

City of Oakland Public Ethics Commission

COMPLAINT FORM

PUBLIC ETHICS COMMISSION  
2004

For Official Use Only

2004 DEC 11 A 10:12

Stamp Date/Time Received:

Complaint Number: \_\_\_\_\_

Please Type or Print in Ink and Complete this Form.

This complaint concerns a possible violation of: (please check all that apply)

The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)

Oakland Campaign Reform Act

Oakland City Council's Rules of Procedure/Code of Ethics

Oakland Limited Public Financing Act

Oakland Conflict of Interest regulations

Oakland Lobbyist Registration Act

Oakland False Endorsement In Campaign Literature Act

I am/We are not sure which specific law, ordinance or regulations apply. However, I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s)

November 22, 2004 – December 1, 2004

The alleged violation occurred at the following place:

Oakland Planning Commission

Please provide specific facts describing your complaint (Or attach additional pages as necessary.)

Please See Attached Letter

The persons you allege to be responsible for the violation(s) are:

Oakland Planning Commission & Related Staff

Any witnesses who were involved and/or who can provide additional information: (Please indicate names and phone numbers, if available.)

PLEASE NOTE:

There may be other laws that apply to the violations you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filling this complaint. You should contact an attorney immediately to protect any rights available to you under the law.

By filling this complaint with Public Ethics Commission it, and all other materials submitted with it, becomes a public record available for inspection and copying by the public

NAME: Denise Davila \_\_\_\_\_

PHONE NO.(Day/Eve): (510) 531-3930 \_\_\_\_\_

ADDRESS: 4150 Rettig Avenue \_\_\_\_\_

CITY: Oakland STATE: CA ZIP: 94602

FAX NO.: (510) 531-3930. Telephone First.

E-MAIL: d2davila@yahoo.com

PLEASE RETURN THIS FORM TO:

Public Ethics Commission  
One Frank Ogawa Plaza, 4th floor  
Oakland, CA 94612

Revised letter attached

ATTACHMENT 1A

Item E-1  
Date 1-12-05  
Page 8 of 52

Denise Davila  
4150 Rettig Avenue  
Oakland CA, 94602

December 10, 2004\*

Public Ethics Commission  
One Frank Ogawa Plaza  
Oakland, CA 94612

Dear Public Ethics Commissioners,

### **Introduction**

Since January 2004, we have attempted to participate in the democratic process regarding the Rettig Avenue Landslide project, Case V04-209 & CP04-071 (A04-521). Our participation has been trivialized and prejudiced by City Staff and Representatives.

Most recently, we were prejudiced by the unfair discretion of City Staff and Planning Commissioners regarding the Appeal Hearing of Case V04-209 & CP04-071 (A04-521), on Wednesday, December 1.

### **I. Improper Notification to the Appellant & Residents in Proximity of the Project**

- A. On Monday, November 22 at 1:35PM, Planner, Edward Manasse, sent an electronic transmission to notify key parties that the appeal hearing (A04-521), had been added to the agenda for the December 1 Planning Commission meeting. A total of 9 days notice was provided via e-mail beginning the first day of the Thanksgiving Holiday Week in which many people take extended vacation time (1).
- B. Hard copy notification of the Revised Planning Meeting Agenda was not post-marked until Tuesday, November 23. Homeowners in proximity of the project, however, did not receive the document until Saturday, November 27 due to the Thanksgiving holiday (2).

### **II. Improper Notification of the Public: Violation of Brown Act & Sunshine Ordinance**

- A. The Planning Commission Agenda Web Page was not updated with the Revised Agenda 72 hours before the meeting.
- B. The Planning Commission Web Page does not inform the public to "check-back" up to 72 hours before the meeting for revisions to the agenda. -Had there been such an instruction, constituents who viewed the web site before Thanksgiving would have been notified of potential addendums to the Dec. 1 Agenda.
- C. The Revised Agenda was not filed with the Office of the City Clerk 72 hours before the meeting (3).
- D. The Revised Agenda was never sent to the Oakland Public Library (4).
- E. The Revised Agenda was never sent to the constituents whom attended the July 14 Public Meeting hosted by Councilmember Quan. City officials promised to notice all attendees of actions related to the Rettig Avenue project.
- F. Persons whom received the original version of the Agenda did not receive new copies of the "revised" version.

If during the long holiday week it was so important to revise the Planning Commission Agenda to include our appeal hearing, then the City should not have violated the Brown Act and the Sunshine Ordinance. As a result, citizens with deep interest in the project were uninformed about the appeal hearing because of the extreme limitations the City placed on notifying constituents over the holidays.

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### III. Unavailability of Agenda Related Materials: Violation of Sunshine Ordinance OMC 2.20.080c.

- A. The Oakland Planning Commission Agenda states: "Staff reports for items listed in this agenda will be available by 3:00 p.m. the Wednesday, one week before the meeting, to any interested party..." (5).
- B. The Staff Report was not prepared until Monday, November 29 (10). Neither the Staff Report nor the Agenda Related Materials were even ready to be filed with the Office of the City Clerk 72 hours before the meeting.

As a result, none of the participants (commissioners, applicants, or appellants) received the large quantity of materials until Tuesday, November 30, barely 24 hours before the appeal hearing.

If City staff observed the customary practices of the Planning Commission, a full week (Wednesday – Wednesday) would have been provided for any interested party to review the staff report and its attachments.

If City staff minimally observed the Sunshine Ordinance, and it had not been a holiday week, interested parties would have still been provided approximately 120 hours (Friday – Wednesday) to review the staff report and its attachments.

We, the appellants, receiving barely 24 hours, did not have adequate time to review and respond to the Staff Report and its twenty-one attachments, many of which we had never before seen.

Moreover, Planning Commissioners did not receive more than 24 hours to review the agenda related materials let alone learn and study the arguments of the appeal.

### IV. Inequitable Discretion on the part of City Staff and Planning Commissioners

- A. On Wednesday morning, November 24, we sent a letter to Mr. Gary Patton, Mr. Calvin Wong, Mr. Edward Manasse, Mr. Mark Wald, and Planning Commissioners to request the rescheduling of the appeal hearing to a date that accommodates all parties and enables the City to provide appropriate written notification (6).
- City Attorney Mark Wald responded via telephone. He stated (a) that because of the holiday week he was unable to discuss our request with staff whom were already on Thanksgiving vacation, and (b) that we would have to make our request in person on December 1.
- B. After Thanksgiving on Monday, November 22, we went to the Office of the Planning Commission and the Planning & Zoning Department to request in person, the rescheduling of the appeal hearing. We were told to speak directly with Gary Patton, who was not in the office.
- C. On Tuesday, November 30, we sent a e-mail to the Planning Commission to request the appeal hearing be rescheduled to December 15 (7).
- Commission Chair, Mark McClure replied, "I believe the December 15<sup>th</sup> Agenda is already completely full, so it will not be possible to continue it to that date (8)."
- D. The Oakland Tribune ironically reports, however, that during the Dec 1 meeting Mr. McClure & Ms. Claudia Cappio postponed one of the evening's hearings to December 15, even though the applicant was there and had never asked for the delay (9).

In contrast, the Commission flatly denied our request to reschedule our hearing and to provide proper notification, stating that there wasn't any room available on the December 15 Agenda.

### V. Access Denied to Public Records.

- A. I have personally reviewed all of the Public Records for Planning & Zoning permit project: V04-209 & CP04-071 no less than 11 times since June, 2004. I last reviewed the Public Records on Monday, November 1 and Monday, November 29. On November 29, the file for V04-209 was approximately one-half its normal size.

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B. The following documents that were attached to the Staff Report were not located in the Public Records and had never been made available to us:

Attachment A: November 22, 2004.	<u>Fitzgerald Abbott &amp; Beardsley Letter</u>
Attachment F: October 22, 2004.	<u>Reza Baradaran Memo</u>
Attachment I: September 28, 2004.	<u>Hallenbeck Allwest Report</u>
Attachment J: August 9, 2004.	<u>CE&amp;G Report</u>
Attachment M: July 20, 2004.	<u>Hallenbeck Allwest Report</u>
Attachment T:	<u>Wet Grading Permit (Draft)</u>
Attachment U: November 23, 2004.	<u>Draft Wet Weather Grading Application</u>

At minimum, Attachments F, I, J, and M should have been in the Public Record no later than October 29, the day the City issued the Decision Letter on the project.

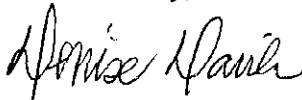
C. Planning Commissioners were informed of the violation of the Public Records Act at the December 1 meeting, and a request was made for the provision of adequate time to review the documents.

### Conclusion

When citizen invest precious time, energy, and money to participate in the democratic process, City staff and representatives must take serious their duty to uphold our laws and to uphold the commitments they make to constituents.

We urge the Public Ethics Commission to consider how citizens have been prejudiced by the City of Oakland regarding the appeal of Case V04-209 & CP04-071, and to demand that the Planning Commission (a) rescind its December 1, 2004 decision to deny appeal number A04-521 and (b) re-schedule the appeal hearing for a future Planning Commission meeting when 72 hours notice to the public is guaranteed and the Staff Report & Agenda Related Materials are available the Wednesday, one week before the meeting.

Yours Sincerely,



Denise Davila  
Friends of Peralta Creek

### Notes:

- |                       |  |
|-----------------------|--|
| 1. November 22, 2004. | Ed Manasse E-Mail  |
| 2. November 23, 2004. | Post-Mark of Notification to Certain Rettig & Norton Ave homeowners. |
| 3. November 29, 2004. | Dated & Stamped Agenda filed with the Office of the City Clerk       |
| 4. December 7, 2004.  | Testimony of Oakland Public Library Staff                            |
| 5. November 22, 2004. | Revised Agenda, page 2   |
| 6. November 24, 2004. | First Request Letter to Reschedule Appeal Hearing                    |
| 7. November 30, 2004. | Second Request Letter to Reschedule Appeal Hearing                   |
| 8. December 1, 2004.  | Reply from Commissioner McClure                                      |
| 9. December 4, 2004.  | Oakland Tribune Article  |
| 10. November 29, 2004 | Staff Report E-Mail  |

\* Please note, this letter takes the place of the December 9 letter that was sent via FAX.

