

ORIGINAL

**CLAIM
COUNTY OF SANTA BARBARA**

PLEASE RETURN ORIGINAL AND ONE COPY TO:

COUNTY OF SANTA BARBARA
CLERK OF THE BOARD OF SUPERVISORS
105 EAST ANAPAMU STREET, SUITE 407
SANTA BARBARA, CA 93101

A. Ramirez
RECEIVED BY (DEPUTY CLERK)

- Personal Delivery
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CLERK OF THE BOARD TIME STAMP

* READ THE INSTRUCTIONS ON THE REVERSE SIDE BEFORE COMPLETING *
IF ADDITIONAL SPACE IS NEEDED, USE SEPARATE PIECES OF PAPER *

A. NAME AND ADDRESS OF THE CLAIMANT:

*Peter and Andreea Jorgensen
5575 Somerset Dr
Goleta CA 93111*

TELEPHONE: *805-886-2108*

EMAIL (optional): *Peter@jorgensen-family.com*

B. ADDRESS TO WHICH THE PERSON PRESENTING THE CLAIM DESIRES NOTICES TO BE SENT:

Kate Neiswender
PO Box 1225
Blue Jay, CA 92317-1225

TELEPHONE: *805 320 2520*

EMAIL (optional): *KateLawVentura@gmail.com*

C. DATE, PLACE, AND OTHER CIRCUMSTANCES OF THE OCCURRENCE OR TRANSACTION WHICH GAVE RISE TO THE CLAIM: *com*

DATE: TIME:

PLACE:

CIRCUMSTANCES:

See Attached Narrative

D. GENERAL DESCRIPTION OF THE INDEBTEDNESS, OBLIGATION, INJURY, DAMAGE, OR LOSS INCURRED SO FAR AS IT MAY BE KNOWN AT THE TIME OF PRESENTATION OF THE CLAIM:

Damage to property due to failure to maintain County easement

E. NAME(S) OF THE PUBLIC EMPLOYEE(S) CAUSING THE INJURY, DAMAGE, OR LOSS:

see Attached narrative

F. IS THE AMOUNT CURRENTLY CLAIMED LESS THAN \$10,000? YES ___ NO

IF "YES": STATE THE AMOUNT CLAIMED, AND THE BASIS OF COMPUTATION:

IF "NO": DO NOT STATE A DOLLAR AMOUNT, AND INSTEAD STATE WHETHER THE CLAIM WOULD BE A "LIMITED CIVIL CASE":

No, unlimited

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT

[Signature]

SIGNATURE OF CLAIMANT OR REPRESENTATIVE

6/13/2022
DATE SIGNED

LAW OFFICE OF K.M. NEISWENDER

Land Use • Business • Environmental

Phone: 909.744.9723
Cel: 805.320.2520

Email: KateLawVentura@gmail.com

Mailing Address:
Post Office Box 1225
Blue Jay, California 92317

June 14, 2022

County of Santa Barbara
Clerk of the Board
105 E. Anapamu Street #407
Santa Barbara CA 93101

Re: Government Claim By Andrea and Peter Jorgensen
Erosion Damage at 5575 Somerset Drive

Greetings:

This Government Claim is being filed regarding erosion damage to the property at 5575 Somerset Drive in Goleta (hereinafter the "Property").

There are four parts to this claim: (1) A chronology of the events leading to this claim; (2) photos showing the damage; (3) the law of the case; and (4) a summary of damages.

1. Chronology of Events

Claimants purchased their property, which is adjacent to San Jose Creek, in 2018. In January of 2019, it was clear that erosion from City-owned San Jose Creek (hereinafter "Creek") was endangering the Claimants' property. The County of Santa Barbara, through its Flood Control District, owns an easement across the City property.

In reviewing Public Records from the City, it appears that the City and the County are "pointing fingers," each claiming the other is responsible for maintenance of the channel and therefore responsible for the damages described in this letter. Communications with both the City and the County began in March of 2019:

March 4, 2019: Claimants sent the first email with photos to the City. All photos referenced herein can be produced upon request. However, only a portion of the photo record is attached hereto. It was around this time that Claimants put in a City "service request."

