



TOWN OF FAIRFAX

STAFF REPORT

August 2, 2017

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager GC
Michele Gardner, Town Clerk/Elections Official

SUBJECT: Initiative Measure "Amending Town General Plan to Prohibit Land Uses that Adversely Affect Community Recreational Sport Fields, Including Lefty Gomez Field, Without Voter Approval." As part of the consideration and discussion, the Council will:

- i. Receive a 9212 Elections Report analyzing the effects and impacts of the Initiative Measure on the Town; and
- ii. Accept certification of the Initiative Petition; and
- iii. Adopt a resolution to either adopt the Measure or call for an election to submit the Measure to the voters at the November 7 regular election.

RECOMMENDATION

1. Conduct public hearing
2. Receive, file, and accept the Certificate of Sufficiency of Initiative Petition from the Town Clerk; and
3. Receive and file report on the effects and impact the Initiative Measure "Amending Town General Plan to Prohibit Land Uses that Adversely Affect Community Recreational Sport Fields, Including Lefty Gomez Field, Without Voter Approval" has on the Town pursuant to California Elections Code Section 9212; and
4. Adopt a resolution to adopt Measure without alteration **OR** adopt a resolution calling for an election to submit the measure to the voters at the Nov 7 regular election

DISCUSSION

On April 4, 2017, the Town received a Notice of Intent to Circulate a Petition and proposed Initiative Measure ("Measure") from Fairfax residents/proponents, which would prohibit land uses that adversely affect community recreational sports fields, including Lefty Gomez Field, without voter approval.

In accordance with the California Elections Code, the Town Attorney's office prepared and timely sent an impartial ballot title and summary of the Measure to the proponents on April 19, 2017. The proponents then had 6 months to gather enough signatures to qualify the Measure for the ballot. On June 15, 2017, the proponents submitted a signed petition to the Town Clerk's Office.

On July 17, 2017, the Marin County Registrar's Office verified (see attached letter) that the petition contained 1038 valid signatures to qualify the Measure for the ballot. The Elections Code requires the signatures of at least 10 percent of the Town's registered voters to qualify a local measure. The Town Clerk's office confirms that there are currently 5602 registered voters in the Town of Fairfax and, therefore, 561 signatures were required.

The Town's Elections Official (Town Clerk) is also now certifying the petition to the Council after her office's examination of the petition sections and finding them substantially in order pursuant to the requirements of the California Elections Code,

The Certificate of Sufficiency of Initiative Petition is attached to this report and it is recommended that the Town Council receive, file, and accept the certificate as valid in all respects.

The Council will recall that at its July 12 meeting, while the petition signature count was pending, it directed Staff to prepare a report on the Measure's effects and impacts on the Town pursuant to California Elections Code Section 9212 (the "9212 Report"). Staff has concluded its review and a complete copy of the 9212 Report is attached for the Council's consideration. Also attached is the County of Marin's analysis of the proposed Initiative as requested by the Council as well as Frequently Asked Questions (FAQ) prepared by the County for Lefty Gomez Field.

Since the Measure has obtained the required number of signatures, tonight, the Town Council's legal options under the Elections Code are as follows:

- A. Adopt the Measure, without alteration;
- B. Submit the Measure to the voters at the next regular municipal election occurring at least 88 days later. A "regular election" is one where Councilmembers are elected. In Fairfax's case, this would be the upcoming Council election on November 7, 2017;
- C. Submit the Measure to the voters at a special election between 88 and 103 days after the Town Council calls the election (between October 29 and November 13, 2017).

Please note that while Option C is technically a legal option, it is likely not a practical one given that the Town's regularly scheduled municipal election already falls within this time frame. Staff is not recommending that a special election be called for the Measure.

Staff is recommending that the Council adopt one of the two resolutions, depending upon whether it decides to adopt the Measure (Option A) or to place it on the November, 2017 ballot (Option B).

FISCAL IMPACT

Depending on the selected option, there will be either the additional cost of a ballot measure or the staff time to revise the General Plan and applicable Town zoning code sections. This is in addition to the \$765.10 cost of signature verification by the Marin County Registrar of Voters and staff time to prepare the 9212 report.

ATTACHMENTS

1. Certificate of Sufficiency of Initiative Petition
2. 9212 Elections Report
3. County of Marin memo on the Lefty Gomez Field Initiative
4. County of Marin FAQ
5. Resolution Adopting the Measure [Option A]
6. Resolution Placing Measure on November 7, 2017 Ballot [Option B]



TOWN OF FAIRFAX

Certificate of Sufficiency of Petition

California Elections Code §9212(b)

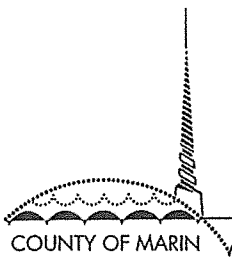
I, Michele Gardner, Town Clerk of the Town of Fairfax, State of California, hereby certify that my examination of the Initiative Petition proposing a Measure Amending Town General Plan to Prohibit Land Uses that Adversely Affect Community Recreational Sport Fields, Including Lefty Gomez Field, Without Voter Approval filed June 15, 2017, is complete and I find the Petition to be sufficient as follows:

1. The Marin County Registrar's office verified the signatures on the Initiative Petition and found the Petition contained 1038 valid signatures, as per the July 17, 2017, letter attached hereto as Exhibit A; and
2. I examined all sections of the Petition and found they substantially complied with the requirements of the Elections Code.

In witness whereof I set my hand and official seal this 19th day of July 2017.


Michele Gardner, Town Clerk

ATTACHMENT 1



ELECTIONS DEPARTMENT

Providing a responsive, transparent, and professional approach to conducting elections.

July 17, 2017

Lynda Roberts
REGISTRAR OF VOTERS

Melvin Briones
ASSISTANT REGISTRAR OF
VOTERS

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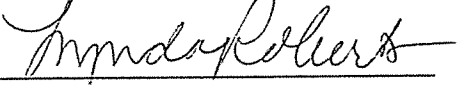
Re: An Initiative Petition pertaining to Fairfax Flood Retention

The petition titled "INITIATIVE MEASURE AMENDING TOWN GENERAL PLAN TO PROHIBIT LAND USES THAT ADVERSELY AFFECT COMMUNITY RECREATIONAL SPORTS FIELDS, INCLUDING LEFTY GOMEZ FIELD, WITHOUT VOTER APPROVAL" was reviewed by the Registrar of Voters at your request.

As directed by your office, we have conducted a verification of 1,093 signatures submitted. Results of the verification are as follows:

- Number of sections submitted 213
- Number of signatures 1,093
- Number of valid signatures 1,038
- Number of invalid signatures 55
 - Not registered 6
 - Out of district 3
 - Signed more than once 13
 - Registered at different address 5
 - No signature 1
 - Signatures don't match 27
- Number of signatures required 561
- Number of registered voters in territory 5,602
(Secretary of State Report of Registration of February 10, 2017)

If you have any questions, please contact me at 415-473-6401 or Melvin Briones at 415-473-6443.


Lynda Roberts
Registrar of Voters



TOWN OF FAIRFAX

ELECTIONS CODE 9212 REPORT ON INITIATIVE PROPOSING TO AMEND THE TOWN GENERAL PLAN TO PROHIBIT LAND USES THAT ADVERSELY AFFECT COMMUNITY RECREATIONAL AREAS, INCLUDING LEFTY GOMEZ FIELD

Prepared by Town Attorney's Office & Town Manager

EXECUTIVE SUMMARY

The proposed initiative, if adopted, would amend the Land Use Element of the Town General Plan to add a general objective requiring the Town to preserve recreational sports fields (the "Initiative"). The Initiative would also add two land use policies prohibiting use of recreational sports fields at White Hill School and of other lands designated in the Town's General Plan as Public Domain or Open Space from being used in ways that would adversely affect recreational amenities without voter approval at a general election. If adopted, the Town would need to obtain voter approval before making changes that would "adversely affect the community benefit" of areas currently being utilized for recreational sports activities. If adopted, the School District may in some circumstance be required to seek voter approval of "nonclassroom facilities" (as defined by state law) that could potentially "adversely affect" recreational amenities at the White Hill School's sports fields. This will extend the time it takes to make changes to school facilities and recreational facilities and cause the Town, the School District and potentially other local agencies to incur more costs in the process. Furthermore, there are legal issues with the Initiative which raise questions about its efficacy.

REPORT

- I. What the Initiative Would Do
 - A. Text of the Amendments to the General Plan

If adopted, the Initiative would add four amendments to the Town of Fairfax General Plan as follows:

1. *Add Objective LU 7.3 to the General Plan's Land Use Element as follows: Preserve recreational sports fields in Fairfax to maintain and enhance local community activities and character.*
2. *Add Policy LU 7.3.1 as follows: Lefty Gomez Field may not be utilized as a flood detention basin, nor may any non-classroom facilities (as that term is utilized in California Government Code § 53094) be permitted that adversely affect or reduce the recreational amenities at the school's sports fields without approval of the citizens of Fairfax as part of a general election.*
3. *Add Policy LU 7.3.2 as follows: No lands designated as Public Domain or Open Space in the General Plan that are currently utilized for recreational sports shall allow land uses that adversely affect the community benefit provided by those recreational sports activities without approval by the citizens of Fairfax as part of a general election, unless such lands are owned by school districts in which case any such use that is a non-classroom facility (as that term is utilized in California Government Code § 53094) shall not be allowed without approval of the citizens of Fairfax as part of a general election.*
4. *Add Program 7.3.1.2 as follows: the Town shall implement Policy LU 7.3.2 by amending its zoning code to implement and be consistent with this General Plan amendment.*

Section VIII (Amendment or Repeal) of the Initiative also states:

"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. This requirement shall apply only with respect to two zones, Public Domain and Open Space, and shall not affect the Town's ability to amend any provisions of its General Plan or other planning documents that apply to other lands within the Town."

The Initiative also makes legislative findings and declarations regarding the purpose of the Initiative, makes consistency findings with the Town's General Plan in relation to preservation of recreational uses of sports fields, makes provisions for conflicting and competing initiatives and sets the effective date for the Initiative. The full text of the Initiative is attached as Attachment A.

