

TOLLING AGREEMENT

This Tolling Agreement ("Agreement") is made and entered into as of January 5, 2005, by and between the CITY OF OAKLAND ("City"); ANNA and ANGELOS SAKKIS, PHIL GREGORY/CAL ENGINEERING & GEOLOGY INC., AL WILLIAMS, VIRGINIA JONES, TONY PEREIRA (collectively referred to as "Real Parties in Interest"); Friends of Peralta Creek and Denise Davila (collectively referred to as "Friends"). The effective date of this Agreement is the last date on which this Agreement is signed by any of the parties to the Agreement.

RECITALS

- A. On October 29, 2004, the City of Oakland's Community and Economic Development Agency approved a variance (V04-209) and creek protection permit (CP04-071) for a landslide repair project ("Project") consisting of grading and slope stabilization to repair a landslide on five parcels (4165 and 4201 Norton Avenue; 4168, 4200 and 4206 Rettig Avenue) in Oakland, California.
- B. On November 8, 2004, Friends filed an appeal of the City's October 29, 2004 decision to approve these variance and creek protection permits for the Project.
- C. On December 1, 2004, the Oakland Planning Commission denied Friends appeal, affirmed City staff's environmental determination, and approved the variance and creek protection permits for the Project. On December 2, 2004, City filed a Notice of Exemption with the Alameda County Clerk's office which claimed the Project is exempt from the California Environmental Quality Act ("CEQA").
- D. On December 15, 2004, the Oakland Planning Commission reaffirmed its December 1, 2004 decision to deny Friends' appeal, approve a variance and creek protection permit for the Project, and exempt the Project from compliance with CEQA. The City then filed a second Notice of Exemption with the Alameda County Clerk's office claiming that the Project was exempt from CEQA.
- E. On December 16, 2004, the City of Oakland, through its Public Works Agency and Tree Services Section thereof, approved four (4) development-related tree removal permits for the Project (Permit Nos. DR04-056, DR04-057, DR04-100, DR04-101). The December 16, 2004 tree removal permits were also found by the City to be exempt from CEQA under the previously claimed exemption for the Project.
- F. On December 21, 2004, the City of Oakland approved wet weather grading permit No. GR0400096 for the Project to allow limited grading and the installation of stabilization piles to proceed immediately during the wet weather months (October 15 through April 15). On December 27, 2004, the City filed a Notice of Exemption with the Alameda County Clerk's office claiming that the work approved in the wet weather grading permit was similarly exempt from CEQA.
- G. Public Resources Code Section 21167, subdivision (d), states that the statute of

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limitations within which the City's decision to approve the Project on grounds of noncompliance with CEQA may be challenged is thirty five (35) days from the date of filing of the Notice of Exemption.

H. Friends has expressed its intent to file a lawsuit challenging, among other things, the City's environmental review, or lack thereof, of the project pursuant to CEQA.

I. The City and Real Parties in Interest disagree with Friends' assertion that CEQA's mandates were improperly followed and that the Project is not exempt from CEQA.

J. In order to provide the parties with a reasonable opportunity to resolve their various disputes without resorting to litigation and to engage in continued settlement discussions, the parties desire to toll all applicable statutes of limitations for the commencement of litigation based on the alleged failure to comply with CEQA or any other grounds, as to Denise Davila and Friends of Peralta Creek and not to any other party. This agreement does not extend to any individuals who, through members or officers of Friends, might be contemplating the filing of litigation in their own names as individuals, or to any individuals who, through members or officers of Friends, might be contemplating joining with other individuals to form a new organization to file litigation in the name of the new organization, or to anyone else. In other words, the additional time provided herein for Friends to file litigation does not extend to any individuals, persons or entities, other than Denise Davila and Friends.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. Each Recital set forth above is incorporated herein by reference and is made part of this Agreement.
2. The parties agree that the statute of limitations for any claim or cause of action relating to the Project approvals referenced in Recitals A through F that would otherwise expire between the effective date of this Agreement and the termination date of this Agreement is tolled until the termination date of this Agreement pursuant to paragraph 12 ("Tolling Period").
3. The City and Real Parties in Interest hereby waive any defense that they may have to any claim or cause of action based on the expiration of the statute of limitations, laches, estoppel or waiver regarding the passage of time, action or inaction during the Tolling Period. The City's and Real Parties in Interests' waiver, however, extends only to the additional amount of time represented by the passage of the time between the date on which the original statute of limitations would have expired and the subsequent date on which this Agreement terminates pursuant to paragraph 12.

