

# SUPREME COURT COPY

No. S172199

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT  
FILED

JUL 24 2009

FORD GREENE,  
Plaintiff and Appellant,

Frederick K. Ohlrich Clerk

vs.

Deputy

MARIN COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT,  
Defendant and Respondent,

FRIENDS OF CORTE MADERA CREEK WATERSHED AND FLOOD  
MITIGATION LEAGUE OF ROSS VALLEY,

Respondents and Intervenors.

Review of Decision by the Court of Appeal for the First Appellate District  
(Case No. A120228)

Superior Court for the County of Marin  
The Honorable M. Lynn Duryee, Judge Presiding  
(Marin County Superior Court Case No. CV 073767)

RESPONDENTS'/INTERVENORS' NOTICE OF MOTION AND MOTION FOR  
JUDICIAL NOTICE

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
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Attorneys for Respondents and Intervenors,  
FRIENDS OF CORTE MADERA CREEK WATERSHED and FLOOD MITIGATION  
LEAGUE OF ROSS VALLEY

**No. S172199**

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**Attorneys for Respondents and Intervenors,  
FRIENDS OF CORTE MADERA CREEK WATERSHED and FLOOD MITIGATION  
LEAGUE OF ROSS VALLEY**

*To the Honorable Chief Justice and Associate Justices of the  
Supreme Court of the State of California:*

Please take notice that, pursuant to California Rules of Court, Rules 8.520(g) and 8.252(a), and California Evidence Code sections 452(g) and 452(h) and (h), and 459, Respondents and Intervenors Friends of Corte Madera Creek Watershed and Flood Mitigation League of Ross Valley hereby move this Court to take judicial notice of the following true and correct documents, which are attached hereto as Exhibits A-S to the Declaration of Thomas M. McInerney:

A. Marin Independent Journal article dated Jan. 15, 2006, "Inaction Made Marin Flood Damage Inevitable, which was attached as Exhibit A to Respondents'/Intervenors' Request for Judicial Notice submitted in the Court of Appeal. This article is available on-line at [http://www.marinij.com/marinnews/ci\\_3405333?IADID](http://www.marinij.com/marinnews/ci_3405333?IADID).

B. Marin Independent Journal article dated January 8, 2006, "Doomed from the First Drop," which was attached as Exhibit B to Respondents'/Intervenors' Request for Judicial Notice submitted in the Court of Appeal. This article is available on-line at [http://www.marinij.com/marinnews/ci\\_3383122?IADID](http://www.marinij.com/marinnews/ci_3383122?IADID).

C. New York Times article dated January 2, 2006, "Damage Mounts in California as Fierce Storms Rush South," which was attached as Exhibit C to Respondents'/Intervenors' Request for Judicial Notice submitted in the Court of Appeal. This article is available on-line at <http://www.nytimes.com/2006/01/02/national/02storm.html>.

D. Marin Independent Journal article dated January 1, 2006, "Storm's Surreal Mess Shocks Ross Valley," Marin Independent

Journal, which was attached as Exhibit D to Respondents'/Intervenors' Request for Judicial Notice submitted in the Court of Appeal. This article is available on-line at

[http://www.marinij.com/marinnews/ci\\_3362746?IADID](http://www.marinij.com/marinnews/ci_3362746?IADID)

E. Marin Independent Journal Article dated December 31, 2005, "Storm Damage Extensive Throughout Marin," which was attached as Exhibit E to Respondents'/Intervenors' Request for Judicial Notice submitted in the Court of Appeal. This article is available on-line at [http://www.marinij.com/marinnews/ci\\_33360320?IADID](http://www.marinij.com/marinnews/ci_33360320?IADID).

F. CBS Channel 5 article dated January 2, 2006, entitled, "San Anselmo, Ross, Fairfax Continue Storm Cleanup," which was attached as Exhibit F to Respondents'/Intervenors' Request for Judicial Notice submitted in the Court of Appeal. This article is available on-line <http://cbs5.com/local/San.Anselmo.Ross.2.439376.html>.

G. San Francisco Chronicle article dated January 1, 2006, entitled, "Marin merchants unsure where to start," which was attached as Exhibit G to Respondents'/Intervenors' Request for Judicial Notice submitted in the Court of Appeal.

H. San Francisco Chronicle article dated January 3, 2006, entitled "Waiting for a bailout/owners without flood insurance suffering," which was attached as Exhibit G to Respondents'/Intervenors' Request for Judicial Notice submitted in the Court of Appeal.

I. Marin Independent Journal article dated July 3, 2006, entitled, "Ross: Survivor ready to start all over again," which was attached as Exhibit I to Respondents'/Intervenors' Request for Judicial Notice submitted in the Court of Appeal.

J. Marin Independent Journal article dated February 2, 2007, entitled “Drainage user fee would pay to eliminate bottlenecks.” This article is available on-line at

[http://www.marinij.com/marinnews/ci\\_5177154?IADID](http://www.marinij.com/marinnews/ci_5177154?IADID).

K. Marin Independent Journal article dated February 8, 2007, entitled “Study identifies flood trouble spots in Ross Valley.” This article is available on-line at [http://www.marinij.com/marinnews/ci\\_5182371?IADID](http://www.marinij.com/marinnews/ci_5182371?IADID).

L. Marin Independent Journal article dated February 9, 2007, entitled, “Hal Brown: Time for progress, not excuses.” This article is available on-line at [http://www.marinij.com/marinnews/ci\\_5191431?IADID](http://www.marinij.com/marinnews/ci_5191431?IADID).

M. Marin Independent Journal article dated April 7, 2007 entitled “Ross Valley flood control measure criticized as unfair, illegal.” This article is available on-line at [http://www.marinij.com/marinnews/ci\\_5620799?IADID](http://www.marinij.com/marinnews/ci_5620799?IADID).

N. Marin Independent Journal Editorial dated April 12, 2007, entitled “Vote ‘yes’ on the Ross Valley flood fee.” This article is available on-line at [http://www.marinij.com/marinnews/ci\\_5656731?IADID](http://www.marinij.com/marinnews/ci_5656731?IADID).

O. Marin Independent Journal article dated April 13, 2007 entitled “Taxpayer group opposes Ross Valley flood fee.” This article is available on-line at [http://www.marinij.com/marinnews/ci\\_5657398?IADID](http://www.marinij.com/marinnews/ci_5657398?IADID).

P. Marin Independent Journal article dated April 26, 2007, entitled “Supervisor to discuss flood fee at luncheon.” This article is available on-line at [http://www.marinij.com/marinnews/ci\\_5761730?IADID](http://www.marinij.com/marinnews/ci_5761730?IADID).

Q. Marin Independent Journal article dated May 2, 2007, entitled “Ross Valley taxpayers face mail-in ballot on flood control charge.” This article is available on-line at [http://www.marinij.com/marinnews/ci\\_5798508?IADID](http://www.marinij.com/marinnews/ci_5798508?IADID).

R. Marin Independent Journal article dated May 14, 2007, entitled "Lise Stampfli Torme: Countering flood 'misinformation.'" This article is available on-line at [http://www.marinij.com/marinnews/ci\\_5897701?IADID](http://www.marinij.com/marinnews/ci_5897701?IADID)

S. Marin Independent Journal article dated October 15, 2007, entitled, "Greene will appeal decision on flood fee election." This article is available on-line at [http://www.marinij.com/marinnews/ci\\_7185872?IADID](http://www.marinij.com/marinnews/ci_7185872?IADID).

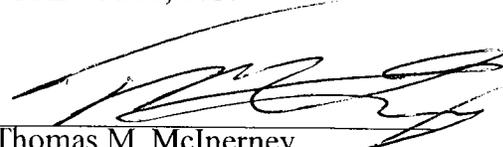
This motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities and Declaration of Erwin M. Benedicto, and Exhibits A, B, C and D attached thereto, and the complete records and files of this Court, and the accompanying [proposed] order granting this motion.

DATED: July 24, 2009

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By:

  
Thomas M. McInerney  
Attorneys for Respondents/Intervenors  
Friends of Corte Madera Creek Watershed  
and Flood Mitigation League of Ross Valley

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. THE SUPREME COURT SHOULD TAKE JUDICIAL NOTICE AS REQUESTED

#### A. General Principles of Judicial Notice

Judicial notice may be taken of “[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.” (Cal. Evid. C. § 452, subd. (g)). Moreover, judicial notice is proper of “facts . . . that are not reasonably subject to dispute” and are capable of “immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Cal. Evid. C. § 452, subd. (h).); *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal. App. 4<sup>th</sup> 797, 807; *Larson v. State Personnel Bd.* (1994) 28 Cal. App. 4<sup>th</sup> 265, 270, fn. 2.

“Judicial notice is the recognition and acceptance by the court, for use . . . by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Lockley v. Law Office of Cantrell, Green, et al.* (2001) 91 Cal.App.4th 875, 882 (citations and quotations omitted). “The underlying theory of judicial notice is that the matter being judicially noticed is a law or fact that is *not reasonably subject to dispute.*” (*Id.*; Cal. Evid. Code § 452(h)).

**B. The Court Should Take Judicial Notice of the Articles  
Included Here.**

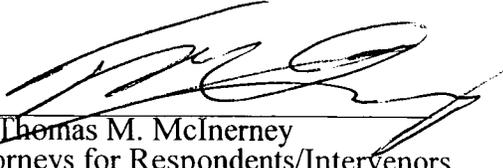
The Court should judicially notice the articles accompanying this Request. The events surrounding the devastating flood that occurred on December 31, 2005 are not subject to reasonable dispute, and these news stories merely document these events. Moreover, the articles from 2007 attached at Exhibits J through R are not offered for the truth of the matters asserted in the articles, but rather for purpose of showing that the storm drainage fee balloting was widely publicized in the Ross Valley community. Similarly, Exhibits S and T are not offered for the truth of anything stated in this article, but rather to further show that Greene's arguments in this case have shifted over time.

DATED: July 24, 2009

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By:

  
Thomas M. McInerney  
Attorneys for Respondents/Intervenors  
Friends of Corte Madera Creek Watershed  
and Flood Mitigation League of Ross Valley

**DECLARATION OF THOMAS M. McINERNEY**

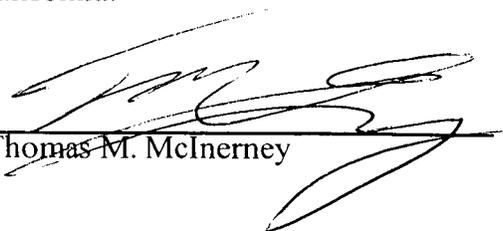
**[CRC 8.54(a)(2)]**

1. I am an attorney licensed to practice before the Courts of this state, and am a shareholder with Ogletree, Deakins, Nash, Smoak & Stewart, P.C., counsel for Respondents/Intervenors Friends of Corte Madera Creek Watershed and Flood Mitigation League of Ross Valley. I make the following statement of facts based upon personal knowledge and if called to testify as to them, could and would do so competently.

2. Attached hereto at Exhibits A through T are true and correct copies identified at the outset of this Request for Judicial Notice. I personally obtained these articles from the websites of the identified publications.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on this, the 24<sup>th</sup> day of July 2009, at San Francisco, California.

