



SPECIAL TOWN COUNCIL MEETING
In the Council Chambers at
525 San Anselmo Avenue,
San Anselmo, CA 94960

Town Council Agenda

Wednesday, December 6, 2023

6:00 PM

SPECIAL TOWN COUNCIL MEETING

Meeting held In-Person and via Zoom:

<https://us02web.zoom.us/j/86864617084>

Or Telephone: +1 669 900 6833 | Webinar ID: 868 6461 7084

How to Submit Comments Before the Meeting: Members of the public are encouraged to submit email correspondence to towncouncil@townofsananselmo.org before the meeting begins.

How to Participate During the Meeting: Members of the public will have the option to speak during the meeting through the Zoom application by using their phone or an electronic device.

For PC, Mac, or smart phone, Use Raise hand function when public comment for an item is requested. It is a button that is located at the top or bottom of your screen, based on your computer.

For landline phones, raise hand to be recognized with *9

Please be advised those participating in the meeting remotely via Zoom do so at their own risk. The Town Council special meeting will not be cancelled if any technical problems occur during the meeting.

Call to Order. Optional Pledge of Allegiance: The Mayor or a designated Council member will recite the Pledge of Allegiance for members of the Council and the public who wish to join in the recitation

1. Business Items:

In general, the following procedural order applies to business items. •Staff Presentation •Town Council Questions •PUBLIC COMMENT – limited to 3 minutes/person •Town Council discussion/action

- 1.1** Receive an Informational Report on the Potential Impacts of the “Withdrawal of San Anselmo from Flood District Initiative” and Consider Calling a Regular or Special Election to Place the Initiative on the Ballot; and Find the Actions Exempt from the California Environmental Quality Act (CEQA).

[Staff Report \(DOC\)](#)

[Attachment 1- 9212 Report \(PDF\)](#)

[Attachment 2- Draft Resolution Calling Special Election \(DOC\)](#)

[Exhibit A to Draft Resolution \(PDF\)](#)

[PowerPoint Presentation \(PPTX\)](#)

[Public Comment- Marin County Flood Control District \(PDF\)](#)

[Public Comment- Asselstine \(PDF\)](#)

[Public Comment- Greene \(PDF\)](#)

Adjourn

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact Town Staff at email savila@townofsananselmo.org. Notification at least 48 hours prior to the meeting will enable the Town to make reasonable accommodation to help insure accessibility to this meeting.

Any writings or documents provided to a majority of the Town Council regarding any item on this agenda after the distribution of the original packet will be made available for public inspection at the public counter at Town Hall located at 525 San Anselmo Avenue.

Notice is hereby given that Council may discuss and/or take action on any or all of the items listed on this agenda. If any of these matters above are challenged in court, you may be limited to raising only those issues you or someone else raised at any public hearing described on this agenda, or in written correspondence delivered at, or prior to, this Council meeting. Judicial review of an administrative decision of the Town Council must be filed with the Court not later than the 90th day following the date of the Council’s decision (Code of Civil Procedure Section 1094.6) Any item not under discussion before 10:00 p.m. may be continued to the next regular meeting. Next regular meeting is on December 12, 2023.

Administration Department
Town Hall, main floor
525 San Anselmo Avenue
San Anselmo, CA 94960
(415) 258-4691

Town Council
Steve Burdo, Mayor
Eileen Burke, Vice Mayor
Brian Colbert, Councilmember
Alexis Fineman, Councilmember
Tarrell Kullaway, Councilmember

Staff
Dave Donery, Town Manager
Linda Kenton, Assistant Town Manager / Town Librarian
Jeff Zuba, Finance and Admin Services Director

Megan Holt Acevedo, Town Attorney
Serge Avila, Town Clerk
Heidi Scoble, Planning Director
Sean Condry, Public Works Director
Dannielle Mauk, Community Services Director
Mike Norton, Chief of Police
Dan Mahoney, Interim Fire Chief

Declaration of Posting

This Notice is posted in accordance with Government Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the Town of San Anselmo website. Under penalty of perjury, this Agenda was posted to the public at least 24 hours prior to the meeting.



TOWN OF SAN ANSELMO
TOWN COUNCIL
STAFF REPORT

For the Special Meeting of December 6, 2023

Agenda Item 1.1

Date: December 6, 2023

To: Mayor Steve Burdo and Town Council Members

From: Megan H. Acevedo, Town Attorney
Serge Avila, Town Clerk
Dave Donery, Town Manager

Subject: Receive an Informational Report on Potential Impacts of the “Withdrawal of San Anselmo from Flood District Initiative” and Consider Calling a Regular or Special Election to Place the Initiative on the Ballot; and Find the Actions Exempt from the California Environmental Quality Act (CEQA)

RECOMMENDATION

Staff recommends that the Council take the following actions:

1. Receive, file, and accept the Informational Report on Potential Impacts of the “Withdrawal of San Anselmo from Flood District Initiative” (Attachment 1).
2. Choose to place the Initiative a regular or special election ballot.
 - a. If the Town Council chooses to place the Initiative on the March 5, 2024, Presidential Primary Election ballot, the Council should adopt the attached resolution calling the election.

BACKGROUND

On April 11, 2023, the Town Clerk received a Notice of Intention to circulate a petition within the Town of San Anselmo for a proposed ballot initiative to seek withdrawal of the Town from Marin County Flood Control and Water Conservation District Flood Control Zone 9. (“Notice”). The

Notice was signed by Diana Davis, David Bohn and Ross Asselstine (“Proponents”) and included a request that the Town Attorney prepare a ballot title and summary for the initiative.

If approved by the majority of Town voters, the Withdrawal of San Anselmo from Flood District Initiative (“Initiative”) would withdraw parcels in the Town from the Marin County Flood Control and Water Conservation District (“District”). The State Legislature created the District in 1953 to control flood and storm waters and to conserve water for use when practicable. The Town withdrew from the District in 1971, before rejoining in 2006. In 2007 the District imposed a storm drainage fee on property in the Ross Valley, which the District designated as Zone 9, including the Town. That fee ends on June 30, 2027.

Although voter approval of the Initiative would withdraw all land in the Town from the District, State law provides that withdrawal will not release that land from the duty to pay fees to fund debts and obligations the District becomes responsible for before the withdrawal.

Following receipt of the Notice, the Town Attorney timely prepared the requested title and summary and the Town Clerk provided them to the Proponents on April 24, 2023. The Proponents published the title and summary in the *Marin Independent Journal* on April 27, 2023. The Proponents had six months from receipt of the ballot title and summary to gather enough signatures to qualify the initiative for the ballot.

On October 11, 2023, the Proponents presented signatures to the Town Clerk for verification. After conducting a preliminary count, on October 11, the Clerk forwarded the signatures to the County Elections Department. The Registrar of Voters certified the signatures on October 30, 2023. (Attachment 1). In compliance with the Elections Code, the Town Clerk presented the Initiative and certified signatures to the Town Council at its first regular meeting following certification, which was held on November 14, 2023. (Cal. Elec. Code § 9215).

At the November 14th meeting, the Town Council received, filed and accepted the Town Clerk’s certification of the signatures. The Council then directed staff to prepare an informational report on the potential impacts of passage of the Initiative on the Town and its residents. The Council specifically requested information about residents’ obligation to pay the storm drainage fee and property taxes to the District following withdrawal, the effect of withdrawal on residents’ flood insurance rates, and the impact of withdrawal on the Town’s liability for lawsuits brought against the District following withdrawal.

DISCUSSION

The attached Informational Report provides the analysis requested by the Town Council for consideration before taking action on the Initiative. (Attachment 1). The Town Attorney, in consultation with outside counsel, and Town staff prepared the report to the best of their ability in the abbreviated timeframe.

Under State law, the Council must act within 10 days of receipt of the Report to place the Initiative on the ballot at a regular or special election. (Cal. Elec. Code § 9215(c)). The next regular municipal election will be held on November 5, 2024. A resolution adding the Initiative to that regular election would be brought before the Council along with a resolution calling that election during at a Council meeting scheduled for next June or July 2024.