March 31, 2019: Because there was no response to the 3/4/19 email, a follow-up email with additional photos was sent to the City.

April 1, 2019: The City directed Claimants to the public works manager.

April 8, 2019 - Public Works Manager Paul Medel ("Medel") wrote: "Thank you for your concern regarding the creek area. After having the City Arborist look at the area, he indicated it was best to leave the tree that had fallen over within the wash as a stabilizer and hopefully its root structure will work as a holding base as well. We will continue to monitor this area that is City Property with hopes of continued tree growth and then return prior and during next winter to evaluate."

Government Claim - Jorgensen

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April 8, 2019: Claimants asked for a meeting.

April 9, 2019: Meeting, meeting takes place.

April 10, 2019: From Medel: "Yes, I have indicated to our city engineer about the creeks heavy flow removing material during winter (which it will naturally do). If I hear anything more I will let you know. Thanks again."

April 24, 2019: Claimants sent email with additional photos of continued erosion.

April 24 - Medel responds: "Thanks Peter for your concerns in regards to the creek. The City will provide you a written response as soon as possible."

June 24, 2019: Claimants sent email asking about the response and if there were any plans for the up next winter.

June 27, 2019: Medel wrote: "Thank you again. I have provided our legal department with your information and concerns about the winter creek flow. They will be providing you with a response as soon as they are able to look through all the information."

July 16, 2019: From Medel: "Just an quick update. We are still trying to piece together info from County flood control and hope to give you some info as soon as we can. Thank you for your patience."

July 17, 2019: The City drafted a "Project Initiation Document" requiring rip-rap or other material to stop the erosion of the Property. This document is attached. Nothing was done to complete the work described in this Document.

August 5, 2019: Claimants asked if there was any new information. The City failed to respond.

August 22, 2019: Claimants asked again for any updates.

August 22, 2019: Medel responded, saying: "Hi Peter, I believe the person you would like to contact going forward regarding the creek flow would be Julie Chang. She has been working with county flood on the creek flow."

September 17, 2019: - Claimants sent email to Goleta City Council members expressing concern about the erosion issue.

September 18, 2019: Claimants received a positive response from Kyle Richards and Stuard Kasdin.

September 20, 2019: Kasdin wrote: "As you know, the city is aware of the problem and will be working to address it. There are some jurisdictional questions that need to worked out with the county and a meeting is being set up to discuss responsibilities. But no one is forgetting the problem. Hopefully, there is a resolution soon"

September 20, 2019: Kasdin wrote again: "There has already been an initial contact with the county. County staff were receptive to a full-on, all-hands meeting, so that is being set up now. Resolving this concern is apparently a priority for the city; your issue hasn't been forgotten."

October 15, 2019: The City asked for additional information.

October 15, 2019: Kasdin wrote to Claimants: "The meeting is scheduled for October 24, so at this point we don't have any new information."

November 4, 2019: Claimants asked if there was any news from meeting.

November 6, 2019: Richards wrote: "I have contacted our staff to see what I can find out. I'll let you know as soon as I hear anything."

November 7, 2019: Kasdin wrote: "Is Julie not responding to your email requested for information about the meeting?"

November 7, 2019: Claimants responded to Kasdin email that they had not received any information from Julie Chang.

This chronology continues into 2020:

June 15, 2020: Claimants sent email showing winter storms had continued erosion and sent multiple photos.

June 15, 2019: Chang wrote: "I will let you know that this issue has been elevated to the PW Director and unfortunately I don't have any additional information. I will let you know if I hear anything."

November 4, 2019: Claimants sent email to City Councilmembers and public works raising issue and safety concerns for upcoming winter storms.

November 9, 2019: Kasdin wrote: "I passed on your message to the staff. Apparently, our interactions with the county make this complicated. Sorry."