By:

  
Thomas M. McInerney

[Proposed]

**ORDER TAKING JUDICIAL NOTICE OF  
REGULATIONS AND LEGISLATIVE ACTIONS**

Good cause appearing, IT IS HEREBY ORDERED that Respondents/Intervenors Friends of Corte Madera Creek Watershed and Flood Mitigation League of Ross Valley's Motion Requesting Judicial Notice is granted. IT IS ORDERED that this Court shall take judicial notice of the Exhibits A through T contained with this motion.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ronald M. George  
Chief Justice

**PROOF OF SERVICE BY UNITED STATES MAIL**  
*Ford Green v. Marin County Flood Control District, et al.*  
*Court of Appeal Case No. A120228*

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California; I am over the age of 18 years and not a party to this action. My business address is Steuart Tower, Suite 1300, One Market Plaza, San Francisco, California 94105.

On July 24, 2009, I served the following document(s) described as:

**RESPONDENTS'/INTERVENERS' NOTICE OF MOTION AND  
MOTION FOR JUDICIAL NOTICE**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**DECLARATION OF THOMAS M. McINERNEY**

**ORDER TAKING JUDICIAL NOTICE OF REGULATIONS AND  
LEGISLATIVE ACTIONS**

on the persons below as follows:

Patrick K. Faulkner  
County Counsel  
Sheila Shah Lichtblau  
Deputy County Counsel  
3501 Civic Center Drive, Room 275  
San Rafael, CA 94903  
*Attorneys for Defendant and Respondent  
Marin County Flood Control and Water  
District*

Colantuono & Levin, PC  
Michael G. Colantuono  
Sandra J. Levin  
Erin M. Benedicto  
555 W. 5<sup>th</sup> Street, 31<sup>st</sup> Floor  
Los Angeles, CA 90013-1018  
*Attorneys for Defendant and Respondent  
Marin County Flood Control and Water  
District*

Ford Green, Elector  
Hub Law Offices  
711 Sir Francis Drake Boulevard  
San Anselmo, CA 94960-1949  
*Attorneys for Appellant in Pro Per*

Attorney General of California  
1515 Clay Street  
P.O. Box 70550  
Oakland, CA 94612

I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses as indicated above and:

- deposited the sealed envelope or package with the United States Postal Service, with the postage fully prepaid.\*
- placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this

business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United State Postal Service, in a sealed envelope or package with postage fully prepaid.

I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on July 24, 2009, at San Francisco, California.

\_\_\_\_\_  
Type Name

\_\_\_\_\_  
Signature

# **EXHIBIT “A”**



### Inaction made Marin flood damage inevitable

Dick Spotswood

Article Launched: 01/15/2006 04:49:00 AM PST

THE FLOOD that has just devastated the commercial hearts of San Anselmo and Ross was the result of decades of inaction and procrastination. Community leaders were well aware that the commercial and residential neighborhoods that straddle San Anselmo and Corte Madera creeks were at serious risk, but no one could forge a politically acceptable solution.

Figuring out whom to blame for this mess is useless and counterproductive. Just let it be said that there were no unsung heroes who took the initiative to prevent this inevitable disaster.

The entire Ross Valley now needs to look forward and to come together to make certain that homeowners and small retailers will not face the financial and emotional losses that accompany floods again.

Since the deluge of 1982, the forces of inaction were simply more politically forceful than those parts of the community that begged for relief. Now it's time for those residents and business peoples whose ox was just gored to stick together, demand action and do their share to help formulate a practical plan.

Flood victims need to make it clear to every council member and county supervisor that if there is no long- and short-term plan to address their needs, then a big change can be expected come election time. If merchants and homeowners sit back and hope that wisdom prevails, then it's guaranteed that nothing will occur and flooding will come to San

Anselmo, Ross, Fairfax and points in between again.

Marin needs to mimic Napa, a county on the cutting edge of innovative environmentally sensitive methods of flood management. Napa figured out that the days have passed when towns were slaves to the old concrete-and-chainlink-fence mentality that was once dogma at the Army Corps of Engineers.

Napa pioneered innovative flood control methods that combined physical improvements with land-use changes that removed structures from the most hazardous areas. Despite that, only 40 percent of its plan was in place, most observers agree that Napa's sustainable approach to flood control greatly mitigated the severity of this year's inundation.

The Upper Ross Valley needs both a long-term and short-term approach to flood management. The big picture calls for the development of a working plan within the next six months that addresses flood control, while acknowledging the understandable desire to protect the valley's vital network of living creeks.

Why six months? That's the duration of the public's attention span after any disaster; be it flood, earthquake, fire or even terrorism. Our collective memory tends to fade unless we promptly act when our anger and frustration are fresh.

Short-range action is needed to address the reality that San Anselmo and Ross creeks are a mess of overgrown vegetation, downed trees and sloughing banks. While not a solution to the dilemma, removing debris will increase the carrying capacity of the creeks. It will also limit the likelihood of dams being spontaneously created by collections of rubbish that block waterways and cause instant flooding.

As flood season isn't over yet, this last task should

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be completed within the next 30 days. The effort needs to be led by the county with Second District Supervisor Hal Brown. It will surely not occur without a strong leader with the guts to actually do something.

**ODDS & ENDS:** The Mill Valley Town Clock is broken again. The timepiece stands prominently outside the Book Depot in the heart of the city's downtown. A broken clock is a small thing. Many cities and school districts have similar lapses which, while annoying, do not greatly affect our quality of life. Yet, when something so visible as a town clock doesn't work, it's often a sign of greater problems still unseen. One can logically conclude that if a community can't do the little things well, perhaps big things will exhibit serious problems soon.

**EXPECT** a major announcement this coming week from Novato Council member Pat Eklund. She has long been rumored as a potential candidate to succeed Cynthia Murray on the Marin Board of Supervisors in the Novato-centered Fifth District. In the same race for the Board of Supervisors, Eklund's colleague Judy Arnold has been campaigning for the post for months. Arnold, according to her own press release, was "hand-picked" by Murray as her potential successor. Also in the race is a third Novato council member, Carole Dillon-Knutson. When filing closes on March 10, the only female member of the Novato council not running for supervisor might be Jeanne MacLeamy.

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# **EXHIBIT “B”**



### Doomed from the first drop

Richard Halstead

Article Launched: 01/08/2006 04:28:00 AM PST  
As floods surged through the Ross Valley last weekend, Miriam Kuppermann of Ross watched from her window as a deer was swept down Kent Avenue in a 4-foot-deep torrent of water.

Turbid water poured through her basement and garage, submerging her family's four cars.

Now, she and other water-logged residents of the region including Ross, San Anselmo and Fairfax want to know: Why has a flood control project for the area languished for more than 30 years?

"I'm an avid hiker, and I totally appreciate and respect the environment, but you can't turn Kent Avenue into a flood zone," Kuppermann said. "It needs to be fixed right away."

This isn't the first time the Ross Valley has been inundated. The Corte Madera Creek Basin has flooded 14 times over the past 50 years. Floods causing major damage occurred in 1951, 1955, 1958, 1960, 1962, 1963, 1967, 1969, 1982-83 and 1986. The worst floods occurred in 1955 and 1982. Prior to the 1960s, it was not uncommon to see rowboats in use on the College of Marin campus.

In the 1960s, the U.S. Army Corps of Engineers initiated a flood control project on Corte Madera Creek. As originally conceived the project would have reached from the San Francisco Bay into Fairfax, replacing the upper reaches of Corte Madera Creek and much of San Anselmo Creek with a concrete channel extending 6.5 miles.

But the project hit a political brick wall when it

reached the town of Ross in 1971.

Time after time over the next three decades the project would appear about to proceed only to face some new roadblock. The main sticking point has been the Army Corps' design plans. Local environmental activists have rejected more than one version. They say the Army Corps' focus on getting water to move faster through the creek channel is misplaced and question whether it would be effective. Project opponents say more attention needs to be paid to prohibiting building in the flood plain and reducing the amount of impervious surfaces.

The most recent reincarnation of the project stalled in 2000 when representatives from Ross, Kentfield, Larkspur and a local environmental group, Friends of Corte Madera Creek Watershed, failed to agree on a preferred design alternative. The estimated cost for the project continues to spiral upward with every tick of the clock. Even if local consensus was reached, funds would have to be allocated by Congress.

#### Channel challenged

In 1971, when the federal government was prepared to pay the lion's share of construction costs, the project ran afoul of Marin's budding environmental movement. At the time, Frank Egger, in the early stage of his more than 40 years on the Fairfax Town Council, compared the proposed concrete channel to the Embarcadero Freeway in San Francisco. The freeway was deplored as an eyesore when built and later torn down. Egger said the concrete channel was an approach that might have been acceptable in 1962 - but not in 1971. Both Fairfax and San Anselmo decided to opt out of the project.

"We didn't want our creeks turned into concrete ditches," said Egger, who played a key role in

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getting both towns to drop out.

The Ross council, however, voted 3-2 to proceed.

"Ross had a gun put to its head," said Peter Brekhus, who was the Ross town attorney in 1971. Brekhus said the Army Corps threatened to build a dam at the town borders between Kentfield and Ross if the town refused.

Nevertheless, construction was halted by a lawsuit filed in December 1971 by Ross resident Peter Valentine, co-chairman of a group calling itself Save Our Creek. In his suit, Valentine insisted a referendum should be placed on the ballot to allow Ross voters to decide the matter. In April 1972, a Marin Superior Court judge ruled in Valentine's favor. The decision was later overturned, however, after the Ross council appealed.

Valentine, who now lives in Kentfield, says it was the Army Corps' refusal to consider a more environmentally friendly design that doomed the original project.

"I told them, 'What we want is a Chevrolet,'" Valentine said. "Their response was 'No. You can have a tank, or you can have a tank.'"

Opponents of the project received support from Marin County supervisors Peter Arrigoni and Gary Giacomini. But the Board of Supervisors gave up an attempt to block the project in November 1974 after a judge ruled that supervisors could be held personally liable for up to \$12 million in damages.

At the beginning of 1975, the project appeared to be back on track. The state Supreme Court had refused to hear an appeal by Valentine. But in February 1975, Congressman John Burton, then the Sixth District's representative in the House of Representatives, stepped in, promising to block

federal funding. In March 1975, Burton announced that the Army Corps had agreed to consider design alternatives.

A compromise plan, which called for building a channel parallel with the creek - a series of stone-covered concrete walls up to 8 feet high - emerged and appeared to garner the support it needed to move forward. Then in 1978, California voters passed Proposition 13, throwing up a new roadblock. The initiative limited the Marin County Flood Control District's ability to raise the \$500,000 in local funds needed to secure federal funding.

It wasn't until after the devastating floods of 1982 that this obstacle was surmounted. In August 1983, Marin Superior Court Judge Henry Broderick ordered the district to impose a special tax to raise the local matching funds. Broderick said the tax would be legal since the funding agreement was reached prior to passage of Proposition 13.

But the 1982 flood revealed new information about the work already completed, a trapezoidal earth channel near the Corte Madera Creek's mouth followed by a 1,500-foot concrete channel farther upstream through Kentfield.

The Corps discovered that the rate at which water flowed through the channel had been slowed substantially because of sediment and barnacles growing on the concrete walls. As a result, the design for the project extension into Ross, once again, had to be rethought.

**Back from the dead**

The project lay dormant until 1996 when the Board of Supervisors requested that the Army Corps proceed with a scaled-down version. The Corps responded with four options. But a local advisory committee formed to choose one failed to reach a

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consensus. The project stalled again.

Joan Lundstrom, who heads the five-member committee that advises the Board of Supervisors on flood matters, has notified the county that she wants to resume discussion of the project this month.