If the Council chooses to call a special election, the election must be held not less than 88 days nor more than 103 days after the order of the election. (Cal. Elec. Code § 1405). For a special election that would coincide with the March 5, 2024, Presidential Primary Election, the Council must call the election by December 8, 2023.

A. Draft Resolution Calling Special Election.

Per the Town Council's request, staff has attached a draft resolution calling a special election for March 5, 2024 (Attachment 2).

1. Ballot Question.

The draft resolution includes the following ballot question:

Shall an initiative measure be adopted to withdraw parcels of land in the Town of San Anselmo from the Marin County Flood Control and Water Conservation District?

The Town Council asked that staff provide alternate language for consideration. Given that withdrawal is the sole focus of the Initiative, there is not much room for creativity; therefore, staff provides the following as an option:

Shall an initiative measure be adopted to withdraw the Town of San Anselmo from the Marin County Flood Control and Water Conservation District?

The Council should offer its input on the ballot question before adopting the resolution.

2. Ballot Argument.

In addition to choosing the ballot question, staff recommends that the Town Council determine whether it will prepare an argument in favor or in opposition to the Initiative (Cal. Elec. Code § 9282). If the Council determines that it will submit an argument, it may also submit a rebuttal. (Cal. Elec. Cod § 9285). If the majority of the Council votes to submit an argument, it may wish to designate one or two members to draft the argument and rebuttal on behalf of the full Council.

The County Registrar of Voters established the following deadlines for arguments for measures on the March 5, 2024, election:

- (1) December 9th – 18th - Primary arguments in favor and in opposition to the measure may be submitted, changed or withdrawn (Cal. Elec. Code § 9282).
- (2) December 18th – 27th – Rebuttal arguments to the primary arguments for or against the measure must be filed with the Town Clerk (Cal. Elec. Code § 9285).

FISCAL IMPACT

The Town Clerk contacted the County Elections Department to come up with estimates for the costs associated with a regular and special election, but there is no way to provide firm amounts due to variables, including the number of items that will appear on the ballots at each election. However, since the November 14, 2023, meeting, the Elections Department was able to shed some light on the factors determining costs.

November Regular Election

For the November 5, 2024, regular consolidated election, the cost to the Town is estimated to be between \$1-\$3 per voter. The Town will already have offices on the November ballot, so adding the Initiative to that ballot would increase the cost by \$.15 and \$.30 per voter.

→ Assuming approximately \$2.25/voter for 9520 Registered Voters = \$21,420.

March Special Election

For a special election coinciding with the March 5, 2024, Presidential Primary, the per-voter cost would be somewhere between the cost of a regular election (\$1-\$3/voter) and a stand-alone special election (\$8-\$10/voter).¹ The Elections Department noted that the March election may be more expensive than the November election, because it is a Presidential Primary and ballots are printed based on political party preference. More County staff time and expense is incurred where multiple ballots are involved in an election.

→ Assuming a conservative cost of approximately \$3.00/voter for 9520 Registered Voters = \$28,560.

Note: The Town would also be paying for the November regular election for officers and any other measures, so the total cost to hold these two elections in 2024 would be approximately \$28,560 + \$19,040 = \$47,600.

CEQA DETERMINATION

CEQA review is not required for the actions being considered by the Town Council. (*Tuolumne Jobs & Small Bus. All. v. Superior Ct.*, (2014) 59 Cal. 4th 1029, 1043).

¹ As discussed at the November 14, 2023, Council meeting, for a stand-alone special election, including a vote-by-mail election, the cost could range from \$8.00 to over \$10.00 per registered voter. Based the cost for 9520 Registered Voters at an estimated \$9.00 each= \$85,680.00.

ATTACHMENTS

9212 Report (Attachment 1)

Draft Resolution Calling Special Election (Attachment 2)



California Elections Code Section 9212 Report re:
Potential Effects of Town's Withdrawal from Flood Zone 9

Summary

The Town Council requested that Town staff prepare an informational report pursuant to California Elections Code section 9212 related to the effect of the potential passage of an initiative to withdraw the Town from the Marin County Flood Control and Water Conservation District, Zone 9.

As discussed below, withdrawal from the District is unlikely to impact San Anselmo residents' payment of fees or property taxes associated with existing District projects. Nor is withdrawal likely to affect the Town's liability associated with existing projects or Town residents' flood insurance rates. However, withdrawal can absolve Town property owners from funding any projects initiated by the District after withdrawal and it may limit the Town's liability for such projects.

Background

A. Initiative Process Background

On April 11, 2023, the Town Clerk received a Notice of Intention to circulate a petition within the Town of San Anselmo for a proposed ballot initiative to withdraw the Town from Marin County Flood Control and Water Conservation District Flood Control Zone 9. ("Notice"). If approved by the majority of Town voters, the Withdrawal of San Anselmo from Flood District Initiative ("Initiative") would withdraw parcels in the Town from the Marin County Flood Control and Water Conservation District, Zone 9.

The Notice was signed by Diana Davis, David Bohn and Ross Asselstine ("Proponents") and included a request that the Town Attorney prepare a ballot title and summary for the Initiative. Accordingly, the Town Attorney timely prepared the requested title and summary and the Town Clerk provided it to the Proponents on April 24, 2023. The Proponents published the title and summary in the Marin Independent Journal on April 27, 2023. The Proponents had six months from receipt of the ballot title and summary to gather enough signatures to qualify the initiative for the ballot.

On October 11, 2023, the Proponents presented signatures to the Town Clerk for verification. After conducting a preliminary count, on October 11, the Clerk forwarded

the signatures to the County Elections Department. The Registrar of Voters certified the signatures on October 30, 2023. (Attachment 1). Under the Elections Code, the Town Clerk must present the Initiative and certified signatures to the Town Council at the first regular meeting following certification. (Cal. Elec. Code § 9215).

At its meeting of November 14, 2023, the Town Council accepted the Town Clerk's certification of the signatures and requested that staff prepare an informational report regarding the potential impacts of passage of the Initiative on the Town and its residents. The Town Attorney, in consultation with outside counsel, and Town staff have prepared the following report to the best of their ability within the short time available.

B. Marin County Flood Control and Water Conservation District Background

The State Legislature created the Marin County Flood Control and Water Conservation District ("District") in 1953 when it enacted the Marin County Flood Control and Water Conservation District Act ("the Act") to control flood and storm waters and to conserve water for use when practicable. The Act provides procedures for establishing zones within the District; appointing advisory commissions; implementing projects for the benefit of the District or property in particular zones; considering objections to proposed projects and boundaries; and for withdrawal from the District.¹

The District established Zone 9 on December 14, 1965.² The Town withdrew from the District in 1971, but rejoined on November 14, 2006, with the adoption of Resolution No. 3788.³ The District then amended Zone 9 to incorporate the Town's territory by Resolution No. 2007-05.⁴

On April 10, 2007, the Town Council adopted Resolution No. 3797 supporting the Ross Valley Flood Protection and Watershed Program and the proposed Zone 9 drainage system fee.⁵ That same year, Zone 9 property owners voted to finance flood control projects with a stormwater drainage fee to expire in 2027 (hereinafter "Flood Fee").⁶ On February 12, 2008, the Town Council adopted Resolution No. 3830, requesting the Board of Supervisors implement the Ross Valley Flood Protection & Watershed Program.⁷

The Flood Fee funds programs such as the San Anselmo Flood Risk Reduction Project, the Corte Madera Creek Flood Risk Management Project, annual Ross Valley Creek

¹ Stats. 1953, ch. 68, West's Ann. Cal. Wat. Code Appen., cited herein as Water Code §§ 68-1, *et seq.*

² *City of Larkspur v. Marin County Flood Control etc. Dist.* (1985) 168 Cal.App.3d 947, 950.