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From: "Manasse, Edward" <EManasse@oaklandnet.com>  
 To: "lippelaw@sonic.net" <lippelaw@sonic.net>, "asakki@earthlink.net" <asakki@earthlink.net>, "d2davia@yahoo.com" <d2davia@yahoo.com>  
 "Wald, Mark" <MPWald@oaklandcityattorney.org>, "Ma, Dominic" <DMa@oaklandnet.com>, "Cowan, Richard" <RCowan@oaklandnet.com>, "Schwarz, Alison" <aschwarz@oaklandnet.com>, "Kashi, Kevin" <kkashi@oaklandnet.com>, "Gallagher, Daniel" <DGallagher@oaklandnet.com>, "Placido, Abe" <APlacido@oaklandnet.com>, "Matsumura, Brian" <BPM@oaklandnet.com>, "Smith, Gerald" <JSmith@oaklandnet.com>  
 Subject: Norton-Rettig Appeal before the Planning Commission on 12/1/04  
 Date: Mon, 22 Nov 2004 13:35:56 -0800

**Edward C. Manasse**, Planner IV  
 Design Review Supervisor  
 City of Oakland  
 CEDA-Planning & Zoning Div.  
 ph: 510-238-7733  
 fax: 510-238-4730  
 e-mail: [emanasse@oaklandnet.com](mailto:emanasse@oaklandnet.com)

Attachment



PC.Agenda\_12\_1\_04.REVISED.doc  
 doc file

ATTACHMENT IA

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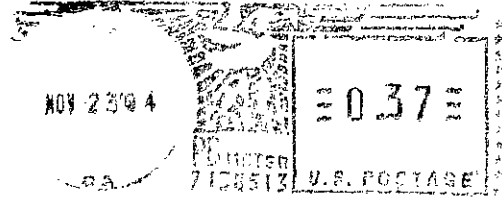


ATTACHMENT 1A

CITY OF OAKLAND



COMMUNITY & ECONOMIC DEVELOPMENT AGENCY  
ZONING DIVISION  
250 FRANK H. OGAWA PLAZA, SUITE 2114  
OAKLAND, CALIFORNIA 94612-2031



CASE(S): A04-209 (V04-209, CP04-071)  
HASTINGS BARBARA  
4169 RETTIG AV  
OAKLAND CALIF 94602

94602+4020 27



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Date 4-12-05  
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# Oakland City Planning Commission

## AGENDA

(Revised: 11/22/04)

Mark McClure, Chair  
Celand Jang, Vice Chair  
Nicole Franklin  
Clinton Kilhan  
Suzie W. Lee  
Michael Lighty  
Anne Mudge

NOV 25 AM 9:35

DECEMBER 1, 2004  
Regular Meeting

Notice – Staff reports are now available on-line. See web site download instructions on Page 2.

### MEAL GATHERING 5:00 P.M.

Off Broadway Cafe & Catering Co., Cafe Deli, 416 15th Street

Open to the public at no charge. (Members of the public must pay for their own meals if desired. Purchase of meal is not required to attend.)

### BUSINESS MEETING 6:30 P.M.

Hearing Room 1, City Hall, One Frank H. Ogawa Plaza

Persons wishing to address the Commission on any item on the agenda, including Open Forum and Director's Report, should fill out a speaker card and give it to the Secretary prior to the convening of the meeting or prior to 8:30 p.m. for matters scheduled to be heard after 8:30 p.m. Speakers are generally limited to two minutes at the discretion of the Chair. Applicants and appellants are generally limited to five minutes.

Agenda items will be called at the discretion of the Chair and not necessarily in the order they are listed on the agenda. However, a matter identified as an 8:30 p.m. item shall not be called until 8:30 p.m. or later. The order of items will be determined under "Agenda Discussion" at the beginning of the meeting. With the exception of Open Forum, a new item will not be called after 10:15 p.m., and the meeting will adjourn no later than 10:30 p.m. unless the meeting is extended by the Chair with the consent of a majority of Commissioners present.

POSTED  
NOV 29 2004  
BY: D

For further information on any case listed on this agenda, please contact the case planner indicated for that item. For further information on Historic Status, please contact the Oakland Cultural Heritage Survey at 510-238-6879. For other questions or general information on the Oakland City Planning Commission, please contact the Community and Economic Development Agency, Planning and Zoning Division, at 510-238-3941.

This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the Planning Department at 510-238-3941 or TDD 510-238-3254 at least three working days before the meeting. Please refrain from wearing scented products to this meeting so attendees who may experience chemical sensitivities may attend. Thank you.

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# YAHOO! MAIL

Print - Close Window

**From:** "Smith, Douglas" <dsmith@oaklandlibrary.org>  
**To:** "'d2davila@yahoo.com'" <d2davila@yahoo.com>  
**Subject:** Dec. 1 Planning Commission Agenda  
**Date:** Tue, 7 Dec 2004 09:33:49 -0800

Hello Ms. Davila,

I've confirmed with the Library staff members who receive city agendas that the Main Library did not receive any revisions to the Planning Commission's December 1 agenda.

Douglas Smith  
Acting Supervising Librarian  
Public Services, Main Library  
Oakland Public Library

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Please check with the Planning Department prior to the meeting regarding items that may be continued. Any agenda item may be continued, without the hearing on the matter being opened or public testimony taken, at the discretion of the Chair. Persons wishing to address the continued item may do so under Open Forum.



Staff reports for items listed on this agenda will be available by 3:00 p.m. the Wednesday, one week before the meeting, to any interested party, at the Community and Economic Development Agency, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Oakland, California 94612. Reports are available at the Strategic Planning Division on the 3<sup>rd</sup> floor (Suite 3330), which closes at 5:00 p.m.

New web-site staff report download instructions

Staff reports are also available on-line, generally one week prior to each meeting, at [www.oaklandnet.com](http://www.oaklandnet.com) by searching "Frequently Visited Pages" located on the City of Oakland Homepage. Clicking on "Planning Commission Meetings" will open a menu of Planning Commission and Committee Agendas. Staff reports are available on the selected agenda by clicking on the highlighted case file number. For further information, please call 510-238-3941. *While attending Planning Commission meetings parking in the Clay Street Garage is Free. Attendees should write Planning Commission on the back of the parking ticket.*

If you challenge a Commission decision in court, you may be limited to issues raised at the hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the hearing. Any party seeking to challenge in court those decisions that are final and not administratively appealable to the City Council must do so within ninety (90) days of the date of the announcement of the final decision.

**ROLL CALL**

**WELCOME BY THE CHAIR**

**COMMISSION BUSINESS**

Agenda Discussion

Director's Report

Committee Reports

Commission Matters

City Attorney's Report

**OPEN FORUM**

At this time members of the public may speak on any item of interest within the Commission's jurisdiction. Speakers are generally limited to two minutes or less if there are six or less speakers on an item, and one minute or less if there are more than six speakers.

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Law Offices of  
THOMAS N. LIPPE

329 Bryant Street,  
Suite 3D  
San Francisco, California 94107

Telephone: 415-777-5600  
Facsimile: 415-777-9809  
Email: Lippelaw@sonic.net

November 24, 2004

Planning Commission City of Oakland 250 Frank H. Ogawa Plaza Suite 2114 Oakland, CA 94612	Gary V. Patton Deputy Director City of Oakland CEDA-Planning and Zoning Division 250 Frank H. Ogawa Plaza Suite 2114 Oakland, CA 94612
Calvin Wong Director of Building Services City of Oakland 250 Frank H. Ogawa Plaza Suite 2340 Oakland, CA 94612	Edward C. Manasse, Planner IV Design Review Supervisor City of Oakland CEDA-Planning & Zoning Division 250 Frank H. Ogawa Plaza Suite 2114 Oakland, CA 94612

**RE: Appeal of City's Approval of Norton-Rettig Landslide Project**

Dear Planning Commissioners and Sirs:

This office represents Friends of Peralta Creek and Denise Davila (hereinafter "Friends") with respect to the Landslide Repair Project (hereinafter "Project") proposed at 4156 and 4201 Norton Avenue; 4168, 4200 and 4206 Rettig Avenue. I am writing to request a continuance of the appeal hearing currently set for the December 1, 2004 Planning Commission meeting.

On Monday, November 22, both Denise Davila and I received an email from Edward Manasse attaching a copy of the agenda for the December 1, 2004 Planning Commission meeting showing Friends' appeal set for hearing on December 1, 2004. This was the first and only notice that we received of this date for the appeal hearing. This email notice does not comply with the notice requirements in City Code Sections 17.148.060 and 13.16.450 for appeals of decisions approving minor variances and creek protection permits. Those sections require the City to give written notice of the date and place of the hearing on the appeal to the appellant and appellant's attorney (among others) not less than 10 days prior to the appeal hearing. Assuming, *arguendo*, that Mr. Manasse's email qualifies as the required written notice, it remains deficient due to the fact that it was provided just nine days prior to the date Friends' appeal is scheduled to be heard by the Planning Commission.

Also, Ms. Davila teaches a college course at California State University Hayward which holds class once a week on Wednesday evenings. Normally, Ms. Davila would be able to make

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Planning Commission. Gary Patton, Calvin Wong, Edward C. Manasse  
Appeal of City's Approval of Norton-Rettig Landslide Project  
November 24, 2004  
Page 2

other arrangements and/or cancel her class in order to participate in the appeal, but she can not do so with respect to her final classes of the semester on December 1 and December 8. On December 1st, Ms. Davila will be preparing her students for their final exam which is scheduled to be given during the last class of the semester the following Wednesday evening on December 8.

Therefore, based on the City's short notice of the appeal hearing and Ms. Davila's unavailability on December 1st and December 8th, I request that the Planning Commission reschedule Friends' appeal to be heard at its December 15, 2004 meeting, or as soon thereafter as is convenient to all the parties. Rescheduling will enable the City to issue legally adequate notice of the appeal as required by the City Code and will allow Ms. Davila to attend the appeal hearing and present testimony and other evidence in person during the Commission's consideration of her appeal.