B. Explanation of Provisions

Amendments to the General Plan. The Land Use Element of the General Plan is the Town's primary document setting forth the permitted uses of land in the Town of Fairfax. The general purpose of the Initiative is to take direct voter control over the decisions of how recreational sports fields at White Hill School and other Open Space and Public Domain lands currently utilized for recreational sports activities in the Town of Fairfax will be used in the future.

Specifically, proposed Policy LU 7.3.1 provides Lefty Gomez Field may not be utilized as a flood detention basin and prohibits any non-classroom facilities, as defined under state law that would adversely affect or reduce the recreational amenities at White Hill School's sports fields, absent voter approval at a general election. There is no statutory definition of non-classroom facilities. Government Code Section 53094 provides a nonexclusive list of examples,

including warehouses, administrative buildings, and automotive storage and repair buildings, which qualify as “nonclassroom” facilities. The phrase “adversely affect or reduce recreational amenities” at sports field is not defined and may require subjective judgments regarding the impact of proposed projects on recreational amenities.

Proposed Policy LU 7.3.2 would prohibit lands designated as Public Domain or Open Space in the Fairfax General Plan that are “currently utilized for recreational sports” from allowing land uses that “adversely affect the community benefit provided by those recreational sports activities” without approval by the citizens of Fairfax as part of a general election. Policy LU 7.3.2 contains a carve-out exception for lands owned by school districts, in which case only uses that qualify as a “non-classroom facility” require voter approval. This policy would impact any publicly and privately owned recreational amenities in the Public Domain and Open Space General Plan land use designations. Attachment B contains the General Plan map.

There are a number of uncertainties regarding the intended scope of proposed Policy 7.3.2:

- “Lands... currently utilized for recreational sports” is not defined. This seems to require a point in time list of recreational areas and would not seem to apply to new recreational areas/facilities. It is also unclear whether “recreational sports” refers to areas and facilities designed for competitive team play, or whether it applies to all recreational uses, such as the walking, hiking and biking trails throughout town. In other words, it is not clear if Policy 7.3.2 only applies to “sports fields” in light of Objective LU 7.3.
- “No land ... shall allow land uses...” The limitation applies to land uses that are implemented in the Open Space and Public Domain zones. However, the Initiative neither dictates nor implements the rezoning and therefore fails to identify which of the currently permitted, conditionally permitted or accessory uses in the Open Space and Public Domain zones “adversely affect” the community benefit of sports activities or provide guideposts for making this determination.
- “Adversely affect the community benefit” is not defined. It is unclear what the threshold is for requiring a vote. For example, would restroom facilities or water fountains that marginally decrease field space require a vote? What if one type of recreational activity was impacted (e.g. baseball), but other sports activities could still be played on the field? Does it apply to temporary impacts or closures?
- To what extent would the Town or others be constrained from closing recreational areas completely, for example due to lack of funding, environmental concerns, safety concerns, etc. Is this a land use that adversely affects recreational use?

The Initiative leaves these interpretive issues (and the others noted throughout this report) to be determined by the Town when it crafts implementing zoning amendments.

Both policies would require adverse impacts to recreational areas be approved by voters at a general election. Special elections could not be called for the purpose of approving changes to recreational areas and facilities. Following the November 2019 election, Fairfax’s general elections will be held in November of even-numbered years. Any proposed changes to recreational areas and facilities, therefore, could have to wait up to two years for voter consideration.

II. Internal Consistency of Town's General Plan and Consistency with Zoning

Under California state law, the various elements of a general plan must be internally consistent. (Gov. Code § 65300.5.) Any measure, including any initiative that would result in an internal inconsistency within a general plan is vulnerable to legal challenge. The Initiative is generally consistent with a number of General Plan policies. For example, it is consistent with the goals to preserve open space (Goal LU-2) and to preserve the sensory qualities of open space for recreational, cultural, educational, and spiritual experiences (Goal OS-3).

However, the Initiative is at odds with aspects of the Safety Element, including:

- Goal S-2: Minimize risks due to flood hazards.
- Objective S-2.1: Protect life and property from risks associated with flooding
- Policy S-2.1.1: Development and land use decisions will be made using the best available hydrological and flood hazard information.
- Objective S-4.3: Prepare the community for flood hazards using a risk reduction approach that also ensures habitat protection.
- Policy S-4.3.3: The Town will increase community capacity to prepare for, respond to and recover from emergencies and disasters caused by flood hazards.

Because the Initiative would potentially limit the ability of the Town to approve improvements identified as necessary to minimize flood hazard risks or otherwise protect people and property from flooding, it is inconsistent with these policy directives.

To the extent the Initiative would limit the ability of the Town to control stormwater and flooding, the Initiative also poses potential conflicts with certain aspects of the Conservation Element, including:

- Policy CON-3.1.1: Maintain floodwater capacity and promote creek restoration.
- Program CON-3.1.1.4: Assess, prioritize and coordinate with appropriate agencies to promote peak stormwater flow detention areas.
- Program CON-3.1.1.5: Participate in Marin County Flood Control and Water Conservation District Flood Zone 9 (District) programs.

In addition, recreational uses of open space areas may in some circumstances conflict with environmental, ecological and wildlife resources protection. For example, the Initiative could lead to potential future conflicts with General Plan Objective OS-2.2, where native resources must be restored on open space lands that are currently used for recreational purposes. Recreational uses may also lead to future conflicts with Objective OS-3.3 ("Constrain anthropogenic sound levels in and around open space areas so that natural sounds of flora and fauna are audible"). See generally, Town General Plan, Conservation Element, Goal CON-6: Wildlife conservation.

These potential inconsistencies may trigger the need for further amendments to the Town General Plan.

While not General Plan policies, the Town's Local Hazard Mitigation Plan and Town Code Chapter 17.068 Floodplains both have objectives to minimize public and private losses due to flood conditions. The Marin County Flood Control & Water Conservation District (District) states that five detentions basins are required to "...to temporary store the volume of water needed to prevent the type of flooding experience in December 2005" and that "Lefty Gomez Field was identified as a site that meets the ideal criteria for a detention basin site..."

III. Legal Limitation - Intergovernmental Immunity

Under state law, the default rule is that local agencies, as defined,¹ are required to comply with all applicable building and zoning ordinances of the city/town or county in which the territory of the local agency is situated. However, local agencies are immune from city/town or county building and zoning regulation of facilities for water storage or treatment or electrical energy. (Gov. Code § 53091.) Additionally, there are provisions allowing local agencies to nullify a city/town zoning and building ordinances in certain circumstances. The relevant exceptions are explained in the following paragraphs.

School Districts. The governing board of a school district, may by a two-thirds vote of its members, render a city/town or county zoning ordinance inapplicable to a proposed use of property by the school district. The school district may not take this action when the proposed use of the property by the school district is for "nonclassroom facilities, including, but not limited to, warehouses, administrative buildings, and automotive storage and repair buildings." (Gov. Code § 53094(b).) The courts have construed the term "nonclassroom facilities" to mean "those not directly used for or related to student instruction." Notably, one court has found recreational sports fields to serve important student educational functions through its use in physical education, interscholastic athletics, spirit activities, and band performances. (*Santa Cruz v. Santa Cruz Schools Bd. of Education* (1989) 210 Cal.App.3d 1 [held the replacement of lighting fixtures on a high school's athletic field could be exempted from a city's zoning ordinance].) Therefore, if a school's sports fields or recreational areas are used for similar student instruction or activities, then proposed projects may in some instances be eligible to override the limitations in proposed Policy LU 7.3.1 and Policy LU 7.3.2, to the extent applicable.

On the other hand, school districts must comply with city/town and county ordinances regulating drainage improvements and conditions, among other things. (Gov. Code § 53097.) If the proposed limitation on utilizing Lefty Gomez field as a flood detention basin qualifies as a regulation of "drainage improvements and conditions," then it would be mandatory for the school district. However, the apparent legislative intent behind Government Code Section 53097 is to ensure school districts comply with local measures to protect against flooding. It is unclear to

¹ Note that the definition of "local agency" excludes a city or county. Pursuant to Government Code Section 53090, "local agency" means an agency of the state for the local performance of governmental or proprietary function within limited boundaries. "Local agency" does not include the state, a city, a county, a rapid transit district, or a rail transit district whose board of directors is appointed by public bodies or officers or elected from election districts within the area comprising the district, or a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code.

what extent Section 53097 would apply to local regulations *prohibiting* flood control improvements designed to mitigate flooding.

Flood Districts & Water Districts. In addition to the absolute exemption for water storage/treatment and electrical energy facilities, a local agency is also conditionally exempt from a city/town or county zoning ordinance when the proposed use of the property by the local agency is for facilities “related to” storage or transmission of water or electrical energy. (Gov. Code § 53096; *City of Lafayette v. East Bay Municipal Utilities District* (1993) 16 Cal.App.4th 1005, 1015-1016.) The local agency must determine by vote of four-fifths of its members at a publicly noticed hearing that there is no feasible alternative to its proposal to override the local regulation. Note however, we are unaware of any case deciding whether or not a flood/stormwater detention basin qualifies as a facility for water storage that would be eligible either for an absolute exemption from local zoning under Section 53091 or for an override of local zoning regulations pursuant to Section 53096. Thus, it is not certain whether the Flood District, acting on its own, could nullify the proposed policies contained in the Initiative with respect to the contemplated flood detention basin at Lefty Gomez field. Depending on the particular project, the Water District could potentially be immune or conditionally immune for future projects located in lands designated as Open Space in the General Plan.

County. The County of Marin is exempt from the Town of Fairfax’s General Plan policies and zoning ordinances. Cities and counties are mutually exempt from each other’s planning and zoning ordinances, including general plan compliance. (*Lawler v. City of Redding* (1992) 7 Cal.App.4th 778, 783-84.) A county enjoys immunity from city/town zoning regulations regardless if it is acting alone or jointly with other public agencies. (*Zack v. Marin Emergency Radio Authority* (2004) 118 Cal. App. 4th 617.) Although the County would have to submit the matter to the Town Planning Commission for a report on conformity with the Town’s General Plan (Gov. Code §65402), ultimately, a County project would be immune from the limitations of the Initiative.