³ Town Council Resolution No. 3788 (Nov. 14, 2006)

<<https://www.townofsananselmo.org/DocumentCenter/View/8919/Reso-3788?bidId=>>

⁴ Marin County Flood Control and Water Conservation District, Resolution No. 2007-05 (Jan. 23, 2007) <https://marin.granicus.com/MetaViewer.php?view_id=9&clip_id=1886&meta_id=192717>

⁵ Town Council Resolution No. 3797 (Apr. 10, 2007)

<<https://www.townofsananselmo.org/DocumentCenter/View/8927/Reso-3797?bidId=>>

⁶ Richard Halstead, *Marin Supervisors Approve Ross Valley Flood Fee Hike* (Aug. 7, 2019)

<<https://www.marinij.com/2019/08/07/marin-supervisors-approve-fee-hike-for-ross-valley-flood-control/>>

⁷ Town Council Resolution No. 3830 (Feb. 12, 2008)

<<https://www.townofsananselmo.org/DocumentCenter/View/8959/Reso-3830?bidId=>>

maintenance, and the Lower Corte Madera Creek & Geomorphic Dredge Study.⁸ The District also collects a share of ad valorem (property) taxes from San Anselmo property owners for facility maintenance and flood risk reduction projects.⁹

C. San Anselmo Flood Risk Reduction (SAFRR) Project Background

On September 18, 2018, the Board of Supervisors held a public hearing and adopted Resolution No. 2018-99¹⁰ certifying the final environmental impact report (FEIR) for the SAFRR Project and Resolution No. 2018-100 approving the Project.¹¹ The approval included flood mitigation projects on two parcels, “one to remove a channel-constricting building on San Anselmo Creek at 634-636 San Anselmo Avenue [hereinafter, “Building Bridge 2” or “BB2”] and one to construct a flood diversion and storage basin at 3000 Sir Francis Drake Boulevard along Fairfax Creek.”

In November 2018, the District purchased Building Bridge 2, intending to remove the building as part of its SAFRR Project.¹² In April 2020, the Town and the District entered into a cooperative agreement for the design and construction of the Project.¹³ The agreement facilitated the removal of the structures atop BB2 and allowed for the creation of a plaza. The District leased BB2 to the Town for use as public park space until the District terminated the lease on September 15, 2022.¹⁴

Because the District owns BB2 and controls the SAFRR Project, the District will determine how the Project proceeds. Most recently, the District released a second addendum to the FEIR for the SAFRR Project on November 3, 2023.¹⁵ The District has submitted an application to the Town for ministerial demolition and building permits and

⁸ Marin County Flood Control and Water Conservation District, Ross Valley Flood Protection and Watershed Program Final Storm Drainage Fee Update Report (July 2023) <<https://storage.googleapis.com/proudcity/marinwatershedprogramca/uploads/2023/06/Storm-Drainage-Fee-Report-2023.pdf>>

⁹ County of Marin, Department of Public Works, “Conduct Public Hearing and Adopt the Flood Control Zone Baseline Budgets for Fiscal Year 2022–2023 (June 21, 2022)

<https://marin.granicus.com/MetaViewer.php?view_id=33&clip_id=11438&meta_id=1204136>

¹⁰ Marin County Flood Control and Water Conservation District Resolution No. 2018-99 (Sept. 18, 2018)

<<https://pav.marincounty.org/publicaccessbosrecords/api/Document/AUWOKnheBVnQxIbJTUD896edHmRcZEIncxoelQ087DWUxRmX754ccpjbjUtVJfjUWIKÉ2x0v7Htsp82zb9SEmlU%3D/>>

¹¹ Marin County Flood Control and Water Conservation District Resolution No. 2018-100 (Sept. 18, 2018)

<<https://pav.marincounty.org/publicaccessbosrecords/>>

¹² Town of San Anselmo Staff Report, Update Regarding Building Bridge 2 (632-636 San Anselmo Avenue) (Sept. 21, 2022) https://docs.google.com/gview?url=https%3A%2F%2Fsananselmo-ca.granicus.com%2FDocumentViewer.php%3Ffile%3Dsananselmo-ca_6eec3a1d1a1d5e42b96fd3b8f87e0add.pdf%26view%3D1&embedded=true [accessed on Nov. 27, 2023].

¹³ Cooperative Agreement By And Between The Town Of San Anselmo And Marin County Flood Control And Water Conservation District For Design And Construction Of The San Anselmo Flood Risk Reduction Project At 632-636 San Anselmo Avenue (2020) <https://sananselmo-ca.granicus.com/MetaViewer.php?view_id=1&clip_id=413&meta_id=67651>

¹⁴ *Id.*

¹⁵ Marin County Flood Control and Water Conservation District, *Second EIR Addendum Review Period Extended*, available at <<https://marinflooddistrict.org/second-eir-addendum-review-period-extended/>>

staff is processing the application. According to the District website, the removal of BB2 will occur in the summer of 2024.¹⁶

II. Analysis

A. Initiative Impact on Flood Fee

Although voter approval of the Initiative would withdraw all land in the Town from the District, State law provides that withdrawal will not release that land from the duty to pay fees to fund debts and obligations the District becomes responsible for before the withdrawal:

[T]he withdrawal of the area lying within the exterior boundaries of such city from the district shall not release the area so withdrawn from debts and obligations for or upon which it was liable or chargeable at the time such withdrawal was made ... (Cal. Water Code § 68-26.1).

No definition in the statute or its legislative history describes what constitutes “debts and obligations” under the Act. Nor could a definition be found in the Acts establishing other Flood Control and Water Conservation Districts.¹⁷

However, there is an Appellate Court decision interpreting this statute that provides insight into a court’s understanding of a jurisdiction’s obligations following withdrawal. In *City of Larkspur v. Marin County Flood Control and Conservation District*, the Town of Corte Madera unsuccessfully argued that its 1978 vote to withdraw from Zone 9 relieved its property owners of any financial obligation for existing ongoing Zone 9 projects.¹⁸ Because Corte Madera benefited from those projects and did not protest the projects under Section 11 of the Act when they were initiated, the court concluded the Town was obligated to fund their completion, notwithstanding its withdrawal from the District.¹⁹ The court found the “exclusive procedure” for the Town to “seek exclusion” from Zone 9 obligations “by reason of non-benefit” was by requesting exclusion during the District’s hearing on its resolution to undertake the project.²⁰

Based on the *City of Larkspur* case, the District may assert that Town property owners were required to object to funding any Zone 9 project at the hearing at which the District Board approved the project.²¹ For example, as described above, the District approved the SAFRR Project following a public hearing in September 2018 at which time, Town

¹⁶ Marin County Flood Control and Water Conservation District, *Building Bridge #2 Removal* <<https://marinflooddistrict.org/building-bridge-2-removal/>>

¹⁷ Stats. 1949, ch. 55, § 55-26.1, West’s Ann. Cal. Wat. Code Appen. [Alameda County]; Stats. 1951, ch. 63, § 63-27, West’s Ann. Cal. Wat. Code Appen. [Contra Costa County]; Stats. 1954, ch. 62, § 62-31, West’s Ann. Cal. Wat. Code Appen. [Lake County]; Stats. 1956, ch. 79, 79-31, West’s Ann. Cal. Wat. Code Appen. [San Joaquin County].

¹⁸ *City of Larkspur*, *supra*, 168 Cal.App.3d at p. 955.

¹⁹ *Id.* at 957-58.

²⁰ *Id.*; Stats. 1953, Cal. Water Code § 68-11.

²¹ *City of Larkspur*, *supra*, 168 Cal.App.3d at p. 958.

property owners could have objected to, or filed a protest related to, the project under Section 11 of the Act.

Thus, withdrawal from the District is unlikely to release property owners in the Town from having to fund Zone 9 projects to which the District is already committed and which benefit the Town.²² However, withdrawal can protect Town property owners from having to fund projects initiated *after* withdrawal.

B. Property Taxes

In addition to the responsibility to fund the completion of District projects with the Flood Fee, San Anselmo property owners will continue to fund maintenance of existing constructed improvements in Zone 9 through a portion of their property taxes. Withdrawal will not affect the property taxes collected for maintenance.

