



PRESS STATEMENT FROM THE CITY OF SAN PABLO

FOR IMMEDIATE RELEASE: 7:00 p.m., Wednesday, April 27, 2011

UPDATE ON SAN PABLO WYMAN/HILLCREST LANDSLIDE UPDATE

The City of San Pablo remains in "EMERGENCY RESPONSE MODE" regarding the current Wyman/Hillcrest Landslide event which initially occurred on Thursday, March 24, 2011. This evening, the San Pablo City Council took action to extend the City's EMERGENCY DECLARATION, and authorized the City Manager to proceed with the "INTERIM FIX" as presented to affected homeowners on April 12, 2011.

INTERIM PLAN APPROVED

This evening, the San Pablo City Council authorized the City to pay for and construct a temporary "INTERIM FIX" that hopefully will enable the homeowners of Wyman and Hillcrest to move back into their homes. Initially, on April 19, 2011, the City gave the homeowners one week to sign the Waiver/Release Agreement (Agreement) because time is of the essence - Any further earth movement could move the hillside so much that the "INTERIM FIX" would not work, or make the "INTERIM FIX" simply too expensive to undertake. Right now, the City estimates that the "INTERIM FIX" will cost between \$100,000 and \$150,000. On April 21, 2011, the homeowners asked for more time to review the Agreement and have expressed some concerns over the language.

The City has agreed to give the homeowners one additional week until Tuesday, May 3, 2011, understanding that this might change if the status quo on the hillside changes. The City has revised language in Section 7.0 of the Agreement in order to meet concerns expressed by the homeowners. A copy of this correspondence is attached.

CITY LIABILITY ISSUES

There is currently no evidence to suggest that the City is responsible or liable for the slide, and geotechnical experts have stated that it does not appear that any prior city work or property ownership contributed in any way to this most recent slide. This area has been sliding due to its natural condition since at least the 1950's.

The City sympathizes with the homeowners and has done everything within its power to assist them in their time of need. The temporary "INTERIM FIX" will **NOT** permanently stabilize the hillside or provide any guarantees to the homeowners.

By volunteering to construct the "INTERIM FIX," the City exposes itself to further liability. For that reason, the Agreement requires that ALL the affected property owners agree to release the City from liability for anything caused by the "INTERIM FIX". The Agreement does NOT hold the City harmless against all future claims. It simply provides that the homeowners cannot use the fact of the City's "INTERIM FIX" against the City in court, except in the case of gross negligence or willful misconduct by the City. Changes have been made to the Release language to meet the owners' concerns. ALL of the affected homeowners must sign the Agreement in order for the "INTERIM FIX" to proceed.

STATUS OF PROPERTIES

The following is a status on the buildings/structures as determined by the City's Chief Building Official:

- A "Red Tag" remains issued for 5945 Wyman Street property, with RESTRICTED ACCESS. This property was previously issued a "Yellow Tag" with limited authorized access on Saturday, March 26, 2011. All utilities remain shut-off and City building officials will continue with 24-hr inspections for the affected property.
- "Yellow tags" remain posted for 5950 and 5962 Hillcrest Road. A patio deck at 5931 Wyman also remains "Red Tagged" by City building officials. Access remains restricted for these subject properties per the City's Chief Building Official. Regular 24-hour inspection intervals will continue by City officials on structures which are being closely monitored.

For additional information, all media is requested to contact the City's Public Information Officer for this incident:

Assistant City Manager Kelsey Worthy

Cell: (510) 798-7835

Work: (510) 215-3039

ATTACHMENT

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CITY OF SAN PABLO

City of New Directions

E-TRANSMITTALDATE OF TRANSMITTAL: April 26, 2011PROPERTY OWNERS:

5945 WYMAN STREET (APN 420-063-004-6)

5955 WYMAN STREET (APN 420-063-003-8)

5931 WYMAN STREET (APN 420-063-005-3)

5925 WYMAN STREET (APN 420-063-006-1)

5962 HILLCREST ROAD (APN 420-063-016-0)

5950 HILLCREST ROAD (APN 420-063-015-2)

5938 HILLCREST ROAD (APN 420-063-014-5)

SUBJECT: REQUEST FOR 30-DAY EXTENSION

Dear Homeowners:

On April 19, 2011, the City of San Pablo sent you an Agreement under which the City would use public funds to attempt an interim fix of the damages caused by the Wyman/Hillcrest landslide. The goal of such a fix would be enable the property owners to safely return to their homes. In return, the City asked to be held harmless for any damages caused by such repair, unless due to the gross negligence or willful misconduct of the City.

The City of San Pablo has received your email on April 21, 2011 to Assistant City Manager Kelsey Worthy requesting an additional 30-day extension to obtain legal counsel on the agreement (See Attachment).