IV. Additional Potential Legal Limitations

In addition to the interpretive issues identified in Section I.B above, the Initiative may subject the Town to legal attack on the following grounds:

- An Initiative measure may be invalid if, instead of itself being a legislative act, it directs a city/town council to perform a legislative act. See *Marblehead v. City of San Clemente* (1991) 226 Cal.App.3d 1504, 1509 (initiative invalidated which required city council to make amendments as necessary to promote identified land use “concepts”). Here, the Initiative, Section III.A.4 adds a Program 7.3.1.2 directing the Town to amend its zoning code to implement and be consistent with this General Plan amendment. As identified above, there are a number of uncertainties regarding the intended scope of proposed Policies LU 7.3.1 and LU 7.3.2. These ambiguities will require Town interpretation in the course of crafting implementing zoning regulations. In particular, the Town will have to identify which land uses in the Open Space and Public Domain zones adversely affect the community benefit of sports activities, or create standards for making such determination on a project-by-project basis.

- The powers of initiative and referendum only extend to legislative acts. Legislative acts are those that involve the formulation of rules to be applied in all future cases, whereas administrative/adjudicatory acts involve the application of a fixed rule to a specific set of facts or a specific project. In the land use context, amendments to the general plan and zoning ordinances are legislative acts, while variances, conditional use permits and subdivision map approvals are adjudicative acts. To the extent the Initiative would require voter approval of particular projects at White Hill School and in the Open Space and Public Domain zones, the Initiative would impermissibly restrict the Town Council’s adjudicatory functions. See *Wiltshire v. Superior Court* (1985) 172 Cal.App.3d 296, 302 (initiative impermissibly confers to voters’ approval authority over conditional use permits for the location, construction or establishment of a waste-to-energy plant); *The Park at Cross Creek, LLC v. City of Malibu*, 2d Dist., 2017 Cal.App.LEXIS 569, filed 6/21/17 (initiative measure requiring all development projects greater than 20,000 square feet to have a specific plan approved by voters invalidated).
- The Initiative may be subject to challenge as it arguably impermissibly impairs the “essential government functions” of a local government to the extent it interferes with the placement of government facilities. See *Simpson v. Hite* (1950) 36 Cal. 2d 125 (invalidated initiative relating to siting of county courthouse).
- Land designated as Open Space is real property that is protected from development and preserved in perpetuity as open space through a formal instrument or agreement, or other legally binding method. (Fairfax General Plan, Conservation Element, p. CS-4). It is unknown whether the Initiative interferes with any rights potentially reserved in such agreements.

Although the Town Attorney’s Office is not offering a legal opinion on the merits of such potential legal challenges, we raise them in this Report because the Town could be subject to litigation concerning the Initiative, which would have a fiscal impact on the Town, including staff time and legal resources.

V. Effects on Recreational Sports Fields and Opportunities, Flood Control, Fiscal Impacts and Other Issues

Location of Recreational Sports Fields

The Initiative adds new General Plan Objective L.U. 7.3 to “Preserve recreational sports field in Fairfax” However, as stated above, the Initiative does not specifically define recreational sports field. The Initiative alludes to organized team sports (e.g., Little League, local soccer teams) that are played on the fields. However, the Initiative does imply that Lefty Gomez Field is a school sports field.

Using Lefty Gomez field as an example of a recreational sports field, this definition would presumably include the field at Manor School and the Town ballfield located on Bank Street. It is unclear whether the field at Deer Park (O-A zone) would be considered a recreational sports field since we are unsure if organized team sports occur on the field, but it does appear the property is located within the Town limits.

The initiative also states that “No lands designated as Public Domain (PD) or Open Space (O-A) in the General Plan that are currently utilized for recreational sports shall allow land uses that adversely affect the community benefit provide by those recreational sports activities without approval by the citizens....” Attachment C contains two maps showing the parcels zoned Public Domain and Open Space. The public schools including their sports field, the Town’s ballfield, Bolinas Park, Peri Park are zoned PD. Deer Park is zoned O-A. Again, it is unclear whether the field at Deer Park would be considered “land currently utilized for recreational sports.”

It should be noted that there are no privately owned properties currently zoned PD or O-A, but some of the property is owned by the Ross Valley School District or Marin Municipal Water District.

Effect on Recreational Sports Fields and Opportunities

The Initiative would have the effect of preserving the recreational sports fields and other recreational areas identified above for their present state of use.

Due to the uncertainties of when voter approval is required and delays in seeking voter approval, the Initiative could have the unintended consequence of decreasing recreational amenities and opportunities over time. Concern that temporary but lengthy closures may be considered an “adverse impact” could potentially lead to decisions to forgo installing new or replacement amenities. Concern that plans could adversely impact certain recreational users could lead to decisions to forego installing new equipment or updated amenities. For example, would improvements such as a bicycle pump track, dog park, or restrooms be considered adverse impacts to existing recreational activity on such properties if they favor certain users or recreational activities to the disadvantage of other types of users or recreational activities? To the extent that the Initiative adds procedural hurdles, cost and exposure to potential litigation, the Initiative could prevent or discourage the Town, and other public agencies, from improving recreational areas.

Effects on Flood Control

Please refer to the memo dated July 26, 2017 prepared by the County of Marin/District that analyzes the proposed Initiative. The County memo is attached to the staff report. Also attached to the staff report are the Frequently Asked Questions (FAQ) prepared by the District regarding a detention basin at Lefty Gomez Field.

Fiscal Impact

At this time, we are unable to evaluate the fiscal impact of the Initiative on the Town, other agencies, residents, and businesses as it pertains to detention basins due to the lack of project specifics. We can, however, state that the 2005 Flood cost the Town over \$3,000,000 to repair damage caused by the 2005 flood. The past winter storms are estimated to have caused approximately \$900,000 in damage (primarily to roads) to the Town.

FEMA’s National Flood Insurance Program reports that as of 2007, Fairfax residential and commercial properties experience over \$500,000 in insured losses. Over 100 Fairfax properties are required to obtain flood insurance. Presumably, if the District program is fully implemented, these losses could be avoided and flood insurance premiums reduced or eliminated.

Cost of Ballot Measures for Voter Approval

The Initiative would require voter approval of: 1) a detention basin or any other non-classroom facility on Lefty Gomez Field and 2) any land uses on any properties designated as Public Domain or Open Space that are currently used for recreational sports activities that may adversely affect that use. In general, ballot measures conducted in the same year as general elections for Councilmembers will increase election costs by approximately 15%. For example, if the general election cost the Town \$20,000, the ballot measure will add approximately \$3,000. The Initiative does not allow for special or non-general elections for voter approval of projects.

VI. Conclusion: Summary of Implications for Future Projects

A. Lefty Gomez Field and Future Projects at White Hill School

- “Nonclassroom facilities” as defined in state law that adversely affect or reduce the School’s sports fields would be prohibited without a vote at a general election.
- Except, particular projects at White Hill School may be eligible for the School District to override the Town’s General Plan and zoning ordinances if the sports fields are used for instructional purposes.
- The County acting together with the Flood Control District would be immune from the restrictions contained in the Fairfax General Plan and zoning code.

B. Future Projects in Town’s Public Domain or Open Space Lands

- Land uses that “adversely affect community benefits of recreational activity” on public and private (if any) property located on lands designated Public Domain and Open Space in the General Plan would be subject to voter approval.
- Requires zoning code implementation.
- School district projects only have to comply with this restriction for “nonclassroom facilities”.
- Could require up to 2 year delay for vote at general election and increased costs at general elections
- Public Domain and Open Space zoned properties currently include public schools, Town Hall including adjacent parks and ballfield, and Deer Park. There is uncertainty as to when certain improvements would trigger vote approval requirements.

FAIRFAX LEFTY GOMEZ FIELD INITIATIVE

Be it Ordained by the People of the Town of Fairfax:

SECTION I. TITLE

This measure shall be known and may be cited as the "White Hill School Lefty Gomez Field Initiative" (the "Initiative").

SECTION II. FINDINGS AND PURPOSES.

A. Purposes. The purpose of the Initiative is to preserve the rights of Fairfax citizens to control the decision on how recreational sports fields in the Town of Fairfax will be utilized in the future. To accomplish this objective, the Initiative amends the Town General Plan as follows:

1. The Initiative amends the General Plan's Land Use Element to add as an objective the preservation of recreational sports fields in the Town of Fairfax in order to enhance and maintain local community activities and character.
2. The Initiative amends the General Plan's Land Use Element to add a policy that the White Hill School property, including Lefty Gomez Field, may not be utilized as a flood detention basin, nor may non-classroom facilities (as that term is utilized in California Government Code § 53094) be permitted that adversely affect or reduce the recreational amenities at the school's sports fields without approval of the citizens of Fairfax as part of a general election.
3. The Initiative amends the General Plan's Land Use Element to add a policy that land uses that adversely affect the community benefits provided by recreational sports activities may not be permitted on lands designated as Public Domain or Open Space that are currently utilized for recreational sports without approval by the citizens of Fairfax as part of a general election, unless such lands are owned by school districts in which case any such uses authorizing non-classroom activities (as that term is utilized in California Government Code § 53094) shall not be allowed.
4. The Initiative amends the General Plan's Land Use Element to add an implementation program to amend the Town's zoning code to be consistent with the General Plan amendments made by the Initiative.

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

1. Recreational sports fields in the Town of Fairfax enhance and maintain local community activities and character by allowing local students and nonstudent citizens a place for community gathering and recreational activities within the Town of Fairfax.
2. The Town of Fairfax is currently lacking in parks and recreational facilities on the limited flat land spaces existing in the Town.
3. White Hill School's Lefty Gomez Field is an irreplaceable recreational resource for the citizens of Fairfax. Lefty Gomez Field, in its present form, is the result of many hours of volunteer work and resources donated by the citizens of Fairfax, West Marin Little League and local soccer teams, which has created a unique recreational experience for local citizens.
4. This Initiative would allow the preservation of Lefty Gomez Field in its current form, and would prohibit recreational sports fields in the Town of Fairfax from being used for non-recreational uses that interfere with the existing recreational uses enjoyed by local students and Fairfax citizens. The Initiative will ensure that land use decisions that may adversely affect or reduce the limited amount of recreational sports fields in Fairfax will be made by the citizens of the Town of Fairfax in a General Election vote.

5. This Initiative does not and will not interfere with legally permitted classroom facility uses at Lefty Gomez Field or any other Town lands owned by local school districts and therefore subject to Government Code § 53094.