Section 26.1 of the Act states, in part:

[A]ny portion of a city which prior to its withdrawal from the district was included within the boundaries of a flood control zone shall remain subject to taxes for the maintenance of improvements constructed within such zone prior to the withdrawal of the city from the district. (Cal. Water Code § 68-26.1).

This section will require funding of maintenance for improvements throughout Zone 9 and will not be limited to improvements located in or serving San Anselmo. However, property tax proceeds from parcels in the Town will not be used to maintain projects constructed after the Town's withdrawal.

Withdrawal of the Town from the District will not impact the collection of property taxes, because the only tax the District imposes for this purpose is a share of the 1 percent property tax capped by Proposition 13. Accordingly, if the District were to surrender its share of the property tax, taxes would not fall for San Anselmo property owners; rather, the distribution of those taxes would change as among the benefited taxing agencies.

C. Liability Following Withdrawal

Claims for money or damages against the District are generally governed by the California Government Tort Claims Act and all claims must be audited and paid in the same manner and with the same effect as similar claims against the County. (Cal. Water Code § 68-29; Cal. Gov't Code §§ 810 *et seq.*) Nothing in the Act specifies how withdrawal impacts liability. As discussed above in relation to funding obligations, it would follow that the Town may continue to be implicated as a District member in a lawsuit arising from a project approved prior to withdrawal. Similarly, the Town may be absolved from legal liability for litigation arising from a project approved after withdrawal. Generally, liability for a flood improvement arises from ownership or control

²² Note that this report does not assess the Town's obligations following withdrawal in the event that the SAFRR project is not completed by the District.

of that improvement and these improvements are owned by the District, which is legally distinct from the Town. But this will be so regardless of whether the properties in the Town remain part of the District.

D. Effect of Withdrawal on San Anselmo Residential Flood Insurance Rates

Flood insurance rates are calculated based on floodplain maps and flood risk assessments. The Town's participation in the District will not affect these factors. It is changes to flood control facilities, not district boundaries, which affect flood risk analysis. Moreover, the Town's Federal Emergency Management Agency (FEMA) Community Rating System (CRS) rating is not tied to participation in the District and therefore, withdrawal from the District will not impact the Town's rating or flood insurance rates. Edie Lohmann, a National Flood Insurance Program Insurance Specialist with FEMA confirmed this.

Conclusion

In accordance with statutory and current case law, if the voters approve the measure to withdraw the area of the Town from the District, Town property owners will continue to fund existing Zone 9 projects through the Flood Fee until its sunset in 2027. In addition, a portion of owners' property tax will continue to be used for maintenance of existing Zone 9 improvements. Similarly, withdrawal is unlikely to release the Town from any legal liability it might have for District projects approved prior to withdrawal. Finally, withdrawal from the District will not impact flood insurance rates. However, withdrawal can absolve Town property owners from funding projects initiated by the District after withdrawal and it may further limit any potential Town liability for such projects.

**DRAFT TOWN OF SAN ANSELMO
RESOLUTION NO. _____**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO CALLING
A SPECIAL MUNICIPAL ELECTION IN ITS JURISDICTION ON MARCH 5, 2024, TO
SUBMIT TO THE QUALIFIED VOTERS OF THE TOWN OF SAN ANSELMO AN
INITIATIVE MEASURE SEEKING VOTER APPROVAL FOR WITHDRAWAL OF THE
TOWN OF SAN ANSELMO FROM MARIN COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT ZONE 9; REQUESTING THE MARIN COUNTY BOARD OF
SUPERVISORS CONSOLIDATE THE SPECIAL MUNICIPAL ELECTION WITH ANY
OTHER ELECTION CONDUCTED ON SAID DATE; REQUESTING ELECTION SERVICES
BY THE COUNTY REGISTRAR OF VOTERS; AND PROVIDING RULES AND DEADLINES
FOR ARGUMENTS AND REBUTTALS FOR AND AGAINST THE MEASURE**

WHEREAS, pursuant to the authority provided by the California Elections Code, a petition has been filed with the Town Council of the Town of San Anselmo seeking voter approval for an initiative measure which would withdraw the Town of San Anselmo from Marin County Flood Control and Water Conservation District Flood Control Zone 9 (“Initiative”); and

WHEREAS, pursuant to California Elections Code section 9215, an initiative petition must be on file with the Town in valid form and signed by not less than 10% of the registered voters of the Town in order to qualify the initiative for the ballot; and

WHEREAS, according to Marin County voter records, the minimum number of signatures required to qualify the Initiative for the ballot is 952 registered Town voters; and

WHEREAS, the Town Clerk has certified that the form of the Initiative petition complies with California law and, based upon an examination of voter registration records by the Marin County Registrar of Voters, has ascertained that the petition is signed by the requisite number of voters to qualify the Initiative for the ballot; and

WHEREAS, at its November 14, 2023, meeting, the Town Council ordered a report pursuant to Elections Code section 9212 to evaluate the effects of the Initiative on the Town and its residents and staff prepared and presented the report to the Town Council at a special meeting on December 6, 2023; and

WHEREAS, the Town Council is authorized and required by California Elections Code sections 1405 and 9215 to submit the proposed Initiative to the voters at either the Town’s next regular election or at an earlier special election held not less than 88 days nor more than 103 days after the order of the election; and

WHEREAS, the next regular election is the Town’s General Municipal Election scheduled for November 5, 2024; and

WHEREAS, the Town Council desires to place the Initiative before the Town voters sooner than November 5, 2024, and the next available Special Election date that is not less than 88 days or more than 103 days from the date of this resolution is March 5, 2024; and

WHEREAS, the specific terms of the Initiative are attached hereto as Exhibit A and by this reference made an operative part hereof, and in accordance with all applicable law; and

WHEREAS, by adoption of this Resolution, the Town Council desires that the County of Marin render full services to the Town in connection with conducting the Special Municipal Election; and

WHEREAS, all necessary expenses in performing these services shall be paid by the Town of San Anselmo; and

WHEREAS, under California Elections Code section 10400 *et seq.*, an election may be consolidated with other elections held on the same date; and

WHEREAS, it is also desirable to establish rules for submission of written arguments and rebuttals for and against the Initiative in accordance with the applicable California Elections Code procedures.

NOW, THEREFORE, the Town Council of the Town of San Anselmo hereby resolves as follows:

SECTION 1. Environmental Review

The Town Council finds that this resolution and the placement of the Initiative on the ballot is not a discretionary action of the Town Council within the meaning of the California Environmental Quality Act (CEQA) and therefore, not subject to CEQA review. (*Tuolumne Jobs and Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029.)

SECTION 2. Recitals.

The Town Council hereby finds and determines that the foregoing recitals are true and correct and are incorporated herein and by this reference are made an operative part hereof.

SECTION 3. Call of Special Municipal Election.

The Town Council hereby orders the Initiative attached hereto as Exhibit A to be submitted to qualified voters of the Town at a Special Municipal Election for the Town of San Anselmo to be held on the 5th day of March, 2024. The proposed Initiative shall be in the form attached hereto as Exhibit A and is incorporated herein by reference.

SECTION 4. Ballot Question.

The Town Council, pursuant to its right and authority, does hereby order that the ballot question for the Initiative shall be presented and printed upon the ballot submitted to the qualified voters in the

manner and form set forth in this Section. On the ballot to be submitted to the qualified voters at the Special Municipal Election to be held on March 5, 2024, in addition to any other matters required by law, there shall be printed the following ballot question:

“Shall an initiative measure be adopted to withdraw parcels of land in the Town of San Anselmo from the Marin County Flood Control and Water Conservation District?”	Yes
	No

SECTION 5. Request for Consolidation and Election Procedures.

The Town Council of the Town of San Anselmo hereby requests that the Board of Supervisors of the County of Marin:

- (1) Consolidate the Town’s Special Municipal Election with any other applicable election conducted on March 5, 2024.
- (2) Pursuant to Elections Code section 10002, authorize and direct the County Registrar of Voters, at Town expense, to provide all necessary election services and to canvass the results of said election. The services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections, including but not limited to checking registrations, mailing ballots, hiring election officers and arranging for polling places, receiving absentee voter ballot applications, mailing and receiving absentee voter ballots and opening and counting same, providing and distributing election supplies, and furnishing voting machines.
- (3) The Town Clerk of the Town of San Anselmo shall receive the canvass from the County as it pertains to the Special Municipal Election and shall certify the results to the Town Council, as required by law.

