

League of Women Voters
Task Force to Investigate and Report on Piedmont Hills Undergrounding Project
Addendum to Preliminary Findings - Crest Road Trench Washout
November 14, 2011

The League of Women Voters Task Force is publishing this Addendum to its initial report (updated 3/15/11) because of additional information obtained since completion of that report. The Audit Subcommittee has not directly addressed the Crest Road trench washout and use of sewer funds, and the Task Force believes that information about this process of decision-making and the issues therein are very relevant to future City projects.

Scope of Investigation

The Preliminary Findings are based on all City documents made available to the Task Force, including: the contract documents made with Valley Utility; a field directive from the City Engineer to Valley Utility; the summary of a consultation with geotechnical engineering firm Kleinfelder West, Inc.; City Council minutes of 11/16/09; an email from the City Clerk; minutes of the City Council Audit Subcommittee of 8/23/11; a Council Agenda Report of 11/16/09 by the Director of Public Works; an interview with the new Public Works Director; and minutes of meetings of the Audit Subcommittee and City Council.

Preliminary Findings

1. Crest Road was included in the PHUD; it extends from Hampton Road to LaSalle Ave. Because of the topography of the street, which follows the crest of a hill, there are neither sewers nor storm drains, and there never have been any in 87 years. The sewer lines flow to the rear of the properties. Surface runoff flows down the street to Hampton Road where it is collected into storm drains.

2. The utility trench that was partially washed out and repaired ran down Crest Road and was approximately 5 feet deep and 18-24 inches wide. Conduits to carry the electrical power lines, telephone and TV cable to be undergrounded were installed in the trench at specified spacings. The trench was backfilled with “bedding material” (a fine sand in compliance with PG&E specifications). A concrete “slurry” (also known as “controlled density fill”) was placed on top of that, and the street was re-paved over the trench. The utility contractor left openings at various locations along the length of the trench for service trenches (laterals) leading to the houses, with steel plates placed over them to prevent anyone from falling in. The approximately 12 inch wide and 3 feet deep trench laterals were left open by the contractor for its own convenience to facilitate later installation and wiring of the lateral service connections.

3. The contractor did not install trench dams (that is, a physical barrier in a sloping trench at a specified spacing, often made of concrete, to prevent water from flowing

down the trench through the permeable backfill), despite their being called for in the specifications. Engineer of Record Robert Gray's project inspection did not detect the lack of trench dams on Crest Road.

4. In the unusually heavy rainfall of October 13-14, 2009 (a storm which had been forecasted), water flowed into the trench and out at the temporary openings, carrying with it some of the backfill, which, because of its type, was easily carried out of the trench with the water. The loss of the backfill caused the paving above the trench to collapse several inches, creating a surface hazard that needed to be repaired.

5. By written directive to the contractor dated October 14, 2009, the City Engineer requested that repairs commence immediately. Emergency repairs included solidifying the trench with controlled density fill, a less granular backfill material.

6. The City Engineer requested a geotechnical consultation with Kleinfelder West, Inc. regarding their recommendations for how to proceed with the trench backfill washout. Kleinfelder recommended the installation of concrete trench dams, drains with individual "reaches" that may consist of perforated pipe that empties into a gutter or catch basin, and the use of a coarser backfill. This recommendation was dated 11/4/09. It appears that Kleinfelder was not asked to opine as to who was responsible for the trench collapse.

7. The contract with Valley Utility explicitly stated that the Contractor was liable for any damages of public or private property resulting from "the Contractor's execution of the Work..."

8. In a meeting between Valley Utility and the City Clerk and Director of Public Works an agreement was reached that the utility contractors would assume 20% of the repair cost and the City 80%. No explanation for the City's assumption of any portion of the cost to repair was given in any written documentation that was available to the Task Force nor is any basis reflected in any minutes.

9. On 11/16/09, the Director of Public Works proposed that the Council approve using the City's Sewer Fund for repairs to Crest Road because maintenance to both the storm drainage system and the sewer system is funded from this source. The Director of Public Works' report stated that the Kleinfelder recommendations for "alternative drainage improvements" connected to the trench would help avoid future storm damages, thus justifying the use of City Sewer Funds.

