COUNTY OF SANTA CRUZ

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GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda: 08/02/05

To: Santa Cruz County Board of Supervisors

Re: Claim of Pete and Haruyo Pearson, Claim No. 304-042B

Original document and associated materials are on file at the Clerk of the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

1. _X_ Reject the claim of Pete and Haruyo Pearson, Claim No. 304-042B and refer to County Counsel.
2. ____ Deny the application to file a late claim on behalf of _____ and refer to County Counsel.
3. ____ Grant the application to file a late claim on behalf of _____ and refer to County Counsel.
4. ____ Approve the claim of _____ in the amount of _____ and reject the balance, if any, and refer to County Counsel.
5. ____ Reject the claim of _____ as insufficiently filed and refer to County Counsel.

RISK MANAGEMENT

By Janet McKinley
Janet McKinley, Risk Manager

DANA McRAE, COUNTY COUNSEL

By
Julia Hill, Assistant County Counsel

Cc: Tom Bolich, Public Works Department

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JUL 2005 RECEIVED Clerk of the Board Board of Supervisors County of Santa Cruz

CLAIM AGAINST THE COUNTY OF SANTA CRUZ

(Pursuant to Section 910 et Seq., Govt. Code)

RECEIVED

2005 JUL -1 PM 3: 20

PERSONNEL

TO: BOARD OF SUPERVISORS
COUNTY OF SANTA CRUZ
ATTN: Clerk of the Board
Governmental Center
701 Ocean Street, Santa Cruz, CA 95060

1. Claimant's Name: Pete and Haruyo Pearson

Address: c/o Fitzpatrick, Spini & Swanston
838 S. main Street, Ste. E Salinas, CA 93901

Phone No: (831) 755-1311

P.O. Box to which notices are to be sent: Not applicable.

2. Occurrence: Please see attached.

Date: Continuing to present Place: 101 Benedict Avenue, Santa Cruz, CA

3. Circumstances of occurrence or transaction giving rise to claim: See Exhibit attached. Pushing of fill and debris onto claimants' property and causing slides and failures on property.

4. General description of indebtedness, obligation, injury, damage or loss incurred so far as is now known:
See Exhibit A attached hereto and incorporated by referenced as if fully set forth herein.

5. Name(s) of public employee(s) causing injury, damage or loss, if known: Unknown at this time.

6. Amount claimed now . In excess of $10,000,000.00

Estimated amount of future loss, if known ..... $Unknown

TOTAL $Unknown

7. Basis for above computations: Estimate of possible costs of reparing ravine.

8. [illegible] claimed is over $10,000, indicate the court of jurisdiction:

_____ Municipal Court Santa Cruz Superior Court

CLAIMANT'S SIGNATURE: [signature]
Attorneys for Claimants

Note: Claim must be presented to Clerk, Board of Supervisors, within six (6) months after the act which occasioned the injury.

Americans with Disabilities Act questions or requests for accommodations may be directed to the ADA Coordinator at 454-2962 (TDD 454-2123).

PER5003

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2/7-01-05

Claimants Pete and Haruyo Pearson own real property off of Benedict Road, near Cabrillo Avenue in Santa Cruz, California. Claimants' property is located along the southeast boundary of the Santa Cruz Gardens Elementary School property, and is situated generally in the kana-Rodeo watershed, between Arana Gulch and Rodeo Creek. A deep ravine is located on the claimants' property ("the ravine"), just east of the claimants' residence. The ravine runs in a south-westerly direction, generally parallel to Cabrillo Avenue.