SECTION 6. Arguments and Impartial Analysis.

- (1) The Town Council authorizes the Town Council or any member(s) of the Town Council, the proponents of the Initiative, any individual voter eligible to vote on the Initiative, a bona fide association of such citizens or any combination of voters and associations, to file a written argument in favor of or against the Initiative, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code. December 9, 2023, is the beginning of a ten-day period to file a primary written argument in favor of or against the Initiative. The primary arguments may be changed or withdrawn until and including December 18, 2023, after which no arguments for or against the Initiative may be submitted or withdrawn. Arguments in favor of or against the Initiative shall not exceed 300 words in length and must be filed with the Town Clerk and include the printed name(s) and signature(s) of the author(s) submitting it. Or, if the argument is submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument.

- (2) Pursuant to Elections Code section 9285, rebuttal arguments to the primary arguments for or against the measure must be filed with the Town Clerk by no later than December 27, 2023 and must be 250 words or less, in accordance with state law.
- (3) The Town Clerk shall comply with all provisions of law establishing priority of arguments for printing and distribution to the voters and shall take all necessary actions to cause the selected arguments to be printed and distributed to voters.
- (4) Pursuant to Elections Code section 9280, the Town Council directs the Town Clerk to transmit a copy of the Initiative to the Town Attorney. The Town Attorney shall prepare an impartial analysis for the Initiative in compliance with state law. The Impartial Analysis shall be filed by the deadline set for filing primary arguments as set forth above.

SECTION 7. Transmittal of Resolution.

The Town Clerk shall submit a certified copy of this resolution to the Board of Supervisors for the County of Marin.

SECTION 8. Severability.

If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Town Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 9. Effective Date of Resolution.

This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED THIS _____ day of _____, 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Steve Burdo, Mayor

ATTEST:

Serge Avila, Town Clerk

EXHIBIT A

INITIATIVE MEASURE SEEKING VOTER APPROVAL FOR
WITHDRAWAL OF THE TOWN OF SAN ANSELMO FROM MARIN COUNTY FLOOD
CONTROL AND WATER CONSERVATION DISTRICT ZONE 9

SAN ANSELMO FLOOD ZONE INITIATIVE

Be it Ordained by the People of the Town of San Anselmo:

SECTION I. TITLE

This measure shall be known and may be cited as the "Public Vote on the Subject of San Anselmo's Withdrawal from Flood District Zone 9" (the "Initiative").

SECTION II. FINDINGS AND PURPOSES.

A. Purposes. The purpose of the Initiative is to preserve and enable the rights of San Anselmo citizens to collectively control the decision of whether parcels within the Town of San Anselmo will be a part of Flood Zone 9. To accomplish this objective, the Initiative provides for a public vote on the subject of Withdrawal from Flood Zone 9 of Marin County California.

1. The Initiative provides the opportunity for citizens to vote in accordance with **Clause 68-26.1 Withdrawal of Territory** of the Marin County Flood Control and Water Conservation Act of 1953, which states in part:

68-26.1. Withdrawal of territory

Notwithstanding any provisions of this act to the contrary, the withdrawal of all the area lying within the exterior boundaries of any chartered or incorporated city from the district may be effected by the vote of a majority of the qualified electors of said city voting at any regular or special election on the proposition to withdraw the area lying within such city from the district. Said election shall in all particulars be held as provided by law for holding a municipal election in said city and the cost thereof shall be a city charge.

The city council shall cause the results of the election to be certified to the board of supervisors of the district and if a majority of the votes cast on the proposition to withdraw such area from the district are in favor thereof, thereupon the area lying within the exterior boundaries of such city shall no longer be a part of the district; provided, however, that the withdrawal of the area lying within the exterior boundaries of such city from the district shall not release the area so withdrawn from debts and obligations for or upon which it was liable or chargeable at the time such withdrawal was made; provided further, however, that any portion of a city which prior to its withdrawal from the district was included within the Page 15 boundaries of a flood control zone shall remain subject to taxes for the maintenance of improvements constructed within such zone prior to the withdrawal of the city from the district.

B. Findings and Declarations: The people of the Town of San Anselmo hereby find and declare the following:

1. The Marin County Flood Control and Water Conservation District Zone 9 has failed to find feasible methods to significantly mitigate major flooding, property loss by floods, flood insurance obligations or disruption caused by major flooding events.
2. Based on a vote of a majority of qualified electors, the Town of San Anselmo hereby withdraws all parcels within the Town of San Anselmo from Marin County Flood Control and Water Conservation District Zone.

SECTION IV. FINDINGS OF CONSISTENCY.

A. This measure is consistent with and would promote the intent of the Marin County Flood Control and Water Conservation Act of 1953.

B. The Initiative is not inconsistent with the General Plan, which does not require San Anselmo to Participate in Flood Zone 9.

SECTION V. CONFLICT WITH OTHER MEASURES.

This Initiative will be deemed to conflict with any other initiative appearing on the same ballot if the other initiative(s) address(es) any of the following subjects, whether it does so by specific application to, or as a more general enactment that could otherwise be applied to the subject: fiscal and legal responsibility applicable to any part of the Special Hazards Zone, as set forth in the Town's Municipal Code, or in any other applicable Town law, policy or regulation. In the event that this Initiative and any other initiative are approved by the voters at the same election, and this Initiative receives a greater number of affirmative votes than any other such measure or measures, this measure shall control in its entirety and the other measure or measures shall be rendered void and without any legal effect. If this Initiative is approved by a majority of the voters but does not receive a greater number of affirmative votes than any other conflicting initiative, this Initiative shall take effect to the extent permitted by law.

SECTION VI. EFFECTIVE DATE.

In accordance with the provisions of Elections Code section 9217, if a majority of the voters vote in favor of the Initiative, the Initiative shall go into effect 10 days after the vote is declared by the Town Council.

SECTION VII. INTERPRETATION AND SEVERABILITY.

This measure shall be interpreted so as to be consistent with applicable federal and state laws, rules and regulations. If any section, subsection, sentence, clause, phrase or portion of this measure is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this measure. The voters hereby declare that this measure, and each section, subsection, sentence, clause, phrase or portion hereof would have been adopted or passed even if one or more sections, subsections, sentences, clauses, phrases or portions are declared invalid or unconstitutional. If any portion of this measure is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this measure that can be given effect without the invalid application. This measure shall be broadly construed in order to achieve the purposes stated herein.

SECTION VIII. AMENDMENT OR REPEAL.

The provisions of this measure may be amended or repealed only by a majority of the voters of the Town voting in an election held in accordance with state law.

SECTION IX. IMPLEMENTATION.

A. Upon the effective date of this Initiative, The Town Council shall act in accordance with the provisions of The Marin County Flood Control and Water Conservation Act of 1953, including Clause 68-26.1 Withdrawal of Territory, and as otherwise required by the Act.



TOWN OF
SAN ANSELMO
EST. 1907

INFORMATIONAL REPORT ON
THE INITIATIVE FOR WITHDRAWAL OF
SAN ANSELMO FROM THE FLOOD
DISTRICT

EHC EPSTEIN
HOLTZAPPLE
CHRISTO

BACKGROUND - PROCESS -

November 14 Town Council Meeting

- Town Council Accepted Town Clerk's Certificate of Sufficiency of Signatures for the Flood Zone 9 Withdrawal Initiative ("Initiative").
- Town Council requested staff return with an informational report on the impacts of the Initiative on the Town and its residents (Cal. Elec. Code § 9212).
- Per Council request, the 9212 Report was issued 5 days in advance of the December 6, 2023, special meeting to allow time for review.

December 6 Special Town Council Meeting

- Town Council to review 9212 Report.
- Either ask for additional information or place the Initiative on a regular or special election ballot

BACKGROUND - FLOOD ZONE 9 -

The State Legislature created the Marin County Flood Control and Water Conservation District (District) in 1953 to control flood and storm waters and to conserve water for use when practicable.

