

To: Subcommittee of the Audit Committee, Piedmont City Council
Via email to jtulloch@ci.piedmont.ca.us

March 2, 2011

Dear Members of the Audit Subcommittee:

The League of Women Voters Task Force to Investigate and Report on Piedmont Hills Undergrounding District is pleased to submit attached its Summary of Preliminary Findings to the Subcommittee of the Audit Committee of the Piedmont City Council. The preliminary report by the Task Force identifies what it believes to be some of the significant problems that led to the unprecedented cost overruns and identifies city policies that it believes need to be addressed.

The Audit Subcommittee has requested public comment in response to the three individual preliminary reports that its members have prepared regarding cost overruns on the Piedmont Hills Undergrounding District. We offer the following comments that specifically address the three individual reports.

General

We wish to thank the Subcommittee for its work in this connection. The reports of members Chiang and Kawaichi in particular demonstrate hours of work in reviewing and analyzing documents and other data.

We endorse Judge Kawaichi's comments that the auditing process has been hampered due to constraints of pending investigations and litigation. Likewise, we endorse his recommendations that, after the litigation is concluded, the Subcommittee 1) reopen its investigation, and 2) proceed with a public hearing at which witnesses can be subpoenaed and testify under oath.

Additionally, we ask that the final report more clearly address the conflict of interest between the City Engineer and Harris' other role and explain how and why this presented a problem. Our report does so.

Process

When the Subcommittee was originally appointed, the Task Force expressed concerns that there could not be a completely independent and impartial review if there were two City Council members on the Subcommittee. Despite the addition of Judge Kawaichi, the Subcommittee remains dominated by Council members. Moreover, the Subcommittee apparently has not seen the need to retain any experts or experienced construction professionals to assist with its work. For instance, the Subcommittee appears to have reached a conclusion that the City had no alternatives once managers became aware in late fall that the contingency had been exhausted, without addressing the issue that the presence of extensive rock was well known on the project level months before. In contrast, the Task Force has members with experience in construction, and has reached the conclusion that it was the delay in the recognition and reporting of the extensive rock that precluded the City from taking effective steps to minimize its exposure.

Additionally, the Subcommittee did not address whether it believed Valley's reduced charges for rock excavation, which were still almost 250% over the average bid unit price, were proper. Finally, we would have expected the Subcommittee to consult one or more legal and construction experts to learn of specific, concrete ways by which the City could avoid liability in undergrounding and other construction projects. We would expect the Subcommittee to outline possible means of achieving this goal.

Timing of Reporting

The individual reports are unclear on the timeline when City personnel became aware of the serious problem with cost overruns in the District. One basic problem the Subcommittee fails to address is the lag time between when events occur in the field – which was when the City first had knowledge of the problem – and the lag time before payment was eventually made to the contractor which was many weeks thereafter. A related issue involves the concept of trending – when no rock excavation quantities are specified, but on the average two-thirds of the project involves rock from the very beginning– it should have been apparent to any reasonably competent manager to project that the contingency reserve would be depleted in less than two months. There does not seem to be any rational explanation for responsible staff to have waited for the inevitable to occur before notifying anyone.

The reports make it appear that the City did not become aware that the contingency reserves were exhausted until 11/30/2009, but this is not the case. The first rock was encountered in July 2009 and most of the contingency reserves were exhausted in mid-September 2009. Moreover, the reports do not specify whether the City Administrator notified the Mayor of the problem in early, late or mid-October. The Subcommittee's report should clearly state when the Mayor knew about the problem, so that it becomes clear how long he waited to inform the Council. If the Subcommittee's report accurately reflects the timeline, any management and oversight deficiencies may become more apparent.

Amount of Overrun

The reports understate the total amount of the project cost overrun by overlooking the cost to repair the trench washout. Notwithstanding the fact that the accident did not involve sewers, approximately \$300,000 was transferred from the sewer fund to cover the cost from the trench wash-out, which should fairly be treated as a direct cost of the District and be reflected in the final tally of the project cost overrun.

Management of Project and Accountability

The Subcommittee reports indicate that the City Clerk assumed increased responsibility for managing the project, and also state that there was management by committee and blurring of responsibility. The reports, however, do not address how or why this was allowed to occur on the project. The reports also reflect that a number of City staff had relatively early knowledge of the problems with the District: the Director of Public Works, the City Engineer, the Finance Director, the City Clerk, and possibly the City Attorney. The reports fail to address why no one involved notified the City Council of the problem until months after the problem was apparent on the project level. It would seem that the City Administrator had an obligation to ensure that

responsibility for project management was delegated to a qualified person, ensure that there were clear lines of responsibility, and keep informed of major developments in the project. This he did not do. The final report should address these shortcomings.

There are conflicts among the three individual reports regarding management's handling of the project. We believe that the conflicts among the individual reports should be resolved in favor of concluding that there were weaknesses in management and oversight.

Other Recommendations

We find the three reports to be focused on substantiating what happened, rather than recommending appropriate policies and procedures for avoiding such losses on future projects. We endorse Council Member Chiang's recommendation that the City use a system of enterprise risk management, so that all major project risks are identified in a timely manner, particularly those involving construction projects, and are considered. Though not emphasized by the individual reports, the City administration seemed to assume that the Hills project would proceed the same way as past projects, and did not even consider risks that might be unique to the Hills district (even though there were soils reports for properties in the District that indicated the presence of extensive rock). We also endorse the individual Subcommittee report recommendations that the management of projects be assigned to a qualified person who is accountable for keeping the Council informed, and if necessary this should mean that the City hires an experienced project manager. We also strongly recommend that the Council amend its policies to make clear that post-formation, no City funds are to be used for the direct costs of undergrounding districts, and to define what constitutes a direct cost. The amended policies should also address the handling of indirect undergrounding costs in a way that will not discourage the hiring of an outside project manager if needed. Finally, we recommend that the City specify the percentage vote to proceed with a district, at the same time that homeowners are asked to express preliminary interest in forming a district,

Conclusion

It is our hope that the Subcommittee will issue one unified report as soon as possible, so that the Council may quickly consider policy and procedure changes that would apply to all major construction projects. While further proceedings will be appropriate when the litigation is concluded, the Subcommittee has enough information to suggest immediate changes in City policies and procedure, particularly since multimillion dollar projects will likely come before the City Council prior to resolution of the undergrounding litigation.

Respectfully submitted,
Alex Gunst
Mary Heller
Rob Hendrickson
Al Peters
Kathleen Quenneville