*Thank you for your attention to this.*

Very truly yours,

Thomas N. Lippe

cc: Mark Wald, City Attorney

C012 request for continuance of appeal to Dec 15.wpd

ATTACHMENT 1A

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Date 9-12-05  
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# YAHOO! MAIL

Print - Close Window

**Date:** Tue, 30 Nov 2004 16:23:27 -0800 (PST)  
**From:** "denise davila" <d2davila@yahoo.com>  
**Subject:** Request to reschedule appeal hearing for Case V04-209/CP04-071  
**To:** nicole.franklin@sfgov.org, colland@aol.com, cocoaklandplanning@yahoo.com, suzie@yhla.net, mlighty@calnurses.org, mark\_mcclure@alarconbohm.com, aemudge@stoel.com  
**CC:** "Stephen E. Velyvis" <svelyvis@sbcglobal.net>

Dear Mr. McClure and City Planning Commission,

I am the main appellant of Case V04-209/CP04-071.

I send this e-mail to respectfully request that the appeal hearing for this hearing be rescheduled for December 15.

First, we did not receive the appropriate 10-day written notification of the date of the appeal hearing per City Code Sections 17.148.060 and 13.16.450. We received less than 10 days notice via an e-mail transmission sent by Mr. Edward Manasse.

Second, I teach evening courses in the Teacher Education Department at California State University in Hayward. Wednesday, December 1 is the last class of the quarter. December 8 is our final. Under other circumstances, I would be able to cancel my class or to make different arrangements for my students. As the final classes of the quarter, however, I cannot miss either of these dates.

Before Thanksgiving, our attorney, Tom Lippe sent a letter to Mr. Gary Patton, Mr. Calvin Wong, Mr. Edward Manasse, and Mr. Mark Wald to request the rescheduling of the appeal hearing to a date that accommodates all parties and enables the City to send out appropriate written notification. The letter is attached for your review in the form of a pdf file.

I would like to be able to attend the Planning Commission meeting in full and to have the opportunity to participate in the meal gathering that is open to the public prior to the meeting.

I greatly appreciate your consideration of my request.

The earliest that I would be able to arrive at the hearing meeting tomorrow night is after 8:30PM.

I hope that you will be able to respond to my request before 12 noon tomorrow, as I will be at school all afternoon and evening.

Yours Sincerely,  
Denise Davila  
(510) 531-3930

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**Subject:** RE: Request to reschedule appeal hearing for Case V04-209/CP04-071

**Date:** Wed, 1 Dec 2004 13:44:32 -0800

**From:** "Mark McClure" <mmclure@alarconbohm.com>

**To:** "denise davila" <d2davila@yahoo.com>, nicole.franklin@sfgov.org, colliand@aol.com, cokoaklandplanning@yahoo.com, suzie@yhla.net, mlighty@calnurses.org, aemudge@stoel.com

**CC:** "Stephen E. Velyvis" <svelyvis@sbcglobal.net>

Dear Ms Davila:

Thank you for email. I believe the December 15th Agenda is already completely full, so it will not be possible to continue it to that date.

It is the opinion of the City Attorney that a 9 days notice period, while not the customary 10 days, still represents "Substantial Notice" and is adequate for this item. Furthermore, it is the 7th Item on the Agenda so it will not be heard before 8:30, which according to your email, should give you adequate time to attend the meeting. Please feel free to contact me at my office prior to tonight's meeting should you have any further question.

Respectfully,  
Mark McClure

Mark McClure  
Bohm Environmental/Alarcon Bohm  
5301 Adeline Street  
Oakland CA 94608  
510-893-4405 office  
510-893-2125 fax  
www.alarconbohm.com

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Oakland Tribune. December 4, 2004

Who's calling the shots?

Things were moving along swimmingly at the Oakland Planning Commission meeting Wednesday, that is until it came time for a hearing on a proposed construction recycling facility in Council President Ignacio De La Fuente's district.

Planning Commission chair Mark McClure and Planning Director Claudia Cappio stalled for time while they came up with a reason why the hearing needed to be rescheduled until Dec. 15, even though the applicant, Cal Brown of Capitol Recycling, was there and had not asked for the delay. Brown's business has to move because of residential development near the Coliseum, and needless to say, he wasn't happy to get blindsided.

Turns out De La Fuente's staff hit the roof when they found out the business was hoping to set up shop in an industrially-zoned area of High Street, near the estuary. De La

Fuente's aide, Carlos Plazola, said they have been working to change the zoning of the estuary area to allow medium-density residential and retail, and have been meeting with city planning staff about it for several months. He said they were "very surprised" not to be notified about the new recycling business.

New residential developments are popping up in pockets along the shoreline from Jack London Square nearly down to Fruitvale Avenue, and De La Fuente said he wants to see such projects as far south as possible.

"I feel sorry for the applicant; it's not his fault, it's the staff's fault," De La Fuente said. "But it's better for us and better for the applicant to be on the same page."

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# YAHOO! MAIL

Print - Close Window

**From:** "Wilson, Stephanie J" <sjwilson@oaklandnet.com>

**To:** lippelaw@sonic.net, "Cowan, Richard" <RCowan@oaklandnet.com>, asakkis@earthlink.net, d2davila@yahoo.com

**Subject:** Appeal.Report4.Final-11.23.04 - ED

**Date:** Mon, 29 Nov 2004 09:58:22 -0800 ←

Attached is the staff report for the Norton/Rettig Landslide Project scheduled for the December 1, 2004, Planning Commission meeting. If you have any questions or need more information, please contact Ed Manassee at (510) 238-7733 or emanasse@oaklandnet.com. Also attached is a revised Planning Commission Agenda listing this item.

### Attachment



Appeal.Report4.Final\_11.23.04\_\_ED.DOC  
.DOC file

### Attachment



REVISED\_PC\_Agenda\_12\_1\_04.doc  
.doc file

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August 4, 2005

Denise Davila & Hugo Evans  
4150 Rettig Avenue  
Oakland, CA 94602

Public Ethics Commission  
City Of Oakland  
One Frank Ogawa Plaza  
Oakland, CA 94612

RE: Complaint #A04-521: Public Notice of Permits V04-209 and CP04-071

Dear Public Ethics Commission Members:

In addition to Complaint # A04-521, we submit for your review documentation of misleading language regarding the landslide project at Rettig Avenue.

For the purpose of this discussion, please note that Rettig Avenue runs adjacent to Peralta Creek. The paved road surface is barely sixteen (16) feet wide at the project site. One edge drops sheer into the creek. The roadway is arguably within twenty (20) feet of the **top** of the bank of Peralta Creek.

On July 14, 2004, community members called upon City of Oakland Representatives to re-post the Public Notice for permit applications V04-209 and CP04-071. Previous notices misrepresent project plans and make no mention of an "emergency" situation.

A revised Public Notice was posted on August 2, 2004. As detailed below, it misrepresents the Oakland Municipal Code and Oakland Creek Protection Ordinance.

The August '04 revised Public Notice proposal description states:

"The proposed upper-slope retaining walls will be approximately 90 feet away from *the bank of Peralta Creek*... [W]ork will also include... *the completion of the remaining remedial grading of the landslide.*" (emphasis added)

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The August '04 revised Public Notice planning case description states:

“Creek Protection Permit (Category III) [is] to allow landslide stabilization and remedial grading within 100 feet of *a creek bank*.” (emphasis added)

The Oakland Municipal Code uses very exact terms to define the features of a creek such as “top of bank” and “center line of creek.” The O.M.C. states precisely that a Category III permit applies to any work:

that may adversely impact the creek, beyond **the twenty (20) foot setback from the top of bank** of the Creek, and is within 100 feet of the **center line of the creek**... [and] includes Earthwork beyond **the twenty (20) foot setback from the top of bank** of the Creek. OMC 13.16.130 (emphasis added)

A Category IV permit applies to any work:

that is conducted from the **center line of the creek to the twenty (20) foot setback from the top of bank** of the creek, that may or may not require any other development related permits including without limitation: earthwork,... private drainage improvements, ... or trenching work. OMC 13.16.130 (emphasis added)

Generalizations like, “bank” and “creek bank,” **are not** analogous with the correct definitions for a “center line of the creek,” or a “twenty (20) foot setback from the top of bank.”

Use of correct terminology is critical to informing the public of a project’s proximity to the top of a creek bank, and is essential to representing Oakland’s Creek Protection Ordinance. The final August '04 Public Notice *disserves the Oakland’s Creek Protection Ordinance and misrepresents* the O.M.C. to readers.

It is, therefore, not surprising that the City approved an exempt Category III permit for CP04-071 that also authorizes the “disturbance and/or removal of the landslide debris pile [from the surface of] Rettig Avenue... (i.e., be the minimum feasibly/reasonably necessary to complete the emergency landslide repair project).” The additional authorization for earthwork on the narrow

paved surface is despite the fact that, "... the slide debris removal on Rettig Avenue [is not] being proposed or considered..." under CP04-071. (City of Oakland, Permit Authorization Letter. October 29, 2004.)

The use of incorrect terms in the August '04 Public Notice is but a precursor to the use of misrepresentative language in the City's October 29, 2004 Permit Authorization Letter for the landslide project (which will be addressed in a separate letter).

We appreciate your attention to these matters.

Sincerely Yours,

Denise Davila & Hugo Evans

(510) 531-3930

August 5, 2005

Denise Davila & Hugo Evans  
4150 Rettig Avenue  
Oakland, CA 94602

Public Ethics Commission  
City Of Oakland  
One Frank Ogawa Plaza  
Oakland, CA 94612

RE: Complaint #A04-07: CA Public Records Act

Dear Public Ethics Commission Members:

In addition to Complaint # A04-07, we submit for your review documentation of violations to the California Public Records Act regarding the landslide project at Rettig Avenue.