At a time uncertain, believed to be in the 1960s and 70s, a subdivision called Santa Cruz Gardens was developed in the area. Part of the subdivision is located along the eastern boundary of Santa Cruz Garden Elementary School, continuing south past Benedict Road, along the eastem bank of the ravine. Homes in this subdivision drain water into the ravine. The homes located along the eastern bank of the ravine divert much of their water directly into ravine. Much of the water from other homes and streets in the subdivision is channeled into the ravine through storm drains, catch basis, street gutters, street surfaces and other channels and surfaces in the northeast section of this subdivision, including but not limited to those on or near Thurber Lane, Winkle Avenue, Cabrillo Avenue, Benedict Road and Germaine Avenue. Much of this water is channeled through underground pipes that run in a southerly direction along Cabrillo Avenue, then beneath Benedict Road, terminating on the claimants' property where these underground pipes empty into the ravine. The streets, catch basins, gutters, storm drains, underground pipes and culverts that channel surface water run-off and drainage from the homes and other facilities in the area are all maintained by the County and City of Santa Cruz. Claimants are informed and believe that the streets, gutters, storm drains, underground pipes, culverts and other drainage components have been dedicated to and accepted by the County and City of Santa Cruz. The streets, gutters, storm drains, catch basins pipes, culverts, surfaces, and other channels described in this paragraph shall hereinafter be referred to as "the Subdivision Drainage System."

Santa Cruz Gardens Elementary School, part of the Soquel Union Elementary School District, sits on property adjacent to claimants' property, on the same side of the ravine as claimants' home. Its address is believed to be 8005 Winkle Avenue, and the school is believed to occupy two parcels, Assessor's Parcel Number 10121133 and Assessor's Parcel Number 10212135. Much of the water draining from the school's field, playgrounds, parking facilities and other improvements flows into catch basins that channel the water underground and into the ravine, through the same 24 inch culvert that channels water from the Santa Cruz Gardens subdivision into the ravine. Other water draining from the surface of Santa Cruz Gardens Elementary School flows into a channel located on the boundary between the school and the subdivision, which then directs the water into the ravine, both through underground pipes connecting to the aforementioned 24 inch culvert and across the surface of the ground in the area. The surfaces, pipes, culverts, catch basins, improvements and other channels described in this paragraph shall hereinafter be referred to as "the School Drainage System."

The County and City of Santa Cruz also own and operate a park, Santa Cruz Gardens Park, located just north of Santa Cruz Gardens Elementary School, on

Assessor's Parcel Number 10236210, which diverts water onto claimants' property and into the ravine, through the Subdivision Drainage System and the School Drainage System..

The Subdivision Drainage System and the School Drainage System have each been created, constructed and maintained in a manner that has altered the flow of surface water, storm water and other water in the area so that it differs from the manner in which such waters flowed under natural conditions. Moreover, the Subdivision Drainage System and the School Drainage System have increased the volume of water flowing onto claimants' property and into the ravine; have concentrated the flow of such water and have increased the velocity of such water. **As** a result, claimants' property has been damaged, in that severe erosion has occurred in an about the ravine, landslides and other slope failures have occurred in and about the ravine and trees have been weakened and have fallen in and about the ravine. The banks of the ravine and the areas in and around the ravine have become unstable, and future damage is certain to occur. Claimants' residence, road, driveway, yards, gardens and other areas of their property are threatened, and have either been damaged or will certainly be damaged in the future by the progressive instability and failure of the ravine and the areas around the ravine, caused by the way in which the flow of water in the area has been altered by Santa Cruz County and City and the Soquel Union Elementary School District.

During the winter rains of January 2005, claimants' ravine suffered additional failures and slides. Following such rains, it was discovered that "old fill" caused or contributed to the failures. Claimants contend this fill and debris was pushed onto claimants' property and ravine by and/or at the direction of County of Santa Cruz and Soquel Union Elementary School District.

The claimants' have been sued by David and Dolores McCartney, Kenneth and Loretta Reaves, the 1996 Kenneth G. Reaves and Loretta J. Reaves Revocable Trust and Richard and Jill Silva, all of whom own real property near the ravine. **A** true and correct copy of the complaint filed by those individuals and entities is attached hereto as Exhibit B and incorporated by this reference as if fully set forth herein (not as an admission to the truth of the allegations therein, which claimants reserve the right to deny, but rather for informational purposes and for context).

Claimants seek indemnity, contribution, equitable relief and damages from the County and City of Santa Cruz and from the Soquel Unified Elementary School District, for construction and repairs to the ravine, compensation for damage to claimants' property.