SECTION III. AMENDMENTS TO THE GENERAL PLAN

A. The Town's General Plan is hereby amended as follows:

1. Add Objective LU 7.3 to the General Plan's Land Use Element as follows: Preserve recreational sports fields in Fairfax to maintain and enhance local community activities and character.
2. Add Policy LU 7.3.1 as follows: Lefty Gomez Field may not be utilized as a flood detention basin, nor may any non-classroom facilities (as that term is utilized in California Government Code § 53094) be permitted that adversely affect or reduce the recreational amenities at the school's sports fields without approval of the citizens of Fairfax as part of a general election.
3. Add Policy LU 7.3.2 as follows: No lands designated as Public Domain or Open Space in the General Plan that are currently utilized for recreational sports shall allow land uses that adversely affect the community benefit provided by those recreational sports activities without approval by the citizens of Fairfax as part of a general election, unless such lands are owned by school districts in which case any such use that is a non-classroom facility (as that term is utilized in California Government Code § 53094) shall not be allowed without approval of the citizens of Fairfax as part of a general election.
4. Add Program 7.3.1.2 as follows: The Town shall implement Policy LU 7.3.2 by amending its zoning code to implement and be consistent with this General Plan amendment.

SECTION IV. FINDINGS OF CONSISTENCY.

This measure is consistent with and would promote the objectives and policies of the Town's General Plan. Without limiting the foregoing, this finding of consistency is based on the following:

- A. This measure is consistent with the objectives and policies of the General Plan to preserve community and neighborhood character in that it would preserve the recreational uses of Lefty Gomez Field and other recreational sports fields in the Town of Fairfax unless the Town's citizens agreed that such recreational field use could be eliminated or reduced. Recreational sports fields build community and neighborhood character by allowing local students and nonstudent citizens a place for community gathering and recreational activities within the Town of Fairfax, which is lacking in parks and recreational facilities on the limited flat land spaces existing in the Town.
- B. This measure is consistent with the objectives and policies of the General Plan, which require the Town to implement updated zoning ordinances that account for the different land use designations and criteria set forth in the General Plan.

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 the Ross Valley School District's currently undeveloped lands used for recreation including Lefty Gomez Field, or as a more general enactment that could otherwise be applied in a manner that addresses any of the following subjects: planning and zoning controls and development standards applicable to any part of the Ross Valley School District's White Hill School Lefty Gomez Field, as set forth in the Town's General Plan, Municipal Code, Zoning Maps or in any other applicable Town law, policy or regulation with the potential for adverse effects on recreational sports fields in the Town of Fairfax. 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. This requirement shall apply only with respect to two zones, Public Domain and Open Space, and shall not affect the Town's ability to amend any provisions of its General Plan or other planning documents that apply to other lands within the Town.

SECTION IX. COMPETING MEASURES.

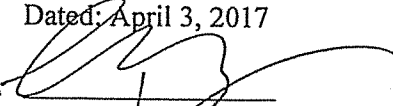
This measure was circulated and qualified as a citizens' initiative. If the Town Council proposes an alternative measure for placement on the same ballot as this measure, that measure is hereby deemed to be inconsistent with this measure, and the measure receiving the greater number of affirmative votes shall supersede the other measure. No provision of the superseded measure shall be implemented or become effective.

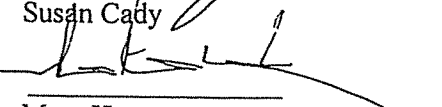
SECTION X. IMPLEMENTATION.

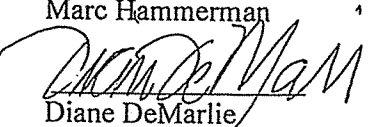
A. Upon the effective date of this Initiative, the General Plan amendments contained in this Initiative are hereby inserted into the Town General Plan.

B. If this Initiative is approved, the Town shall immediately undertake to revise any elements or provisions of the General Plan and Municipal Code, including all exhibits and figures, and all other Town ordinances, policies and implementation programs or policies, in order to remove any inconsistencies which may exist between the purposes of this Initiative as set forth above.

Dated: April 3, 2017


Susan Cady


Marc Hammerman


Diane DeMarlie

Initiative Measure to be Submitted Directly to the Voters

The Town Attorney has prepared the following title and summary of the chief purpose and points of the proposed Measure, pursuant to California Elections Code Section 9203.

BALLOT TITLE:

Initiative Measure Amending Town General Plan To Prohibit Land Uses that Adversely Affect Community Recreational Sports Fields, Including Lefty Gomez Field, Without Voter Approval.

BALLOT SUMMARY

The General Plan is the Town's primary document setting forth the permitted uses of land in the Town of Fairfax. This Measure would amend the Land Use Element of the Town General Plan in the following ways:

- It would add Land Use Objective #7.3, requiring the City to preserve recreational sports fields in Fairfax to maintain and enhance local community activities and character.
- It would add Land Use Policy #7.3.1, prohibiting Lefty Gomez Field from being utilized as a flood detention basin and further prohibiting any "non-classroom facilities" (as defined in State law) at White Hill School that would adversely affect or reduce recreational amenities at the School's sports fields, without voter approval at a general election.
- It would also add Land Use Policy #7.3.2, prohibiting any land designated in the Town's General Plan as "Public Domain" or "Open Space" and which is currently being utilized for recreational sports activities from being used in a way that adversely affects the community benefit provided by those recreational sports activities, without voter approval at a general election. This prohibition also applies to "non-classroom" facilities on school district land.
- It would also add Land Use Program #7.3.1.2 requiring the Town amend its Zoning Code to implement and be consistent with the General Plan amendment described above.

/s/ Janet Coleson, Town Attorney

TOWN OF FAIRFAX 2010-30 General Plan Map



TOWN OF FAIRFAX
142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1544 / FAX (415) 453-1618

- General Plan Designations**
- COMMERCIAL**
- Central Commercial
 - Light Commercial
 - Service Commercial
 - Recreational Commercial
- RESIDENTIAL**
- Residential .25 du/acre
 - Residential 1 - 6 du/acre
 - Residential 7 - 12 du/acre
 - UR - 7 UR - 10 acres/du*
 - PDD
- *Building site area as per Residential .25 du/acre
- PUBLIC AND QUASI PUBLIC**
- Town Government Offices
 - Public Domain
 - Public Schools
 - Fairfax Town Parks
 - Town Owned Properties
 - Public / Private Open Space (OSP)
- OTHER**
- Municipal Boundaries
 - Parcel Boundaries
 - Scenic Roads
 - Creeks

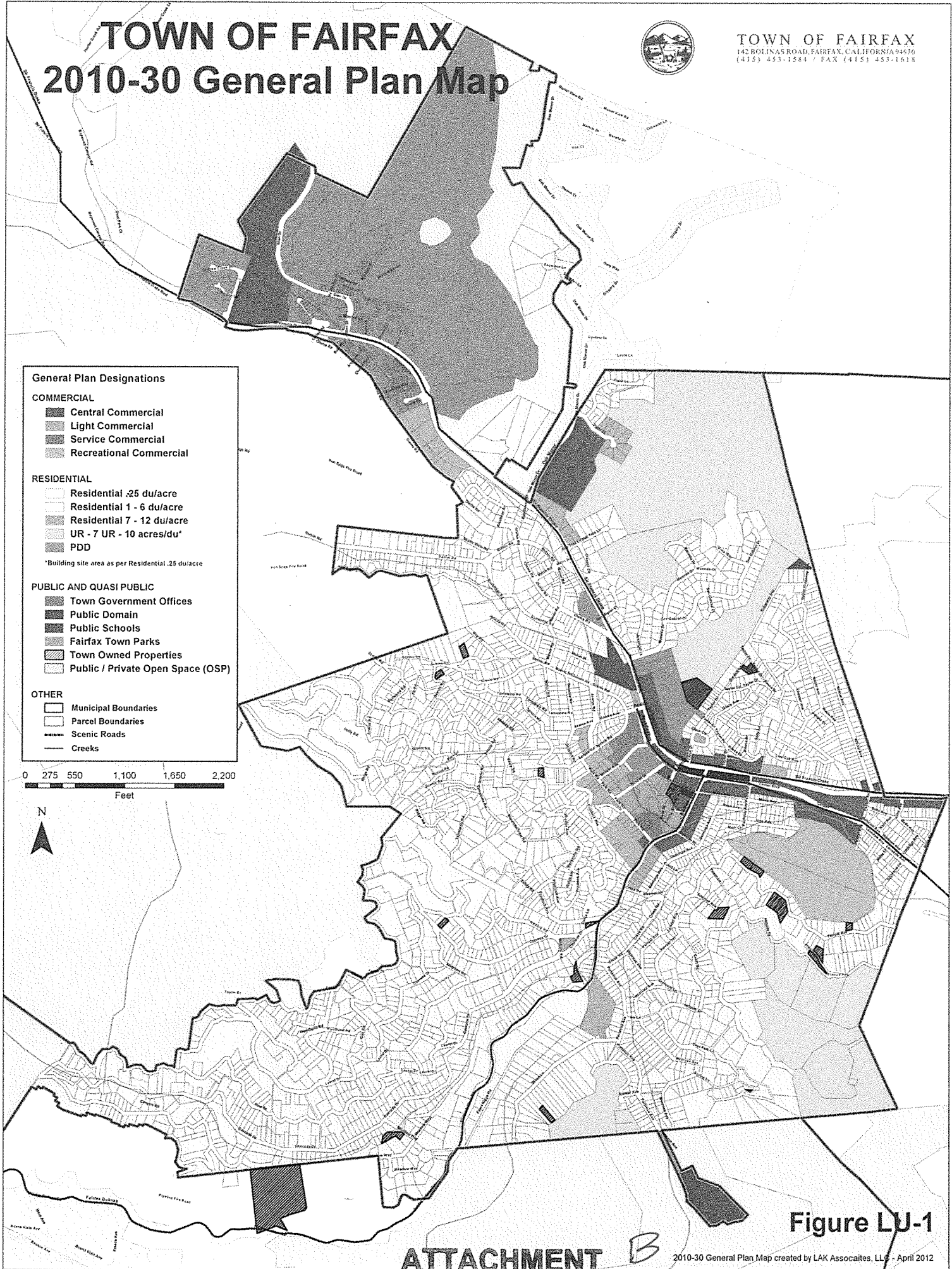
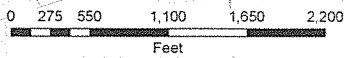


