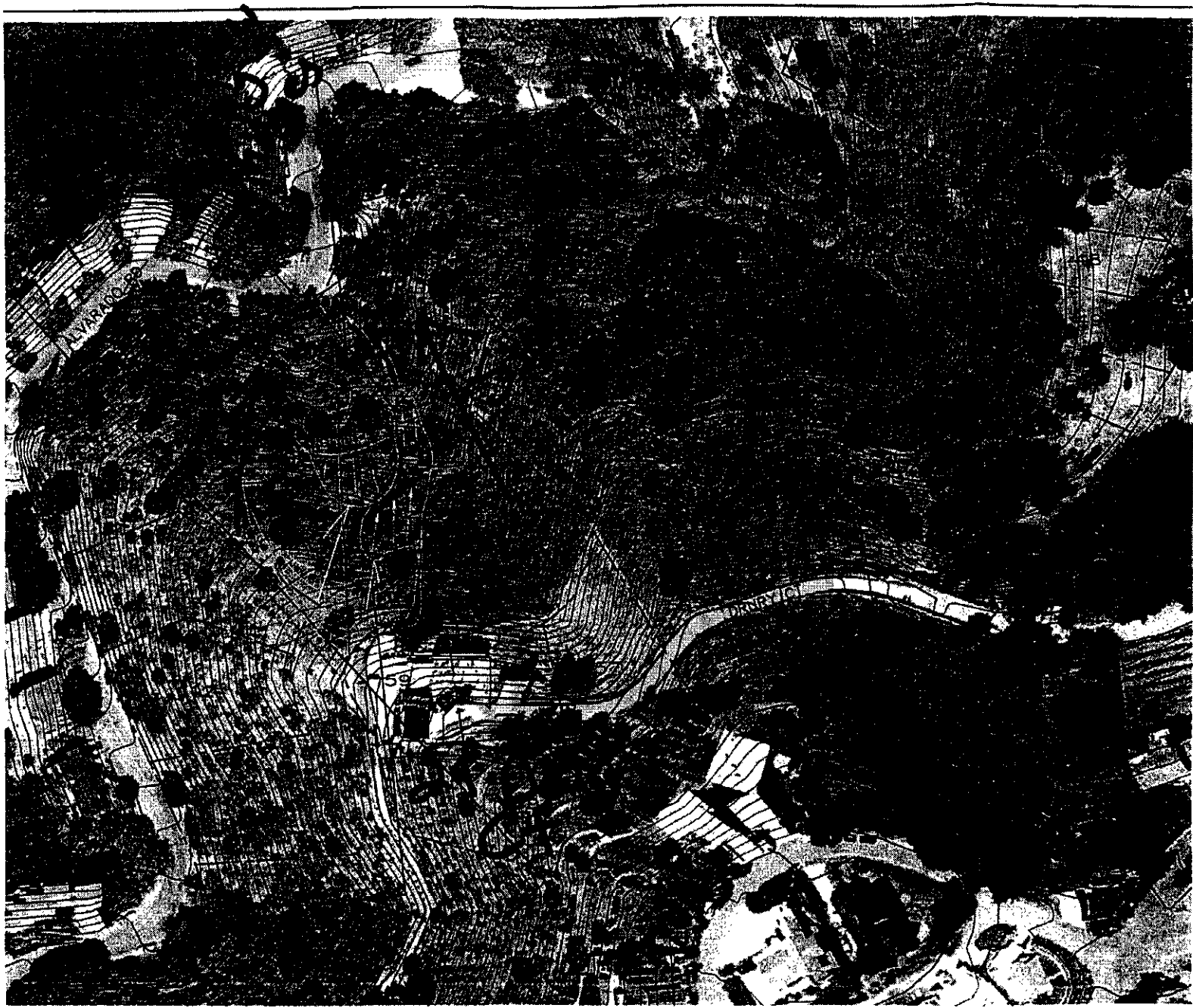
LANDSLIDE  
21 DRURY COURT AND ALVARADO ROAD  
OAKLAND, CALIFORNIA

SITE LOCATION MAP

PROJ NO. 060910

JUNE 2006

FIGURE 1



Excavation with TRACK-MOUNTED EXCAVATOR

with HAND LABORERS

LOCATIONS



**CE&G**  
 CAL ENGINEERING & GEOLOGY

1870 Olympic Blvd  
 Suite 100  
 Walnut Creek, CA 94596  
 Phone (925) 935-9771

LAI  
 21 DRURY COURT  
 OAKLAND  
**PROPOSED EX**  
 PROJ NO. 050910

**Exhibit B:**

**Parcel Ownership information for slide area**

Dartmouth Dr, Alvarado Rd and Gypsy Ln



● 21 Drury Ct  
(left)

1/2 A.C.