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OMAR F. JAMES-SBN 69041
ROBERT K. JOHNSON-SBN 61636
JOHNSON & JAMES LLP
[illegible]
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LAW OFFICES OF SALVATORE BASILE
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Santa Cruz, CA 95060
Tel. (831) 427-2500
Attorney for Plaintiffs

FILED
DEC 30 2002
BARBARA J. FOX, CLERK
BY GRACIELA ESPINOZA
DEPUTY, SANTA CRUZ COUNTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

David R. McCartney, Dolores McCartney, Richard Silva, Jill Silva, Loretta J. Reaves, Kenneth G. Reaves, and the 1996 Kenneth G. Reaves and Loretta J. Reaves Revocable Trust Plaintiffs, vs. Pete Pearson, Haruyo I. Pearson, and **Does 1** through 50, Inclusive, Defendants.	CASE NO. CV 145857 COMPLAINT

Plaintiffs, David R. McCartney, Dolores McCartney, Richard Silva, Jill Silva, Loretta J. Reaves, Kenneth G. Reaves and the 1996 Kenneth G. Reaves and Loretta J. Reaves Revocable Trust (hereinafter "Plaintiffs"), allege as follows:

[illegible] COMMON TO ALL CAUSES OF ACTION

1. Plaintiffs David R. McCartney and Dolores [illegible], were, from August 22, 1991 to the present, the owners of real property, located in the County of Santa Cruz, commonly known as 339 Cabrillo Avenue, Assessor's Parcel Number 102-231-04.

2. Plaintiffs Kenneth G Reaves and Loretta J. Reaves, and the 1996

Exhibit B

Kenneth G. Reaves and Loretta J. Reaves Revocable Trust, were from July 31, 1996 to the present, the owners of real property located in the County of Santa Cruz, commonly known as 343 Cabrillo Avenue, Assessor's Parcel Number 102-231-03.

3. Plaintiffs Richard Silva and Jill Silva were from June 25, 1998 to the present, the owners of real property located in the County of Santa Cruz, commonly known as 335 Cabrillo Avenue, Assessors Parcel Number 102-231-05 [the properties of all said Plaintiffs referred to hereinabove shall [illegible] collectively as "Plaintiffs' properry").

4. Defendants Pete Pearson and Haruyo Pearson are, and at all times mentioned herein, were residents of Santa Cruz County, California, and the owner of real property in the County of Santa Cruz, commonly known as 101 Benedict Avenue, Assessors Parcel Numbers 102-121-37, 102-121-34 and 102-121-[illegible] ["Defendant's property"].

5. The Plaintiffs' property ana Defendant's property adjoin each o-cher at Plaintiffs' northern and Defendant's southern boundaries.

6. Plaintiffs are ignorant of the true names ana capacities of those Defendants sued herein as Does 1 through 50, inclusive, and therefore sues those Defendants by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained. Each of the fictitiously-named Defendants is responsible in some manner for the occurrences herein alleged, and Plaintiffs' damages as herein alleged were proximately caused by their actions.

7. At all times mentioned herein, each of the Defendants was the agent and employee of each of the remaining Defendants, and in doing the things herein alleged, was acting within the course and scope of such agency and employment.

FIRST CAUSE OF ACTION (INJUNCTIVE RELIEF)

8. Plaintiffs incorporate herein by reference each and every allegation contained in Paragraphs 1 through 7 above, inclusive.

9. Plaintiffs are informed and believe and thereon allege that beginning on or before December 30, 2001, and continuing through the present time, Defendants, and each of them, wrongfully and unlawfully maintained their premises in such a manner as to cause large amounts of foreign materials and soils to be deposited upon their lands thereby altering the flow of the natural watercourse. The alteration of the natural watercourse caused the water to undermine and otherwise erode the lands adjoining Plaintiffs' property thereby resulting in, among other things, a reduction in lateral and subjacent support of Plaintiffs' land causing, among other things, landslides and erosion of Plaintiffs' property thereby jeopardizing the overall structural integrity of Plaintiffs' property, and a diminution in the value of said property.

10. On various dates, Defendants, and each of them, were informed and warned that the acts specified above were causing damage to adjacent parcels, including the Plaintiff's property, and Defendants [illegible] to remedy and abate the problems set forth hereinabove. Defendants, and each of them, have refused and still refuse to do so.