For the purpose of this discussion, please note:

1. "Public Records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (Emphasis added.)  
*CA Public Records Act Section 6252e.*
2. "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. *CA Public Records Act Section 6252g.*
3. Public Records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record.  
*CA Public Records Act Section 6253a.*
4. Nothing in [the CA Public Records Act] shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. (Emphasis added.)  
*CA Public Records Act Section 6253d.*

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5. Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter [CA Public Records Act], to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. (Emphasis added.)  
*CA Public Records Act Section 6254.5*

**First**, when the official Public Comment period opened for permit applications for V04-209; CP04-071; and V04-303, pertinent documents related to the landslide project were not available for public viewing and copying as required by the CA Public Records Act.

I went to the Planning & Zoning Department daily to request documents specific to the permit applications. Contrary to CA Public Records Act Section 6253a, none of the records I requested were available, nor did Planning & Zoning staff know how to locate them.

**Second**, per the instruction of Planning & Zoning Case Planer, Jason Madani, I wrote to Dominic Ma, Senior Building Engineer of the City of Oakland, to request documents related to the projects in order to make informed public comments (1). On July 29, 2004, Mr. Dominic Ma responds:

You can come to review the document in our office. However, we are still waiting for release forms (hopefully via fax) from Mr. Phil Gregory and Mr. Adel Kasim to allow you to make copies of their engineering drawings and document. (2)

Mr. Ma's response contradicts CA Public Records Act Sections 6253d and 6245.5. A disclosure of any records constitutes a waiver of exemption from copying.

The morning of July 30, Mr. Ma **disclosed for my viewing**, documents related to permit applications for V04-209; CP04-071; and V04-303. I was not, however, allowed to copy the records.

**Third**, I made a formal disclosure request to Mr. Manasse, Mr. Ma, and Mr. Placido to release for copying documents that had already been disclosed for my viewing at the Permit Counter. (3)

This time, I was enlisted by Mr. Ma to acquire release forms from private citizens to allow duplication of documents that had been used and retained by the City of Oakland. (4)

Attached, please find copies of the release forms I had to personally request of private parties. (5).

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**Fourth**, technical documents necessary to making informed public comment only became available to the public midday, Friday, August 6, 2004. One of the documents critical to the landslide project was not even written until August 6, 2004. (6)

In short, the public received just one weekend (Saturday & Sunday) to enlist the services of professionals to review the final documents and to formulate comments on the project before the close of the Public Comment period on August 9. Nobody received the benefit of a ten (10) calendar-day hitch & obstacle-free review period that is commonly afforded the public per O.M.C. 13.16.180 and O.M.C. 17.147.030.

Thank you for your consideration of this situation with regard to the California Public Records Act.

Yours Sincerely,

Denise Davila & Hugo Evans

Attachments:

1. E-Mail to Dominic Ma & Abe Placido. July 28, 2004
2. E-Mail to Denise Davila. July 29, 2004
3. E-Mail to Manasse, Ma, and Placido. August 2, 2004
4. E-Mail to Denise Davila. August 2, 2004
5. E-Mail & Document Release Forms by Denise Davila.
6. Final Draft: Jensen-Van Lienden Peer Review August 6, 2004

1. -----Original Message-----

From: denise davila [mailto:[d2davila@yahoo.com](mailto:d2davila@yahoo.com)]  
Sent: Wednesday, July 28, 2004 1:35 PM  
To: [dma@oaklandnet.com](mailto:dma@oaklandnet.com); [aplacido@oaklandnet.com](mailto:aplacido@oaklandnet.com)  
Cc: Tom Lippe; Stephen E. Velyvis; [jmadani@oaklandnet.com](mailto:jmadani@oaklandnet.com); [emanasse@oaklandnet.com](mailto:emanasse@oaklandnet.com); Denise Davila  
Subject: V04-209 & V04-303 Please Reply

Dear Mr. Ma and Mr. Placido,

Mr. Jason Madani, the Planning & Zoning Department Case Planner for V04-209 and V04-303, referred me to you.

Can you provide more information about the:  
a) Plans; b) Detailed, Technical Descriptions; c) Geotechnical Reports; and d) Peer Review for the universal landslide repair project at 4155, 4165, 4201 Norton and 4168, 4200, and 4206 Rettig Avenues?

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The Public Record for: V04-209; CP04-071; and V04-303 do not contain the current plans, technical descriptions, geotechnical reports, or the peer review that were promised to the public at the community meeting on July 14 at Councilmember Quan's office.

According to the staff at the Building Permits counter, plans and documents for related permits: GR0400036 and RB0402597, are not even available to them. The computer screen indicates that the documents were "check-out," and are in the possession of the Public Works Agency.

We would very much like to view ALL of the documents related to V04-209; CP04-071; and V04-303 projects in order to make informed public comments.

Thank you for your prompt attention to this matter. We appreciate any assistance you can offer.

Yours Sincerely,  
Denise Davila  
Friends of Peralta Creek

**2. From:** "Ma, Dominic" <DMA@oaklandnet.com> Add to Address Book  
**To:** "denise davila" <d2davila@yahoo.com>  
**CC:** "Wald, Mark" <MPWald@oaklandcityattorney.org>, "Derania, Ray" <RDerania@oaklandnet.com>  
**Subject:** RE: V04-209 & V04-303 Review of Documents  
**Date:** Thu, 29 Jul 2004 17:10:35 -0700

You can come to review the document in our office. However, we are still waiting for release forms (hopefully via fax) from Mr. Phil Gregory and Mr. Adel Kasim to allow you to make copies of their engineering drawings and document.

Dominic Ma  
Supervising Civil Engineer  
Building Services  
Community & Economic Development Agency  
City of Oakland  
Tel.: (510) 238-3669  
Fax: (510) 238-6445  
e-mail: [dma@oaklandnet.com](mailto:dma@oaklandnet.com)

**3. -----Original Message-----**

**From:** denise davila [mailto:[d2davila@yahoo.com](mailto:d2davila@yahoo.com)]  
**Sent:** Monday, August 02, 2004 11:59 AM  
**To:** [emanasse@oaklandnet.com](mailto:emanasse@oaklandnet.com); [dma@oaklandnet.com](mailto:dma@oaklandnet.com); [aplacido@oaklandnet.com](mailto:aplacido@oaklandnet.com)  
**Cc:** Stephen E. Velyvis; Tom Lippe; [jmadani@oaklandnet.com](mailto:jmadani@oaklandnet.com); Denise

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Davila  
Subject: Immediate Disclosure Request

Immediate Disclosure Request

Dear Mr. Manasse, Mr. Ma, and Mr. Placido,

First, thank you for providing to me copies of: a) the July 14 Plans, and b) the preliminary draft of the Jensen-Van Lienden Peer Review Report for V04-209; V04-303; and CP04-071. I picked-up the documents from Planning & Zoning around 8:30AM this morning.

We all want to make informed public comments. Unfortunately, most of the documents that were reviewed by the peer reviewer, Jensen-Van Lienden (according to the preliminary draft of the peer report letter), are not accessible in the public records for V04-209; V04-303; and CP04-071.

Please release and permit the public to have copies of the following reports/drafts:

\* Cal Engineering & Geology. June 4, 2004.  
Geotechnical Design Report for Landslide Stabilization.

\* Hallenbeck/Allwest Associates. September 18, 2003.  
Job No. 98-7317GP-01. Geotechnical Engineering Report-Plans/Specs

\* Edward McNair. July 2, 2004. Construction and Excavation for Main Landslide Repair Stability

\* Gilpin Geosciences, Inc. September 17, 2001.  
Project 91231.01. Engineering Geological Investigation.

Thank you for your immediate disclosure of these documents. Thank you also for your time.

Sincerely,  
Denise Davila  
Friends of Peralta Creek

**4. From:** "Ma, Dominic" <DMa@oaklandnet.com> Add to Address Book  
**To:** "denise davila" <d2davila@yahoo.com>  
**CC:** "Wald, Mark" <MPWald@oaklandcityattorney.org>, "Derania, Ray" <RDerania@oaklandnet.com>, "Placido, Abe" <APlacido@oaklandnet.com>  
**Subject:** RE: Immediate Disclosure Request  
**Date:** Mon, 2 Aug 2004 14:11:08 -0700

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As you are aware, all documents that are in our possession have been reviewed by you on last week Friday at the Building Services counter. I explained to you at that time that we need permission in writing from engineers and owners to authorize the City to release engineering drawings and document for duplication. I have faxed release forms to Phil Gregory, Adel Kasim and Ed McNair last week Thursday. As of now, Mr. Gregory and Kasim have not returned my calls to them on Friday nor have they returned their release forms, except from Mr. McNair who faxed his release form to me this morning.

I gave you a release forms to bring to Angelos and Anna Sakkis for them to sign. We also have not received the form from the Sakkises yet.

Please be advised that we have provided all the files that we have in possession. As more files are sent to us, they will be available to you and the public for review. You are welcome to come to the Building Services counter and review the files again and pick out the document that you wish to duplicate. Once we have release forms from engineers and owners, they are available for duplication.

Dominic Ma  
Supervising Civil Engineer  
Building Services  
Community & Economic Development Agency  
City of Oakland  
Tel.: (510) 238-3669  
Fax: (510) 238-6445  
e-mail: [dma@oaklandnet.com](mailto:dma@oaklandnet.com)

**5. Date:** Mon, 2 Aug 2004 21:51:51 -0700 (PDT)  
**From:** "denise davila" <d2davila@yahoo.com>  
**Subject:** Release Forms for Peer Review Documents-Rettig Slide  
**To:** sakkisa@wellsfargo.com, asakkis@earthlink.net, adelkasim@allwestg.com, pgregory@caleng.com  
**CC:** dma@oaklandnet.com, "Stephen E. Velyvis" <svelyvis@sbcglobal.net>, "Tom Lippe" <lippelaw@sonic.net>, "Denise Davila" <d2davila@yahoo.com>

Dear Mr. Gregory, Mr. Kasim, and Mr. and Mrs. Sakkis,

I hope this message finds you well.

We would very much like to view and make photocopies of the documents that were reviewed by peer reviewer, Jensen-Van Lienden.

Unfortunately, most of the documents that were reviewed are not available in the Planning & Zoning public records for V04-209; V04-303; and CP04-071.