"This is the time to sit down and focus everybody," said the Larkspur councilwoman.

But local environmentalists still oppose any of the construction alternatives.

Jared Huffman, an attorney with the National Resources Defense Council and a Marin Municipal Water District board member, has led a coalition of environmentalists calling for "a serious look at nonstructural strategies for flood management."

"Unfortunately, the Corps of Engineers has continued to focus on 1950s-style channelization and concrete walls, which we now know doesn't work," Huffman said.

Huffman, a candidate for state Assembly, said the work completed so far fails to deliver the amount of flood protection promised. "In fact, it delivers almost no protection," he said.

Huffman contends the major problem is all the construction in the Ross Valley, much of it in the flood plain, that is impervious to water. He said that when the rain comes hard and fast, the water sheets off roofs, concrete sidewalks and asphalt parking lots.

Brekhus said much of the water that flooded Ross in 1982 flowed there from San Anselmo.

"There were actually cars and big Dumpsters floating down San Anselmo Avenue into Ross," Brekhus said.

Any work completed downstream in Ross will provide no flood relief to communities upstream such as San Anselmo and Fairfax, said Jim Miller, the Army Corps' project manager.

But John Woley, a county flood control consultant, said it is inaccurate to say that the flood control project has been a failure. From 1900 through the 1960s, there were property-damaging floods every four years in the Ross Valley; since then there have been four, Woley said.

"There has been a dramatic reduction in the amount of flooding in the lower Ross Valley after construction of the project," Woley said.

### Rising costs

The cost for the Ross section of the project has ballooned from \$3 million in 1974 to \$11.6 million in 2000. It is unclear whether the Marin County Flood Control District would be required to pay the 1.5 percent local match, which existed when the project was initiated, or the 50 percent match required of projects since 1996.

"The ifs get larger the longer you go," Lundstrom said.

Supervisor Hal Brown, who joined the board in 1983, said one of the problems has been keeping people's attention once the rain stops.

"If there hasn't been flooding for 10 years, nobody's interested," Brown said. "You can't get anybody to come to a meeting."

In the end, Brekhus said people may once again shrug off last weekend's storm and say, "Thank God these 100-year storms only come every 20 years."

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# **EXHIBIT “C”**

January 2, 2006

## Damage Mounts in California as Fierce Storms Rush South

By CAROLYN MARSHALL

SONOMA, Calif., Jan. 1 - With many people stranded amid floodwaters and still-swollen rivers, Northern Californians spent Sunday assessing storm damage or hustling to mop up, as Southern Californians braced for approaching storms that the authorities said could set off mudslides.

Napa County, in wine country, was hit hardest by a drenching storm that forced hundreds of residents from their homes and closed scores of roads, including stretches of Interstate 80, the link between San Francisco and the Sierra Nevada, and parts of U.S. 101 running north of San Francisco. Sections of the two roads were inundated with high water and debris and could be flooded for days, state authorities said.

Guerneville, a resort town along the Russian River about 40 miles northwest of here, floundered underwater on Sunday, its roads cut off to anyone trying to get in or out.

Hundreds of residents in Northern California spent New Year's Eve with friends on higher ground, while others sought shelter in local hotels or at one of three emergency shelters in wine country.

The authorities said the storm damage was at its worst in Napa, where the Napa River overflowed its banks and flooded at least 1,000 homes and acres of cropland.

"Napa got nailed," said Cindy Matthews, a hydrologist with the National Weather Service, who also works with the state and federal flood-control operations. The authorities have been urging residents to stay off the roads and to watch for flooding, mudslides and falling trees.

A 63-year-old man in Vacaville, about 25 miles northeast of Napa, died on Saturday, killed by a tree that toppled in the strong winds.

Although Northern California is expected to get less rain in the next few days, officials warned that damage from the latest storm might not be over.

"There's still a lot of high water throughout the region," Ms. Matthews said, "and some of the river locations haven't peaked yet."

The authorities said on Sunday that it was too early to calculate the total cost of the destruction. Some officials in Napa estimated that the county had suffered up to \$60 million in damage, while the cost in Sonoma County could reach \$15 million. Neither estimate included losses for the state's billion-dollar wine industry.

It was also too early to estimate the cost of damage to homes, streets and businesses in San Francisco, Santa Cruz or San Anselmo, a city in Marin County about 15 miles north of the Golden Gate Bridge, where rushing waters flooded the downtown and 20 local businesses.

"It's hard to tell the cost because everything is still underwater," said Rob Hartman, a hydrologist for the

California Nevada River Forecast Center.

In Southern California, the authorities have been preparing for days for the coming storms. Los Angeles and San Diego are expected to get the brunt of a storm system that poured inches of rain in the north on Sunday afternoon and was rushing toward the south, where forecasters said it would pick up speed and density.

Jim Bowers, a hydrologist with the United States Geological Survey, said flash-flood advisories had been issued for cities between Los Angeles and San Diego, where mudslides could occur late Sunday and Monday. Mr. Bowers said that mudslides were a severe threat, because nearby mountain ranges were burned raw by forest fires last summer.

The new storm is expected to drop four to eight inches of rain on Los Angeles and Ventura Counties and five to six inches on Riverside and San Bernardino Counties.

"It's not a matter of saturation as in the north," Mr. Bowers said. "It's because the hillsides are denuded from fires. In scientific terms, it gets real messy."

The rains that have drenched Northern California over the last six days have caused record or near-record flooding, said Mr. Hartman, of the River Forecast Center.

In St. Helena, at the headwaters of the Napa River north of here, the river crested at 21.5 feet, 3 feet higher than the flood of record, he said. In Napa, the river crested at 8 feet above the 22-foot flood level. And in Guerneville, the Russian River peaked at close to 42 feet, almost 10 feet above flood level.

"There is still an awful lot of water that has to work its way through the system," Mr. Hartman said. "It can develop into a bad situation if one of the levees breaks."

A broken levee was blamed Saturday for flooding in Novato, about 30 miles north of San Francisco. But in general the state's levee system, which spans 3,000 miles mostly in Northern and Central California, has been holding up well. The authorities said there had been only a few spillovers and minor leaks.

But some of the aging levees are vulnerable, Ms. Matthews said, pointing to a breach midday on the Cosumnes River, south of Sacramento, which caused sudden flooding on Highway 99 near Elk Grove.

"With this kind of rain, we have hundreds of people on patrol 24 hours a day," Mr. Hartman said. "Patrols are driving through the levees watching for leaks and erosion. The idea is to be proactive."

Some residents of hard-hit areas like Napa and San Anselmo spent New Year's Day shoveling mud, water and debris out of their homes and businesses, but officials blocked others from going home.

Paul Laliberte of Petaluma spent New Year's Eve in a shelter with his wife. Mr. Laliberte, 65, planned to return Sunday to his mobile home, which was surrounded on Saturday by waist-high water that he said appeared to come from nowhere. "The water has a lot of power; I know the trailer will have moved" off its foundation, he said.

# **EXHIBIT “D”**



## Storm's surreal mess shocks Ross Valley

By Tad Whitaker, Nels Johnson and Don Speich

Article Launched: 01/01/2006 08:35:00 AM PST

Looking around during the worst of it, cars and Dumpsters and large trees could be seen floating down one street or another on dark, muddy rivers raging through the streets of Fairfax and San Anselmo, two of the Marin towns most severely hit by the powerful storm that slammed into the county Friday night.

But other sights, some equally surreal, others just disjointed and messy, made it clear that no Ross Valley community escaped the storm's seemingly relentless waves of destruction, made all the more dramatic and fearsome because they occurred under the cover of darkness, heard but not seen.

A 45-foot-tall uprooted tree smashed the backstop at the baseball diamond on Ross Common, many front yards along Shady Lane were filled with standing water, and numerous vehicles were stranded in enormous puddles several feet deep and hundreds of feet long along the Magnolia Avenue corridor that connects the central Marin communities along their western borders.

San Anselmo appeared to suffer the worst damage after more than 4 feet of water rushed like a river down San Anselmo Avenue, flooding shops and restaurants. Fairfax appeared to be hit hard by mudslides that took their toll on residences along Wood Lane and Tamalpais Road in particular.

Perhaps underscoring the helplessness that many felt as the storm had its way with anything in its path, was a former Fairfax City Council member, standing with an empty sandbag in his hand at 6 a.

m. looking fruitlessly and forlornly for some sand to fill it.

Mike Ghiringhelli said, "There was virtually no sand left, and I was surprised. We had sandbags but no sand." The evening before, there had been a large pile of sand there; it apparently had been washed away by floodwaters overnight.

On Tamalpais Road, resident Craig Zellers, 43, was clearing away some mud on his property when he heard a rumbling sound.

"I looked up to see a wall of mud 3 or 4 feet high coming down the street, pushing trees and cars, moving at a good rate of speed," and heading in his direction, he said. Also being carried by the mud was a car. He picked up his 9-year-old son and jumped up on the stairs leading to his home.

Zellers said the car came to rest at the edge of the steep street with the front end teetering over the side. He also said a person got out of the car and apparently was not injured.

In Ross, disbelief was not uncommon. Neither were criticisms of the town.

"I'm just amazed this happened," said Don Ahrens, owner of Eddie's grocery store.

Ahrens is inclined to blame environmentalists, Ross residents and others for standing in the way of efforts to re-engineer Corte Madera Creek to prevent floods.

"It's all Ross' fault," said Larkspur resident Ron Stolowitz, whose house and car were flooded out. "Anyone there whose house is blown over deserves it, and you can quote me on that."

San Anselmo Town Administrator Debbie Stutsman

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said no major injuries were reported, but two people were treated for hypothermia after being rescued from their stranded cars. Aside from that, there were no problems between people.

Marin Sanitary has brought trucks and Dumpsters into downtown, Ghilloti Brothers is using its construction vehicles to pick up debris, and firefighters were hosing off sidewalks because there was so much mud that it was dangerous for people to walk around.

"People seem to be pulling together," she said. "There's a lot of volunteering going on."

Stutsman said council members and town officials were walking the streets offering help, and a state of emergency was called to enable the town to apply for federal and state disaster relief funds. She said Town Hall and the police headquarters were damaged.

"At one point, we saw two Dumpsters floating down San Anselmo Avenue," she said.

San Anselmo Chamber of Commerce President Connie Rogers said the chamber spent six hours calling business owners Friday night to warn them about the imminent flood. She said they recommended placing 25 sandbags in front of the door to each business, but that was almost good for nothing.

"It was to no avail because it went right over the sandbags," she said.

Rogers was helping clean out the inside of the upscale antique business La Sede Bella, located next door to Town Hall. Mud covered the floor, and water marks were visible on tables, rolls of expensive fabrics and other merchandise.

Rogers said the owner had installed a flood gate Friday night, but it actually turned into a problem. Water rushing down the street broke out the front windows and poured inside the building, and the flood gate prevented it from leaving.

The flood entered into the realm of disbelief for Marny Delaney, owner of Doodlebug pottery studio who is no stranger to misfortune. The business was gutted during a fire on Christmas Eve 2003, and she reopened in June 2004.

Pottery, bottles of paint, stuffed animals and other merchandise was scattered so badly that Delaney and her army of friends had to clear paths just to reach the back of the store. Even then, standing water and mud covered the floor.

"The two huge kilns even moved," she said in amazement. "It was flowing that fast."