Figure LU-1

ATTACHMENT B

TOWN OF FAIRFAX Zoning Map



TOWN OF FAIRFAX
142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1384 / FAX (415) 453-1618

Manor Elementary School – 150 Oak Manor Drive
White Hill Middle School – 101 Glen Drive
Fairfax / San Anselmo Children's Center – 199 Porteous Avenue

White Hill
Middle School
Sports Field

PD

Manor School
Sports Field

PD

Sports Field

PD

OA

Fairfax / San Anselmo
Children's Center
Sports Field

ZONING DISTRICTS

PUBLIC ZONES

PD - Public Domain

COMMERCIAL ZONES

CC - Central Commercial
CL - Light Commercial
CS - Service Commercial
CR - Recreational Commercial

RESIDENTIAL ZONES

RD - 5.5 - 7 - Residential
RS - 6 - Single Family Residential
RS - 7.5 - Single Family Residential
RM - Multi-Family Residential
PDD - Planned Development District
UR - 7 - Upland Residential (7ac/du)
UR - 10 - Upland Residential (10ac/du)

*RS - 6 - zoning determined by arrowwood settlement agreement recorded 5/28/91

OPEN AREA ZONE

O-A - Open Space

(Consult Fairfax Zoning Ordinance for detailed Zone descriptions)

OTHER

▭ Municipal Boundaries
▭ Fairfax Parcels Boundaries
— Creeks

Summary of Amendments

Date	Ordinance Number	Description/Summary
8/13/1973	352	Established land use zones, official zoning ordinance
9/9/1981	403	Amended zoning to add districts from RD 5.5-7 along SF06
8/10/1985	439	PDD zone for Shattuck House (SF06, 1.5/20ac, 1.5/20ac, 0L, 0L, 0L, 1-2/10ac)
12/28/87	534	Rezone portion of Access Rd from RD 5.5-7 to RS-1
9/16/1989	584	Establish OA Zone - Deer Park School
12/6/1991	647	Established Upland Residential Zones UR-7.5 & UR-7
8/13/1994	832	PDD pro-con Shadow Creek Subdivision

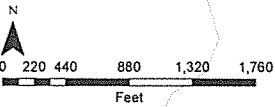


Figure LU-2

ATTACHMENT

TOWN OF FAIRFAX

Aerial Map



TOWN OF FAIRFAX
 142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
 (415) 453-1584 / FAX (415) 453-1618

White Hill
 Middle School
 Sports Field

PD

Manor School
 Sports Field

PD

Sports Field

PD

Fairfax/San Anselmo
 Children's Center
 Sports Field

OA

Figure 1 U-2

ZONING DISTRICTS

PUBLIC ZONES

PD - Public Domain

COMMERCIAL ZONES

- CC - Central Commercial
- CL - Light Commercial
- CS - Service Commercial
- CR - Recreational Commercial

RESIDENTIAL ZONES

- RD - 5.5 - 7 - Residential
- RS - 6 - Single Family Residential
- RS - 7.5 - Single Family Residential
- RM - Multi-Family Residential
- PDD - Planned Development District
- UR - 7 - Upland Residential (7ac/du)
- UR - 10 - Upland Residential (10ac/du)

*RS - 6 - zoning determined by arrowwood settlement agreement recorded 5/28/91

OPEN AREA ZONE

O-A - Open Space

(Consult Fairfax Zoning Ordinance for detailed Zone descriptions)

OTHER

- Municipal Boundaries
- Fairfax Parcels Boundaries
- Creeks

Date	Ordinance Number	Description/Summary
3/12/1973	201	Established the first zoning ordinance
3/8/1981	410	Amended zoning to the district from PD 1.5 F along SR 208
3/13/1983	435	PDD zone for Bernard House (APNs 1-10524, 1-10441, 82, 83, 1-21146)
5/12/87	536	Revised portion of Actavis Rd from RS 1.5 F to RS - 6
8/14/1989	564	Established OA Zone - Deer Park School
12/9/1991	607	Established Upland Residential Zoning UR 10 & UR 7
8/12/1994	623	PDD pre-zone Station Creek Subdivision

MEMORANDUM

TO: Fairfax Town Council

FROM: Raul Rojas, District Engineer, Marin County Flood Control
& Water Conservation District, and
Brian E. Washington, County Counsel

DATE: July 26, 2017

RE: White Hill School Lefty Gomez Field Initiative

As requested, attached please find our analysis of the proposed Initiative.

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Attachments:

- Exhibit A: Resolution 2007-05, Department of Public Works Staff Letter dated January 23, 2007
and County Counsel Memo dated January 10, 2007
- Exhibit B: Resolution No. 2474, Department of Public Works Staff Letter dated
February 20, 2007
- Exhibit C: Additional Facts
- Exhibit D: Policy Considerations
- Exhibit E: Questions and Answers

Thank you for the opportunity to comment on the proposed initiative, "White Hill School Lefty Gomez Field Initiative" (Initiative). This Memorandum contains the Marin County Flood Control and Water Conservation Control District's (District) analysis of the potential effects of the Initiative.

The District was formed to provide for, among other things, "the control and conservation of flood and storm waters and the protection of watercourses, watersheds, harbors, public highways, life and property from damage or destruction from such waters" (See Water Code Appen., Ch. 68.) To ensure adequate protection to the county as a whole, flood control requires a collective effort. Flood control is a regional issue where piecemeal decisions and policies can have a detrimental effect on ensuring a workable plan and therefore should be avoided.

The proposed Initiative seeks to amend the Town's General Plan to prohibit land uses that adversely affect community recreational sports fields, including Lefty Gomez Field. Among other things, the Initiative proports to prohibit the District from using Lefty Gomez Field as a "flood detention basin"¹ without prior voter approval. This Memorandum will set forth why the District believes that piecemeal decisions, such as proposed here, are problematic from both a policy and legal standpoint. In addition, the Memorandum attaches pertinent historical information that further sets forth factual background and policies that should be considered.

I. FACTUAL BACKGROUND AND POLICY CONSIDERATIONS

A. Ross Valley Watershed, a Shared System of Flooding Characteristics & Constraints.

Urban development in Ross Valley outpaced the watershed's ability to convey water along its natural systems. Residential, commercial and institutional development has created expansive impermeable areas while encroaching onto the banks of the channel supplanting the natural flood attenuating capacity of the floodplain. Additional land uses and public services such as domestic water supply, public safety, recreation/open space and agriculture further complicate addressing flooding issues in a floodplain, creek and stormwater system that has a limited, and essentially fixed, capacity to convey water to the San Francisco Bay.

Due to the complexity of the Ross Valley Watershed, no single flood risk reduction project will provide a solution to the flooding problem in the Ross Valley. Meaningful 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. This proposed system relies on a combination of flood diversion and storage basins¹ at the top of the watershed to hold back peak storm flows, increased capacity in the existing creeks and channels to carry water, and attenuating flow wherever possible by creating and/or restoring natural floodplains.

Flood diversion and storage basins in the upper watershed, such as the proposed sites in Fairfax and unincorporated areas of Marin County, are an integral component of an effective flood risk reduction system as they are designed to retain peak flood flows at the top of the watershed, thus reducing the water surface elevation through the remainder of the watershed. Flood diversion and storage basins also reduce the need for other, often more impactful and costly, measures such as creek widening and long stretches of flood walls throughout the watershed. Lowering water surfaces in the creeks reduces the chance for break out points where flows leave the creek and reduces excessive erosion along creek

¹ In order to be consistent with national standards, the District is no longer using the term "flood detention basins" and instead using flood diversion and storage (FDS) basins (see fema.gov and epa.gov).

banks prone to excessive damage after high winter flows. Reducing erosion means less sediment in the lower watershed and channel, thereby reducing the need for costly dredging while supporting fish passage.

B. Historical Flooding in Ross Valley

Ross Valley is naturally prone to flooding by its location, geologic and geomorphic setting: rainfall can be intense, soils are shallow with limited absorption capacity, slopes are steep, stream channels are entrenched and in many places narrow with relatively little in-channel storage capacity. Urban development within and adjacent to low lying, tidally influenced areas also subject residents and businesses to flood risk when severe weather events coincide with high tides.

Floods in Ross Valley have been recorded with varying degrees of severity as far back as 1914. Since the installation of the USGS streamflow gaging station on Corte Madera Creek in 1951, major flood flows were also recorded in calendar years 1951, 1955, 1958, 1967, 1969, 1970 (FEMA, 1980), 1982, 1983, 1986 (USACE, 2000), and 2005. Of these, the three most severe events took place in 1955, 1982 and 2005. The 1955 flood was recorded as a 25-year event, meaning a flood event with a 25% chance of occurring in any one year. The 1982 and 2005 floods were at or above the 100-year flood event, meaning an event that has a 1% chance of occurring in any one year. 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.

C. Watershed-Wide Projects Are Interdependent

Today, flood management is evolving from narrowly focused traditional approaches toward an Integrated Water Management (IWM) approach, which includes a mix of multiple measures—structural and nonstructural approaches. This more integrated approach enhances the ability of undeveloped floodplains and other open spaces to behave more naturally and absorb, store and slowly release floodwaters during small and medium-sized events. Flood management as part of an IWM approach considers land and water resources on a watershed scale, employing both structural and nonstructural measures to maximize the benefits of floodplains and minimize loss of life and damage to property from flooding, and recognizing the benefits to ecosystems from periodic flooding.

One recognized approach to flood management in California and encouraged by federal agencies such as the Environmental Protection Agency and Federal Emergency Management Agency is flood diversion and storage basins. Flood Diversion and Storage basins involve diverting floodwaters from the creek channel into a wetland, floodplain, or multi-use facility and storing them in above-ground basins, floodplains, wetlands, green infrastructure elements, or other storage facilities. This allows for a controlled release and tempers peak flood flows, stages, and velocities to mitigate flooding. The Ross Valley currently has de-facto basins where floodwaters exit the creek channels and flood develop areas such as downtown Fairfax.

