

RESOLUTION NO. 2007-_____
RESOLUTION OF THE RESOLUTION OF THE BOARD OF SUPERVISORS OF THE MARIN
COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
ACCEPTING REPORT ON PROPOSED FLOOD ZONE 9-ROSS VALLEY DRAINAGE
SYSTEM FEE AND FOR PURPOSES OF SETTING THE DATE AND TIME FOR PUBLIC
HEARING THEREON

WHEREAS, the State of California Health and Safety Code Section 5470 – 5474.10 provides for the prescribing of fees for the services and facilities of a storm drainage system; and

WHEREAS, in order to better provide for storm drainage and flood control services within Flood Control District Zone 9 – Ross Valley, the Board of Supervisors of the District has retained services of Terrence E. Lowell & Associates (TLA) to provide recommendations to the Board with respect to a program being commonly referred to as the “Ross Valley Flood Protection and Watershed Program”; and

WHEREAS, TLA has concluded their report (the Report) and have included therein,

- (1) Identification of the parcels of land (Identified Parcels) within Zone 9 upon which annual storm drainage fees should be imposed; and
- (2) the method for determining the amount of the Annual Storm Drainage Fees to be imposed each year upon the identified parcels as a source of funding for such storm drainage and flood control services, including but not limited to additional capital facilities and maintenance services with which to manage storm water runoff so as to better protect life and property within Zone 9; and
- (3) the proposed amount of the annual storm drainage fees to be imposed on the identified parcels for 2007-2008,
 - (a) Lowell has prepared and submitted to the District a written report, dated March 13, 2007, and entitled, “*Ross Valley Flood Protection and Watershed Program – Storm Drainage Fee Report*” which provides the recommendations of TLA with respect to the Ross Valley program. The Report is on file in the office of the District Clerk of the Board and is available as a public record for public review.
 - (b) In compliance with the provisions of Section 6 of Article XIID of the California Constitution (“Section 6” and “Article XIID,” respectively), the Board wishes to provide for a public hearing upon the Report and any related matters respecting the Ross Valley program, including but not limited to the identified parcels, the Annual Storm Drainage Fee Schedule and the 2007-2008 Fee Amounts.

NOW, THEREFORE, BE IT RESOLVED, ORDERED AND DECLARED that, the Board hereby establishes Tuesday, May 1, 2007, at 11o'clock a.m., in Board of Supervisors meeting room, located in the Marin County Civic Center, at 3501 Civic Center Drive, San Rafael, California 94903, as the date, time and place for a public hearing to consider the recommendations set forth in the Report and any related matters respecting the Identified Parcels, the Annual Storm Drainage Fee Schedule and the 2007-2008 Fee Amounts; and

Section 1. Section 6 imposes certain procedural requirements relating to the imposition of property-related fees and charges (as defined in Article XIII D), such as the Annual Storm Drainage Fees, including the requirement to conduct a public hearing for consideration of the Annual Storm Drainage Fees. In furtherance of assuring compliance with the requirements of Section 6 as applied to the proposed imposition of the Annual Storm Drainage Fees, and in furtherance of providing full notice to interested persons as to the procedures the Board intends to follow with respect to the public hearing established by this resolution and the notices of hearing to be published and mailed to the owners of the Identified Parcels, the Board hereby approves the "Procedures for Mailed and Published Notices of Hearing; Conduct of the May 1, 2007, Public Hearing; and County of Written Protests Relating to the Proposed Zone 9 Annual Storm Drainage Fees," as set forth in Exhibit A, attached hereto and incorporated herein by reference (the "Notice and Hearing Procedures")

Section 2. At the above-described public hearing, all interested persons shall be afforded the opportunity to be heard, and the Board shall consider all protests against the Identified Parcels, the Annual Storm Drainage Fee Schedule, the 2007-2008 Fee Amounts, or any other aspect of the Report or the Program. If written protests (as defined in the Notice and Hearing Procedures) against the Annual Storm Drainage Fees are presented by a majority of owners of the Identified Parcels, the Board shall not impose the Annual Storm Drainage Fees. In the absence of a majority protest, the Board may submit the Annual Storm Drainage Fees to a vote of the property owners in accordance with Article XIID.

Section 3. The Clerk of the Board is hereby authorized and directed to cause the preparation, mailing and publication of notice of hearing in accordance with the Notice and Hearing Procedures, and upon completion of same, shall cause the preparation and filing in the Clerk of the Board's official records of these proceedings of suitable affidavits or certificates of compliance respecting the same.