It is important to note here that the City was and is fully aware that it owns San Jose Creek, and is responsible for its maintenance. While there is a County-held easement along the bottom for open space purposes, it is and has always been the City's responsibility to maintain the Creek so as not to damage adjacent property owners, including Claimants.

Communications continued in 2021:

February 1, 2020: Claimants sent email showing impacts of winter storms and photos of resulting overhangs. These photos were taken February 1, 2021.

February 1, 2020: Kasdin responds: "I'm sorry no one has gotten back to you. I'll try again to get you a better response."

February 4, 2020: Claimants replied to Kasdin's email reiterating safety concerns and reminding him that communication has erratic at best.

February 4, 2020: Kasdin replies: "Well, I passed on your info. to staff. I really hope there is SOME information that they can get back to you with. I'm sorry we haven't been more forthcoming with you about the situation and what the city can do."

February 5, 2020: Kasdin replied: "We have a closed session item to talk about your situation."

February 16, 2021: The City Council discusses the Property and the Creek at a meeting on this date (see City Council Meeting Agenda, page 5, attached). The text of the meeting notice read: CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Pursuant to Government Code section 54956.9(d)(2), a point has been reached where the City Council, based on the advice of its legal counsel and existing facts and circumstances, has determined that there is a significant exposure to litigation against the City. The facts and circumstances pursuant to Government Code section 54956.9(e)(2) are as follows: Exposure to litigation from owner of 5575 Somerset Drive arising from alleged erosion of creek embankment."

February 17, 2021: Claimants spoke to James Campero on the phone. He had no new information, but did follow up by email: "It was good talking to you on the phone today and I appreciate your understanding in regards to this item. I assure you we do understand your concerns and are not taking this item lightly. As discussed we will reach out to you as soon as we have information to share and we will do our best to update you as things progress."

March 10, 2021: Claimants asked if there was any new information.

March 12, 2021: Campero replied: "Unfortunately I have not heard anything additional because Charlie and our City Attorney are managing this item. I do not meet with Charlie next week, but I will follow-up with him the following week on the status or any additional news at our leadership meeting."

April 1, 2021: Claimants requested update.

April 19, 2021: Campero replied: "Sorry I don't have any updates, but as I had mentioned our Public Works Director, Charles Ebeling, is the lead on this item so he may have more information. I have forwarded your request on to him"

April 19, 2021: Claimants asked if they should email Charles Ebling directly.

April 19, 2021: Campero replied: "Yes, at this point he is the primary Public Works point of contact. I would also suggest cc'ing Imelda Martin (imartin@cityofgoleta.org). She is Public Works Administrative Assistant and helps manage Charlie's schedule and work efforts."

April 21, 2021: Claimants emailed Ebling and Martin as directed by Campero.

April 21, 2021: Martin replied: "Thank you for your email. Mr. Ebeling is out of the office. I can get a message to him and ask him to contact you by the end of the week."

May 6, 2021: Claimants received no response, and requested follow up. No follow up was received.

December 24, 2021: Submitted ticket with new photos to City Photos taken December 24, 2021. Damage is extensive.

December 27, 2021: Claimants submit additional photos.

December 30, 2021: Claimants submit additional photos.

With damage continuing, and continued City and County inaction, communications continued into 2022:

January 5, 2022: Claimants submit additional photos. After the late December rains, the erosion destroyed the bank all the way to Claimants' fence.

January 6, 2022: Claimants spoke with Campero via phone. Campero emailed Claimants with a map showing the City owns the Creek and the bank.

Additional photos were taken and submitted to the City in January and again in March.

2. Photos of the Damage

Photos are attached to this Claim, showing the accelerating damage from 2019 to the present. As noted above, there is a photo-history of the damage, and while only some of these photos are attached, all are available.

3. The Law of The Case

The City's General Plan anticipated the Creek bed erosion that led to this claim. In Section SE 5.6, it states:

Streambed Stabilization Projects. [GP/CP] In stream areas susceptible to slope failure, the City shall pursue and implement streambed stabilization projects. For these projects, stabilization by restoration with native plantings and natural-looking, "soft" stabilization methods shall be preferred over concrete channelization, gabions, riprap, and other "hard" stabilization methods.