D. Evolution of Flood Zone Number 9

The Ross Valley encompasses Flood Control Zone Number 9 (Zone 9), which includes most of the watershed drained by Corte Madera Creek. Zone 9 was originally established in 1966 to act as a sponsoring entity for a major U.S. Army Corps of Engineers Flood Control project on Corte Madera Creek (Corte Madera Creek Units 1-6 Project). In the 1970s, the parcels within the Towns of Fairfax and San

Anselmo were removed from Zone 9 at the Towns' request, and the U.S. Army Corps terminated planning for Units 5 and 6 through those towns.

The Ross Valley experienced large, damaging floods in 1982 and 2005. After the 2005 event, Marin County District 2 Supervisor Hal Brown with officials and managers of the affected towns as well as District staff, cooperatively initiated creek cleanup efforts, created a website to provide timely information and to serve as a vehicle for community feedback, and improved monitoring and warning systems. Recognizing the growing success of this cooperative effort, the Towns of San Anselmo and Fairfax rejoined Zone 9 in 2007.

Following the 2005 flood and the expansion of Zone 9 to include San Anselmo and Fairfax, Zone 9 formed the Ross Valley Watershed Flood Risk Reduction Program (Program) and residents passed a ballot measure to create a Storm Drainage Fee (Fee). The Fee helps fund the Program and leverage additional state and federal grants to design and implement flood reduction measures and activities to pursue short term and long term solutions.

E. The Ross Valley Watershed Flood Risk Reduction Program

The Program's overall goal is to increase the existing 6-year level of flood protection (on average) to a 100-year level, representative of the last major flood event in 2005. The Program goal is structured into two phases. Phase 1 (2017-2027, the period of the current flood fee) will target a goal of 25-year flood protection (4% chance of occurring in any one year) currently undergoing community participatory planning and scoping for the Program environmental review (began January 2017). Phase 2 (2028-2050, depending on securing funding sources such as grants or a renewal of the flood fee) will add additional measures to achieve a target goal of 100-year flood protection.

The Program lead agency is the Marin County Flood Control and Water Conservation District (District) acting in partnership with the County of Marin, Towns of Fairfax, San Anselmo, Ross, and City of Larkspur along with unincorporated areas of Marin County including Greenbrae, Kentfield, Sleepy Hollow and Oak Manor. Additional Program partners include environmental, business and community organizations, the U.S. Army Corps of Engineers, Marin Municipal Water District, Marin County Parks and Open Space District, Ross Valley Fire Department, Ross Valley School District, the College of Marin and the local residential and commercial communities.

Since the Fee's passage and the development of the Program, the District has developed several studies in the Ross Valley to identify measures satisfying the Program objective to substantially reduce the frequency and severity of flooding watershed wide in an economically viable manner while prioritizing public safety and minimizing environmental impacts. The Fee will raise over \$40 million during a 20-year period (2007-2027) to implement solutions for helping reduce flood risk within the most flood impacted areas of the watershed. To date, over \$33 million dollars in grant funding has been awarded to the Program and additional funding opportunities are continually being pursued.

F. Program Planning and Studies

Key studies developed since the start of the Fee that assess and prioritize various flood reduction measures for Ross Valley include the Capital Improvement Plan Study for Flood Damage Reduction and Creek Management (CIP) (Stetson, 2011), Ross Valley 25-year Flood Protection Plan Technical Memorandum (25-year Plan) (Stetson, 2012) and Ross Valley Flow Reduction Study Report (Flow Reduction Study) (CH2M, 2015). The studies utilized a computer-based floodwater model calibrated

with data from Ross Valley's most recent severe floods to examine numerous approaches to flood risk management. The Program is currently working on updating the original model with new data and the latest advancements in this technology. The studies and model provide a technical rationale for a suite of on-the-ground flood reduction measures, spread watershed-wide, that work together as a system to reduce flooding and seek to restore the ecological health and function of Corte Madera Creek and its tributaries through the following actions:

- Increasing creek and floodplain capacity to convey floodwaters
- Enlarging some areas of the creek or channels through the removal or modification of existing obstructions to flow
- Reducing peak discharge and attenuating the flows by increasing floodplain capacity
- Flood preparedness including regular creek maintenance and structure modification
- Community flood education including flood preparedness, real-time rain and stream monitoring, flood response checklists and information

The studies support that in order to achieve even the Program Phase 1 goal of a 25-year flood level of protection, two principal and widely accepted methods to contain a flood event are a necessary: (1) increase the conveyance capacity of the key creek channels; and (2) reduce the peak discharge by attenuating flood flows in large flood diversion and storage detention basins., flood diversion and storage basins must be implemented upstream of downtown Fairfax along with certain bridge replacements and associated creek improvements such as supplemental floodwalls. A total of five basins were identified in the original CIP, including Lefty Gomez Field.

A Program Environmental Review Report (PEIR) is currently underway to evaluate and study the watershed-wide environmental impacts of the construction and operation of the Ross Valley Watershed Flood Risk Reduction Program. The PEIR provides an opportunity to understand how the watershed would benefit or be impacted by a variety of combined and individual flood reduction measures, such as the impacts of a flood control system without flood storage and diversion basins in the Fairfax and the upper watershed. The process also presents multiple opportunities to collect input from the public on potential environmental effects. The Draft Program EIR is expected in Fall 2017, Final Program EIR Report is expected in Spring of 2018 and final EIR Certification in Summer of 2018.

G. Lefty Gomez Field As A Dual-Use Facility

Removing Lefty Gomez Dual-Use Facility (Lefty Gomez) Project or any Fairfax flood diversion and storage basin site from future consideration in the Program jeopardizes the possibility of providing flood protection for the Ross Valley Watershed. The potential flood diversion and storage basin site at Lefty Gomez Field is the second largest volumetric potential storage basin site in Ross Valley and would directly benefit Fairfax Creek, San Anselmo Creek, and Corte Madera Creek in terms of lowering peak flood flows. All identified temporary flood diversion basins along Fairfax Creek upstream from downtown Fairfax provide flood reduction benefits to downtown Fairfax in addition to other watershed-wide benefits including in San Anselmo, Ross, Kentfield, and Larkspur.

The proposed flood diversion and storage basins continue to be a critical part of the watershed system-wide approach to reducing flooding in the Ross Valley. Flood diversion and storage basins are a priority measure in the Program as they act in tandem with other flood reduction measures to hold back peak flood waters at the top of the watershed, so that downstream measures that remove constrictions

(potential flood water break out points) and widen the floodplain can be effective in keeping water surface elevations downstream low enough to stay in creeks and channels. Without flood diversion and storage basins on the “menu” as options, additional, more intrusive measures will need to be constructed elsewhere to meet the program’s goals.

Due to the high cost of the Lefty Gomez Project, funding is not currently available and thus the project is not reflected in the Program’s long- or short-term financial planning documents such as the Program Cost and Revenue Estimates and Fiscal Year 17/18 Program Budget and Work Plan. Should funding become available and with support of the Zone 9 Advisory Board and Town of Fairfax, the District would continue working closely with the public through feasibility and into environmental review. Following a comprehensive public engagement process to incorporate community priorities, including selection of a preferred alternative and certification of the EIR, the project would move into design and finally construction. Public engagement and collaboration is built into all aspects of this process.

II. LEGAL CONSIDERATIONS

A. The Marin County Flood Control and Water Conservation Act Sets Forth The Exclusive Procedure For Town Input On The District’s Proposed Projects

The Marin County Flood Control and Water Conservation District Act (Act) sets forth the objects and purpose of the District and the procedures for flood control zones (zones) to weigh in on proposed projects. (Water Code Appen., Ch. 68) One purpose of the District is to provide for “the control of flood and storm waters ... and to conserve such waters for beneficial and useful purposes” and to “protect from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district...” (See Water Code Appen., Ch. 68-4.) To accomplish its purpose, the District is authorized to establish zones and carry out projects for the benefit of the entire District or of one or more zone. (*Id.*, §§ 68-6.1, 68-10, 68-11) As oversight for such projects, the Act provides that the District must consult with a zone advisory board on matters affecting its zone and grants the advisory board the opportunity to prepare a report on the District’s proposed action. (*Id.*, §68-6.2) The Act also sets forth procedures for objecting to District projects. (*Id.*, §§ 68-11, 68-11.1)

In 2006, as described above, the Town sought to rejoin Flood Zone 9 and passed a resolution that provided various conditions, including the right of final approval over any project proposed by the District within the boundaries of the Town of Fairfax. The District rejected this condition finding that the Act does not permit such delegation of authority. (See Resolution 2007-05, Department of Public Works Staff Letter dated January 23, 2007 and County Counsel memo dated January 10, 2007 attached hereto as Exhibit A).

In 2007, the Town sought again to rejoin Flood Zone 9 and passed a resolution that omitted the language set forth in Resolution No. 2463 and expressly rescinded the prior resolution. The revised resolution provided that the annexation of the Town into the District was “with the understanding that during the feasibility study phase of any proposed project within the Town of Fairfax the District would provide the Town all documents pertinent to the project to allow for review and comment by the Town Council.” (Resolution No. 2474 attached hereto as Exhibit B). As a result of the Town’s annexation, the District amended the boundaries of Zone 9, as set forth in Resolution No. 2007-25, and provided that the Town “no longer requires the right of final approval over any project proposed by the District within the boundaries of the Town of Fairfax.” (Resolution No. 2007-25 attached hereto as Exhibit A)

Accordingly, the Act vests the sole authority to determine projects or works of improvements with the District. By joining Flood Zone 9, the Town expressly recognized and agreed that the District has the authority to govern over matters related to flood control and water conservation after consultation with the Town and the advisory board. The District's authority encompasses proposing and carrying out projects related to the District's purpose, including, but not limited to, the flood diversion and storage basin at issue here. The proposed initiative cannot change this.

B. Numerous Additional Restrictions Limit the Initiative's Ability to Govern In This Area

The principal statutory provisions governing whether a local public agency must comply with the building and zoning ordinances of a county or city in which it is located are contained in Government Code sections 53090, 53091 and 53096. 1. The County is not subject to the building and zoning ordinances of the Town. (See Gov't Code §§ 53090, 53091.) In addition, the Town's zoning ordinances do not apply "to the location or construction of facilities for the production, generation, storage, or transmission of water . . ." (Gov't Code § 53091.) Section 53096, subdivision (a), further provides a procedure where a local agency by four-fifths vote "may render a city or county zoning ordinance inapplicable to a proposed use of property if the local agency at a noticed public hearing determines by resolution that there is no feasible alternative to its proposal."