When asked whether she had the energy to rebuild again, she said, "I sure hope so."

In Ross, water 3 feet deep ran down Sir Francis Drake Boulevard and blew down a huge wooden gate across the entrance to a home. Swimming pools filled with mud, and standing water filled the lawn in front of Town Hall.

"This is the worst I've ever seen it," said Fred Rinaldi, who lives at 20 Sir Francis Drake Blvd. across from the house where the gate was blown down.

Eddie's grocery store owner, who lives next door to his Ross market, said he removed all the food, liquor and other merchandise from the lower shelves in the store Friday night. Although that helped limit the damage, mud still covered the floor. In the back stockroom, which is a few feet lower than the main store floor, cases of soda and bags of food

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floated in floodwater.

"I was up all night watching in agony," he said.

Ahrens said he wasn't sure if he would stay in business. He said it's frustrating because this happens every few years, and the city of Ross does little in terms of flood prevention.

Meanwhile, throughout Ross Valley, people could be seen trying to assess what had happened during the night. Children played in the water, as their parents watched. In one spot, a motorist plowed through a flooded street, submerging the vehicle's hood in water.

"Awful," said Larkspur resident Pat Hagen, who watched a truck drive over yellow caution tape blocking the road before speeding through the standing water. "They turn legally stupid."

At 19 Broadway in Fairfax, co-owner Chris McCarthy surveyed the damage left by a 2-foot stream of water that poured through the center of the bar at about 6 a.m.

"Are you kidding me?" he said, "We could have been trout fishing in here."

He finished scraping some mud off the side of the bar and then turned to pour a customer a mid-morning drink.

"Hell or high water, we never close," he said.

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# **EXHIBIT “E”**



### Storm damage extensive throughout Marin

IJ report

Article Launched: 12/31/2005 12:51:00 PM PST

The Marin County's Emergency Operations Center said Saturday afternoon that the storm that slammed into the county overnight has caused flooding in several areas.

Hardest hit are Fairfax, San Anselmo and Mill Valley.

Temporary evacuation centers have been opened at West Marin School in Pt. Reyes; the Margaret Todd Center, 1560 Hill Rd., Novato; Mill Valley Community Center, 180 Camino Alto, and the Isabel Cook Center, 1000 Sir Francis Drake Boulevard, San Anselmo.

Additionally the EOC said it had received a report of a partial failure of a 100 foot section of a flood control channel. It apparently is near Kaiser Hospital and currently water is flooding only a vacant field with neither the hospital nor nearby residents threatened.

Flooded areas include the Sycamore area of Mill Valley, Kentfield, Greenbrae and much of Ross Valley. Independent Journal staffers report that much of downtown San Anselmo was under two to four feet of water.

There have been mudslides reported in Fairfax, Inverness and San Rafael.

Road closures include Sir Francis Drake south of the hub and between Greenbrae and Ross.

Pt. Reyes Station is currently closed off in all directions.

#### Other storm-related information:

The northbound 101 exit to Mill Valley and Stinson Beach is flooded and has been closed off by the California Highway Patrol. Waters from Richardson Bay, up to one to three feet deep, it appeared, are threatening to flood offices and businesses at the large commercial complex adjacent to the exit.

East Blithedale appears to be the only way into Mill Valley. Southbound Camino Alto has been blocked off at the Community Center. Northbound traffic is still being allowed. The lagoon has spilled over onto to Miller and has turned soccer fields and the dog park and the running and bike trail into a lake. Water appears to be threatening to move across the road to the city's main Fire Station at 1 Hamilton Drive.

The Mill Valley Police Department says that sand bags are available at the city's fire stations.

Sausalito Marin City off ramp southbound on 101 is flooded at the intersection with Donahue Drive. The entrance to Drake Avenue southbound is completely underwater.

Traffic is snarled at the northbound 101 exit into central San Rafael with cars backed up onto the freeway.

Winds continue but the rain has become sporadic with the sun occasionally making a brief appearance.

Novato's officials including the fire chief and police chief are holding a press conference at 2 p.m. to detail storm damage to that north Marin community.

Winds over Mt. Tamalpais were clocked in excess of 50-miles-per hour over night.

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Marin emergency officials are advising resident to stay home and off the roads due to high winds, debris and standing water. Drains close to homes should be cleared and kept free of debris as another storm is anticipated Sunday afternoon.

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# **EXHIBIT “F”**

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# Local News By Area

Jan 2, 2006 1:15 am US/Pacific

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## San Anselmo, Ross, Fairfax Continue Storm Cleanup

SAN ANSELMO (Bay City News) — Soggy, rolled-up carpets and other muddy items lined San Anselmo Avenue Sunday afternoon as downtown merchants worked to clean up what they could before a new storm rolled in tonight.

Meanwhile, police and fire officials looked around for a place to temporarily call home, as their headquarters were flooded along with the rest of downtown San Anselmo this weekend.

The storm that passed through the region late Friday and early Saturday dumped buckets of rain on the Bay Area and sent the San Anselmo Creek over its banks and streaming into the surrounding roadways.

About 80 businesses and possibly more than 100 homes sustained flood damage, according to a police spokesman.

Ross Valley Fire public information officer Joanne Lewis said that the town's flood siren went off around 3:30 a.m. Saturday.

"At that point it all happened so fast," she said. "We had literally 15 minutes to get out of our fire station, get things up off the floor ... but the water came in so fast that we were literally driving into it to get out of the station."

She said several feet of water spilled into the fire department's engine rooms and the administrative offices at 777 San Anselmo Ave., damaging some equipment including computers.

Lewis said she watched much of the action from the second floor of the Town Hall, and estimated that the water was about four and a half feet high.

"It was rushing like a river," she said. "I don't know how else to describe it."

Lewis said Ross Valley fire's Fairfax station, which is also situated along a creek, was damaged as well, but that firefighters' upstairs living quarters are still habitable at both stations.

San Anselmo police Cmdr. Jim Providenza said police headquarters at 525 San Anselmo

### Video



FEATURED STORY  
San Anselmo, Fairfax Out  
Jan. 01, 2006, 8:1  
Local News

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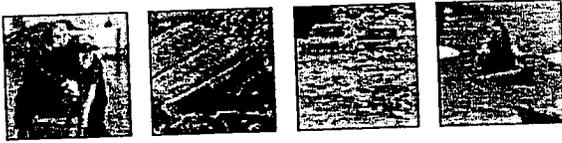
# **EXHIBIT “G”**

**SFGate.com**

## Marin merchants unsure where to start

### Water up to 4 feet deep floods businesses that had stocked up for holiday sales -- 'I've never seen anything like this in my life'

Peter Fimrite, Chronicle Staff Writer  
Sunday, January 1, 2006



The half-submerged drawing board amid the soggy debris in Marnie Delaney's toy and crafts store said a lot about what kind of New Year this is going to be for the shop owners in downtown San Anselmo.

The New Year's Eve storm turned San Anselmo Creek into a roiling, muddy torrent as it spilled over its banks and swept through town, flooding dozens of businesses.

By the time shop owners arrived in the morning, it was too late. Water 3 to 4 feet high had filled virtually every building on San Anselmo Avenue, ruining hundreds of thousands of dollars worth of merchandise.

It is back to the drawing board for the many people whose businesses were, for all intents and purposes, destroyed.

The tragedy was, for Delaney, familiar territory. Her business, called Doodlebugs, was destroyed by fire two years ago on Christmas Eve. She spent much of her own money rebuilding after finding out that her insurance would cover hardly any of the damage.

Now this.

"This unfortunately is the time of year you have more stuff in the store than any other time," said Delaney, as she slogged through the ooze and filth picking out salvageable items amid the waterlogged toys and equipment inside her store.

"It's nice," she said, her voice breaking, "that everyone is helping me."

Indeed, San Anselmo Avenue was bustling with people Saturday helping the store owners sweep, mop, carry out ruined articles, and hose down the mud-caked floors. The street was covered with water and silt, piles of furniture and garbage bags.

Two men carried a soaking, mud-caked Persian rug from the once elegant Eden Day Spa, on the corner of Magnolia and San Anselmo avenues, where a pile of sandbags was useless against the onrushing water. Owner Katayoun Anjadi wandered around in tears as she saw her mud-covered Turkish lounges, drapery and rugs.

"I don't know where to start," she wept. "I don't know what to do. I've never seen anything like this in my

life."

Residents said they had heard a siren early in the morning signifying that the creek was flooding. Witnesses said that within 15 minutes, 4 feet of water was rushing through downtown.

Brian Muller was one of the first to be alerted, and he raced from his home in Corte Madera to San Anselmo, where his company, Harrigan Weidenmuller, owns three buildings.

"When I came through, I saw planter boxes and outdoor furniture floating down the middle of the street," Muller said.

He moved 10 cases of wine from the basement of the post office, but there wasn't much he could do for the businesses.

"I feel sorry for the tenants," he said, as he scanned the chaotic street scene. "This is supposed to be the New Year's holiday, and look at it."

Magid Nazari, owner of Ludwig's Liquor and Smoke Shop, said the torrent was so strong that it had broken his doorjamb.

"I have stuff in the front of the store that ended up in the back and cases of wine in storage in back that ended up in front," said Nazari, who estimated that \$100,000 worth of fine wine and expensive cigars were destroyed. "What are you going to do? My goal is to clean up and see if I can reopen by Monday and salvage some of my loss."

When the flooding subsided, San Anselmo Town Hall was like an island in the middle of a sea of slimy brown ooze.

It wasn't the first flood on the street, but for most merchants it was definitely the most severe. Only a few people remembered a flood in 1982, which they said had lasted longer but hadn't been a whole lot worse.

Delaney said trouble always seemed to find her on the holidays -- there was a flood four years ago, and her dog died of cancer three years ago -- but she refuses to let it get her down.

"I still feel lucky," said Delaney, who rescued all the children's art projects before she started retrieving her merchandise. "Something wonderful will probably happen from this. It's just a big old hassle."

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<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/01/01/MNG94GFVUQ1.DTL>

This article appeared on page **A - 10** of the San Francisco Chronicle

# **EXHIBIT “H”**

**SFGate**.com

## Waiting for a bailout Owners without flood insurance suffering

Ryan Kim, Pia Sarkar, Kelly Zito, Chronicle Staff Writers  
Tuesday, January 3, 2006



Holly Hopper thought she could live without flood insurance for her garden and home furnishings in San Anselmo.

"It's a huge chunk of money, and I played roulette and didn't win," said Hopper, owner of Grasshopper on San Anselmo Avenue.

Today, her merchandise is soaked in water and mud from last week's storm. She has spent the past couple of days picking through furniture and grasping at anything that might be saved.

"I probably lost about 75 percent of my merchandise, maybe more," she said.

As homeowners and small-business owners picked up the pieces after this weekend's deluge and flooding, many began wading through the language of their insurance policies to determine the extent of coverage.

In many cases, like Hopper's, people found they don't have the right type of policy. In other cases, some property and business owners were still in a quandary over their coverage because they hadn't had a chance to fully review their policies.

Initial damage estimates were spotty, due in part to the long holiday weekend and widespread disruption, which hampered assessment efforts. The city of Napa reported damage of an estimated \$75 million, while city officials in San Anselmo estimated 150 businesses and more than 300 homes suffered \$30 million in flood damage. On Monday, Gov. Arnold Schwarzenegger declared a state of emergency in seven counties, including Napa and Sonoma.