The Town withdrew from the District in 1971, before rejoining in 2006. In 2007 the District imposed a storm drainage fee on property in the Ross Valley, Zone 9, including the Town through 2027 (“Flood Fee”).

Under state law, withdrawal from the District requires approval of a measure by a majority of voters in the Town.

INITIATIVE

If approved by the majority of Town voters, the Initiative would withdraw parcels in the Town from the District.

How would withdrawal from the District effect the Town and its residents?

- Withdrawal is unlikely to impact San Anselmo residents' payment of the Flood Fee or property taxes associated with existing District projects.
- Withdrawal is unlikely to affect the Town's liability associated with existing projects or Town residents' flood insurance rates.
- However, withdrawal can absolve Town property owners from funding projects initiated by the District *after* withdrawal and it may limit the Town's liability for such projects.

9212
REPORT
-SUMMARY-



DEBTS & OBLIGATIONS

Cal. Water Code § 68-26.1

“[T]he withdrawal of the area lying within the exterior boundaries of such city from the district shall not release the area so withdrawn from debts and obligations for or upon which it was liable or chargeable at the time such withdrawal was made”

City of Larkspur v. Marin County Flood Control etc. Dist. (1985) 168 Cal.App.3d 947, 950.

- Court found that because Town benefited from District projects and did not protest the project when it was initiated under the exclusive procedure provided by the Act, the the Town was obligated to fund the delayed completion of the project, notwithstanding its withdrawal from the District.



MAINTENANCE COSTS

Cal. Water Code § 68-26.1

“[A]ny portion of a city which prior to its withdrawal from the district was included within the boundaries of a flood control zone shall remain subject to taxes for the maintenance of improvements constructed within such zone prior to the withdrawal of the city from the district.”

***City of Larkspur v. Marin County Flood Control etc.
Dist. (1985) 168 Cal.App.3d 947, 950.***

Court found that per section 26.1 of the Act, the Town is obligated to pay its share of the costs of the construction and maintenance of the project following withdrawal from the District.

TOWN FUNDING FOR ZONE 9 PROJECTS

- Flood Fee – In 2007 Zone 9 property owners voted to finance flood control projects with the Flood Fee.
 - The District is likely to continue collecting and utilizing the Flood Fee until 2027 to fund Zone 9 projects to which the District is already committed and which benefit the Town.
- Property Taxes – The only tax the District imposes for Zone 9 projects is a share of the 1% property tax capped by Proposition 13.
 - Even if the District were to surrender its share of the property tax, taxes would not fall for San Anselmo property owners; rather, the distribution of those taxes would change as among the benefited taxing agencies.





OTHER IMPACTS

Liability - Liability for a flood improvement arises from ownership or control of that improvement and these improvements are owned by the District, which is legally distinct from the Town. But this will be so regardless of whether the properties in the Town remain part of the District.

Flood Insurance Rates - It is changes to flood control facilities, not district boundaries, which affect flood risk analysis. Moreover, the Town's Federal Emergency Management Agency (FEMA) Community Rating System (CRS) rating is not tied to participation in the District. Therefore, withdrawal from the District will not impact the Town's CRS rating or flood insurance rates.

TOWN COUNCIL OPTIONS

Within 10 days of receipt of the 9212 Report, the Council must:

1. submit the Initiative, unaltered, to voters at a regular election; or
2. submit the Initiative, unaltered, to the voters at a special election.





1. REGULAR ELECTION

The next “regular municipal election” will be on November 5, 2024.

A resolution adding the Initiative to the regular election would be brought before the Council along with a resolution calling that election during a Council meeting in June or July 2024.

Regular election cost is estimated between \$1-\$3 per voter. The Town will already have offices on the November ballot, so adding the Initiative to that ballot would increase the cost by \$.15 and \$.30 per voter.

- Assuming approximately \$2.25/voter for 9520 Registered Voters = \$21,420.

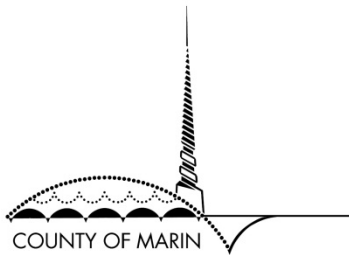
2. SPECIAL ELECTION

- For a special election that would coincide with the March 5, 2024, Presidential Primary Election, the Council would have to call the election by December 8, 2023.
- Costs for a consolidated special election are unpredictable and the County Elections Department cannot offer us a current estimate for the March Primary.
- Assuming a low cost of approximately \$3.00/voter for 9520 Registered Voters = \$28,560. But the cost could be higher.
- The Town would also be paying for the November regular election for officers and any other measures, so the total cost to hold these two elections in 2024 would be approximately $\$28,560 + \$19,040 = \$47,600$.



COUNCIL ACTIONS

Receive or Request	Receive and accept the 9212 Report; or Request additional information be included in the Report before it is finalized.
Choose	Choose one of the options available to the Council:
	1. Submit the Initiative, unaltered, to voters at a regular election; or
	2. Submit the Initiative, unaltered, to the voters at a special election by adopting Resolution provided.



Brian E. Washington
COUNTY COUNSEL

Renee Giacomini Brewer
ASSISTANT COUNTY COUNSEL

Jenna J. Brady
CHIEF DEPUTY COUNTY COUNSEL

Patrick M. K. Richardson
Stephen R. Raab
Steven M. Perl
Kerry L. Gerchow
Deidre K. Smith
Brandon W. Halter
Sarah B. Anker
Kate K. Stanford
Scott Drexel
Carolyn Ortler Tsai
Jacy Dardine
DEPUTIES

Colleen McGrath
ADMINISTRATIVE SERVICES
OFFICER

Marin County Civic Center
3501 Civic Center Drive
Suite 275
San Rafael, CA 94903
415 473 6117 T
415 473 3796 F
415 473 2226 TTY
www.marincounty.org/cl

May 19, 2023

VIA EMAIL

Megan Acevedo
Town Attorney
525 San Anselmo Avenue
San Anselmo, CA 94960
megan@ehc.law

Dear Megan,

I am writing in response to the proposed initiative, "A Public Vote on the Subject of San Anselmo's Withdrawal from Flood District Zone 9" (Initiative) that was submitted to the Town. The Marin County Flood Control and Water Conservation Control District (District) has reviewed the Initiative and wanted to provide the District's initial assessment of the impact of the Initiative, should it pass.

In summary, if the Initiative measure passes, it will have little effect on the currently planned and approved projects and their revenue streams. As described in more detail below, the Town's residents would remain obligated to pay for the approved Corte Madera and San Anselmo flood mitigation projects, as well as continued maintenance. While these short-term projects would proceed, our flood control staff is concerned that the Town departing the District would result in a fractured approach to flood prevention that would jeopardize progress in improving Ross Valley flood control.

Background

Before describing the proposed Initiative's impacts, it is important to remember why the District, the Town, and other partners have undertaken extraordinary efforts on these important projects. Floods in Ross Valley have been recorded with varying degrees of severity as far back as 1914. The 1982 and 2005 floods were at or above the 100-year flood event. A 100-year event in Ross Valley can inundate an estimated 2,904 land parcels. The last, severe flood in December 2005 resulted in over \$95 million in damages to homes, businesses, and public agencies.

Following the 2005 flood, San Anselmo and Fairfax joined Zone 9, and Zone 9 formed the Ross Valley Watershed Flood Risk Reduction Program

(Program). Residents passed a ballot measure to create the Storm Drainage Fee in 2007 (Fee), now collecting approximately \$2.6 million annually. This revenue stream has assisted the District in leveraging additional funding, including a \$8,720,500 California Department of Water Resources grant.

The Program's overall goal is to eventually increase the flood protection level to the 100-year flood level, and to provide 25-year flood level protection by 2027. Since the start of the Program, the District has designed, approved, and begun implementation of the San Anselmo Flood Risk Reduction Project (SAFRR Project) and the Corte Madera Creek Flood Risk Management Project (Corte Madera Creek Project).