Mr. Dominic Ma in Building & Engineering Services has explained that in order to make the documents available for duplication, the City of Oakland must have signed authorization-release forms from the owner/designer of a project.

We would like to have copies of the following documents:

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- Cal Engineering & Geology. June 4, 2004. Geotechnical Design Report for Landslide Stabilization.
- Hallenbeck/Allwest Associates. September 18, 2003. Job No. 98-7317GP-01. Geotechnical Engineering Report-Plans/Specs
- Edward McNair. July 2, 2004. Construction and Excavation for Main Landslide Repair Stability
- Gilpin Geosciences, Inc. September 17, 2001. Project 91231.01. Engineering Geological Investigation.
- Jensen-Van Lienden Peer Review Report-Final Draft.

Attached to this e-mail, please find an authorization/release form. We would greatly appreciate it if you would sign the form and FAX it to Mr. Ma.

Dominic Ma  
Supervising Civil Engineer, Building Services  
Tel.: (510) 238-3669  
Fax: (510) 238-6445

Thank you for your cooperation.

Sincerely,  
Denise Davila

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August 19, 2005

Denise Davila & Hugo Evans  
4150 Rettig Avenue  
Oakland, CA 94602

Supplemental Letter to Ethics Complaint No. 04-07

RE: Misrepresentative & Misleading Prose in City Authorization Letter

Dear Mr. Purnell,

Our objective is to provide the Ethics Commission a clear account of one neighborhood's experience in attempting to participate in a democratic public process. Many residents had never before engaged in the City's process, nor had ever interacted with City officials prior to the Rettig Ave. landslide. Citizens joined together and invested tremendous amount of time and energy to voice concern for community and the environment. The actions of City representatives, however, demonstrated little regard for Oakland's mission to deliver "effective, courteous, and responsive services;" and to treat citizens with "fairness, dignity, and respect."

What follows is an analysis of the City's Approval Letter of October 29, 2004 for Permit Applications: V04-209 & CP04-071. The letter does not treat with fairness, dignity, and respect, the citizens whom raised concerns and participated in the public comment process. Instead, the letter misrepresents the citizens whom actually live within 300 feet of the project site and marginalizes their concerns, while providing incomplete and inaccurate information to reader. The City's use of slanted prose in the letter ultimately demonstrates an inappropriate bias on the part of a governing agency.

It may be helpful to first read the Friends of Peralta Creek Appeal of the City's Approval of the project (Nov. 8, 2004) to understand the public viewpoint that was presented to the City for consideration regarding Permit Applications: V04-209 & CP04-071. Then read the City's October 29, 2004 Approval Letter before engage in the analysis below.

**I. The City's October 29 Approval letter does not provide an accurate description of the landslide project site in the context of the discussion of the surrounding environment. The description minimizes the actual quality of the environment.**

IA. The letter states, "as in many parts of Oakland, there is a creek" (p. 23).

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- The letter does not state that the proposed project is adjacent to the top of the bank of the Peralta Creek, one of the few creeks in Oakland that flows water year-round and is undergoing an \$850,000 restoration project downstream (1).

IB. The letter states, “[n]atural springs also frequently occur in the Oakland hills.”

- The statement suggests that the project site is located in the Oakland hills, when it is actually located in the Laurel District near 35<sup>th</sup> Avenue.
- While springs occur, however, the springs at the project site are so intense that they daylight year-round and make pools.

IC. The letter states, “many homes and related infrastructure, *including those of the project opponents*, are located **near** fault lines, springs, and creeks” (p. 23). [emphasis added]

- The term, “near” is relative. It does not represent the actual distance of the project site to the natural features of the area:

(a) the project site is 600 feet from the center of the Hayward Earthquake Fault Line;

(b) the site is located on top of springs and involves the actual excavation and drainage alterations of the springs;

(c) the site is as close as 20 feet of the top of the bank of Peralta Creek.

- The statement does not mention that nearly 8 acres of natural open space/wildlife habitat fronts Rettig Avenue, and is less than 18 feet of project site. The Oakland General Plan calls the the Peralta Creek *corridor that begins at Wisconsin Street*, “only natural open space in the area.” The General Plan also recommends identifying the area as a “wildlife corridor for the purpose of habitat management” (2).

- The statement refers to the homes of “project opponents” as a subset of a generalized “many homes” nearby. The “project opponents,” however, are actual neighbors whom live within feet of the project site.

ID. The letter suggests that there are “no growth inducing impacts because infrastructure is already in place and the residential area is essentially built out” (p. 23). [emphasis added.]

- As mention above, the residential area of the project site is not “built out.” It is adjacent to nearly 8 acres of opens space cited by the Oakland General Plan.

**II. The letter marginalizes the concerns of Rettig Avenue homeowners and neighbors (Friends of Peralta Creek) as being unrelated to the project, and only regarding "Other Work."**

IIA. In the statements below, the letter refers to 4200 & 4206 Rettig Avenue, the actual site of the project, as "some vacant lots in the area." In this context, the word, some, is synonymous with words like unimportant, insignificant, and irrelevant.

"Essentially, they [Rettig Avenue homeowners, neighbors, and Friends of Peralta Creek] maintain that the City has not considered the environmental effects of debris removal on Rettig Avenue, the reopening of Rettig Avenue and the possible future development of *some vacant lots in the area (collectively called 'Other Work')*," (p. 23). [emphasis added]

"The project opponents contend that since the Emergency Work is being financed by the conveyance of *the vacant lots in the area*, that future development of the lots is part of the Emergency Work" (p. 27). [emphasis added]

**III. The letter misrepresents the neighbors and Friends of Peralta Creek:**

The letter states: "It is the permanent closure of the public road, as advocated by some neighbors and Friends of Peralta Creek, which is the discretionary action that is subject not only to CEQA review but the substantive and procedural requirements of state and local law... (p. 27)." [emphasis added].

IIIA. None of the neighbors or Friends of Peralta Creek advocates the permanent closure of the roadway. Many City officials know the group's position having both met and talked with members on several occasions. Documentation of the City's knowledge of the group's position can be provided upon request.

**IV. The letter falsely states that the City is “currently meeting with residents, at their request, to discuss specific features of a reopened Rettig Avenue.”**

IVA. Residents last met with the City in August, 2004. The City promised to respond within a week to the Residents’ proposals for ways to create an emergency vehicle access & evacuation route (EVA) between 4206 and 4315 Rettig Avenue. Residents e-mailed and telephoned for a response for over two months. The City never gave the courtesy of a return call or e-mail.

**V. The letter employs parenthetic commentary, a literary devices uses by authors to conduct private, side-conversations with readers to influence the way readers view alternate points-of-view on the issue.**

The following statements use parenthetic commentary to communicate a desired message to readers:

VA. *“The current (and worsening) condition of the hillside...(pp. 15, 16, 17, 21, and 23).”*

- Readers are five times told that the condition of the landslide is getting worse.

VB. *“The Emergency Work was delayed as a result of lawsuits, necessary performance of geotechnical and related studies, and the application process (including community input),” (pp. 21, 24).*

- Readers are twice told that community input delayed the Emergency Work project. Community input, however, is a healthy part of the democratic process and required by the Oakland Municipal Code in the permit process. Moreover, it wasn’t until 6.5 years after the landslide occurred that the permit application process began and community input was solicited.

VC. *“The engineers conclude that this Emergency Work must occur now regardless of what happens with the Other Work (whether that takes place or not) (pp. 24, 27).”*

- The letter twice suggests that there is uncertainty as to whether “Other Work” may ever occur. This statement reinforces previous misleading statements regarding community concern about “other work.”

VD. *“Second, even assuming for the sake of argument that it is determined that Emergency Work is necessarily or essentially linked to the Other Work and/or that there is some reason why the City must evaluate the environmental impacts of the Other Work (which is not the case)...(p. 24, 28).”*

- The letter parenthetically tells readers twice that "Other Work" will not merit evaluation for environmental impact by the City.

VE. *"The City is currently meeting with residents, at their request, to discuss specific features of a reopened Rettig Avenue. These options range from merely restoring the existing conditions (exempt from CEQA)...(p. 27)"*

The letter tells readers that "merely restoring" the road to its previous condition is exempt from CEQA. If restoring the road to its previous condition will cause a significant adverse effect on the area (as residents contend) however, then the project is not exempt from CEQA.

Clearly, the City's October 29, 2004 approval letter contains much evidence of bias. Each of the misleading and misrepresentative statements illustrated above is so obviously incorrect that, collectively, they serve only marginalize and diminish the concerns of citizens who invest time and energy to participate in the democratic process of our City government.

We thank you for your consideration of this letter and appreciate your collective review of all of the complaints we have shared with you regarding the Landslide Project at Rettig and Norton Avenue.

Yours Sincerely,

Denise Davila & Hugo Evans

- (1) Casey, Laura. "Oakland Starts \$850,000 Creek Revamp." Oakland Tribune May 30, 2003
- (2) Open Space and Recreation Element (OSCAR). Oakland General Plan.

Attachments:

City of Oakland: October 29, 2004 Approval Letter.  
Friends of Peralta Creek: November 8, 2004 Appeal Letter.

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# City Planning Application

## NOTICE IS HEREBY GIVEN THAT

6.	<b>Location:</b>	4165, 4201 Norton Avenue (APN 029-1069-008-00) (05/03/04)
	<b>Proposal:</b>	To construct retaining wall to exceed 6' in height and remedial grading to repair landslide on five parcels. (This case has been previously noticed on 06/10/04 with incorrect information)
	<b>Applicant:</b>	Phil Gregory/Cal Engineering & Geology Inc.
	<b>Contact Person/Phone Number:</b>	Phil Gregory (925)935-9771
	<b>Owner:</b>	Al Williams
	<b>Case File Number:</b>	V04-209
	<b>Planning Permits Required:</b>	Minor Variance to allow 15' height retaining wall to repair landslide where 6' Maximum is required.
	<b>General Plan:</b>	Hillside Residential
	<b>Zoning:</b>	R-30 Single Family Residential Zone.
	<b>Environmental Determination:</b>	Exempt, Section 15301 of the State CEQA Guidelines; Construct retaining walls to repair landslides.
	<b>Historic Status:</b>	Not a Potential Designated Historic Property; Survey rating: N/A
	<b>Service Delivery District:</b>	4
	<b>City Council District:</b>	4
	<b>For further information:</b>	Contact case planner Jason Madani at (510) 238-4790 or jsmadani@oaklandnet.com

Your comments and questions, if any, should be directed to the Zoning Division of the Community and Economic Development Agency, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, California 94612-2031 by **June 28, 2004**. When sending comments or making inquiries, please refer to the file number shown immediately below the applicant's name.