Officially, about 260,000 of California's 12.5 million homeowners carry flood insurance, and most do so because they are required to because their homes are located in special flood plains. But about 25 percent of all flood claims come from areas that have minimal flood risks, according to the National Flood Insurance Program.

The flooding was a rude awakening for many homeowners and business owners, who had hoped to dodge a bullet by not getting flood insurance.

Hermann and Paula Dungs live one house downhill from a Wood Lane home in Fairfax that was heavily damaged by a mudslide Saturday. A half-acre of the Dungs' property is now covered by 3 feet of mud -- so deep and sticky that it takes about 15 minutes to get from one end of the property to the other.

Hermann, who with his wife has been taking turns sleeping for two hours while the other watches for further slides, estimates that it will take about a year and up to \$60,000 to clean up his property. Because his homeowner's insurance is not expected to cover the cost, he hopes the area will be designated a disaster zone so that he may be able to collect federal aid.

"That's the big question," Hermann Dungs said in a phone interview, on a break from digging walkways through the mud. "If you talk to any contractor, it's a \$20,000 deposit (to start work). That's a big chunk of money. Right now, we're just rolling with the punches."

The Dungs' luck doesn't look good. Schwarzenegger's declaration of a state of emergency did not include Marin County. The governor's decision paves the way for state relief funding and ultimately allows the federal government to declare the region a disaster area, opening the door for local homeowners and business owners to get low-interest loans and grants.

While many have come to the grim conclusion that they don't have the proper insurance, some are still unclear as to what might be covered. For some owners, the policies are too old, and they've been too busy with the recovery efforts to know for sure if they're protected. Many are waiting anxiously to confirm their policies with their insurance agents.

"It's been a long time since we got it, and you don't look at it as often as you ought to," said Camela McLanahan, 36, owner of Bug-A-Boo, a children's clothing shop in Fairfax that suffered water damage. "Unless something bad happens, you don't think about it, because you're busy running your business."

But business owners and homeowners should spend more time doing just that, said Orlando Frasca, president of Rogers Insurance Services Inc., an independent insurance brokerage.

Frasca said up to 50 to 60 percent of homes and businesses have some flood exposure. Typical flood insurance policies for homeowners start at \$350 a year, with a \$500 to \$1,000 deductible. That price has caused many to pass on flood insurance, but he said that could be a mistake, because flood damage could far outweigh the premium.

"It can seem like a lot, but when something like this happens, \$350 is nothing," said Frasca. "It's insignificant."

At the very least, people should make an informed decision about their policies. Unfortunately, many don't know the details of their coverage.

"It's usually times like this that we try to get people to come in and review their policy," said Gigi Horton, a State Farm agent in Fairfield. "They don't know what's not covered until a situation arises. A lot of people think they're fine."

Knowing your insurance policy also means knowing its limits. All flood insurance policies are handled directly or indirectly through the National Flood Insurance Program. In the event of a flood, a homeowner can receive up to \$250,000 for damage to their home and \$100,000 for lost contents. A business owner

can receive \$500,000 for building damage and the same again for lost contents. The policies, however, do not cover landslides, which are rarely covered.

Buying insurance, however, takes 30 days to become effective, so property owners need to think ahead if they want quick coverage.

Renters' insurance, typically \$200 a year, does not cover flood damage and can only be expanded to cover other water damage.

Frasca suggested filing damage claims as soon as possible. The longer the delay in reporting the damage, the longer it takes to receive relief, he said. Even with a 30-day waiting period for flood insurance, it might make sense to add it now, as the rains could continue for up to 60 days, he said.

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#### Flood insurance tips

- Be aware of your flood risk. Twenty-five percent of flood claims come from minimal risk areas.
- Decide whether you need and can afford it. An average premium is \$400 a year, with deductibles starting at \$500.
- Be aware that it takes 30 days for the change to go into effect.
- Keep your records in a safe place offsite, and file claims quickly to ensure timely reimbursement.

Source: National Flood Insurance Program, local insurance agents

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This article appeared on page **E - 1** of the San Francisco Chronicle

# **EXHIBIT “I”**



### Ross: Survivor ready to start all over again

Joe Wolfcale

Article Launched: 07/03/2006 08:13:00 AM PDT  
Stefanie Cook is a survivor.

The Ross mother of two young girls survived the Loma Prieta earthquake while living in San Francisco's Marina District in 1989. She and her husband, Nate, survived when their 3,000-square-foot home in suburban Seattle burned to the ground a few years later.

Now, six months after the New Year's Eve flood, the Cooks - with girls Katarina, 6, and Gabrielle, 2 - are once again starting over.

"It's really insane, a big joke, we had downsized to simplify our lives," said Cook, whose 1,600-square-foot, three-bedroom Shady Lane home sustained major damage when water filled the basement and lifted the home off its foundation. "It feels like a lifetime has passed with all the things we've gone through. It's exactly one year Friday since we bought this house."

The Cooks had just returned from a visit to British Columbia when Corte Madera Creek crested its banks and flooded much of Ross Valley. The family escaped with a few valuables and waited out the storm huddled in their vehicle in the parking lot of the Branson School.

"We're really questioning whether it's worth it," Cook said. "The fire was all encompassing. But this, you don't know about water damage, mold and mildew, what it can do to your home. It can undermine the whole foundation."

The Cooks have invested several thousands dollars in soil engineers, architects and structural engineers to help assess the condition of their \$1 million-plus home. There are several cracks in the walls, ceiling beams are offline and the whole house is listing to one side. It needs a new foundation, too.

"Nothing squares up," Cook said.

Several neighbors are raising their homes. The Cooks are next in line.

Cook estimated the work - to bring the house up to code and replace the kitchen - could cost between \$500,000 and \$600,000. "It's gonna be a lot of money," she said.

The Cooks do have one thing in their favor. The couple is experienced with insurance companies. It took nearly three years of costly litigation to settle the case after their home burned.

"I've seen the game and know how it works," Cook said. "I have to believe for whatever weird reason, there will be some good things to come out of this."

Contact Joe Wolfcale via e-mail at [jwolfcale@marinij.com](mailto:jwolfcale@marinij.com)

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# **EXHIBIT “J”**

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## Drainage user fee would pay to eliminate bottlenecks

By Richard Halstead

Posted: 02/07/2007 02:31:38 PM PST

Two sites in Ross and another in San Anselmo create the worst bottlenecks in Corte Madera Creek, topping a list of seven prime culprits that cause flooding in the Ross Valley, engineers say.

The blockages, where flooding would occur first during heavy rainfall, were identified in a new hydraulic computer model developed by engineering consultants hired by the county.

Marin County Supervisor Hal Brown said the information will be used to decide how to spend taxpayer money if voters approve a new storm drainage user fee on a proposed April ballot.

Most homeowners would be asked to pay \$125 or less per year, but the maximum charged homeowners will be \$180 a year - for 20 years.

Fees will vary according to the size of parcels and the amount of impervious surfaces on the property.

Brown is leading an ambitious new effort to reduce the risk of flooding in Marin's Ross Valley. A storm that hit Marin early in the morning of Dec. 31, 2005 damaged about 1,200 homes and businesses. Most were located along Corte Madera Creek.

Brown said the plan is to ask voters to approve the user fee in April. "We don't want to put this off again," he said.

Two of the three worst blockages are in Ross - where a U.S. Army Corps of Engineers flood control project has been stalled since 1971. The Ross choke

points are at the Lagunitas Road Bridge and a wooden fish ladder about 600 feet downstream from the bridge.

Equally troublesome is the Madrone Avenue Bridge in San Anselmo, said Jack Curley, who is overseeing the county's participation in the flood control effort.

Using a computer model of the creek, engineers found that water would spill over the creek's banks at those three sites first, Curley said.

When the model simulated additional rainfall, flooding occurred on the creek where it is spanned by a commercial building at 636 San Anselmo Ave. in downtown San Anselmo, and along a 550-foot-long culvert that runs under downtown Fairfax. Two other San Anselmo bridges, at Nokomis and Sycamore avenues, would flood next if even heavier rainfall occurred, the model indicated.

The results came as no great surprise.

"These are all the prime suspects that everybody in San Anselmo will tell you about," Curley said.

Nevertheless, Curley said he didn't expect the fish ladder to rank at the top. "I knew it was a constriction. I just didn't know it was such a limiting constriction," he said.

The Army Corps of Engineers is waiting for Friends of Corte Madera Creek Watershed, an environmental group, to submit recommendations for replacing the fish ladder. The fish ladder is included in the Army Corps' plan to widen an 800-foot stretch of the creek near the Ross Post Office and to erect flood walls along the creek. The plan has been in the works for decades.

Last week, the effort suffered its latest setback when the House of Representatives voted to strip

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"earmarks" - legislators' pet projects - from the fiscal 2007 federal budget. Marin County had hoped to get \$700,000 this year to move the project through the planning process.

Jim Miller, who manages the project for the Army Corps, said there is still a chance that some of the federal money will be made available. "We don't know yet," Miller said.

Curley said that the computer model indicated that even if all bottlenecks are removed from Corte Madera Creek, flooding would still occur in the Ross Valley in case of a storm like the one that hit Dec. 31, 2005. But storms of that magnitude occur only about once every 100 years, Curley said.

The model showed that the construction of catch basins upstream could further reduce flood risk. Basins capable of holding 1,300 acre-feet of water would need to be built and all the bottlenecks removed to prevent flooding during another 100-year event, Curley said.

"The community may decide in the long run that 50-year protection is all they're willing to pay for," Curley said.

IF YOU GO: Supervisor Hal Brown and county staff will review data on Corte Madera Creek bottlenecks and share information about the flood protection program's progress at 9:30 a.m. Saturday at Sir Francis Drake High School, 1327 Sir Francis Drake Blvd., San Anselmo.

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# **EXHIBIT “K”**



## Study identifies flood trouble spots in Ross Valley

Richard Halstead

Posted: 02/08/2007 12:51:57 AM PST



Jack Curley, assistant engineer with the Marin County Flood Control and Water Conservation District, walks toward the Lagunitas Road bridge. The bridge and a wooden fish ladder downstream have been identified as major constriction points on Corte Madera Creek in Ross. (11 photo/Frankie Frost)

Two sites in Ross and another in San Anselmo create the worst bottlenecks in Corte Madera Creek, topping a list of seven prime culprits that cause flooding in the Ross Valley, engineers say.

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The Lagunitas Road bridge and the wooden fish ladder downstream from the bridge have been identified as constriction points on Corte Madera Creek in Ross. Jack Curley, assistant engineer with the Marin County Flood Control and Water Conservation District, steps across the ladder. (1) photo/Frankie Frost)

Last week, the effort suffered its latest setback when the House of Representatives voted to strip "earmarks" - legislators' pet projects - from the fiscal 2007 federal budget. Marin County had hoped to get \$700,000 this year to move the project through the planning process.

Jim Miller, who manages the project for the Army Corps, said there is still a chance that some of the federal money will be made available. "We don't know yet," Miller said.

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"The community may decide in the long run that 50-year protection is all they're willing to pay for," Curley said.

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#### MEETING ON FLOOD PROGRAM PLANNED

Supervisor Hal Brown and county staff will review data on Corte Madera Creek bottlenecks and share information about the flood protection program's progress at 9:30 a.m. Saturday at Sir Francis Drake High School, 1327 Sir Francis Drake Blvd., San Anselmo.