Since the District approved the SAFRR project in 2018, the District constructed the former Sunnyside Nursery basin along Fairfax Creek. In addition, the District has moved forward on removing the Building Bridge 2 impediment in San Anselmo, purchasing 634-636 San Anselmo Avenue and demolishing the buildings in 2020. The District is currently scheduled to remove Building Bridge 2 in 2024 and install a baffle and/or finalize mitigation measures downstream, as required. The Corte Madera Creek Project was approved in 2021 and will improve the concrete channel that the U.S. Army Corps of Engineers (USACE) built in the 1960-70s. The Project will result in taller and new floodwalls, a stormwater pump station, and improved fish passage. In addition to these two important projects, the District has continued to provide ongoing creek maintenance and assistance during flood events.

Initiative Impact on Projects, Revenue Sources

If the Initiative measure is passed, it will have little effect on the currently planned and approved projects and their revenue streams. The Marin County Flood Control and Water Conservation District Act ("the Act") provides the mechanism for a city or town exiting the District, but requires the taxpayers in such an exiting area to still fund approved District obligations, as well as maintenance constructed prior to the city or town leaving the District:

"...[T]he withdrawal of the area lying within the exterior boundaries of such city from the district shall not release the area so withdrawn from debts and obligation for or upon which it was liable or chargeable at the time such withdrawal was made."

"...[A]ny portion of a city which prior to its withdrawal from the district was included within the boundaries of a flood control zone shall remain subject to taxes for the maintenance of improvements

constructed within such zone prior to the withdrawal of the city from the district.”

Cal. Water Code Appen. Section 68-26.1. *See also City of Larkspur v. Marin County Flood Control and Water Conservation District*, 168 Cal.App.3d 947 (1985) (withdrawing area liable for obligations committed to in approved project). Even if the Town withdraws from the District through the initiative process, the District will still complete its obligations on the SAFRR and Corte Madera projects, as reflected on the attached list. The District currently projects expense for finishing these components at \$17.6 million. Therefore, pursuant to the Section 68-26.1 provisions above, the District will continue to collect the Zone 9 fee through its expiration on June 30, 2027, to fund this work. In addition, Zone 9 receives approximately \$250,000 in ad valorem tax revenue, which San Anselmo residents contribute. The Act provides that any area that withdraws from the District shall “remain subject to taxes for the maintenance of improvements constructed within such zone prior to the withdrawal....” (*Id.*), so even if the Town’s voters adopt the Initiative, the District will collect this revenue for maintenance purposes (estimated to be \$170,000 annually).

Because of the complexity of the Ross Valley Watershed, the District’s approach reflects that no single flood risk reduction project will provide a solution to the flooding problem in the Ross Valley. District staff believes that improved flood protection for the Ross Valley will only come about through a suite of on-the-ground projects spread watershed-wide that work together, as a system, to reduce flood damage and restore the health and function of the watershed. If the Town were removed from the District, planning and implementing an integrated flood control project in the Ross Valley would become more difficult to achieve.

Very Truly Yours,



Jenna Brady
Chief Deputy County Counsel

Enclosure

cc: Matthew H. Hymel, County Administrator
Rosemarie Gaglione, Director, Flood District
Brian E. Washington, County Counsel

ATTACHMENT

	Description	Amount	Start	End
Loan	2-year loan	\$5M	2022	2024
Stormwater fee		\$2.6M annually	2007	2027
Existing Agreements				
SAFRR Grant	DWR	\$8M	2 0 1	2024
CMC FRM Grant	DWR	\$7M	2 0 1	2026
Ghilotti Bros	Flood Detention and Storage Basin	\$436,734 remaining	2021	2023
Maggiora & Ghilotti	CMC Access Ramp and Pump Station	\$3,072,810 remaining	2022	2024
Laurel Collins	Geomorphic Dredge study	\$19,022 remaining	2018	2024
Desmond, Marcello, and Amster	SAFRR Real Estate acquisition	\$25,656 remaining	2 0 1	2 0 2 2
ESA	SAFRR CEQA	\$73,551 remaining		2024
GHD	CMC FRM Design	\$210,787 remaining	2021	2024
Kristin Lowell	Stormwater fee annual report	\$27,750 remaining	2021	2023
MGE	BB2 Design	\$9,850 remaining	2 0 2	2 0 2 3
Stetson	SAFRR Design	\$119,023 remaining	2 0 1	2 0 2 4
Gary Roth	SAFRR	\$2,511 remaining	2 0 2	2 0 2 3
Wood Rodgers	MT-2 application	\$30,000	2 0 2	2 0 2 4
Town of San Anselmo	BB2	\$17,222	2 0 2	2 0 2 3
Town of Ross	Winship	\$5,334	2 0 1	2 0 2 4
Friends of Corte Madera Creek	Lower COM Design	\$22,544 remaining	2 0 2	2 0 2 4

	Description	Amount	Start	End
Maintenance				
Town of San Anselmo	Creek Maintenance	\$30,000 remaining	2 0 2	2 0 2 4
Town of Ross	Creek Maintenance	\$30,000 remaining	2 0 2	2 0 2 4
Town of Fairfax	Creek Maintenance	\$30,000 remaining	2 0 2	2 0 2 4
City of Larkspur	Creek Maintenance	\$30,000 remaining	2 0 2	2 0 2 4
Operations & Maintenance	Stream Maintenance Program Permit	\$15,000/yr	2017	ongoing
	Stream Maintenance (veg, sediment, repairs)	\$50,000/yr	ongoing	
	Basin Maintenance	\$10,000/yr	2022	ongoing
	Water (plant irrigation)	\$10,000/yr	ongoing	
	Pump Station Maintenance	\$50,000/yr	2023	ongoing
Monitoring	Basin Monitoring	\$50,000/yr	2023	2028
	Offsite Mitigation and Monitoring	50,000/yr	2023	2028
	SAFRR off-site mitigation	\$200,000	2023	2024

NOTES ON THE INTERPRETATION AND INPLICATIONS OF WITHDRAWAL FROM THE FLOOD DISTRICT

ER Asselstine

Nov 20 2023, First Draft for initial input to SA staff.

Nov 28, 2023, Final Draft for input to staff and inclusion in TC packet. (*edits in italics*)

The following text in the 1953 Water Act is of importance at this time:

“; provided, however, that the withdrawal of the area lying within the exterior boundaries of such city from the district shall not release the area so withdrawn from debts **and obligations** for or upon which it was **liable or chargeable** at the time such withdrawal was made; provided further, however, that any portion of a city which prior to its withdrawal from the district was included within the Page 15 boundaries of a flood control zone shall remain **subject to taxes for the maintenance** of improvements constructed within such zone prior to the withdrawal of the city from the district.”

Comments:

1. It appears that MC DPW / FZ staff may interpret the word: “obligations”, to include the entirety of the scope of work contemplated in the SAFFR as it was one project of two parts that had a single EIR.

This appears to be a convenient and or defensive interpretation. It’s not a leap to interpret that “approval” alone of a project is not an obligation. Approvals if given by an Advisory Board, Supervisors, State or local environmental agencies, by themselves cannot be interpreted to be an “obligation” on a District. My read of the text is that as “obligation” is preceded by “debts”, the context is about written contracts and lending agreements. The phrase: “liable or chargeable” does not appear to contemplate fulfilling permit approvals and similar. In this interpretation, the only applicable “Obligations” would be current contracts and similar with entities such as ca DWR, consultants, contractors and other entities performing work.

There is forthcoming information that will support that the Flood Zone is in numerous aspects of Default of a Grant with CA DWR. The grant language describes, like all good contracts, the implications of default are details and in large, allows CA DWR to decide the outcome. This includes terminating the grant.