In consideration of the urgency of this INTERIM PLAN, the City denies your request for a 30-day extension. However, to allow additional time for review of revised language presented below to the WAIVER/RELEASE AGREEMENT (Agreement) as presented to you on April 19, 2011, the City will permit an additional seven (7) days for additional review **until Tuesday, May 3, 2011 at 5:00 p.m.**

REVISED LANGUAGE

The City understands that the affected homeowners have misunderstood the language contained under Section 7.0 of the Agreement, feeling that the citation to Civil Code section 1542 might operate to waive all claims against the City in the future. Again, the intent of the Agreement is simply to hold the City harmless for damages arising out of the **interim fix only**, and the existing language, from a legal perspective, accomplishes this. However, to ease your concerns, the City agrees to substitute language which will amend Section 7.0 of the Agreement, as follows:

7. OWNERS of said PROPERTIES **WAIVE AND RELEASE** all CLAIMS against the CITY and CITY REPRESENTATIVES for DAMAGES ARISING OUT OF SAID INTERIM FIX and further agree to DEFEND AND INDEMNIFY the CITY and CITY REPRESENTATIVES against THIRD PARTY CLAIMS ARISING OUT OF SAID FIX, except CLAIMS for gross negligence or willful misconduct.

The releases set forth in this Agreement shall be effective as a bar to all actions, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, **which arise out of said interim fix**. Each and every owner hereby waives the provisions of California Civil Code section 1542 **with regard to the interim fix**, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

If you agree to the amended language as indicated above, the City can provide a revised WAIVER/RELEASE AGREEMENT with changes noted above for your review and subsequent execution by signature. Please let us know ASAP.

NO PERMANENT REPAIR PROVIDED

As indicated on April 12, 2011, please understand that the INTERIM PLAN is being provided to affected homeowners to ensure public health and safety, and to attempt to return homeowners to their properties **as soon as possible**.

No additional work or permanent repair will be provided by the City unless Federal or State financial assistance materializes.

FEDERAL OR STATE ASSISTANCE

Based on information obtained from the City as of April 25, 2011, financial assistance does not look possible from the State of California, and will likely not materialize unless the President of the United States makes an emergency declaration for all 19 counties in California which were impacted by March 2011 storms.

Additionally, the City has verified through the State of California Office of the Insurance Commissioner that representatives have made successful contact with many or all affected homeowners and their insurance providers to provide assistance in this situation.

CONCLUSION

Each affected homeowner must agree to the Waiver/Release From Liability (Agreement), and respond no later than 5:00 p.m., Tuesday, May 3, 2011.

Finally, the INTERIM PLAN work cannot commence until all affected homeowners execute and sign the said Agreement.

Should you have any questions or require additional information, please contact Assistant City Manager Kelsey Worthy at (510) 215-3039 or email: KelseyW@SanPabloCA.gov

Thank you for your time and consideration.

Sincerely,



Matt Rodriguez
City Manager

Attachment:

1). Copy of Email request from Joe Romey dated 04/21/11

cc: San Pablo City Councilmembers
City Attorney
Assistant City Manager
Public Works Director/City Engineer

COPY

From: Joe Romey [<mailto:joe.romey@gmail.com>]
Sent: Monday, April 25, 2011 9:49 PM
To: Kelsey Worthy
Cc: sandragivens@att.net; deedeewe@sbcglobal.net; she1032944@aol.com; trinascott@yahoo.com; NLBascott@yahoo.com; chrislancemarcel@yahoo.com; ljiwalker7@gmail.com
Subject: FW: Agreement Deadline

Good evening Kelsey,

I have not yet received any acknowledgment that you have received our request of Thursday, April 21, for an extension of the deadline to sign the "Agreement".

Please let me know if there has been a problem in the transmittal or receipt of the original emailed request.

Thank you,
Joe Romey

From: Joe Romey [<mailto:joe.romey@gmail.com>]
Sent: Thursday, April 21, 2011 9:12 PM
To: 'Kelsey Worthy'
Cc: 'sandragivens@att.net'; 'deedeewe@sbcglobal.net'; 'she1032944@aol.com'; 'trinascott@yahoo.com'; 'NLBascott@yahoo.com'; 'asaphauling510@hotmail.com'
Subject: Agreement Deadline

Hello Kelsey,

We have just wrapped up the neighborhood meeting to discuss the agreement and we are in the process of finding qualified legal counsel.

We would like to request an extension of the deadline to allow adequate time to be advised of how best to proceed in this complicated situation. We would appreciate it if you would extend the deadline an additional 30 days, to May 23rd.

Thank you in advance for your courtesy.

Joe Romey