11. Defendants, and each of their wrongful conduct, unless and until adjoined and restrained by order of this Court, will cause great and irreparable injury to Plaintiffs in that sliding and erosion of Plaintiffs' property will occur and additional loss of lateral support will occur.

[illegible] and currently being suffered, in that Plaintiffs would be forced to institute a multiplicity of suits to obtain adequate compensation for their injuries, due to the repetitive and recurrent nature of the soil subsidence erosion and other damage.

13. As a proximate result of the Defendants, and each of their wrongful conduct, Plaintiffs' property has been damaged in an amount not yet ascertained. Plaintiffs will be further damaged in like manner so long as Defendants' conduct continues. The full amount of this damage is not now known to Plaintiffs, and

Plaintiffs will amend this Complaint to state this amount when the same becomes known to them or on proof of the damages.

SECOND CAUSE OF ACTION (NUISANCE)

14. Plaintiffs incorporate herein by reference each and every allegation contained in Paragraphs 1 through 13 above, inclusive.

15. At all times mentioned herein, Defendants, and each of them, wrongfully and unlawfully maintained their premises in such a manner as to cause large amounts of foreign materials and soils to be deposited upon their lands thereby altering the flow of the natural watercourse. The alteration of the natural watercourse caused the water to undermine and otherwise erode the land adjoining Plaintiffs' property, thereby resulting in, among other things, a reduction in lateral and subjacent support of Plaintiffs' land jeopardizing the overall integrity of Plaintiffs' property, and a diminution in the value of said property.

16. The aforementioned occupation, design, construction, use, landscape, and maintenance of the property of Defendants, and each of them, constitutes a nuisance within rhe meaning of §3479 of the California Civil Code, in that it was an obstruction to the free use of Plaintiffs' property and it interfered with Plaintiffs' comfortable and quiet enjoyment of their property.

17. As a proximate result of the nuisance created by the Defendants, and each of them, Plaintiffs have been damaged in an amount according to proof but within the jurisdictional limits of this Court.

THIRD CAUSE OF ACTION (NEGLIGENCE)

18. Plaintiffs incorporate herein by reference each and every allegation contained in Paragraphs 1 through 17 above, inclusive.

19. At all times mentioned herein, Defendants, and each of them owed a duty to Plaintiffs to maintain design control and manage their property so as to avoid damage to Plaintiffs' property.

20. Defendants breached that duty in that they negligently maintained,

Exhibit B

designed, controlled, constructed, managed, landscaped, and operated their premises. Plaintiffs are informed and believe and on that basis allege that Defendants knew or should have known that causing or allowing the deposit of soils and other foreign substance in the area of the creek would result in the diversion of surface water from its natural course, and that such diversion would result in the erosion and undermining of areas contiguous to Plaintiffs' property. This erosion and undermining would then ultimately result in the reduction of lateral and subjacent support and other problems set forth herein.

21. Defendants, and each of them, negligently caused such diversion of surface water and resulting erosion and destruction of Plaintiffs' property. These negligence acts as herein described proximately caused the damages to Plaintiffs which are described herein.

22. As a proximate result of the negligence of Defendants, and each of them, Plaintiffs have been damaged in an amount according to proof but within the jurisdictional limits of this Court.

[illegible] conduct as set forth herein, Plaintiffs have suffered severe emotional distress and mental suffering in an amount according to proof.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them, as follows:

1. For an order requiring Defendants to show cause, if any they have, why they should not be enjoined as set forth in this Complaint, during the pendency of this action;

2. For a temporary restraining order, a preliminary injunction and a permanent injunction, all enjoining Defendants [illegible] and employees, and all persons acting under, in concert with, or for them [illegible] herein above described;

3. For general and special damages according to proof, including but not

Exhibit B

limited to costs of slope stabilization, repairs, various clean-up measures and professional services, and diminution in market value;

4. For costs of suit incurred in this action;

5. For general damages for severe emotional distress and mental suffering;

6. For such other and further relief as the Court deems proper.

Dated: December 20, 2007

LAW OFFICES OF SALVATORE BASILE

By: _____
Salvatore Basile, Attorney for Plaintiffs

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Exhibit B