

**LANDSLIDE REPAIR FOUNDATION**  
*A California Nonprofit Corporation*

Officers & Directors:

Ronald E. Stronach, President  
(805) 963-4646  
Thomas W. Sneddon, Jr., Secretary  
(805) 565-1070  
Harry A. Linden, Interim Treasurer  
(805) 969-1895  
William S. Parris, Director  
(805) 884-0100

April 28, 2011

To: Vivien Alexander, and all *Alexander* plaintiffs,

The Board of Directors of Landslide Repair Foundation has been presented with Vivien Alexander's recent e-mail, and would like to make the following remarks for consideration ahead of your meeting scheduled for May 3, 2011.

There Is No Shortage of Funds to Complete All Of The Repairs.

The Landslide Repair Foundation, a California nonprofit corporation (formerly known as Sycamore Landslide Repair Corporation), was funded with \$50 million as a result of the *Alexander* settlement. To state that the repairs cannot be completed from the "original settlement" is misleading. There is ample money from the original settlement funds and the interest generated from its investment to complete this project. At present, the Foundation anticipates that there will be a balance of approximately \$2.5 million, even after funding repair of the secondary slide.

The settlement funds were invested with UBS. Annual accountings have been prepared by an independent accounting firm, Damitz, Brooks, Nightingale, Turner & Morrisset. The auditors have reviewed every expenditure made by the Foundation. The accountants have prepared and filed all required tax returns. David Casselman was provided with copies of all of the Foundation's records for review more than a year ago during the litigation that was completed last summer.

The Foundation filed the lawsuit after discovering that David Casselman used about \$873,000 of the \$50 million repair fund to pay part of the litigation costs and expert fees in the *Alexander* matter. The Foundation was advised by its auditors that *Alexander* litigation costs and fees should not have been paid from the \$50 million fund that was meant solely for repair costs, and that the Internal Revenue Service could declare that the funds were improperly spent. Furthermore, the Foundation believed that based upon the language of the settlement agreement, one-half of any residual funds from the repair should be held by the Foundation for future use, and the other half returned to Caltrans.

At the conclusion of the *Alexander* settlement, David Casselman and his firm received over \$10 million in attorneys' fees from an arbitration award with Caltrans. These funds were paid in addition to the \$50 million repair fund, the \$3 million contingency fund, and all of the plaintiffs' individual settlements.

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During the lawsuit between the Foundation and David Casselman last summer, David Casselman asserted claims to additional attorney fees from any monies left over from the \$50 million repair fund, based upon the contingency fee agreements with each of the *Alexander* plaintiffs, over and above the \$10 million in attorney fees that he had already been paid from Caltrans. It was the position of the Foundation that the unused repair funds should continue to be held by the Foundation for any monitoring, maintenance, or unforeseen repairs. However, based upon Mr. Casselman's claim for additional attorney fees, the Court has ordered that any unused repair funds at the completion of the project shall be distributed equally between Caltrans and David Casselman.

During that same lawsuit, David Casselman alleged that the Foundation misused repair funds. However, the Court made no such finding. As part of the trial, Mr. Casselman did provide testimony from Patrick Shires of Cotton Shires and Associates, in which Mr. Shires stated that sewers were not necessary for the repair project, and as a result, the Court ruled that no sewer system can be developed with the settlement funds.

There is more than enough money for the repair of the hillside based upon all of the current recommendations by the engineers at Cotton Shires & Associates. The secondary slide repair should be completed within a few months. By that time, it is anticipated that all other phases of the repair will also be completed, including the restoration of the roads.

#### The Foundation Has No Ability to Use or Consent to the Release the \$3M.

When the *Alexander* settlement was reached, a separate \$3 million contingency fund was established. This fund has never been a part of the Foundation's repair budget. The use of those funds is the subject of an agreement solely between "the State," that is, Caltrans, and David Casselman. With regard to this separate fund, the *Alexander* settlement agreement provides: "These funds are to be used for residential property repairs of catastrophic property losses attributable substantially to the effects of the subject landslide and related to the State's construction of the State's Highway 144 Project (Contract No. 05 — 0M8209) and State's activities in connection therewith, to the extent that such repairs are necessitated by post settlement earth movement prior to the completion of the repair. The portions of the funds and interest that are not used shall be returned to the State. Any withdrawal of these funds shall be with the written consent of the Plaintiffs' attorneys and the State, and any dispute as to with the withdrawal of these funds shall be submitted to binding arbitration before a mutually agreed upon arbitrator. As used in this section, catastrophic shall mean significant earth movement on the property causing and requiring enhanced damage repair. The parties may develop guidelines for claims for distribution of the fund." (Emphasis added.)