Section 4. Reference is hereby made to the Report, which is on file in the office of the Clerk of the Board, for a list of the Identified Parcels, a full and detailed description of the Annual Storm Drainage Fee Schedule and the 2007-2008 Fee Amounts.

Section 5. The Board hereby designates Jack Curley, Assistant Civil Engineer for the District, telephone number (415) 499-3051, to answer inquiries regarding the Program, the Report and the public hearing.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the Marin County Flood Control and Water Conservation District held on this ____th day of _____, 2007, by the following vote:

AYES: SUPERVISORS
NOES:
ABSENT:

PRESIDENT, BOARD OF SUPERVISORS
MARIN COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

ATTEST:

CLERK

EXHIBIT A

PROCEDURES FOR MAILED AND PUBLISHED NOTICES OF HEARING; CONDUCT OF THE MAY 1, 2007, PUBLIC HEARING; AND COUNTING OF WRITTEN PROTESTS RELATING TO THE PROPOSED ZONE 9 ANNUAL STORM DRAINAGE FEES

Introduction

These Notice and Hearing Procedures are adopted for the purposes of assuring compliance with the requirements of Section 6 as applied to the proposed imposition of the Annual Storm Drainage Fees on the Identified Parcels in Zone 9 and in furtherance of providing full notice to interested persons as to the procedures the Board intends to follow with respect to (a) the mailed and published notices of hearing respecting the public hearing being held on May 1, 2007 (the "Public Hearing"), (b) the conduct of the Public Hearing and (c) the counting of written protests following the close of the Public Hearing (including any continuances of the Public Hearing, if any) to determine whether or not there is a majority protest respecting the Annual Storm Drainage Fees.

All capitalized terms in this Exhibit A not otherwise defined herein shall have the meanings given them in Article XIIID or in the resolution of the Board to which this Exhibit A is attached.

Notices of Hearing

Mailed Notices Notice of the Public Hearing shall be sent, postage prepaid, by first class mail at least forty-five (45) days prior to May 1 to the Record Owner (as defined in Article XIIID) of each Identified Parcel; provided that, in measuring the 45-day period, the day on which mailing is completed may not be counted but the date of May 1 may be counted.

Notices shall be mailed to the Record Owners of the Identified Parcels, as said names and addresses appear on the Assessment Roll, and, in the case of any public entity, the State of California, or the United States, addressed to the public entity at the address of that entity known to the District. In addition, notices shall be mailed to owners of the Identified Parcels, addressed to the names and addresses known to the Clerk of the Board, if different than shown on the Assessment Roll.

Each mailed notice shall contain all of the following:

- A reference to filing of the Report;
- The date, time and place of the Public Hearing.
- The amount of the 2007-2008 Fee to be imposed upon the Identified Parcel covered by the notice.
- A statement of the basis upon which the amount of the 2007-2008 Fee was calculated.
- A statement of the reason for the Annual Storm Drainage Fees.

- A statement that the Annual Storm Drainage Fees will be collected on the County of Marin tax roll each year, commencing with Fiscal Year 2007-2008.

The Clerk of the Board, or the designee of the Clerk of the Board, may certify the proper mailing of notices by an affidavit, which shall constitute conclusive proof of mailing in the absence of fraud.

Failure of any person to receive notice shall not invalidate the proceedings.

Published Notice Notice of the filing of the Report and the Public Hearing shall be published once a week for two successive weeks in the Marin Independent Journal, with the first publication at least fourteen (14) days prior to the Public Hearing, and with at least five (5) days intervening between the first and second publications.

Eligibility to File a Written Protest

The Assessment Roll shall be presumptive evidence of ownership of an Identified Parcel for written protest purposes.

If an owner of any Identified Parcel is not shown on the Assessment Roll, such owner may establish eligibility to file a written protest for such parcel by filing with the Clerk of the Board a proxy from the Record Owner in a form satisfactory to County Counsel, as general counsel to the District ("County Counsel"), or evidence of ownership satisfactory to County Counsel. Any such proxy or evidence must be received by the Clerk of the Board prior to the conclusion of the Public Hearing.

When an Identified Parcel is held by a partnership, as community property, in joint tenancy, or as a tenancy in common, any partner, spouse, joint tenant, or tenant in common, as the case may be, may file a written protest for such parcel.

An executor, administrator, or guardian may file a written protest for an Identified Parcel on behalf of the estate it represents. If such representative is shown on the Assessment Roll as paying taxes levied against the parcel, that fact shall establish the right of such representative to file the written protest. If such representative is not shown on the Assessment Roll, the representative must file with the Clerk of the Board written documentation satisfactory to County Counsel establishing the legal representation. Any such documentation must be filed with the Clerk of the Board prior to the conclusion of the Public Hearing.