The Director's decision will be made following the end of the above public comment period, and that decision will become final unless an appeal is made to the City Planning Commission within 10 days of said decision. You may call (510) 238-3781 for further information.

If you wish to be notified of the decision of any of these cases, please indicate the **case number and submit a stamped self-addressed envelope for each case** to the Community and Economic Development Agency/Zoning Division, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, California 94612-2031. If you challenge the file in court, you may be limited to issues raised in written correspondence delivered to the Community and Economic Development Agency, on, or prior to, **June 28, 2004**.

Please note that the descriptions of the applications found below are preliminary in nature and that the projects and/or such descriptions may change prior to a decision being made.

\* For further information on historic status, please contact the Oakland Cultural Heritage Survey at 238-6879.

### IT IS UNLAWFUL TO ALTER OR REMOVE THIS NOTICE:

Such an act is punishable by a fine of not more than five hundred dollars, or by imprisonment in the City Jail for not more than six months, or by both fine and imprisonment.

(Sec. 3-8.03 O. M. C.)

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Secretary, City Planning Commission

# City Planning Application

## NOTICE IS HEREBY GIVEN THAT

1. **Location:** 4165 and 4201 Norton Avenue, 4168, 4200 and 4206 Rettig Avenue (6/3/04)  
**Proposal:** Emergency grading and slope stabilization to repair landslide on five parcels.

The emergency work will include the installation of stabilization piles and three (3) upper-slope retaining walls. The proposed upper-slope retaining walls will be approximately 90 feet away from the bank of Peralta Creek. Equipment access to the site will be from Rettig Avenue adjacent to the garage at 4168 Rettig Avenue on the south side of the landslide. The emergency work will also include creek protection measures, the installation of an additional retaining wall lower on the slope, and the completion of the remaining remedial grading of the landslide. All work will be completed using slot excavations to reduce the need for off-hauling of excavated soil. No stock piling of soil will be permitted within the Rettig Avenue right-of-way; nor is the removal of slide debris on Rettig Avenue being proposed or considered under this application. The City will be considering the entire slope stabilization project.

**Applicant/Owner:** Phil Gregory/ Cal Engineering & Geology Inc  
 Anna & Angelos Sakkis  
 Al Williams

**Contact Person/Phone Number:** Phil Gregory  
 (925) 935-9771

**Planning Case File Number:** V04-209 - Minor Variance to allow an upper-slope retaining wall up to 15 feet in height where 6 feet is the maximum wall height (lower-slope walls will be 6 feet or less in height); and  
 CP04-071 - Creek Protection Permit (Category III) to allow landslide stabilization and remedial grading within 100 feet of a creek bank.

**Other Permits Required:** Include without limitation:  
 T0400101 - Tree Permit to allow the removal of 5 protected trees located at 4200 Rettig Avenue;  
 T0400100 - Tree Permit to allow the removal of 11 trees located at 4206 Rettig Avenue;  
 GR0400036 - Grading Permit to allow grading for slope stabilization; and  
 RB0402597 - Building Permit to allow installation of retaining walls.

**General Plan:** Hillside Residential  
**Zoning:** R-30/ Single-Family Residential Zone

**Environmental Determination:** Each of the following provides a separate and independent basis for a CEQA exemption:  
 (1) Repair of property damaged in a disaster proclaimed by the California state governor is exempt from Environmental Review under CEQA Guidelines Section 15269(a);  
 (2) Emergency repair to publicly or privately owned facilities necessary to maintain service essential to public safety or welfare is exempt from Environmental Review under CEQA Guidelines Section 15269(b);  
 (3) Specific action necessary to prevent or mitigate an emergency is exempt from Environmental Review under CEQA Guidelines Section 15269(c);  
 (4) Repair, maintenance and minor alteration to existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or public utility services is exempt from Environmental Review under CEQA Guidelines Section 15301(b); and/or  
 (5) Repair, maintenance and minor alteration to existing streets and similar facilities is exempt from Environmental Review under CEQA Guidelines Section 15301(e).

**Historic Status:** Not a Potential designated Historic Property; Survey rating: N/A

**Service Delivery District:** 4  
**City Council District:** 4

**For further information:** Contact case planner Jason Madani at (510) 238-4790 or Jsmadani@oaklandnet.com

Your comments and questions, if any, should be directed to the Zoning Division of the Community and Economic Development Agency, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, California 94612-2031 by **August 2, 2004**. When sending comments or making inquiries, please refer to the file number shown immediately below the applicant's name.

The Director's decision will be made following the end of the above public comment period, and that decision will become final unless an appeal is made to the City Planning Commission within 10 days of said decision. You may call (510) 238-3781 for further information.

If you wish to be notified of the decision of any of these cases, please indicate the **case number and submit a stamped self-addressed envelope for each case** to the Community and Economic Development Agency/Zoning Division, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, California 94612-2031. If you challenge the file in court, you may be limited to issues raised in written correspondence delivered to the Community and Economic Development Agency, on, or prior to, **August 2, 2004**.

Please note that the descriptions of the applications found below are preliminary in nature and that the projects and/or such descriptions may change prior to a decision being made.

\* For further information on historic status, please contact the Oakland Cultural Heritage Survey at 238-6879.

ATTACHMENT 3

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Martin, Thomas N., Esq.  
1705 Parkside Court  
San Mateo, CA 94403  
Tel: 650-573-1111  
Fax: 650-573-1112  
E-mail: tmartin@lippe.com

Hillslope and Fluvial Geomorphology • Erosion and Sedimentation • Sediment Budgets • Landslide Mapping • Stream Channel Mapping and Assessment

August 8, 2004

Mr. Tom Lippe  
Law Offices of Thomas N. Lippe  
329 Bryant St. Suite 3D  
San Francisco, CA 04107

Dear Mr. Lippe,

At your request, I have reviewed geotechnical documents relating to the landslide evaluation and proposed repair project for the Norton-Rettig Landslide (project site) located between Norton and Rettig Avenues, Oakland, CA. Based on my August 5, 2004 site visit, the project site, a 170-foot long hillside between Norton and Rettig Avenues, exhibits active progressive downslope creep (involving a 5-to-15-foot deep surficial mantle of earth mass) and associated surface erosion and mass wasting. The purpose of this review was to provide a professional opinion on adequacy of the applicant's geotechnical data supporting the applicant's notion of immediate imminency of a catastrophic landslide failure at the project site. A review of structural calculations pertaining to the proposed permanent pier, grade beam, and keystone retaining wall is outside of my expertise in the field of geomorphology.

The documents reviewed include:

- Geotechnical Peer Review of Stabilization Plans, Jensen-Van Lienden Associates, Inc., August 6, 2004
- June 1, 2004, June 30, 2004, and July 20, 2004 progress letters from Cal Engineering & Geology to Anna and Angelos Sakkis
- Geotechnical Design Report for Landslide Stabilization, Norton Avenue/Rettig Avenue, Oakland, California; Cal Engineering & Geology, Inc.; June 4, 2004
- Geotechnical Engineering Report-Plans/Spec, Stabilization of Rear Downslope-Addition Foundations, Property at 4155 Norton Avenue, Oakland, California; Hallenbeck/Allwest Associates; September 18, 2003
- Geotechnical Engineering Services, Landslide Stabilization, Norton-Rettig Avenue, Oakland, California; Miller Pacific Engineering Group; September 19, 2001
- Engineering Geotechnical Investigation, Norton/Rettig Avenue Landslide, Oakland, California; Gilpin Geosciences, Inc.; September 17, 2001
- Winterization Recommendations, Retting Avenue Landslide, Oakland, California; Harza Engineering Company; September 14, 1999
- Geotechnical Evaluation Report, Rettig-Norton Landslide, Oakland, California; MicroSearch Environmental Corporation; August 23, 1998
- Preliminary Geotechnical Engineering Evaluation, Landslide Problem, 4165 Norton Avenue, Oakland, California; Hallenbeck & Associates; May 5, 1998.

ATTACHMENT 4

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Oakland City Planning Commission

AGENDA
(2nd Revision - 12/9/04)

Mark McClure, Chair
Colland Jang, Vice Chair
Nicole Franklin
Clinton Killian
Suzie W. Lee
Michael Lighty
Anne Mudge

DECEMBER 15, 2004
Regular Meeting

REVISED

Notice - Staff reports are now available on-line. See web site download instructions on Page 2.

BUSINESS MEETING

5:30 P.M "SPECIAL MEETING TIME"
Council Chambers, City Hall, One Frank H. Ogawa Plaza

Persons wishing to address the Commission on any item on the agenda, including Open Forum and Director's Report, should fill out a speaker card and give it to the Secretary prior to the convening of the meeting or prior to 8:30 p.m. for matters scheduled to be heard after 8:30 p.m. Speakers are generally limited to two minutes at the discretion of the Chair. Applicants and appellants are generally limited to five minutes.

Agenda items will be called at the discretion of the Chair and not necessarily in the order they are listed on the agenda. However, a matter identified as an 8:30 p.m. item shall not be called until 8:30 p.m. or later. The order of items will be determined under "Agenda Discussion" at the beginning of the meeting. With the exception of Open Forum, a new item will not be called after 10:15 p.m., and the meeting will adjourn no later than 10:30 p.m. unless the meeting is extended by the Chair with the consent of a majority of Commissioners present.

Please check with the Planning Department prior to the meeting regarding items that may be continued. Any agenda item may be continued, without the hearing on the matter being opened or public testimony taken, at the discretion of the Chair. Persons wishing to address the continued item may do so under Open Forum.