The scope of work funded by the Grant can be described as two independent projects: a basin at Sunnyside Growing Grounds above Fairfax and the removal of BB2 in San Anselmo. In my view, while the basin has completed and will have a real benefit downstream in Fairfax, the demolition of BB2 is only in design and permitting and is now inherently designed to have zero effect in San Anselmo. The FZ9 staff made representations in a grant application to the CA DWR that the BB2 work would mitigate flooding, while the current defined intent is that it will have

no effect. This is a fundamental change that cannot be ignored considering the immense expenditure and grant funding.

There was comment at the last meeting that appeared to suggest that the vote to withdraw and or action to withdraw would be largely ceremonial. I don't believe this is the case. Unwinding obligations may take time, but my review suggests that the obligations do not exceed the total SA flood fees that would be imposed until the end of the current fee term.

Consider this: The fee cycle is June to June. The first fiscal year of flood fees was 2008/2009, so the twentieth year will be 2027/2028. If the flood fee is on the ballot in March of 2024 SA will be start the withdrawal process immediately, while the rest of the Flood Zone rate payers will be paying full fees for the next four fiscal periods of 2024/2025, 2025/2026, 2026/2027, and 2027/2028. The rate payers of SA pay a total of approximately \$600,000 per year. (This number is not easily deciphered from public records, but it's the best extrapolation I can figure out. It may be more or less.) The remaining four fiscal years of fees for SA would be in the order of \$2,400,000. Each year the total flood fees imposed are approximately \$3,000,000; in the remaining four years this equates to about \$12,000,000. These numbers are in the context of what the "obligations" are to San Anselmo. If the open obligations that the Zone has in place are say, \$3,000,000, then San Anselmo will have contributed their part of the collective in one year. If the open obligations that the Zone has in place are say, \$6,000,000, then San Anselmo will have contributed their part of the collective in two years. To me, it is hard to imagine that the current "obligations" will total \$12,000,000. In other words, this vote and hence Withdrawal is not largely ceremonial at all.

2. As noted in the most recent TC meeting, there is some precedent in regard to FZ9 Withdrawal and subsequent liabilities. I am no lawyer but the futility of the lawsuit over the fullness of time is apparent.
 - a. The suit is about funding a portion of the concrete channel in Ross that was never completed.
 - b. The court found that Unit 4 was part of an initially scope of work from the 1960's and remained an "obligation".
 - c. It has to be noted that the construction of the completed portions of the concrete channel (Units 1-3) were funded in large part by the USACE. I believe the allocation was approximately 95% USACE, 5% FZ9.
 - d. In the five decades since worked stopped on the concrete channel, there has been no resumption of work. Even if the entirety of the FZ9 parcel owners paid taxes / fees into a fund for this scope of work, I think a few things would have happened: 1) there would never be enough local money to fund the construction, 2) local political efforts to stop more concrete channels in the creek would have been successful just as it was in 1971 and 3) any taxes imposed could have only been applied to that single outstanding "obligation" and hence, funds would eventually have to be returned to rate payers. All of this is a story of the unbuildable and unachievable as an open "obligation". In the lawsuit is now almost 40 years old and the issue of obligation and ability to impose parcel fees has proved mute.

- e. It is not hard to imagine a lost list of major US civil engineering projects that were considered “a project” that were only partially completed. The leap of imagination that taxation time period could be considered unlimited and so far outside initial voter support, is unimaginable and absurd. I believe this is ultimately the now evident and proven result with Unit 4: it just died and went away, independent of whatever the court case resulted in.
 - f. It is interesting that the towns of San Anselmo and Fairfax are not identified in this suit. They withdrew before Larkspur and I was under the impression that Unit 4 was part of a “plan” before we / they exited. *The TC minutes of 1971 reflect that the town did not elect to sign a Joint Powers Agreement for maintenance. It is not clear when the public vote on Withdrawal occurred, nor the difference between lack of participation in a Joint Powers agreement of being part of a flood district. All this said, SA and FX were not named in the suit and SA was clearly not part of the Flood Zone until it rejoined in 2006 or 2007.*
 - g. A link to the lawsuit is here: <https://casetext.com/case/city-of-larkspur-v-marin-cty-flood-control-etc>
3. The issue of maintenance is interesting. At no time in the last 14 years has FZ9 staff presented a proposal to set aside flood fee funds for future maintenance. In fact, they have previously stated that they could spend all of the fees on capital projects and make no provisions for maintenance at all. A recent presentation included a projection that in order to complete certain scope of flood control work, they would have to sell one building that was bought specifically for flood control. This supports the premise that all future maintenance will be borne by all areas of the Flood Zone via ad valorem taxes. Hence, the phrase: “.... shall remain subject to taxes for the maintenance of improvements constructed within such zone prior to the withdrawal of the city from the district.” can easily be, and by actions of FZ9 staff, has to be interpreted to mean ad valorem taxes and not flood fees. As for the rest of the towns and areas that will remain in the FZ, their likely only source of funds for maintenance will be ad valorem taxes. I.e. the issue of maintenance is all but the same for those that stay as to those that withdraw; with the exception that SA would not be liable to maintain projects developed post-withdrawal.

4. In summary, the following assumptions are not unreasonable:
- a. The projects completed or underway in FZ9 as of next March will be:
 - i. The basin above Fairfax
 - ii. A \$1M payment to the City of Larkspur for a pump station
 - iii. A pump station just below Ross in Kentfield.
 - b. The probability of a flood fee extension *by public vote* in 2027 is all but zero.
 - c. The BB2 scope of work will remain defined as a project that has no flood mitigation effect. This would suggest that CA DWR would look into the default and terminations clauses of the grant to wind up that portion of the grant.
 - d. I have previously spoken at FZ9 meetings and local city halls about the future maintenance costs. I note that the projects completed currently have the following obligations and my proposed migration of obligation to maintain:

Scope	Current Responsibility	Proposed Responsibility
The basin above Fairfax	Entire District	Fairfax
A \$1M payment to the City of Larkspur for a pump station	Larkspur	Larkspur
A pump station just below Ross in Kentfield.	Entire District	Ross

From: Ford Greene <fordgreene@comcast.net>
Date: Wednesday, December 6, 2023 at 12:16 PM
To: Ann Politzer <annpolitzer@gmail.com>
Cc: Megan Holt Acevedo <megan@ehc.law>, David Donery <ddonery@townofsananselmo.org>, Eileen Burke <eburke@townofsananselmo.org>, Steve Burdo <stephenburdo@yahoo.com>, Brian Colbert <briancolbert@gmail.com>, Alexis Fineman <a.n.fineman@gmail.com>, Dave Bohn <Dave@davebohn.com>, Diana Davis <diana@uprightarts.com>, jeff kroot <jkarch2@comcast.net>, Paul Chignell <p.chignell@aol.com>, Ross Asselstine <ross.asselstine@comcast.net>, Garril Page <obility@comcast.net>, Fran Farmer <lovejoyfran@gmail.com>, Frank Egger <fegger@pacbell.net>, Roseann <dalbello@sonic.net>, John Crane <johncranefilms@gmail.com>, Sean Condry <scondry@townofsananselmo.org>, Ellen Caldwell <ellen@ncps1.net>
Subject: Re: Flood Zone 9 Projects

Sorry. I did not see DCC Jenna Brady's letter when I sent this email. That letter addresses the information I was concerned had been omitted.

Sent from my iPhone

> On Dec 6, 2023, at 12:04 PM, Ann Politzer <annpolitzer@gmail.com> wrote:

>
>
>

>> On Dec 6, 2023, at 11:55 AM, Ford Greene <fordgreene@comcast.net> wrote:

>>

>> Dear Megan:

>>

>> In your report related to tonight's special meeting on the successful initiative to set a vote to determine whether or not San Anselmo should withdraw from Flood Zone 9, you note should the voters approve the towns withdrawal, property owners would be responsible for all debts and obligation incurred prior to withdrawal.

>>

>> I note, however, you make no effort whatsoever to survey or inventory any such debts or obligations. This seems to be a material omission of a relevant category of information that ought to have been included in the scope of the report.

>>

>> I am hopeful that you will make an effective effort to provide such debts and obligations for public information and review at tonight's meeting.

>>

>> Ford Greene

>>

>>

>> Sent from my iPhone

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