When an Identified Parcel is held by a corporation or unincorporated association, a written protest may be filed by any person authorized in writing by the board of directors or trustees or other managing body thereof to take such actions. The corporation or unincorporated association must file with the Clerk of the Board written authorization satisfactory to County Counsel. Any such written authorization must be filed with the Clerk of the Board prior to the conclusion of the Public Hearing.

Submission of Written Protests

Written protests may be mailed (via U.S. mail) to the Clerk of the Board, in care of the Clerk of the Board of Supervisors at the Marin County Civic Center or delivered in person to the Clerk of

the Board at the office of the Clerk of the Board of Supervisors at the Marin County Civic Center or at the Public Hearing.

Written protests delivered via e-mail will NOT be counted for purposes of determining whether a majority protest exists, but the Board may, in its discretion, consider such written protests in making determinations regarding the Annual Storm Drainage Fees.

Each written protest must identify the property covered by the protest and be signed.

No written protest received by the Clerk of the Board after the close of the Public Hearing shall be counted in determining the existence of a majority protest. The last pick up by the Clerk of the Board of written protests mailed or delivered to the office of the Clerk of the Board of Supervisors will occur at 9 o'clock a.m. on the date scheduled for the Public Hearing. To ensure that written protests which are mailed or delivered to the office of the Clerk of the Board of Supervisors at the Marin County Civic Center are received by the Clerk of the Board prior to the close of the Public Hearing, such written protests must be received by the Clerk of the Board of Supervisors at the Marin County Civic Center prior to 9 o'clock a.m. on the date scheduled for the Public Hearing. The Clerk of the Board shall endorse on each written protest the date it is filed. The Clerk of the Board shall identify any written protests which are received after the close of the Public Hearing.

Written protests may be withdrawn in writing at any time prior the close of the Public Hearing by the person who submitted the written protest.

All written protests received by the Clerk of the Board and not withdrawn prior to the close of the Public Hearing shall be considered public records.

Conduct of the Public Hearing; Determination of A Majority Protest

1. At the time, date and place fixed for the Public Hearing, the Board shall:
 - (a) Hear a staff presentation pertaining to the Program and the Report;
 - (b) Hear all persons interested in the matter of any aspect of the Program or the Report; and
 - (c) Receive all written communications regarding the Program or the Report.
2. The Public Hearing may be continued from time to time, as the Board determines is necessary to complete its consideration of the Program and the Report.
3. If the Board determines at the close of the Public Hearing that written protests have been presented, and not withdrawn, by owners or authorized representatives of owners of a majority of the Identified Parcels (i.e., there is a majority protest), the Program shall not be approved and the Annual Storm Drainage Fees will not be imposed.
4. If the Board determines at the close of the Public Hearing that there is not a majority protest, the Board may:

(a) Remedy and correct any clerical error in the Report or otherwise modify the Report; provided that any such modification or correction shall not result in an Annual Storm Drainage Fee for any Identified Parcel which is greater than the amount shown in the notice of the Public Hearing pertaining to that Identified Parcel;

(b) Confirm the Report, as originally filed or as amended in accordance with subparagraph (a), above;

(c) Adopt an ordinance imposing the Annual Storm Drainage Fees, subject to voter approval; and

(d) Adopt a resolution calling for a mailed-ballot election regarding the Annual Storm Drainage Fees.

Counting of Written Protests

For purposes of determining whether a majority protest exists, only one protest for each Identified Parcel will be counted. In other words, one Identified Parcel, one protest.

In order to be counted in determining whether a majority protest exists, a protest must be a written protest received by the Clerk of the Board prior to the close of the Public Hearing, must identify the Identified Parcel covered by the written protest and must be signed by a person eligible to submit a written protest with respect to the subject Identified Parcel.

A written protest from any person having an ownership interest or representing a person having an ownership interest in an Identified Parcel will result in having that Identified Parcel counted among the Identified Parcels for which a written protest has been received, irrespective of the possibility that one or more other persons having an ownership interest or representing a person having an ownership interest in the same Identified Parcel do not join in such written protest.

Written protests respecting multiple Identified Parcels which are combined into a single instrument (a "Combined Protest") shall be accepted, and all Identified Parcels which are listed in the Combined Protest and for which the signature of any person identified above under the heading "Eligibility to File a Written Protest" as a person eligible to file a written protest is set forth shall be counted.