For further information on any case listed on this agenda, please contact the case planner indicated for that item. For further information on Historic Status, please contact the Oakland Cultural Heritage Survey at 510-238-6879. For other questions or general information on the Oakland City Planning Commission, please contact the Community and Economic Development Agency, Planning and Zoning Division, at 510-238-3941.

This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the Planning Department at 510-238-3941 or TDD 510-238-3254 at least three working days before the meeting. Please refrain from wearing scented products to this meeting so attendees who may experience chemical sensitivities may attend. Thank you.

ATTACHMENT 5

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Staff reports for items listed on this agenda will be available by 3:00 p.m. the Wednesday, one week before the meeting, to any interested party, at the Community and Economic Development Agency, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Oakland, California 94612. Reports are available at the Strategic Planning Division on the 3<sup>rd</sup> floor (Suite 3315), which closes at 5:00 p.m.

New web-site staff report download instructions

Staff reports are also available on-line, generally one week prior to each meeting, at [www.oaklandnet.com](http://www.oaklandnet.com) by searching "Frequently Visited Pages" located on the City of Oakland Homepage. Clicking on "Planning Commission Meetings" will open a menu of Planning Commission and Committee Agendas. Staff reports are available on the selected agenda by clicking on the highlighted case file number. For further information, please call 510-238-3941. *While attending Planning Commission meetings parking in the Clay Street Garage is Free. Attendees should write Planning Commission on the back of the parking ticket.*

If you challenge a Commission decision in court, you may be limited to issues raised at the hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the hearing. Any party seeking to challenge in court those decisions that are final and not administratively appealable to the City Council must do so within ninety (90) days of the date of the announcement of the final decision.

**ROLL CALL**

**WELCOME BY THE CHAIR**

**COMMISSION BUSINESS**

Approval of Minutes December 1, 2004

Correspondence

City Council Actions December 7, 2004

Agenda Discussion

Director's Report  
1. 98th Avenue and San Leandro Street – Update on preliminary discussions concerning the development of approximately 364 residential units

Committee Reports

Commission Matters General Plan Discussion

City Attorney's Report



**CONSENT CALENDAR**

The Commission will take a single roll call vote on all of the items listed below in this section. The vote will be on approval of the staff report in each case. Members of the Commission may request that any item on the Consent Calendar be singled out for separate discussion and vote.

**PUBLIC HEARINGS**

The hearing provides opportunity for all concerned persons to speak; the hearing will normally be closed after all testimony has been heard. The Commission will then vote on the matter based on the staff report and recommendation. If you wish to be notified on the decision of an agenda item, please indicate the case number and submit a self-addressed, stamped envelop for each case. Planning Commission decisions that involve "major" cases (i.e., major variances, major conditional use permits) are usually appealable to the City Council. Such appeals must be filed within ten (10) days of the date of the announcement of the Planning Commission decision. If you challenge a Commission decision in court, you may be limited to issues raised at the public hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency at, or prior to, the public hearing.

Interested parties are encouraged to submit written material on agenda items in advance of the meeting and prior to the close of the public hearing on the item. To allow for distribution to the Commissioners, staff, and the public, **25 copies of all material should be submitted.** Material submitted at least ten days prior to the meeting may be included as part of the agenda packet; material submitted later will be distributed at, or prior to, the meeting. To ensure that material is distributed to Commissioner, it should be received by the Commission Secretary no later than 48 hours prior to the meeting and preferably earlier.

<b>1.</b>	<b>Location:</b>	440 High Street
	<b>Proposal:</b>	Proposal to locate a construction and demolition (C&D) recycling transfer station on a currently vacant warehouse and yard located on a 2.5 acre site. The proposal is for the collection and transfer of C&D materials, including plant green waste- no processing of materials on site.
	<b>Applicant:</b>	Capitol Recycling
	<b>Owner:</b>	Michael Pond, Shelly Minor
	<b>Case File Number:</b>	CM04474
	<b>Planning Permits Required:</b>	Major Conditional Use Permit- Extensive Impact Civic
	<b>General Plan:</b>	Light Industrial 3 (Estuary Plan)
	<b>Zoning:</b>	M-40 Heavy Industrial
	<b>Environmental Determination:</b>	Exempt per CEQA Section 15301 Minor Alternations to Existing Facilities
	<b>Historic Status:</b>	N/A
	<b>Service Delivery District:</b>	5
	<b>City Council District:</b>	District V
	<b>Status:</b>	N/A
	<b>Action to be Taken:</b>	Review of staff report
	<b>Finality of Decision:</b>	Appealable to City Council
	<b>For further information:</b>	Contact Margot Lederer Prado at (510) 238-6766 or by email at mprado@oaldandnet.com

ATTACHMENT 5

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**\*\* NOTE: THE FOLLOWING ITEM HAS BEEN  
REMOVED FROM THE AGENDA \*\***

<b>2.</b>	<b>Location:</b>	3872-3860 International Blvd (APN#033-2138-013-014)
	<b>Proposal:</b>	Major Conditional Use Permit for Alcoholic Beverage Commercial Sales Activity in association with an existing restaurant on a restricted street.
	<b>Applicant:</b>	Jesus Campos
	<b>Contact Person/Phone Number:</b>	Jesus Campos / 536-0909
	<b>Owner:</b>	Jesus Campos
	<b>Case File Number:</b>	CM04-472
	<b>Planning Permits Required:</b>	Major Conditional Use Permit
	<b>General Plan:</b>	Neighborhood Center
	<b>Zoning:</b>	C-40
	<b>Environmental Determination:</b>	Exempt, CEQA Guidelines (General Rule Exemption) Section 15301
	<b>Historic Status:</b>	Non Historic Property (NHP)
	<b>Service Delivery District:</b>	4
	<b>City Council District:</b>	5
	<b>Status:</b>	Approve application with attached conditions.
	<b>Action to be Taken:</b>	Pending
	<b>Finality of Decision:</b>	Appealable to City Council
	<b>For Further Information:</b>	Contact case planner <b>Jacob Graef</b> at (510) 777-8672 or by email at <a href="mailto:jgraef@oaklandnet.com">jgraef@oaklandnet.com</a> .

**APPEALS**

The Commission will take testimony on each appeal. Following testimony, the Commission will vote on the report prepared by staff. Unless otherwise noted, the decisions in the following matters are final and not administratively appealable. Any party seeking to challenge these decisions in court must do so within ninety (90) days of the date of the announcement of the final decision. If you challenge an appeal in court, you may be limited to raising only those issues raised at the appeal hearing, or in written correspondence received by the Zoning Division, Community and Economic Development Agency at, or prior to, the appeal hearing.

<b>3.</b>	<b>Location:</b>	3841 West Street
	<b>Assessors Parcel Numbers:</b>	012-0959-001-01
	<b>Proposal:</b>	Appeal of the decision of the Hearing Officer to Revoke the Major Conditional Use Permit to conduct Alcoholic Beverage Sales from a Grocery Store.
	<b>Applicant:</b>	Earl Johnson, esq.
	<b>Owner:</b>	Ali M. Alaoudi
	<b>Case File Number:</b>	A04-389
	<b>Planning Permits Required:</b>	Major Conditional Use Permit
	<b>General Plan:</b>	Urban Residential
	<b>Zoning:</b>	C-10
	<i>Continued on Page 5</i>	



*Continued from Page 4*

**Environmental Determination:** Exempt, Section 15301; State CEQA Guidelines; minor alterations to existing facility

**Historic Status:** Non-historic property (NHP)

**Service Delivery District:** 2

**City Council District:** 1

**Date Filed:** August 10, 2004

**Date of Commission Hearing:** December 15, 2004

**Finality of decision:** Appeal to City Council

**Support/Opposition:** Appellant submitted support for this request/ Community opposition to appeal being submitted

**Staff recommendation:** Re: Deny the appeal

**For further information:** Contact Case Planner Jacob Graef at 510-777-8672 or [Jgraef@oaklandnet.com](mailto:Jgraef@oaklandnet.com)

**\*\* NOTE: THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA \*\***

**4. Location:** 4165 and 4201 Norton Avenue; 4168, 4200 and 4206 Rettig Avenue  
(APN Nos. 029-1069-008-00, 029-1069-007-02, 029-1069-010-00, 029-1069-046-00, 029-1069-045-00)

**Proposal:** **CURE AND CORRECT FOR ALLEGED IMPROPER POSTING OF AGENDA IN CITY CLERK'S OFFICE (LESS THAN THE REQUIRED 72 HOURS BEFORE THE MEETING) PURSUANT TO OAKLAND MUNICIPAL CODE SECTION 2.20.270(D)**

**Consideration of whether to "cure and correct" the Planning Commission's December 1, 2004 action, and, if so, whether to affirm or supersede the Planning Commission's denial of the appeal.**

To allow emergency grading and slope stabilization to repair a landslide on five parcels. The emergency work will include installation of stabilization piles and three (3) upper-slope retaining walls. The work will also include installation of an additional (fourth) retaining wall lower on the slope, and the completion of the remaining remedial grading of the landslide. On November 8, 2004, an appeal was filed of Minor Variance to allow upper-slope retaining walls up to 15 feet in exposed height where 6 feet is the maximum exposed wall height (lower-slope walls will be 6 feet or less in exposed height); and Creek Permit to allow incidental debris removal within the Rettig Avenue right-of-way necessary to complete the emergency landslide repair work.