In line with SE 5.6, City staff prepared a "Project Initiation Document" (attached) that states the Creek next to the Claimants' Property should be stabilized as follows:

"The project consists of installing rip-rap (rock wall) to support the soil erosion areas, including down of slope on private property on Somerset adjacent to the Creek bank. Installing rip-rap will prevent future and present soils and slope related hazards ... Also the design will consider hydrology load from top to bottom at the Creek stream drainage flow based on 100 year storm event."

The City and County as well as the NGO, the Urban Creeks Council, has removed and replanted this area in the past in the pursuit of natural stabilization of the creek bank. Actions by these organizations have not been maintained, but these actions show the County was aware of this issue for years before Claimants purchased their Property.

The overhang created by the erosion is a dangerous condition of public property, not only at Claimants' Property but elsewhere. A boy was killed in the Creek while playing under an overhang just upstream of the Property. As noted above, the City's General Plan directly addresses the need for rip-rap for bank stabilization (SE 5.6).

Thus, before Claimants purchased their Property in 2018, the City and County were fully aware of the problem, had initiated a design for resolution of the problem, and then did nothing. The City and County failures to act was in violation of its duties under its own General Plan as well as the law as described in *Locklin v. City of Lafayette* and cases following.

In *Locklin v. City of Lafayette* (7 Cal. 4th 336, 1994), the California Supreme Court reviewed a case in which a property owner (who owned the Creek to the centerline) sued a city on grounds the failure to properly maintain the creek was liable for damage. The Supreme Court said the city was not liable, but provided direction as to when a public entity (or private party) would be liable for damage from surface waters.

The high court established a "rule of reasonableness," by which the upstream owners could be judged. Several factors were called out (at 359-360):

"The issue of reasonableness becomes a question of fact to be determined in each case upon a consideration of all the relevant circumstances, including such factors as **the amount of harm caused**, the **foreseeability of the harm** which results, the **purpose or motive** with which the possessor acted, and all other relevant matter... It is properly a consideration in land development problems whether the utility of the possessor's use of his land outweighs the gravity of the harm which results from his alteration of the flow of surface waters. The gravity of harm is its

seriousness from an objective viewpoint, while the utility of conduct is meritoriousness from the same viewpoint... If the weight is on the side of him who alters the natural watercourse, then he has acted reasonably and without liability; if the harm to the lower landowner is unreasonably severe, then the economic costs incident to the expulsion of surface waters must be borne by the upper owner whose development caused the damage.”

In our situation, both the City and County have failed to act reasonably. It has known for years that the erosion was occurring, even going so far as to initiate a project to correct the problem, then failing to act. By permitting development that modified that drainage patterns (through impervious surfaces, road construction, etc.) drainage in the Creek was increased. In emails, it was discussed that boulders in the Creek bottom have altered drainage patterns, making erosion at the Claimants’ Property more severe.

The *Locklin* court acknowledged that modifications to the upstream areas were “unnatural” and could shift liability onto the City:

“Draining surface waters from impermeable surfaces and channeling the flow into a waterway in culverts and storm drains is not the manner in which surface water would naturally be discharged into a waterway. Both the volume and the velocity of the discharge are abnormal, and it is the damage which may be caused by that unnatural method of drainage that is in issue.” (At 352-353)

On the other hand, Claimants could not have taken action to install the rip-rap. The Creek is owned by the City¹; the County owns an easement. It was clearly City and County responsibility, and Claimants took no action that would have worsened the erosion.

The City and County may claim they did not have the money in the budget to correct this problem, but two of the *Locklin* factors must be considered. The *foreseeability of the harm* to Claimants was obvious. The bank is being destroyed, bit by bit. A serious storm event could destroy the house itself. The harm in that is overwhelming: no insurance company will insure against landslides or land movement. Claimants could lose their home, their life savings, and be left with nothing. This is not speculation: this is fact.