SLIDE

DRURY CT

CHANCELOR PL

DAWN ST

DRURY RD

DRURY LN

DARTMOUTH DR

BESITO AV ACCESS

AMBER DR

ALLEY

SILER PL

RISPIN DR

CLAREMONT AV

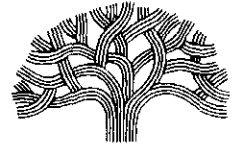
GYPSY LN

## **Exhibit C:**

### **Letter dated May 5, 2006 sent to both property owners outlined required work**

Please note that although only a copy for Y&H Company is provided, the exact same letter was sent to Mr. Potter.

# CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 2340 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency  
Building Services Division

(510) 238-3381  
FAX (510) 238-6996  
TDD (510) 238-6312

By Certified Mail

May 5, 2006

John Hung  
Y & H Company  
592 Vallejo Street, #1  
San Francisco, CA 94133-4017

**RE: Land Slide on Lots 11, 12, & 13 of Claremont Knolls Extension (Dartmouth Dr.)**

Dear Mr. Hung:

As the long rainy season has come to an end, it is time for us to focus our attention on both near-term and longer-term permanent solutions to stabilizing the hill which incorporates your properties in the Oakland. I am appreciative of your quick action in early April 2006 to address the imminent slide hazard and look forward to working cooperatively as you implement permanent measures to avoid such hazards in the future.

The information shared with our office by your geotechnical engineers has indicated that movement of the slide mass has decreased significantly; therefore, the threat of an imminent hazard for a large scale slide on the hill has subsided. However, the presence of a hazard in the form of future slides, especially given additional rain fall in the future, continues to be present. Therefore, you are required to take the following steps:

1. No later than the close of business on June 1, 2006 please submit a plan for removing debris and other materials that present a current hazard to the residents of 1355, 1365, 1375 and 1385 Alvarado Road. This debris is the result of slides of April 2006 and continued to present a hazard to the above mentioned homes on Alvarado. The plans submitted to the City should include a construction staging and grading plan and truck hauling schedule for removing the debris no later than August 15, 2006. The removal of this debris is critical in order to remove future life safety hazards prior to the next rainy season to allow the required time for analyzing, producing, and implementing any long term hydrology and drainage solutions of the hill.

2. No later than close of business on June 30, 2006 you are required to submit plans for mitigating the slide present on your property. These plans should specifically address steps for near-term stabilization of the hill that can be implemented prior to the beginning of the next rainy season, which we define as October 1, 2006. In addition to near-term solutions, your plans should also include discussion and analysis of permanent subsurface and surface drainage mitigation measures to reduce the potential for future erosion and/or slide mobilization. Our preferred goal is to have permanent solutions be constructed and implemented prior to October 1, 2006. However, given that we are already in the middle of the construction season and that plans will not be finalized and approved until sometime mid-to-late summer 2006, we understand that there may be construction required during more than one season. In such an instance, your plans should include (a) a timetable for constructing all permanent solutions no later than the beginning of the rainy season in 2007 (on or before October 1, 2007) and (b) all appropriate mitigation and actions to avoid slides between October 1, 2006 and October 1, 2007.
3. In addition to retaining the services of geotechnical and structural experts to produce the plans for stabilizing the hill detailed above, at this time you also need to begin the process of retaining the services of contractors and/or construction companies. This step is critical due to the fact that we need to minimize any delays between the time the City approves long term solutions and the actual construction and implementation of said plans. In addition, such entities can provide you with additional information about construction costs.