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# **EXHIBIT “L”**



### Hal Brown: Time for progress, not excuses

Hal Brown

Posted: 02/09/2007 12:04:40 AM PST  
ON SATURDAY, Feb. 10, 2006, Marin County Flood Control engineers addressed a crowded meeting at Sir Francis Drake High School.

Using modern GIS mapping techniques, engineers clearly showed how the geography of the Ross Valley, the extent of development in our flood plain and the natural, immutable facts about our soils, slopes and creek sizes (our watershed), when combined with a big tropical Pacific storm, create flooding in the area.

As we looked at the Ross Valley, with the big picture so graphically displayed for us that day, it was obvious that the flooding problems in Kentfield and Larkspur are inextricably linked to the problems in San Anselmo, Ross and Fairfax. Clearly, only by defining the problem as "watershed-wide" would we be able to move forward with finding solutions.

The clearest message, however, from that meeting was that the public is tired of hearing endless arguments over the history of the problems. A new generation of Ross Valley residents spoke loud and clear, demanding that we stop living in the past.

They are right.

We could spend countless hours quibbling over the past and pointing fingers at who made what mistake and when. Or, we can take the advice of all those residents, work together and make progress.

Last March, county flood control staff and I launched a process that has involved key

stakeholders throughout the Ross Valley - those in positions to uphold the interests and aspirations of those dedicated to improving and restoring the riparian habitat of Corte Madera Creek, those looking to protect their properties from future flood damage, those who desire a judicious use of engineering and construction to balance flood protection and the aesthetic and environmental sensibilities of Ross Valley residents.

Volunteers from the Friends of Corte Madera Creek, the Flood Mitigation League of the Ross Valley and the Coalition for Corte Madera Creek sought grants, measured high water marks and offered the best of their experience and background to the effort.

Public servants, members of the town councils of San Anselmo, Fairfax, Larkspur and Ross and the Flood Control Zone 9 Advisory Board, met to find a way forward.

A financial working group met regularly with expert consultants to find answers to financial questions.

Engineers and scientists from the towns and the county, local environmental advocate, representatives from the Army Corps of Engineers, Regional Water Quality Control Board, state Fish and Game and California Coastal Conservancy and private consultants met monthly to find the technical answers to this problem.

The public was correct a year ago when we first met at Drake High. The need to make progress far outweighs our tendency to revisit the past. Yes, each town has unique problems and concerns, and all have to be heard, considered and acted upon. Flood Zone 9 has been hamstrung for 35 years by low revenues, lack of support and regional discord. Times have changed. There now is a willingness, even an urgency, to move forward together.

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Residents have let us know they are willing to contribute to an effort that balances flood mitigation efforts with environmental preservation, restoration and enhancement. This process must include a dedication to honoring local concerns as we identify problems and propose solutions.

Together, and with the support of a voter-approved drainage system fee, we can pursue tens of millions of dollars in state and federal funding, and accomplish through regional, watershed-wide planning what would otherwise be financially and politically impossible.

The message we heard one year ago was a demand from residents to join together and begin to make progress. I am proud to have led an effort that has been marked by great cooperation. This level of cooperation and collaboration must continue.

The road to alleviating flooding in the Ross Valley is a long one. Operating from a unified stance is not only essential, it is the most integral and fundamental ingredient to making real progress for the entire valley.

Hal Brown represents the Second District, which includes the Ross Valley, on the Marin County Board of Supervisors. He lives in Sleepy Hollow.

**MEETING SATURDAY**

The third Ross Valley Watershed Community workshop will be Saturday at Sir Francis Drake High School from 9:30 a.m. to noon.

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# **EXHIBIT “M”**

# marinij.com

## Ross Valley flood control measure criticized as unfair, illegal

Richard Halstead

Posted: 04/07/2007 11:22:13 PM PDT



Fred and Denyce Codoni, standing near their Fairfax home on a footbridge in Deer Park, question why seniors can't be given a reduced rate in the flood control plan. Referring to the add-ons on their property tax bill, the Codonis say the new tax would be hardship because they are on a fixed income. (1) photo/Alan Dep)

Backers of a new charge to control flooding in the Ross Valley are calling it a fee - but critics insist it's

really a tax.

More than semantics is involved, because if the charge were a tax, it would require approval by two-thirds of affected voters. As a fee, however, it can be passed by a simple majority.

Tax, fee or charge, the average Ross Valley area property bill will be about \$125 a year for 20 years.

The program will raise about \$40 million for flood control over two decades. The revenue would make the district eligible for millions more in state grants.

About 1,200 homes and 200 businesses were damaged by the flooding that occurred across much of Marin in the early morning of Dec. 31, 2005, with downtown San Anselmo especially hard hit. It wasn't the first time the Ross Valley had been inundated. The Corte Madera Creek Basin has flooded 14 times over the past 50 years.

So far, the proposed "fee" has elicited a trickle of protest from those who will pay it. As of Friday, 30 residents had filed letters with the Board of Supervisors decrying the latest threat to their wallets. A public meeting has been scheduled for May 1 to solicit additional comment.

Residents in Fairfax, Green-brae, Kentfield, Larkspur, Ross and San Anselmo would be affected, and if more than half of the 15,000 property owners object by May 1, the tax idea will be dropped.

Otherwise, ballots will be mailed out, and the tax will be approved if a simple majority of the property owners who vote approve it. Voters will have 45 days to return their ballots to the clerk of the Board of Supervisors.

Several people expressed doubt that the drainage fee was legal under Proposition 13 and Proposition

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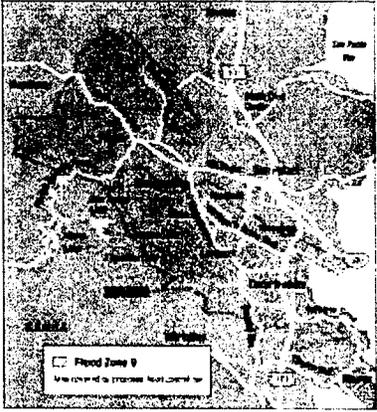
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218, which placed strict requirements on how local governments can raise taxes. Proposition 13, overwhelmingly approved by voters in 1978, requires two-thirds support to raise taxes. Proposition 218, which followed in 1996, tightened loopholes after local jurisdictions began



Source: Marin County Flood Control and Water Conservation District

Click to enlarge

using assessments and fee increases to make up for revenue lost due to Proposition 13.

"A tax is a tax, and it is shameful that the 'storm drainage fee' be considered anything other than a tax," wrote Gerald and Nancy Kelleher of San Anselmo.

Frank Berto of San Anselmo seconded that notion.

"A fee implies that the payer receives some service or benefit. Our property will receive no benefit from this tax," Berto wrote. "We suffered no flood damage in the flood of 2006 nor in the much more severe flood of 1982."

Timothy Bittle, an attorney with the Howard Jarvis

Taxpayers Association in Sacramento, said his association has sued several municipalities that enacted storm drainage fees without conducting an election. In those cases, "We have contended that they are special taxes and need a two-thirds vote," Bittle said.

Fees are generally defined in the law as payment for a service that a property owner requests, Bittle said.

"Theoretically, you subscribe to water, you subscribe to sewer. You ask to be connected and turned on," Bittle said. "The same thing with garbage collection.

"But in the case of storm water drainage our theory has been there is no service actually being provided to the property," Bittle said. "The property owner doesn't have any right to turn it off. He can't say, 'I'm going to Europe for a month and can you please turn off my storm drainage service while I'm gone?'"

Rather than test this theory in court, the Jarvis Taxpayers Association



Fred and Denyce Codoni sit in their Fairfax home with a recent tax bill on Friday. The Codonis are opposed to a proposed storm drainage fee. (1 photo/Alan Den)

settled these cases after the offending cities agreed to hold elections of the type that the Ross Valley flood control district is proposing - where a simple

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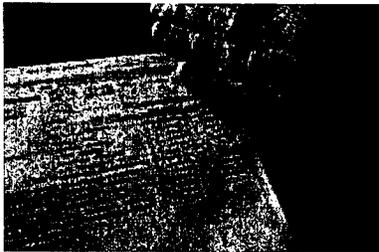
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majority can authorize the fee.

"Technically, we as an organization continue to believe that these type of things are special taxes that should receive a two-thirds vote," Bittle said. "But we're too busy going after cities that try to pass them without any vote at all to hassle the county of Marin, which is clearly going through a thoughtful process."

The flood control district has hired a Berkeley-based consulting firm, MIG Inc., to manage the campaign.

Joyce Vollmer, a spokeswoman for MIG, said, "We're very clearly following exactly what is written in Prop. 218. Prop. 218



spells out exactly what a fee is. That definition itself was written by the Jarvis people. This follows that exactly."

Like Berto, some residents in the district, particularly those living in the hills, wonder why they should have to pay when their homes never flood.

"Who's to pay if our hillside ever needed reinforcement from sliding?" Arthur and Lisa Lange of Greenbrae ask in their letter.

Bittle said that Berto's complaint - that the proposal will provide him with no flood relief - would be a

legal issue if the flood control district were proposing to charge Ross Valley residents based on the amount of flood relief they receive. That's what the Sacramento Area Flood Control Agency is currently doing.

"We are only assessing those properties which are directly protected from inundation by the project features we are constructing," said Stein Buer, executive director of the Sacramento agency. "We are not assessing any upland areas at all."

The Ross Valley district, however, is basing its fee on how much storm water runoff is generated by each property, meaning even people out of the flood zone get a bill.

"The district is treating it as a service rendered to property owners where they collect, carry away and store the storm water that is running off everybody's property," Bittle said. "Just like garbage. That's another form of collecting something that is produced on your property. The people whose property produce one residential bin pay less than a commercial property that produced a three-yard Dumpster in the same period of time."

Vollmer said people who live in the hills use the storm and drainage system "because the rain water that falls on their house has to go somewhere."

People in the hills also benefit if flooding is prevented in the flatlands, where the hub of activity is, Vollmer said. If the flatlands are flooded, the main traffic routes will be impassable and emergency vehicles will be prevented from reaching people in the hills, Vollmer said. In addition, the flatlands are where schools and commercial areas are located, she noted.

In his letter, Joe Fugazzotto of Kentfield objected to having to pay to rectify problems caused by

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buildings that were erected over San Anselmo Creek with the permission of town officials. The district has identified two privately-owned buildings on the creek in San Anselmo as key choke points. The buildings house Mama Teresa's Italian Ristorante and San Anselmo Coffee Roasters.

"I feel that any costs should be borne by the private property owners and the town of San Anselmo for negligently allowing such construction," Fugazzotto wrote.

Jack Curley, who oversees the county's participation in the flood protection effort, said he sympathizes with that argument. But Curley said, "We can't build a program on who we're going to penalize for past actions. We have to move forward in a way that makes a difference."

Mark Dean of Fairfax wants to know why he has to pay the tax, because Fairfax residents are already charged a run-off fee. Ian Roth, Fairfax's finance director, said that fee, which is also based on the amount of impermeable surfaces on properties, was created primarily to prevent pollution from traveling through the storm water system to streams and the ocean. Larkpur has a similar run-off fee.

Two property owners asked why senior citizens don't get a reduced rate.

"We are on a fixed and limited income and simply do not want it eroded further by a new tax," wrote Fred and Denyce Codoni of Fairfax. "Looking at our 2006-2007 property tax bill for Fairfax, we see not only the basic tax but 11 add-ons totaling over \$1,000."