4. The parties agree that neither execution hereof nor performance of any of the provisions of this Agreement shall constitute or be construed as or constitute evidence of an admission on the part of any party of any liability.
5. The parties recognize that under limited circumstances, certain statutes of limitations enacted for the benefit of the public may not be subject to waiver by agreement. The parties to this Agreement agree that no such statute of limitations is involved in or implicated by this Agreement and that they will not raise any defense based upon such ground.
6. The parties agree that the Public Ethics Commission complaint submitted to the City by Denise Davila dated December 10, 2004 (Complaint No. 04-07) ("Ethics Complaint") is hereby stayed, and the City's duty to act on or otherwise respond to the Ethics Complaint is hereby deferred, during the Tolling Period. If the parties are able to come to terms and settle this dispute by the termination date of this Agreement, Denise Davila agrees to formally withdraw, with prejudice, the Ethics Complaint within five (5) days of the execution of any such settlement agreement. If the parties are unable to settle this dispute by the termination date of this Agreement, the Ethics Complaint shall be automatically reinstated on January 28, 2005 such that the City's duty to act on or otherwise respond to the Ethics Complaint will be revived.
7. This Agreement may be executed by the parties in one or more counterparts. All counterparts of any such documents together shall constitute one and the same instrument. This Agreement is of no force or effect until all of the parties have duly executed the Agreement. This Agreement may be executed by facsimile and a facsimile signature shall have the same force and effect as an original signature.
8. The individuals signing this Agreement on behalf of each party represent and warrant that they are authorized to do so on behalf of their respective parties.
9. This Agreement constitutes the entire agreement between the parties hereto regarding the tolling of the statutes of limitations. There are no other such agreements, warranties or representations regarding the statutes of limitations other than those expressly set forth in this Agreement.
10. Except as set forth herein, nothing contained herein shall constitute a waiver of any claims, demands, causes of action, positions, rights, remedies and defenses, in law and in equity, of any of the parties.
11. The parties acknowledge that each party and its counsel have reviewed this agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement.
12. This Agreement shall terminate and shall no longer be in force after 5:00 p.m. on

January 27, 2005.

13. Except as stated in Section 6 above, it is the express purpose and intent of the parties to preserve all claims and defenses which any party hereto had or could have asserted as of the effective date of this Agreement. The parties agree that nothing in this Agreement shall operate to revive or reinstate any claim which would be barred by any applicable statute of limitation and/or laches as of the effective date of the Agreement. The parties further agree that each party is free to assert at any time any defenses based on the passage of time prior to the effective date of the Agreement, and on the passage of time for any action filed outside the term of this Agreement.

14. The parties shall not challenge the legitimacy of this Agreement or raise as a jurisdictional issue the validity of this Agreement in any future legal action arising as a result of the termination of this Agreement and/or the filing of any Petition.

15. Any party may bring an action to enforce the terms of this Agreement.

DATE: January 5, 2005

CITY OF OAKLAND

BY: _____
Mark Wald
Senior Deputy City Attorney

DATE: January 5, 2005

MILES MILES & WESTBROOK

BY: Joel Westman FOR Chipman Miles
Chipman Miles
Attorney for Real Parties in Interest
Anna and Angelos Sakkis; Phil
Gregory/Cal Engineering and
Geology, Inc.; Al Williams; Virginia
Jones; and Tony Pereira

DATE: January 5, 2005

LAW OFFICES OF THOMAS N. LIPPE

BY: _____
Stephen E. Velyvis
Attorney for Friends of Peralta Creek
and Denise Davila

January 27, 2005.

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DATE: January 5, 2005

CITY OF OAKLAND

BY: Mark P. Wald
Mark Wald
Senior Deputy City Attorney

DATE: January 5, 2005

MILES MILES & WESTBROOK

BY: _____
Chipman Miles
Attorney for Real Parties in Interest
Anna and Angelos Sakkis; Phil
Gregory/Cal Engineering and
Geology, Inc.; Al Williams; Virginia
Jones; and Tony Pereira

DATE: January 5, 2005

LAW OFFICES OF THOMAS N. LIPPE

BY: Stephen E. Velyvis
Stephen E. Velyvis
Attorney for Friends of Peralta Creek
and Denise Davila

Jan 05 05 11:00A Law Offices of Thomas N. 415 777 9809 P.S

Jan 05 05 04:45P Law Offices of Thomas N. 415 777 9809 P.S