Further, the Initiative conflicts with the school district's authority pursuant to Government Code section 53094 to override a city zoning ordinance for classroom facilities. Gov't Code § 53094(b). Classroom facilities have been interpreted by the court to turn "on whether the proposed use of the facilities is directly for or related to *educational* purposes (i.e., the property is 'directly used for or related to student instruction')." See *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District*, 215 Cal.App.4th 1013, 1062 (2013)(citations omitted)(emphasis in original). Here, a ball field is a recognized classroom facility diversion and storage basin that is beyond the reach of the City's planning and zoning authority.

Finally, the Initiative seeks to impair an essential government function. An Initiative is not applicable where "the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential..." (*Simpson v. Hite*, 36 Cal.2d 125, 134 (1950)). Here, the Initiative would impair the District from providing an essential, regional, public safety government function to "control and conservation of flood and storm waters and the protection of watercourses, watersheds, harbors, public highways, life and property from damage or destruction from such waters" Therefore, dictating placement of a flood control basin is beyond the initiative power.

C. The Initiative Language Poses Several Potential Problems

The Initiative language as proposed has several potential problems. The most significant is that Section II (A)(3) is overly broad and vague. As written, it could potentially cover other projects and areas within the Town, including open space projects. Further, the language in the Initiative impedes on and potentially conflicts with the safety element set forth in the Town's General Plan, which specifically includes developing maintenance guidelines to reduce flooding.

III. CONCLUSION

We appreciate the Town taking the time to consider the potential effects of the Initiative. In summary, piecemeal decisions related to flood control are problematic and can create widespread policy and legal concerns. Flood diversion and storage basins are an essential component of an effective flood risk reduction system. Removing these options, such as proposed in this Initiative, will result in more intrusive measures needing to be constructed elsewhere.

EXHIBIT A

Resolution 2007-05

RESOLUTION NO. 2007-05

**MARIN COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT BOARD OF SUPERVISORS
AMENDING THE BOUNDARY OF
FLOOD CONTROL ZONE NO. 9 (ROSS VALLEY-CORTE MADERA CREEK)**

WHEREAS, the powers of the Marin County Flood Control and Water Conservation District set forth in State of California Water Code - Appendix Section 68 *et seq.* include the powers of amending zone boundaries and establishing subzones; and

WHEREAS, the amendment of the zone boundary and conditional establishment of the subzone are necessary in carrying out the purposes of the Marin County Flood Control and Water Conservation District Act; and

WHEREAS, the Town of San Anselmo passed a resolution on November 14, 2006 concurring with the proposal to rejoin Flood Zone 9 with the condition that the bylaws of Flood Zone 9 be amended to allow for the appointment of one representative to the Flood Zone 9 Advisory Board; and

WHEREAS, this condition is acceptable to the Flood Control District; and

WHEREAS, the Town of Fairfax passed a resolution on November 15, 2006 concurring with the proposal to rejoin Flood Zone 9 with the following conditions:

1. Provided that the Zone 9 Advisory Board Bylaws be revised to provide that said Board includes a voting member appointed by the Town after the annexation is effective; and
2. The Town of Fairfax retains the right of final approval authority over any project proposed by the District within the boundaries of the Town of Fairfax; and
3. The annexation of the Town of Fairfax into Flood Zone District 9 does not make the Town liable or obligated for the cost of currently scheduled construction projects in the District; and

WHEREAS, the above conditions numbers 1 and 3 are acceptable to the Flood Control District; and

WHEREAS, Condition number 2 is unacceptable in that said condition would result in an illegal delegation of power from the District to the Town of Fairfax to approve District projects; and

WHEREAS, this Board did on December 19, 2006 adopt its Resolution of Intention to amend the boundaries of Flood Control Zone No. 9, and did therefore give notice of a public hearing on said Resolution in the form and for the time required by law, and did cause maps showing the general location of said proposed conditional boundary amendment to be posted at the time and in the manner required by law; and

COPY

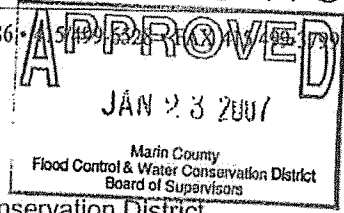
DEPARTMENT OF PUBLIC WORKS

COUNTY OF MARIN
www.co.marin.ca.us/pw

P. O. Box 4186, San Rafael, CA 94913-4186 • TTY 415/499-3232

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499-6528
- TRANSIT DISTRICT
499-6099 • FAX 499-6939
- WASTE MANAGEMENT
499-6647 • FAX 446-7373

January 23, 2007
Board of Supervisors
Marin County Flood Control and Water Conservation District
Civic Center
San Rafael, CA 94903



Farhad Mansourian, RCE
Director

SUBJECT: Resolution of the Marin County Flood Control and Water Conservation District conditionally amending the boundaries of Flood Control Zone No. 9 to include all territories within the incorporated areas of the Towns of San Anselmo and Fairfax

Dear Board Members:

RECOMMENDATION: It is recommended that your Board conduct the public hearing and adopt the Resolution.

SUMMARY: Following a large flood in 1958, the U.S. Army, Corps of Engineers was asked to study and propose flood reduction methods for the Corte Madera Creek drainage basin. A channel modification was designed to carry the runoff from a Standard Project Flood, estimated as a 250-year flood event by the Corps of Engineers. The project featured approximately 3 miles (5 km) of trapezoidal earthen channel from San Francisco Bay to Kentfield. Upstream of Kentfield, a 33 ft (10 m), trapezoidal concrete channel was constructed.

The project, as completed in 1971, was only the first three units of what was originally conceived as a six-unit project. During the construction, Fairfax and San Anselmo (Units 5 and 6) opted out of the project because of economic concerns after the passing of Proposition 13 and requested removal from Flood Zone 9. Property litigation delayed the construction of Unit 4, and then environmental opposition and lack of public support prevented its construction. Since that time, there has been little progress in the Ross Valley watershed with respect to flood control.

The Ross Valley again experienced large, damaging floods in 1982 and 2005. After the 2005 event, the Town of San Anselmo Council asked the county to conduct a forensic analysis of the flooding. On February 11, 2006, just 42 days after the flooding that caused tens of millions of dollars of damage to the valley, County flood control staff presented their findings in a public meeting before approximately 300 residents of the Ross Valley at Sir Francis Drake High School in San Anselmo. The report highlighted the unique geographic qualities that cause high amounts of rainfall to fall in the Ross Valley, and the limited capacity of the Ross Valley creek network, constricted by development since the 19th century, to hold the rainfall runoff within its banks. Simply stated, the storm of December 31, 2005 delivered more water than the creek system could contain within its banks and, with no detention or abatement facilities in place, flooding occurred. Engineers have recently determined that in the 2005 flood, a flow of 1,700 cubic feet per second, or 763,000 gallons per minute,

i

flooded the streets and homes of San Anselmo, Ross, Kentfield and Larkspur. Localized, severe flooding also occurred in Fairfax, Sleepy Hollow and other areas.

Recognizing that no single remedy exists for reducing flood damage in the Ross Valley, Supervisor Hal Brown convened a meeting of elected officials and managers of the 4 affected towns, as well as Flood Control District engineers and staff, in March, 2007. At that meeting, it was decided that solutions to flooding could only be found through a cooperative effort with a watershed-wide focus. County flood control staff also brought in major stakeholders in the watershed such as citizens groups that have worked to improve the creek over the years, and state and federal regulatory agencies, to insure that the watershed-wide effort was circumspect in its efforts and recommendations. To insure that the residents of the Ross Valley were informed in a timely way and to provide a vehicle for their input to the process, the county flood control district hired an experienced consultant, MIG Inc. of Berkeley, CA, to guide the process to create a watershed-wide partnership and to bring the partners to the point where real actions can be taken to reduce flooding and flood damage in the Ross Valley.

Since MIG was hired in March, 2006, there have been 2 large public meetings with a third scheduled for February 10, 2007. MIG facilitated the creation of two working groups to study the technical, financial and policy issues and to make recommendations on next steps. The Technical Working Group, comprised of local volunteers from the science and engineering professions, county flood control staff, and hired consultants, have met 8 times and the Financial Working Group, comprised of the town managers of Larkspur, Ross, San Anselmo and Fairfax, and the County Director of Public Works have met 8 times. The recommendations of these two groups have been invaluable and have insured progress on the Ross Valley effort. In addition, county staff has made a significant effort to keep the stakeholders and regulatory agencies informed of developments, at times asking their advice on specific technical topics, and this has resulted in increased support and participation.

One of the stated guiding principles of the watershed effort is to insure the enhancement, preservation, and restoration of creek habitat, recognizing that Corte Madera Creek has been identified as one of three anchor watersheds in the Bay Area for anadromous (salmon, steelhead) fish habitat. For this reason, the California State Coastal Conservancy has taken an interest in the Corte Madera Creek watershed and contributed a grant of one-hundred thousand dollars (\$100,000) to the watershed effort for the creation of a computerized hydrologic and hydraulic model. This model will allow engineers to decide on a ranked list of projects that will reduce the water surface elevation during large storms and reduce flood damage as well as aid in the removal of fish passage barriers. This model is expected to be operational by end of January, 2007.

During 2006, the county and towns contributed over \$650,000 to fund the startup of the watershed-wide effort. Consultants were hired, the creeks were cleaned of debris and overgrown vegetation in a one-time effort, a website created to provide timely information and a vehicle for community feedback, and improved monitoring and warning systems established. Recognizing the growing success of this cooperative effort, the towns of San Anselmo and Fairfax decided to rejoin Flood Control District Zone 9 – Ross Valley.

On November 14, 2006, the Town Council of the Town of San Anselmo passed a unanimous resolution to rejoin Flood Zone 9 with the condition that they have the authority to appoint one member to the Flood Zone 9 Advisory Board. This condition is acceptable and is provided for in the bylaws of Flood Zone 9.