Please note that this letter is intended to clarify and enhance but not replace the information provided to you in our letters of April 3<sup>rd</sup> and April 13<sup>th</sup>, 2006. In other words, we expect you to continue your monitoring of the slide and informing the City should the condition of the slide change to presents an imminent hazard to the homes at 1355, 1365, 1375 and 1385 Alvarado Road and the circumstances and conditions that would require immediate evacuation of those homes. We look forward to continue working with you to address the landslide on your property. We are available to meet with you, but please note that a meeting can not be a replacement of your required actions. If you have any questions or need additional information, please contact Mr. Ray Derania at 510-238-4780.

Sincerely,



Claudia Cappio  
Development Director

Cc: Honorable Jane Brunner, Oakland City Councilmember – District 1  
Deborah Edgerly, City Administrator  
Raul Godinez, Director of Public Works  
Ray Derania, Interim Building Official



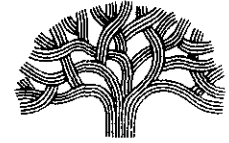
Dominic Ma, Supervising Civil Engineer  
Jeroen van den Berg, Ninyo & Moore

## **Exhibit D:**

### **Substandard Declaration and Notice to Abate letter, dated July 21, 2006, sent to both property owners**

Please note that although only a copy for Mr. Potter is provided, the exact same letter was sent to Y&H Company.

# CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 2340 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency  
Building Services Division

(510) 238-3102  
FAX (510) 238-2959  
TDD (510) 238-6312

July 21, 2006

*US mail - express postage, facsimile, e-mail*

James G. Potter, Jr.  
21 Drury Court  
Oakland, CA 94618

Subject: 21 Drury Court  
Declaration of Public Nuisance -- Order To Abate

Reference: City letters 04/03/06, 04/13/06, 05/05/06, City "restricted entry" 04/13/06  
AKA - Geotechnical Evaluation and Remedial Recommendations 06/30/06  
CEG - Preliminary Landslide Evaluation 07/11/06  
APN 048H-7651-048-00  
Oakland Municipal Code sections 15.08.340.D/ 380.B

Dear Mr. Potter;

As identified in the report (referenced above) by your neighboring property owner's consultant, Cal Engineering and Geology (CE&G), the geotechnical instability that developed in April of this year on your subject property and moved onto your neighbor's properties continues to present a clear hazard to the down-slope public right-of-way (Alvarado Road) and the adjoining developed properties (1355/ 1365/ 1375/ 1383 Alvarado Road).

CE&G has concluded that "... if the landslide is left alone, it will likely reactivate during the next rainy season, if not sooner ..." and recommends that the "... hazard ... be temporarily mitigated by installing short-term ... measures ...". As also identified in the report (referenced above) by your consultant, Alan Kropp and Associates (AKA), their "... mitigation measures provided in (the) report (are not) intended as a stabilization measure for surrounding properties." As you are aware, mitigation of the landslide on the adjoining down-slope unimproved right-of-way that separates your parcel from your neighboring property owner remains the joint responsible of you and your neighbor (Y & H Company).

Therefore, we are making the following determinations and the accompanying declarations:

- The hazardous conditions identified in the CE&G report clearly endanger public infrastructure, public utilities, and developed properties in the likely event the landslide's movement is reactivated. Consequently, your property is hereby determined to be **Unsafe**, and we are therefore required to declare it Substandard and a Public Nuisance and to continue to prohibit occupancy of your home.
- The hazardous conditions also clearly endanger the safety, health, and welfare of the public using Alvarado Road and the occupants of the adjoining developed properties in the likely event the landslide's movement is reactivated. Consequently, your property is further determined to be **Dangerous**, and we are therefore required to order the immediate abatement of the reactivation hazard.

Accordingly, you are hereby ordered to complete all of the following within the designated time limitations:

- **Not later than July 28, 2006**, execute a Compliance Plan and provide an approved security to implement a mitigation plan to stabilize the landslide and arrest further movement (similar in scope to CE&G's recommendations in their Short-Term Landslide Mitigation Plan).
- **Not later than August 2, 2006**, submit an amended geotechnical evaluation with recommendations by your consultant for stabilizing the landslide (peer review by the City's consultant is required).
- **Not later than August 9, 2006**, submit a complete application for required permits to stabilize the landslide.
- **Not later than August 23, 2006**, obtain required permits and commence construction of the landslide stabilization.
- **Not later than September 29, 2006**, obtain final approval of the permits required to stabilize the landslide.