Supervisor Hal Brown, who has spearheaded the effort to raise taxes for flood control in the Ross Valley, said if seniors were exempted, other people - such as those living in the hills - might also expect

immunity.

"If you look at all those exemptions, who do you have left except those who were flooded?" Brown said.

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## BOTTLENECKS

Using a computerized hydraulic model of Corte Madera Creek, the flood control district has identified eight flood "bottlenecks" that it plans to resolve first with money from the storm drainage charge.

- Lagunitas Bridge fish ladder 600 feet downstream from the bridge.

- Lagunitas Road Bridge

- Madrone Avenue Bridge

- A commercial building that spans the creek at 636 San Anselmo Ave., where Mama Teresa's Italian Ristorante is located.

- A 550-foot culvert that runs under downtown Fairfax

- Nokomis Avenue Bridge

- Sycamore Avenue Bridge

- A commercial building that spans the creek at 546 San Anselmo Ave., where San Anselmo Coffee Roasters is located.

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**EXHIBIT “N”**



## Vote 'yes' on the Ross Valley flood 'fee'

Posted: 04/12/2007 11:07:17 PM PDT

NO ONE should be surprised that there are local property owners objecting to another tax - this one to help the remedy flooding that all too often damages the Ross Valley.

But without this tax and the improvements it will pay for, flooding inevitably will strike the valley again, repeating the loss of property and setting back the local economy. The most recent floods - on New Year's Eve 2005, when stormwaters escaped the banks of local creeks - turned several into rivers of destruction.

In May, property owners in the Ross Valley area will be asked to endorse a special fee. This fee will cover each property owner's share of the proposed improvements. The average charge, based on an estimate of each property's contribution to local drainage, is \$125.

This fee goes to the greater good: Protecting Ross Valley homes, businesses and government properties. The government properties, remember, are owned by all of us.

Those who object to the fee offer various reasons. Two of the most common: That there should be a senior-citizens exemption or discount, and that the fee should require a two-thirds majority for passage, the same required for most local tax measures.

Interestingly, there has been little objection to the plan itself, which seeks to strike a balance between flood protection and environmental conservation.

While senior-citizen exemptions are offered on most school taxes, this proposed fee is different. With school taxes, the theory is that seniors already have paid taxes and that they are unlikely to have school-aged kids. The exemption has helped sell school taxes; seniors, a solid core of Marin voting population, can easily vote for a tax they don't have to pay.

This flood fee is different. It is based on each property's estimated drainage and for improvements that benefit all residents, regardless of age. Remember, property that is not in a major flood zone still contributes water to potential flooding in the form of runoff. That property is part of the problem, and needs to be part of the solution.

Protecting downtown San Anselmo means a great deal to the local economy and to local residents. A thriving marketplace is much more appealing than a flooded disaster zone.

More than 15,000 Ross Valley property owners will be asked to vote on this tax. These are property owners who rely on their downtowns and its shop owners for services.

The Ross Valley flood-protection fee is important to each and every property owner and resident in the area.

It is time for effective action to prevent recurring flooding. That's why the IJ has supported Ross Valley leaders' hard work in putting together a flood-protection plan and is asking all property owners to vote for it.

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## Taxpayer group opposes Ross Valley flood fee

Richard Halstead  
Posted: 04/13/2007 12:18:06 AM PDT

The Marin United Taxpayers Association board voted Monday to oppose a storm drainage charge for flood-control projects in the Ross Valley.

Property owners in Fairfax, Greenbrae, Kentfield, Larkspur, Ross and San Anselmo would pay an average of \$125 a year on their property tax bills. The move, if approved by a majority of those who mail in ballots next month, would raise about \$40 million for flood control over two decades.

The tax association's board said the flood plan lacks specifics about how and for what the \$40 million would be spent.

"The advocates' proposed 'plan' is actually only a grandiose outline of a plan, with a 'Christmas tree' of general goals to buy undecided votes," the board stated in a press release.

The taxpayers group said owners of hill properties, where no flooding occurs, would receive no benefit but would be required to pay anyway. And the board expressed outrage that all local county, state and federal government property would be exempt from paying the fee.

San Anselmo resident Louise Mathews, a critic of the proposal, said the flood control district is also exempting nonprofits.

"It's a legitimate concern," Mathews said.

Senior citizens would not get an exemption from the tax.

Board member Fielding Greaves said the organization has remained neutral on other recent tax and fee proposals.

"For some years, we've made a practice of not getting involved unless there is a strong feeling within the community that we should

look into it and take a position," Greaves said.

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Supporters of the flood plan were quick to respond.

"I am completely in support of this fee," said Lise Stampfli of San Anselmo, who helped found the Flood Mitigation League, a citizen group that formed after last year's flood of the Ross Valley.

About 1,200 homes and 200 businesses were damaged by the flooding that occurred across much of Marin in the early morning of Dec. 31, 2005. The Corte Madera Creek Basin has flooded 14 times in

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50 years.

Stampfli says more detailed plans for spending the money must wait until a hydraulic model of the area and a feasibility study has been completed.

"If we don't pass something to get a revenue stream going, we're going to doom ourselves to more flooding," Stampfli said.

Supervisor Hal Brown, who has spearheaded the flood control effort, said state law created by Proposition 218 prohibits the district from stating in advance exactly what the money would be spent on. As for exempting government properties, Brown said, "tax money goes to schools and public buildings anyway. I don't understand that argument at all. It's specious."

Sandy Goldman, president of Friends of Corte Madera Creek, said she strongly supports the fee. "I am absolutely baffled as to how members of the community - even if they do live on a hill - can think they suffer no impacts when schools, fire departments and other public facilities are flooded. You can't cross the road. You can't get downtown," Goldman said.

"Do these people actually think it doesn't cost them anything when public facilities are damaged and have to be repaired?"

A public meeting has been scheduled for May 1 to solicit additional comment on the storm drainage charge proposed for the Ross Valley. If more than half of the 15,000 property owners in the flood control district object by that date, the proposal will be dropped.

Otherwise, ballots will be mailed out, and the tax will be approved if a majority of the property owners who vote approve it. Voters will have 45 days to return their ballots to the clerk of the Board of Supervisors.

Because the district calls the flood charge a fee for drainage service, and not a property tax, it requires a simple majority vote of approval, rather than a two-thirds vote as required by Proposition 13.

Contact Richard Halstead via e-mail at [rhalstead@marinij.com](mailto:rhalstead@marinij.com)

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# **EXHIBIT “P”**



## Supervisor to discuss flood fee at luncheon

Staff Report

Posted: 04/26/2007 11:09:20 PM PDT

Marin County Supervisor Hal Brown will discuss a storm drainage charge proposed for Ross Valley residents at a luncheon sponsored by the Marin Coalition at 11:45 a.m. May 2 at Rafter's Grille and Brewery at 812 Fourth St. in San Rafael.

Residents will vote via mail-in ballot on a flood control charge averaging \$125 a year for each Ross Valley property. Because officials call it a drainage fee and not a tax, it requires passage by a simple majority vote, rather than the two-thirds vote set forth by Proposition 13.

The cost to attend is \$20. Attendees should call 461-1680.

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## Ross Valley taxpayers face mail-in ballot on flood control charge

Richard Halstead  
Posted: 05/02/2007 12:34:46 AM PDT

It's official - a ballot measure to raise funds for flood control in the Ross Valley by imposing a new charge for disposing of storm water run-off will be mailed to residents on Friday.

If a simple majority of those who vote approve the measure, it becomes law. All ballots must be received by 5 p.m. June 25. They will be counted the next day.

Ross Valley's more than 15,000 property owners would be charged based on the estimated amount of run-off their property produces. The average Ross Valley homeowner would pay \$125 a year for the next 20 years.

Residents in Fairfax, Greenbrae, Kentfield, Larkspur, Ross and San Anselmo would be required to pay the charge. Renters would not be affected.

About 1,200 homes and 200 businesses were damaged by the flooding that occurred across much of Marin in the early morning of Dec. 31, 2005. The Corte Madera Creek Basin has flooded 14 times over the past 50 years.

On Tuesday, Marin County supervisors, in their capacity as the Marin County Flood Control and Water Conservation District board, oversaw a final public hearing on the initiative. Supervisor Hal Brown, who has spearheaded the new effort, said failure to act now would derail flood control efforts for the foreseeable future. Emotions burned hot on both sides of the issue.

Several people objected to the charge being labeled a fee instead of a tax. If the charge were a tax, it would require approval by two-thirds of those casting ballots under Proposition 13. Some also

\_\_\_\_\_ complained about being forced to pay for flood control when their homes don't flood.

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\_\_\_\_\_ "I don't see any reason why I should be coerced by the majority in an end-run process like this," said Ford Greene of San Anselmo. "People make decisions to purchase their houses in a flood plain. There are price differentials. Nobody came to me and helped me pay my mortgage," he said.

Supporters of the charge said the process fully complies with Proposition 13 and Proposition 218, which strictly limit government's ability to levy taxes and fees. Supporters said that everyone who owns property in the Ross Valley contributes to the run-off that produces flooding and all will benefit from flood control - because schools, fire departments and emergency medical facilities that are located in the flood plain will be protected.

"I'm amazed to find that there are people so cheap that they wish to place their neighbors at personal risk of property and life by not taking inexpensive and reasonable efforts to reduce the risk of flooding," said Charles Kirk of San Anselmo, a victim of past flooding.

During the 2005 storm, Corte Madera Creek overflowed its banks in San Anselmo and flooded Kent Middle School in Kentfield, said Joan Lundstrom, a long-time member of the flood control district's advisory board and a Larkspur city

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"We're all in this together," Lundstrom said.

Lundstrom said the flood control district lacks the funding to implement significant flood mitigation. The new fee would raise about \$40 million over the next 20 years and make the district eligible for millions more in state and federal grants, supporters say.

Many speakers Tuesday urged voters on the initiative to look beyond the impact on their pocketbooks.

"Do you want to remain part of the problem or be part of the solution?" asked Robert Lewis of San Anselmo. "We are a community. We have to come together and support this," he said.

On Tuesday, the initiative was endorsed by the local chapter of the Sierra Club, the Friends of Corte Madera Creek and the Marin Conservation League. Some of the money raised by the fee would be used to enhance the watershed's habitat.

The proposal also has the support of the San Anselmo Chamber of Commerce and the Flood Mitigation League, a citizens' group that formed after last year's flood of the Ross Valley to lobby government officials to act.

The Marin United Taxpayers Association has stated its opposition; however, no one from the organization spoke at Tuesday's meeting.

Critics of the measure were unimpressed.

"I'm blown away by the warm and fuzzy feeling that is present in these chambers today," said Michael Aaronson of Fairfax.

Aaronson said he recently spent \$60,000 and had to battle with government agencies to fortify an eroding creekbank next to a condominium he owns on Corte Madera Creek.

"Presumably, if we'd waited, under your plan parcel owners in Ross Valley would have contributed to this reconstruction," Aaronson said. "No one in this chamber objects to flood control but I object to the process."

Aaronson and San Anselmo resident Louise Mathews both objected to the flood district's decision to exempt public agencies and nonprofit organizations from the fee. Mathews and other critics suggested the measure could face a legal challenge.

Jack Curley, an engineer who oversees the county's participation in the flood protection effort, said the district decided to exempt property owners already exempted from taxes by the State Board of Equalization. Jim Flageolet, the county's chief deputy county counsel, said he is confident the measure will withstand any legal challenges.