The \$3 million contingency fund is being held in a trust account by David Casselman, subject to the agreement above.

Based upon the language of the agreement, the Foundation has no authority over the determinations for the use of these funds, and cannot be a party to the arbitration.

In November 2010, Patrick Shires wrote a letter to Caltrans explaining the occurrence of the secondary slide activity and requesting consent to release of the catastrophic funds for these repairs. Caltrans is in the process of reviewing this claim, but, to date, Caltrans has not authorized the release of catastrophic funds, and has directed David Casselman not to withdraw the funds.

The Foundation understands that an arbitration hearing is being scheduled to determine if the repair of the secondary slide activity should be paid from the \$3 million catastrophic fund or the \$50 million repair fund. If the arbitrator determines that secondary slide repairs are paid from the \$50 million fund, then the amount of any residual to be divided equally between Mr. Casselman and Caltrans is reduced; if the repairs are made from the \$3 million catastrophic fund, only the amount returned to Caltrans is reduced.

However, the Foundation is proceeding with the repair of the secondary slide subject to the outcome of the arbitration hearing. The repair has already been designed and a bid accepted from the general contractor, Condon Johnson, for the work to commence immediately and before the outcome of the arbitration. If an arbitrator determines that the \$3 million catastrophic fund should be used, then an adjustment can be made between the Foundation and the catastrophic fund, accordingly, at the direction and oversight of Caltrans and David Casselman.

#### The Board Has Not Acted Improperly.

Every Board Member has served as a volunteer. Each of the Board Members has the same interest as all other plaintiffs and homeowners to restore the hillside and the roads.

You may recall that David Casselman requested that the Eucalyptus Knolls Owners Association, a plaintiff, make recommendations to him regarding a board of directors for the then unnamed Corporation that was to be formed as required by the *Alexander* Settlement Agreement. Then, as counsel for all plaintiffs and using the authority granted to him by each plaintiff, and based upon on the recommendation of the Association, he appointed those that would serve on the original board of directors of what is now Landslide Repair Foundation.

The Board has met regularly since the corporation was formed. Minutes of those meetings and the decisions reflected in them have been maintained by the Foundation. David Casselman has been provided with those documents in the lawsuit from last summer.

Cotton Shires and Associates has been the principal engineer on the project. Minutes from the Board Meetings reflect regular attendance by Cotton Shires, including design recommendations, budget projections, construction expenses and approval of all construction contracts.

It bears emphasis that during the recent lawsuit between the Foundation and David Casselman that David Casselman had been provided with all of the Foundation's records and financial data. However, the Court found no improper conduct or misuse of funds, excepting that, based upon the opinion of Patrick Shires, the sewer system that was originally contemplated will not be installed.

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As a result of the lawsuit between the Foundation and David Casselman any leftover settlement monies will not be held by the Foundation for the benefit of the *Alexander* plaintiffs including the EKOA. David Casselman and his law firm will receive one half of the remaining repair funds, and Caltrans will receive the other half. The Court has already ordered that an accounting be presented upon completion of the repairs for a determination of these amounts.

At present, there is a dispute between Caltrans and Mr. Casselman about what the source of the funding should be for the secondary slide repair, based upon the language in the settlement agreement with Caltrans about the use of the \$3 Million catastrophic funds. Whether or not to make the repair is not the issue; the work is being done.


If an arbitrator makes a finding that the secondary slide repair should be paid from the \$3 million catastrophic funds and not be paid from the \$50 million repair fund, then, based upon the Court's ruling in the lawsuit between the Foundation and Mr. Casselman, David Casselman will have more residual in the \$50 million repair fund from which to recover additional attorney fees.


If the arbitrator finds that the secondary slide should be paid from the \$50 million repair fund, Mr. Casselman's recovery of fees is diminished.


The Board of Directors of the Landslide Repair Foundation takes no position in the dispute, and is not standing in the way of Mr. Casselman's efforts to recover additional fees through the use of the \$3 million catastrophic fund to pay for the secondary slide repair.

Sincerely yours,

LANDSLIDE REPAIR FOUNDATION

  
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Harry Linden  
Director

  
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William S. Parris  
Director

  
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Thomas W. Sneddon, Jr.  
Director

  
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Director