Failure to comply fully with all parts of this Order To Abate within the time limitations specified above will subject you and other persons or entities with a financial interest in the property to the following:

- continuing re-inspection and administrative fees, and
- administrative penalties (\$1,000 per day) and judicial actions, and
- injunctive relief in a court of competent jurisdiction, and
- partial, full, or modified implementation by the City (as recommended by our consultant) of CE&G's Short-Term Landslide Mitigation Plan on your property.

Fees, costs, penalties, and attorney and third-party charges associated with our abatement and enforcement actions are very significant and shall be a charge against the property and persons or entities having a financial interest in the property. These charges will be asserted as lien encumbrances against the property title that will be recorded with the Alameda County Recorder and will be recovered either by the Alameda County Assessor through the property tax general levy (priority lien and special assessment) or by the City through court action (judgment lien) against other persons and entities with a financial interest in the property.

In addition, outstanding costs, fees and charges associated with our abatement, if not reimbursed otherwise, will be recovered from any payment related to a settlement of any claims you and other persons and entities might receive from any other parties or insurers.

You may appeal our determinations to an independent Administrative Hearing Examiner. You must pay a \$70.00 non-refundable filing fee, and you must clearly identify how the City has erred or abused its discretion in these actions. Please be advised that you will be assessed additional fees for processing the administrative hearing should your appeal be denied.

Please file your appeal (refer to the enclosure for our recommended format) directly with our hearing supervisor:

July 21, 2006  
Declaration of Public Nuisance  
page 3 of 3

Ms. Sandra Smith  
Management Assistant  
250 Frank H. Ogawa Plaza – 2nd Floor  
Dalziel Administration Building  
Oakland, CA 94612

either:

- orally by telephone message (24 hour) at 510/ 238-3239, or
- in writing by facsimile transmittal (24 hour) at 510/ 238-2959, or
- in writing by mail or courier delivery or personal delivery (8:00 am to 4:00 pm weekdays) at the address above.

If we do not receive your oral or written appeal and filing fee **before 4:00 pm (local time), Friday, July 28, 2006**, you will waive your right for further administrative adjudication of this matter, and your only other method for redressing this matter will be judicial action.

Sincerely,



RAYMOND M. DERANIA  
Interim City Engineer  
Community and Economic Development Agency

(enclosure)

cc: David Stein, Esq. (facsimile, e-mail)

2006 SEP 21 PM 5:22

*F. Faiz*

City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

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**A RESOLUTION AUTHORIZING AN AGREEMENT WITH PRIVATE PROPERTY OWNERS TO ABATE AN IMMINENT HAZARD ON 21 DRURY COURT AND LOTS 15, 16, 13, AND 20 CLAREMONT KNOLLS IN THE OAKLAND HILLS, WAIVING FURTHER BIDDING AS PERMITTED UNDER OAKLAND MUNICIPAL CODE SECTION 2.04.050.I AND AUTHORIZING THE CITY ADMINISTRATOR TO INFORMALLY REBID OR NEGOTIATE IF NECESSARY, AND AWARD A CONSTRUCTION CONTRACT IN ACCORD WITH PLANS AND SPECIFICATIONS FOR WINTERIZATION WORK ASSOCIATED WITH THE ALVARADO ROAD LANDSLIDE WITHIN BUDGET IN AN AMOUNT NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000), WITHOUT RETURN TO CITY COUNCIL**

**WHEREAS**, on April 2006 a landslide occurred on the properties located at 21 Drury Court and Lots 15, 16, 13, and 20 Claremont Knolls in the Oakland hills ("Properties");

**WHEREAS**, the Properties are owned by two individuals and each private property owner ("Owner") was notified of the existence of the slide and the need for monitoring and stabilizing the slide area; and

**WHEREAS**, this landslide constitutes a life safety hazard to both the residents living below the slide area on Alvarado Road and those in the surrounding community using Alvarado Road for public access, including limiting access for fire and emergency vehicles as defined by 2001 California Fire Code, Article 9, Section 902, as well as an imminent threat Alvarado Road itself, which is a public road; and

**WHEREAS**, On May 5, 2006 both Owners were notified of a need to produce and implement a temporary winterization plan prior to the onset of winter rains to minimize the possibility that additional rain may remobilize the slide; and