Those two factors – the amount of harm caused and the foreseeability of that harm – must be weighed against the City’s motive. The cost of the repair was estimated in a City budget item from 2019 as only \$120,000.00. If the City’s failure to act is motivated by money, then the \$120,000.00 must be weighed against the loss of Claimants’ entire investment in their home. We must also consider that the \$120,000 in cost is borne by all the citizens of the City and the County, versus the imposition of a \$1.6 million loss, borne only by Claimants and their family.

There is another factor to be considered. By choosing not to install the rip-rap recommended by City staff in 2019, the City and County are making a conscious decision to damage Claimants’ property. It should be noted that if the City and County were to decide never to install the rip-rap, then the damage will work its way down stream and eventually undermine

¹This is different from the claimant in *Locklin*, who owned the creek bed to the centerline.

Edison power poles (including Cox and Frontier network and phone cables), as well as eventually damage street stormwater discharge piping. By failing to act now, the City and County are endangering public infrastructure. If the City and County contend that Claimants should pay for the riprap installation, that is tantamount to a single private property owner being required to protect public and corporate infrastructure. Again, it appears the City and County are trying to shift a public expense onto a private property owner.

Considering these four factors, it appears obvious that the County would have liability under the *Locklin* factors.

4. Summary of Damages

There are two categories of damages:

Stigma Damages to 5575 Somerset: At this time, due to the unchecked erosion, if Claimants wanted to sell their Property, they would have to disclose the dangers posed by the Creek and City and County inaction. The Property is currently estimated to have a fair market value of \$1.6 million. If Claimants tried to sell, the value of the Property would be considerably less, perhaps nothing, because if the Creek erodes away any more of the Property, and the house itself is damaged, the remaining land would not be able to be used to build another house, or rebuild the existing house. Damages could be in the range of \$1.6 million, although expert testimony will be required to set that amount exactly.

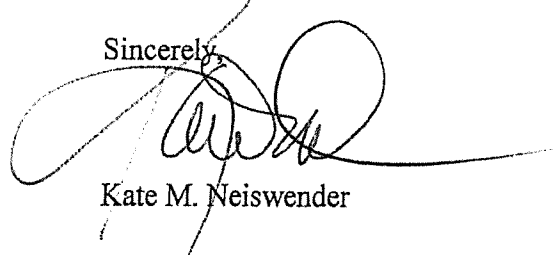
Actual Damages to the Property: At this point, several feet of the Claimants' Property has been lost to erosion, and the erosion has undermined the fencing on the edge of their lot. The loss of that land must be calculated by expert testimony, based on the value of the Property at time of trial (currently \$1.6 million). If the lost land is to be restored properly (engineered compaction of the soil, restoration of the lost bank), that cost is estimated at \$150,000.00, although a formal estimate has not been obtained. Repairs to the fence are currently estimated at \$10,000.00, but the fence cannot be replaced until the bank has been stabilized.

Conclusion

The County is asked to immediately restore the eroded bank where it impacts Claimants' Property and install the rip-rap facing on the Creek banks adjacent to the Property, which will stop continued erosion of the Property and perhaps save Claimants' house and land from further damage.

Please direct any questions or requests for further information to the undersigned.

Sincerely,



Kate M. Neiswender

PROJECT INITIATION DOCUMENT
July 17, 2019
SAN JOSE CREEK BANK EROSION ON SOMERSET
PROJECT No. T1919

Project Type: San Jose Creek Bank Erosion Repair/ Maintenance

Purpose and Need

The purpose of the Project is repair/ maintenance of bank erosion on San Jose Creek / APN 069-153-001, between Somerset Drive and the Northwest corner of Maravilla Senior Community.

The San Jose Creek drainage flow pattern and banks change over time. And these changes in bank location are causing critical soil erosion from the San Jose Creek bank and slope destabilization and erosion along private property on Somerset. Repair and maintenance of the creek bank and down slope of the private property is required to mitigate future landslides occurs by stream erosion, slope collapse, and slope down movement of soil, which will impact Public Health, Safety, Welfare, and the creek ecology.