If more than half of the Ross Valley's 15,010 property owners had objected to the fee proposal before Tuesday, the proposal would have been scrapped. Officials said 102 letters protesting the fee were submitted.

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**ABOUT THE BALLOT**

Key facts about the storm water drainage fee:

**ELECTION:** Ballots will be mailed Friday and must be received by the Clerk of the Board of Supervisors by 5 p.m. June 25 to count. If a simple majority of those who vote approve the measure, it becomes law.

**WHO PAYS:** About 15,000 property owners in Fairfax, Greenbrae, Kentfield, Larkspur, Ross and San Anselmo will pay the fee, which would be based on the estimated amount of run-off their property produces. The average Ross Valley homeowner would pay \$125 a year for the next 20 years.

**WHAT'S IT FOR:** The Corte Madera Creek Basin has flooded 14 times over the past 50 years. The funds would be used to remove bottlenecks in Corte Madera Creek, build catch basins to temporarily hold water during heavy rainfall, enhance watershed habitat and implement other flood programs. Supporters say the fee will raise about \$40 million over the next 20 years and make the district eligible for millions more in grants.

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Contact Richard Halstead via e-mail at [rhalstead@marinij.com](mailto:rhalstead@marinij.com)

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# **EXHIBIT “R”**

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## Lise Stampfli Torme: Countering flood 'misinformation'

Staff Report

Posted: 05/14/2007 11:04:33 PM PDT

There's some misinformation being floated around the Ross Valley regarding the storm drainage fee that needs to be corrected and that property owners should be aware of before casting their ballots.

It's been hinted that damage fee money will be used to pay for ballooning county employee pensions. This is false. The money from the fee will be used only for Flood Control District Zone 9 projects, administration and planning. The money will not enter the general fund or be used for purposes other than Ross Valley flood control, mitigation and watershed environmental restoration projects.

It is worth considering that without the fee, we have only \$165,000 a year with which to fight floods. This is the existing budget for Flood Control District Zone 9. This amount might allow us to pull a few weeds and provide limited creek cleanup, but it is far short of the \$100 million flood control project engineers tell us we need to make the Ross Valley safer.

Some have implied that federal agencies such as the Federal Emergency Management Agency can pick up the tab for flood control. This is false and misrepresents the harsh reality of securing federal or state financing in today's economic climate. Just ask your state and federal legislators and representatives. Talk to the individuals whose homes flooded and ask them if they were able to get FEMA money to lift their homes out of the flood plain. They will tell you they received no help, or in some cases, a very small amount. Assistance from FEMA and other federal agencies has heavy strings

attached.

The government expects that those who can will pay their way, and it places conditions on assistance that demand a local share and local initiative in taking steps to prevent flooding and improving emergency response. It also demands a local share in dollars. Federal and state agencies step in to help those areas that demonstrate a willingness to share the cost of flood control. They help those who help themselves.

That's where the storm drainage fee comes in. In the 20 years the fee is projected to be collected, it will raise our local share of \$40 million. This local contribution will enable us to compete for federal and state assistance in the form of grants. The state levee bill passed last year is one example of a program with funds that we can apply for. But our chances of getting such grants wane or evaporate entirely without the local share.

It is vital that we pass the flood fee now. By passing the fee, property owners are investing in a brighter, safer and more economically viable future. Without it, we are all doomed to suffer from future floods and their costs and impacts on public safety, public and private property and on the economic viability of our commercial districts and civic centers.

The signs of the 2005 flood are still evident. Just look at San Anselmo's vanished businesses, its fire house or Town Hall, or Fairfax's Town Hall. Those who were around for the deadly 1982 flood know that San Anselmo's downtown suffered through a protracted period of economic hardship.

United, we have the means to counter flooding's threat. The fee's average cost per homeowner is \$125 per year. That's the cost of a latte a week for a year. Isn't our community worth it? We should do this because it is the right thing.

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**FLOOD FEE DETAILS**

Ballots have been mailed out and must be received by the clerk of the Board of Supervisors by 5 p.m. June 25 to count. If a simple majority of those who vote approve the measure, it becomes law.

About 15,000 property owners in Fairfax, Greenbrae, Kentfield, Larkspur, Ross and San Anselmo will pay the fee, which would be based on the estimated amount of run-off their property produces. The average property owner would pay \$125 a year. Supporters say the fee will raise \$40 million over 20 years.

Lise Stampfli Torme is a member of the Flood Mitigation League of Ross Valley ([www.FMLofRV.org](http://www.FMLofRV.org)), a citizens group formed after the 2005 floods.

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# **EXHIBIT “S”**



### Ford Greene: Ross Valley voters deserve an apology

Staff Report

Article Launched: 07/24/2007 11:05:58 PM PDT  
Ford Greene

THERE ARE MANY things about the integrity of the mail-notice flood tax election to question. Those questions need to be asked and the facts openly and thoroughly examined.

A determination of the integrity of the voting process does not, however, require going any further than an examination of the face of the ballot itself.

June 25 concluded the seven-week period during which the "voters" returned by mail the "ballots" that the Marin Public Works Department had distributed to its list of property owners. June 25 was the date by which the clerk of the Board of Supervisors was to receive the votes.

At issue is a proposed \$40 million "fee" for "flood control" that would be administered by Marin Public Works in conjunction with the Ross Valley Flood Control District. It would include the dredging of the base of Corte Madera Creek. While dredging will ease egress and ingress for the boats of dock owners, it will do little to deter the incoming flood of a high tide, one of the consistent factors that drives big floods in the creek.

The flood "fee" was approved by a slim majority of 65 votes. But the rub is more than 20 percent of the ballots were thrown out because, unlike any ballot I have ever seen, I had to date it, print my name and then sign it. When 20 percent of the votes languish in the toilet to achieve a simple majority to enact a

measure (which if it were named a "tax" would have required a Proposition 13 two-third's majority), a certain bad smell inevitably arises.

For this reason, I decided to spearhead a timely filed demand for a recount.

I wanted to examine the ballots in the toilet.

Fortunately, with the help of Registrar Elaine Ginnold and others, on Monday I did. With the registrar and her assistant, I personally helped count the ballots that had been disregarded because the voters did not sign them. We counted 1,718 disregarded votes. 1,678 were disregarded because the voter simply failed to sign the document. Of those, 736 were "yes" votes and 942 were "no."

The "no's" won by 206 votes.

If these disregarded ballots had been counted, along with those that were signed, the flood tax would have been defeated by 141 votes. Now, to the ballot. The ballot is a two-sided, 4-by-8 1/2-inch piece of card stock. On the voting side a "Yes" box and "No" box are prominently displayed on the right. Below that and across the bottom is a signature and date line. Although there is plenty of room for it, there is no warning, in bold or otherwise, that one's failure to sign would trigger the disregard of one's vote.

On the other side of the ballot, in the smallest print at the bottom buried among other text is the line: "Ballots received without a signature will not be counted." Very small print and not even in bold.

I am 54 and cannot read the warning without my glasses. Elderly persons who are on fixed incomes are even less likely to read the small print. Elderly persons on fixed incomes also are less likely to approve a \$40 million tax. They cannot afford it.

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On the face of it, the ballot stinks of lack of notice and a cynical manipulation of the elderly and infirm, who are among our weakest citizens.

Not only should we protect the weaker among us, but we should never exploit their vulnerability, no less the integrity of our democratic process, to obtain a particular aim or result. To so do is neither fair nor democratic.

The Marin County Public Works Department and Marin County Board of Supervisors should apologize to the voters and do the right thing by disqualifying the false results of this democratic embarrassment.

We are not Dade County. We are Marin.

Ford Greene is a San Anselmo lawyer.

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# **EXHIBIT “T”**



## Greene will appeal decision on flood fee election

Rob Rogers

Posted: 10/15/2007 05:38:52 PM PDT  
Marin Independent Journal

San Anselmo attorney Ford Greene says he'll appeal a Marin Superior Court judge's decision to throw out his legal challenge to the Ross Valley flood fee election ballot.

"This was a local election that was conducted by a local agency, and now its results have been confirmed by a local judge," Greene said. "Now the case can be scrutinized and reviewed by powers that are not embedded in Marin County."

In her final ruling on the subject Monday, Judge Lynn Duryee dismissed Greene's argument that the county's mail-in election violated the constitutional rights of Ross Valley residents by requiring them to sign the ballots.

Greene's suit alleged the ballot used by the Marin County Flood Control and Water Conservation District in its June 25 election did not warn voters that failing to sign it would disqualify their votes.

About 21 percent of the 8,059 votes cast in the mail-in election were disqualified by county election officials. Most were disqualified because they were unsigned.

Duryee on Friday issued a tentative ruling that the county had complied with state law, which requires voters in certain types of parcel tax elections to sign their ballots.

At a court hearing Monday, Greene argued that the

state law requiring those signatures was unconstitutional because it violated voters' fundamental right to a secret ballot.

"Voters have the right to decide whether they want to include their names or not," Greene said. "If the county wanted to prevent voter fraud, they did not have to violate the constitutional rights of the voters. They could have used the absentee ballot system already in place."

An attorney for the county countered that the procedure used in the Ross Valley election had been used in other elections throughout the state to pay for municipal improvements.

"This was a property fee election, used up and down the state of California, in which the participants were not registered voters but the owners of parcels affected by the election," said attorney Sheila Lichtblau. "The county acted according to what had been spelled out from the beginning by the Legislature."

In addition, an attorney for the Flood Mitigation League and Friends of Corte Madera Creek - both of which support the county's position - argued that Greene had failed to prove that the county had held an illegal election.

Duryee agreed, affirming her tentative ruling without further comment. At Greene's request, however, she agreed to order the preservation of all the ballots, counted and uncounted, in the flood fee election.

Greene announced immediately that he would appeal, a move his opponents dismissed as a publicity stunt.

"It's his right to do it, but it's our hope that upon reflection he'll recognize that he can't succeed," said

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Thomas M. McInerney, who represents both the Flood Mitigation League and Friends of Corte Madera Creek for Thelen Reid Brown Raysman & Steiner LLP, a San Francisco law firm. "We think he's only doing this to gain publicity for his Town Council race, and we hope that once the election is over he'll find something else to do."

Greene, a candidate for Town Council in his hometown of San Anselmo, flatly rejected the allegation.

Although Greene is the only person to have filed action against the county after the controversial election, representatives of the Marin United Taxpayers Association said they still planned to do so.

The organization outlined its concerns in an Aug. 20 pre-litigation notice to the county Board of Supervisors, arguing that the county failed to contact every Ross Valley property owner who would be assessed under the flood control fee and that it declared some county or state-owned properties, such as schools, exempt from the fee.

"MUTA's concern is not about the money or the cost of the tax, but rather the fraudulent nature of the election itself, its many faults or flaws, and the way the process was carried out," said association spokesman Fielding Greaves.

Contact Rob Rogers via e-mail at [rrogers@marinij.com](mailto:rrogers@marinij.com)

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on the persons below as follows:

Patrick K. Faulkner  
County Counsel  
Sheila Shah Lichtblau  
Deputy County Counsel  
3501 Civic Center Drive, Room 275  
San Rafael, CA 94903  
*Attorneys for Defendant and Respondent  
Marin County Flood Control and Water  
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District*

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*Attorneys for Appellant in Pro Per*

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Executed on July 24, 2009, at San Francisco, California.

KATHLEEN A. SOYAK  
Type Name

Kathleen Soyak  
Signature