**WHEREAS**, temporary winterization efforts would provide all parties adequate time to

study the causation and produce a final long term stabilization plan for said slide, while protecting public health and safety and public facilities; and

**WHEREAS**, On July 21, 2006 the City declared the Properties a public nuisance based on California Civil Code Section 3479-3480 and sent a notice to abate the slide to each Owner ; and

**WHEREAS**, August 24, 2006 the City approved and issued a grading permit to the property owners to authorize them to construct a temporary winterization consisting of, but not limited to, installation of debris dams, removal of fallen debris, fiber rolls, plastic sheeting, subsurface hydroauger and surface drainage pipes, water pollution control measures, temporary railing, silt fencing, and debris flow barriers for the said area; and

**WHEREAS**, the City has made every effort to support and direct the Owners to expeditiously implement the Abatement Plan , but as of the date of this resolution no construction work has begun and this construction work is estimated to require four to six weeks to complete; and

**WHEREAS**, *City staff wishes to perform only those repairs necessary to abate the imminent hazard to both the residents living below the slide area on Alvarado Road and those in the surrounding community using Alvarado Road for public access, including limiting access for fire and emergency vehicles as defined by 2001 California Fire Code, Article 9, Section 902, as well as to Alvarado road itself; and*

**WHEREAS**, the Owners must agree to allow the City of Oakland onto the Properties and abate the hazard or the City will be required to secure entry through other means, including but not limited to applying for a court order to authorize entry onto the properties to do the work; and

**WHEREAS**, the City Council finds and determines that the services provided under any contracts authorized by this resolution are in the public interest because of economy and better performance, are of a technical and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service; now, therefore, be it

**RESOLVED:** That the city hereby finds that the facts set forth in recitals to this resolution are true and correct, and establish the factual basis for authorizing the City Administrator to take action; and, be it

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to enter into agreements with Owners to abate the imminent hazard and said agreements must include, at a minimum, the following provisions:

1. Owners shall be required to fully reimburse the City for any cost to abate the hazard or the City will file liens against their properties.

2. Owners shall be required to diligently prosecute any insurance claims and assign the City the proceeds of any successful claim.
3. Owners agree to defend, indemnify, and hold the City harmless and provide the City with releases and waivers for any claims or lawsuits arising out of or in any way connected to the slide and/or the abatement work; any and all such agreements shall be recorded.
4. Owners agree to expressly waive the protections of Civil Code section 1542, and expressly waive and release any rights or benefits arising thereunder, and, be it

**FURTHER RESOLVED:** That the City Administrator is directed to apply for a court order to authorize entry onto the Properties to do the Abatement work if the Owners do not voluntarily agree to allow the City to perform the Abatement work; and

**FURTHER RESOLVED:** That the City Administrator is directed to file property abatement liens to recover all of City's costs to do the work if the Owners do not voluntarily repay the City; and

**FURTHER RESOLVED:** That the City Council hereby finds that in order to limit life and public safety danger, and protect public facilities, the temporary abatement should be constructed as soon as possible; and, be it

**FURTHER RESOLVED:** That the construction of temporary winterization measures by the City do not absolve the Owners from studying the causes for the slide and the preparation of long term stabilization plans for the slide area, which are expected to be completed on or before October 15, 2007 by Owners; and, be it

**FURTHER RESOLVED:** That, pursuant to Oakland Municipal Code Chapter 2.04, Article 2.04.050.I.5, the City Council hereby finds that it is in the City's best interests to waive the regular advertising, competitive bid and award process because it would delay commencement of the necessary construction work into the 2006 rainy season; and, be it

**FURTHER RESOLVED:** That the City Council hereby authorizes the City Administrator to informally rebid or negotiate if necessary, and award a construction contract in accord with plans and specifications for winterization work associated with the Alvarado Road landslide affecting properties located at 21 Drury Court and Lots 15, 16, 13, and 20 Claremont Knolls in the Oakland hills Lots within budget in an amount not to exceed five hundred thousand dollars (\$500,000.00), without return to City Council; and, be it

**FURTHER RESOLVED:** That all agreements authorized hereunder shall be reviewed and approved by the City Attorney for form and legality and shall be filed in the office of the City Clerk.



**FURTHER RESOLVED:** That the City Administrator is authorized to take any and all steps necessary to implement the agreements and actions authorized hereunder consistent with the terms of this resolution.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California