Background

Recently the private property owner of 5575 Somerset Drive /APN 069-153-023, brought to City's attention, San Jose creek bank erosion at the down of slope at the private property on Somerset. The owner also asked about the assistance with site repair by the City. The Creek bank erosion is ongoing in APN 069-153-001, designated as Parcel A in Track 10124 by Santa Barbara County on August 31st, 1960.

There is a Flood Control Drainage Easement in Track 10124, Parcel A, APN 069-153-001 within the soil expansive boundary. The easement was established for public use as open space, and any other public use compatible with open space uses, including but not limited to recreation, parks, and flood control uses.

According to the District and County, the Flood Control District does not have responsibility for the creek bank erosion repair, and hence, will not undertake this project. However, the District may consider including this site as a future maintenance project in their Annual Routine Maintenance Plan to assist with Environmental Documentation in 2020. In the meantime, the City, and/or the adjacent property owner should pursue this project.

Project Description

The project consists of installing rip-rap (rock wall) to support the soil erosion areas, including down of slope on private property on Somerset adjacent to the Creek bank. Installing rip-rap will prevent future and present soils and slope related hazards, such as, expansive soils, slope fairer, and collapsible soils or slope. The proposed rip-rap (rock wall) design will consider the existing rip-rap; rock size, wall height and length, and construction method and materials; as constructed by Santa Barbara County. Also, the

design will consider hydrology load from top to bottom of the Creek stream drainage flow based on 100 year storm event.

Design options may include repairing or relocating the Pipe and Wire Revetment constructed by Natural Resources Conservation Services in 1970's, located downstream of the Creek. The design details will depend on the Revetment location related with creek drainage flow patterns.

Project Issues/Impacts

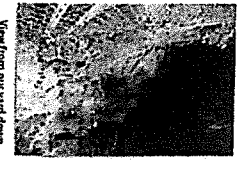
- o Design
 - o To be performed by Bengal Engineering
- o Right of Way Issues
- o Environmental Issues
 - o Flood Control Drainage Easement
- o Utility Coordination
 - o None known
- o Construction, Public Safety and Convenience
- o Conformance with General Plan
- o Conformance with Strategic Plan
 - o STRENGTHEN INFRASTRUCTURE

Funding

Project Name CIP 9090 La Patera Drainage					
Account	Fund Type	FY 19-20 Appropriations	PS&E	Construction	Total
Total					

Cost Estimate

Schedule



View from our yard down



DSC09254



Distance from fence to corner of house (1)



20220318_124600



20220318_124604



20220318_124177



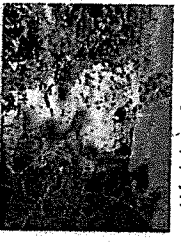
Big trap up beam



DSC09249



Cracks forming on our property (2)



20220318_124520



20220318_124497



Fence off area for safety



DSC09247



Cracks forming on our property (1)



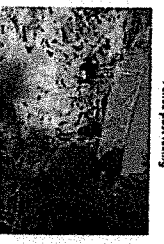
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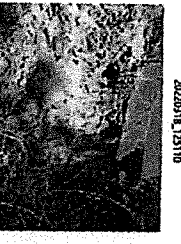
Fence post falling



DSC09245



20220318_125110



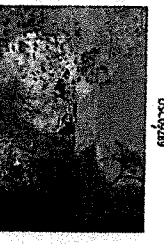
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DSC09238



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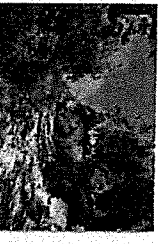
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20220318_124746



20220318_124507



20220318_124190



DSC09236



DSC09233



20220318_124744



20220318_124826



20220318_124182



DSC09231



Distance from fence to corner of house



20220318_124726



20220318_124855



20220318_124824