**Appellant Owners / Applicants:** Friends of Peralta Creek ~ Denise Davila  
Phil Gregory/ Cal Engineering & Geology Inc, Anna & Angelos Sakdis, Al Williams, Virginia Jones, Tony Pereira

**Case File Number:** A04-521 (V04-209 and CP04-071)

**Planning Permits Required:** V04-209 - Minor Variance to allow upper-slope retaining walls up to 15 feet in exposed height where 6 feet is the maximum exposed wall height (lower-slope walls will be 6 feet or less in exposed height); and CP04-071- Creek Protection Permit (Category III)

**General Plan:** Hillside Residential

*Continued on Page 6*

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*Continued from Page 5*

**Zoning:** R-30/ Single-Family Residential Zone

**Environmental Determination:** Each of the following provides a separate and independent basis for a CEQA exemption:  
 (1) Repair of property damaged in a disaster proclaimed by the California state governor is exempt from Environmental Review under CEQA Guidelines Section 15269(a); (2) Emergency repairs to publicly or privately owned facilities necessary to maintain service essential to public safety or welfare is exempt from Environmental Review under CEQA Guidelines Section 15269(b); (3) Specific action necessary to prevent or mitigate an emergency is exempt from Environmental Review under CEQA Guidelines Section 15269(c); (4) Repair, maintenance and minor alteration to existing facilities of both investor and publicly-owned utilities use to provide electric power, natural gas, sewerage, or other public utility services is exempt from Environmental Review under CEQA Guidelines Section 15301(b); and (5) Repair, maintenance and minor alteration to existing streets and similar facilities is exempt from Environmental Review under CEQA Guidelines Section 15301(c).

**Historic Status:** Not a Potential designated Historic Property; Survey rating: N/A

**Service Delivery District:** IV-Fruitvale

**City Council District:** 4

**Action to be Taken:** Decision based on Staff Report

**Finality of Decision:** Decision of Planning Commission is final

**For further information:** Contact case planner, Edward Manasse, at 510-238-7733; or by email at [emanasse@oaklandnet.com](mailto:emanasse@oaklandnet.com)

**OPEN FORUM**

At this time members of the public may speak on any item of interest within the Commission's jurisdiction. Speakers are generally limited to two minutes or less if they are six or less speakers on an item, and one minute or less if there are more than six speakers.

**\* \* SPECIAL MEETING NOTICE \* \***

**PLANNING COMMISSION HOLIDAY DINNER**

**Location: Scott's Restaurant, 2 Broadway**

**Time: *Immediately Following the Meeting***

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**ADJOURNMENT**

By 10:30 P.M. unless a later time is agreed upon by a majority of Commissioners present.

**GARY V. PATTON**  
Deputy Director of  
Planning and Zoning

**NEXT REGULAR MEETING:      JANUARY 5, 2005**

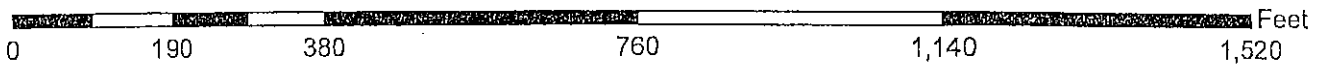
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<b>Location:</b>	4165 and 4201 Norton Avenue; 4168, 4200 and 4206 Rettig Avenue (See map on reverse)
<b>Assessors Parcel Number(s):</b>	029-1069-008-00, 029-1069-007-02, 029-1069-010-00, 029-1069-046-00, 029-1069-045-00
<b>Proposal:</b>	<b>CURE AND CORRECT FOR ALLEGED IMPROPER POSTING OF AGENDA IN CITY CLERK'S OFFICE (LESS THAN THE REQUIRED 72 HOURS BEFORE THE MEETING) PURSUANT TO OAKLAND MUNICIPAL CODE SECTION 2.20.270(D)</b>
	<i>Consideration of whether to "cure and correct" the Planning Commission's December 1, 2004 action, and, if so, whether to affirm or supersede the Planning Commission's denial of the appeal.</i>
	To allow emergency grading and slope stabilization to repair a landslide on five parcels. The emergency work will include installation of stabilization piles and three (3) upper-slope retaining walls. The work will also include installation of an additional (fourth) retaining wall lower on the slope, and the completion of the remaining remedial grading of the landslide.
	On November 8, 2004, an appeal was filed of Minor Variance to allow upper-slope retaining walls up to 15 feet in exposed height where 6 feet is the maximum exposed wall height (lower-slope walls will be 6 feet or less in exposed height); and Creek Permit to allow incidental debris removal within the Rettig Avenue right-of-way necessary to complete the emergency landslide repair work.
<b>Action to be Taken:</b>	Decision on Appeal.
<b>Appellant:</b>	Friends of Peralta Creek – Denise Davila
<b>Owner(s):</b>	Phil Gregory/ Cal Engineering & Geology Inc, Anna & Angelos Sakkis, Al Williams, Virginia Jones, Tony Pereira
<b>Planning Permits Required:</b>	V04-209 - Minor Variance to allow upper-slope retaining walls up to 15 feet in exposed height where 6 feet is the maximum exposed wall height (lower-slope walls will be 6 feet or less in exposed height); and
	CP04-071- Creek Protection Permit (Category III)
<b>General Plan:</b>	Hillside Residential
<b>Zoning:</b>	R-30/ Single-Family Residential Zone

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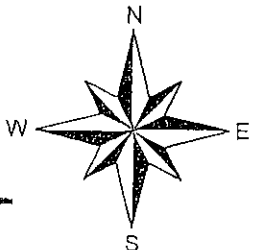
# CITY OF OAKLAND PLANNING COMMISSION



Case File: A04-521 (V04-209 & CP04-071)  
Applicant: Phil Gregory/ Cal Engineering and Geology Inc.,  
Anna & Angelos Sakkis, Al Williams, Virginia Jones  
Tony Pereira  
Appellant: Friends of Peralta Creek- Denise Davila  
Address: 4165 & 4201 Norton Ave.; 4168, 4200, & 4206 Rettig Ave.  
Zone: R-30

ATTACHMENT 6

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<b>Environmental Determination:</b>	<u>Each of the following provides a separate and independent basis for a CEQA exemption:</u> (1) Repair of property damaged in a disaster proclaimed by the California state governor is exempt from Environmental Review under CEQA Guidelines Section 15269(a); (2) Emergency repairs to publicly or privately owned facilities necessary to maintain service essential to public safety or welfare is exempt from Environmental Review under CEQA Guidelines Section 15269(b); (3) Specific action necessary to prevent or mitigate an emergency is exempt from Environmental Review under CEQA Guidelines Section 15269(c); (4) Repair, maintenance and minor alteration to existing facilities of both investor and publicly-owned utilities use to provide electric power, natural gas, sewerage, or other public utility services is exempt from Environmental Review under CEQA Guidelines Section 15301(b); and (5) Repair, maintenance and minor alteration to existing streets and similar facilities is exempt from Environmental Review under CEQA Guidelines Section 15301(c).
<b>Historic Status:</b>	Not a Potential designated Historic Property; Survey rating: N/A
<b>Service Delivery District:</b>	IV-Fruitvale
<b>City Council District:</b>	4
<b>Date Filed:</b>	November 8, 2004
<b>Staff recommendation:</b>	Uphold the Zoning Administrator's approval and deny the appeal.
<b>Finality of Decision:</b>	Final decision, not appealable
<b>For further information:</b>	Contact case planner, Edward Manasse, at 510-238-7733.

On December 1, 2004, the City Planning Commission held a public hearing, heard testimony from the applicant and interested parties, and voted to **DENY** the appeal, **AFFIRM** staff's environmental determinations, and **UPHOLD** the issuance of the Minor Variance to allow upper-slope retaining walls up to 15 feet in exposed height where 6 feet is the maximum exposed wall height, and Creek Protection Permit (Category III) to allow landside stabilization and remedial grading within a public right-of-way contiguous to a Creek/Riparian Corridor.

On December 8, 2004, Mr. Ralph Kanz wrote an e-mail to Development Director, Claudia Cappio, (see **Attachment A**) claiming that the revised agenda for the December 1, 2004 Planning Commission meeting was not posted at the City Clerk's office until sometime on Monday, November 29 - less than 72 hours before the meeting, in violation of both the Oakland Sunshine Ordinance and Brown Act. Upon review, the City was in substantial compliance with the noticing requirements of the Brown Act and the Oakland Sunshine Ordinance as the appellants and applicants were provided notice 9 days before the hearing, all agenda subscribers were sent the revised agenda more than 72 hours before the meeting and the revised agenda was also posted on the City's website more than 72 hours before the meeting. In addition, the Commission found that hearing the item that night was necessary to protect the public's health and safety, since this was an emergency landslide repair project.

**ATTACHMENT** 6

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Nevertheless, in the interests of achieving full compliance with the Brown Act and Sunshine Ordinance, this item is being brought before the Commission for consideration of whether to "cure and correct" the Planning Commission's December 1, 2004 action, and, if so, whether to affirm or supersede the Planning Commission's denial of the appeal.

All the evidence introduced both before and during the December 1, 2004 public hearing is already included in the record, so there is no need to re-hear or re-introduce that evidence.

**RECOMMENDATIONS**

Staff recommends the City Planning Commission:

1. Take new public testimony
2. Affirm the December 1, 2004 decision, including
  - a) Finding that it has exercised its independent judgment.
  - b) Affirming staff's environmental determinations.
  - c) Denying the appeal and uphold the issuance of the Minor Variance and Creek Protection Permit for the emergency landslide repair project.

**NOTICE OF FINAL DECISION**

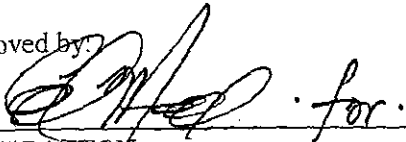
This is a final administrative decision, is not administratively appealable and is effective immediately. Any party wishing to challenge this decision in court must do so no later than ninety (90) days after the date of decision being announced, pursuant to Code of Civil Procedure section 1094.6.

Prepared by:



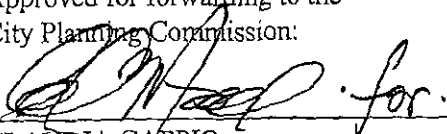
EDWARD MANASSE  
Planner IV

Approved by:



GARY PATTON  
Deputy Director of Planning & Zoning

Approved for forwarding to the  
City Planning Commission:



CLAUDIA CAPPIO  
Development Director

**ATTACHMENTS:**

- A. December 8, 2004 email from Mr. Ralph Kanz
- B. December 1, 2004 Materials submitted by applicant and appellant at 12/1/04 CPC meeting
- C. December 1, 2004 Planning Commission staff report with all original attachments