10. By the time the Council was asked to approve using the Sewer Fund to pay for the Crest Road repairs, 85% of the repairs using controlled density fill in lieu of trench dams had already been completed and invoiced.

11. The City Council on 11/16/09 voted to take \$296,000 (the final amount paid by the City was \$276,000) from the City Sewer Fund to pay for the trench repair on Crest Road, an amount intended to cover 80% of the anticipated total cost of the repair. At the City Council meeting, the City Attorney, after consulting with the City's Bond Counsel, stated

that the use of City funds was in the public's best interest because of the importance of avoiding more severe damage to the street. The Mayor concurred, emphasizing the urgency of the street repair and referencing an in-depth closed session that had taken place prior to the City Council meeting.

12. The trench dams or drains recommended by Kleinfelder were never installed. Further, the recommended drainage improvements addressed subsurface water flow only, not surface water resulting from storms.

13. In the City's subsequent litigation against engineers Robert Gray & Associates and Harris & Associates for the significant cost overruns of the PHUD, the City has claimed, among other things, that the engineers are responsible for the cost to repair because they failed to insure that the Contractor installed the contractually required trench dams.

14. Within the late September/early October of 2009 time frame, the utility contractor had already billed the City \$2, 206,869, or more than \$700,000 above the contract price for a project that was not yet half completed. According to the Audit Subcommittee's preliminary report, efforts were being made to replenish or preserve the PHUD project's contingency reserve. During that same time frame, the City Clerk indicated that there might have been up to \$350,000 in cost savings available to replenish the contingency reserve. The source to which she was referring is not documented and given the size of the then already significant cost overruns, it is difficult to understand on what rational basis anyone could have concluded that any cost savings were possible.

15. The Audit Subcommittee's preliminary report has not examined the decisions for the use of the sewer fund for the payment of the Crest Road damage, nor for the City assuming an 80% financial responsibility for the damage repair.

16. The City Administrator has now confirmed that it was improper to charge the sewer fund, and has recommended that the City Council consider replacing the funds. The City Administrator's willingness to recommend this remedial action arose only after the Task Force and other residents questioned using sewer funds to fund the repair. A date has not been specified for the Council to decide about repaying the sewer fund, nor has an action item been placed on the City Council's agenda in this regard.

Preliminary Conclusions

The City paid 80% of the cost to repair the collapsed sections of Crest Road, even though the contractor was contractually obligated, but failed to install the trench dams and made the decision for its own convenience to leave open the lateral connections. The City had no liability and should have required the contractor to restore the work at no cost to the City. Additionally, the City's acceptance of 80% of the repair costs seems inconsistent with the City thereafter making a claim that the engineers failed to ensure that trench dams were installed.

The City improperly used sewer funds for the repair, even though the trench dams or drains recommended by the geotechnical engineer (the only arguable connection to the sewer system) were not installed. Because 85% of the repairs had been completed and billed for at the time the Council was asked to make the decision to use sewer funds to pay for the repairs, it is difficult to imagine that all those with project responsibility were unaware that there was no rationale for charging the repairs to the sewer fund.

The cost of these repairs, even though a direct cost of the Piedmont Hills Undergrounding District, was not considered a part of the cost overrun for the District.

The Task Force is disappointed not only with the City's handling of the trench collapse, but also with the Audit Subcommittee's failure to investigate the issues raised therein. The facts and preliminary conclusions set forth in this Supplement illustrate poor project management, and an unwillingness to identify accountability issues as is essential to address the underlying management issues. The City's logically unsupportable decisions make the City's decision-making process vulnerable to charges of being improperly influenced by political considerations.

In its Summary of Preliminary Findings, the Task Force recommended a number of City policies that need to be addressed. The facts and conclusions set forth in this Supplementary Report make clear how imperative it is that the City address the policies highlighted in the Task Force's Preliminary Findings. It is particularly critical that this be done before the City embarks on any new major construction projects.