Board of Supervisors
Marin County Flood Control and Water Conservation District
January 23, 2007

On November 15, 2006, the Town Council of the Town of Fairfax passed a unanimous resolution to rejoin Flood Zone 9 with the following conditions:

1. Provided that the Zone 9 Advisory Board Bylaws be revised to provide that said Board includes a voting member appointed by the Town after the annexation is effective; and
2. The Town of Fairfax retains the right of final approval authority over any project proposed by the District within the boundaries of the Town of Fairfax; and
3. The annexation of the Town of Fairfax into Flood Zone District 9 does not make the Town liable or obligated for the cost of currently scheduled construction projects in the District;

Conditions 1 and 3 are acceptable to the Flood Control District. As per County Counsel, in the attached memo dated January 10, 2007, condition number 2 is not legally permissible. In the memo, County Counsel states, "The Water Code Appendix does not provide any authority to delegate the power to approve District projects to another entity such as Town of Fairfax."

We have prepared the attached resolution that provides for the conditional annexation of the Town of Fairfax should they choose to remove condition number 2 which is not legally permissible.


In conclusion, I would like to take this opportunity, at the time of this historic decision, to offer special thanks to Supervisor Brown and Katie Rice, the members of the Town Councils of San Anselmo, Fairfax, Larkspur, and Ross, the Town Administrator of San Anselmo, the Town Manager of Fairfax, the Town Manager of Larkspur, the Town Manager of Ross, the Public Works Directors of San Anselmo, Fairfax, Larkspur and Ross, the members of the Technical Advisory Group of San Anselmo, the Flood Zone 9 Advisory Board, the Army Corps of Engineers, and the California State Coastal Conservancy. Also, I would like to thank the citizens who have volunteered many hours to support this effort, from the Friends of Corte Madera Creek, the Flood Mitigation League of the Ross Valley, and many more. Finally, I want to offer a thank you to the Flood Control District staff, especially Jack Curley, who has worked tirelessly since last February to make this a successful effort. As this effort has shown, we can make real progress through a unified approach.

It is therefore recommended that your Board adopt the attached resolution.

FINANCIAL IMPACT: No impact identified.

REVIEWED BY:	<input type="checkbox"/>	Auditor Controller	<input checked="" type="checkbox"/>	N/A
	<input checked="" type="checkbox"/>	County Counsel	<input type="checkbox"/>	N/A
	<input type="checkbox"/>	Human Resources	<input checked="" type="checkbox"/>	N/A

Very truly yours,



Farhad Mansourian
District Engineer
Flood Control and Water Conservation District

c: Town Administrator of San Anselmo
Town Manager of Fairfax
Town Manager of the City of Larkspur
Town Manager of Ross
Directors of Public Works of Fairfax, Larkspur,

Ross, San Anselmo
Flood Zone 9 Advisory Board Members
Kentfield Planning Advisory Board
Friends of Corte Madera Creek
Flood Mitigation League of the Ross Valley

**PROOF OF PUBLICATION
(2015.5 C.C.P.)
BOARD OF SUPERVISORS**

.....

**STATE OF CALIFORNIA
County of Marin**

SS

Proof of Publication of

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the **MARIN INDEPENDENT JOURNAL**, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of **FEBRUARY 7, 1955, CASE NUMBER 25568**; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

JAN. 13, 19

.....

all in the year 2007.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Donna Lazarus

Donna Lazarus

Signature

19 JANUARY 2007

Dated this.....day of.....2007

**NOTICE OF PUBLIC HEARING BEFORE THE
BOARD OF SUPERVISORS OF
THE MARIN COUNTY
FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

NOTICE IS HEREBY GIVEN that on January 23, 2007 at 11:00 a.m. or as soon thereafter as the matter can be heard, in the Marin County Board of Supervisors' Chambers at the Marin County Civic Center, Room 330, 3501 Civic Center Drive, San Rafael, California, the Board of Supervisors of the Marin County Flood Control and Water Conservation District ("Board") will hold a public hearing on its Resolution of Intention to amend the boundaries of Flood Control Zone No. 9 to include the territory in the incorporated areas of the Towns of San Anselmo and Fairfax.

The Resolution of Intention was adopted by the Board at its meeting on December 19, 2006. A copy of the Resolution of Intention is on file at the office of the Clerk of the Board, as well as being posted at the offices of the Marin County Department of Public Works.

At the time and place fixed for the hearing, or at any time to which said hearing may be continued, the Board shall consider all written and oral objections to the proposed project. Unless a majority written protest exists as defined in the Marin County Flood Control and Water Conservation District Act, (California Water Code, Appendix SS 60-11), the Board shall have the discretion at the conclusion of the hearing to abandon, or proceed with the boundary amendment and subzone establishment.

PROOF OF PUBLICATION

INTER-OFFICE MEMORANDUM

OFFICE OF THE COUNTY COUNSEL

DATE: January 10, 2007

TO: Farhad Mansourian, District Engineer
Marin County Flood Control and Water Conservation District ("MCFC&WCD")

FROM: James G. Flageollet, Chief Deputy County Counsel *JGF*

RE: Zone 9 Annexation

Background: The Board of Supervisors of the MCFC&WCD will consider the annexation of the boundaries of the Town of Fairfax into MCFC&WCD Zone 9. A condition precedent to annexation is concurrence by the Town of Fairfax. By Resolution No. 2463, the Fairfax Town Council provided concurrence subject to three conditions.

Question Presented: Can the Board of the MCFC&WCD approve the annexation conditioned upon Fairfax's resolution requiring that "the Town of Fairfax retains the right of final approval authority over any project proposed by the District within the boundaries of the Town of Fairfax?"

Answer: No.

Analysis: The MCFC&WCD is established pursuant to Chapter 68 of the Water Code-Appendix. Specific to this inquiry, Water Code-Appendix Section 68-10 provides:

"The board shall determine which project or works of improvement shall be carried out and shall determine, as to each project or work of improvement, that is either:

1. For the common benefit of the district as a whole; or
2. For the benefit of two or more zones hereinafter referred to as participating zones; or
3. For the benefit of a single zone."

Hence, by statute, the MCFC&WCD is vested with the sole authority to determine "which projects or works of improvements shall be carried out." Whenever a power is granted to an entity it may only be exercised by that entity in the manner prescribed unless specifically provided otherwise. The Water Code-Appendix does not provide any authority to delegate the power to approve District projects to another entity such as the Town of Fairfax.

Conclusion: In the absence of any statutory authority to delegate "final approval authority over any project proposed by the District" to the Town of Fairfax, such action would constitute an illegal delegation of power.

EXHIBIT B

Resolution 2474

RESOLUTION NO. 2007-25
RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
RATIFYING RESOLUTION 2007-05 AMENDING THE BOUNDARY OF
FLOOD CONTROL ZONE NO. 9 (ROSS VALLEY)

WHEREAS, the powers of the Marin County Flood Control and Water Conservation District set forth in State of California Water Code - Appendix Section 68 *et seq.* include the powers of amending zone boundaries and establishing subzones; and

WHEREAS, the Town of Fairfax Council passed Resolution No. 2474 on February 7, 2007, rescinding the previous Resolution No. 2463; and

WHEREAS, the Town of Fairfax Council passed Resolution No. 2474 on February 7, 2007, that restates the conditions of their concurrence to the annexation of town territory into Flood Control District Zone 9; and

WHEREAS, the Town of Fairfax no longer requires the right of final approval over any project proposed by the District within the boundaries of the Town of Fairfax; and

WHEREAS, the amendment is necessary in carrying out the purposes of the Marin County Flood Control and Water Conservation District Act.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the Marin County Flood Control and Water Conservation District hereby ratifies the previous action annexing the Town of Fairfax to Flood Zone 9 of January 23, 2007 with no further conditions.

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 20th day of February, 2007, by the following vote:

AYES: SUPERVISORS Judy Arnold, Harold C. Brown, Jr., Charles McGlashan,
Susan L. Adams, Steve Kinsey
NOES: NONE
ABSENT: NONE

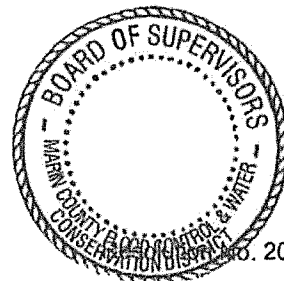


President, Board of Supervisors
Marin County Flood Control
And Water Conservation District

ATTEST:



CLERK



RESOLUTION NO. 2007-25

RESOLUTION NO. 2474

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX PROVIDING CONCURRENCE TO THE ANNEXATION OF THE TOWN OF FAIRFAX INTO THE BOUNDARIES OF THE MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

- WHEREAS, the Marin County Flood Control and Water Conservation District (the "District") was established pursuant to Chapter 68 of the State of California Water Code - Appendix (the "District Act") to provide for, among other things, the control of the flood and storm waters and the conservation of such waters for beneficial purposes; and
- WHEREAS, the Town of Fairfax (the "Town") is not currently within the boundaries of the District; and
- WHEREAS, under Section 68-3.5 of the District Act, before acquiring authority to proceed with the annexation of land that is within the jurisdiction of an incorporated municipality, the Board of Supervisors must obtain the concurrence of the municipality, which concurrence may be evidenced by a resolution adopted by a majority vote of the members of the governing council of the municipality; and
- WHEREAS, the District and the Board of Supervisors of the County wish to annex the Town into the District and have requested that the Town provide its concurrence to such annexation;
- WHEREAS, the Town Council wishes to consent to the request and provide such concurrence, on the condition that the Zone 9 Advisory Board of the District established pursuant to Section 68-6.2 of the District Act include one voting member appointed by the Town after the annexation is effective; and
- WHEREAS, the Town Council provides concurrence to the annexation with the understanding that during the feasibility study phase of any proposed project within the Town of Fairfax, the District shall provide to the Town all documents pertinent to the project to allow for review and comment by the Town Council.

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Fairfax that:

1. The Town provides its concurrence to the annexation of the territory of the Town into the District provided that the Zone 9 Advisory Board Bylaws be revised to provide that said Board

includes a voting member appointed by the Town after the annexation is effective; and

2. The annexation of the Town of Fairfax into Flood Zone District 9 does not make the Town liable or obligated for the cost of currently scheduled construction projects in the District; and
3. The Town Clerk is hereby directed to cause certified copies of this Resolution to be delivered to the Board of Supervisors and the District.

BE IT FURTHER RESOLVED, that Resolution No. 2463 is hereby rescinded.

The foregoing Resolution No. 2474 was adopted at the regular meeting of the Fairfax Town Council held on February 7, 2007, by the following vote:

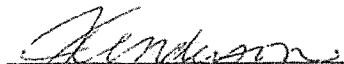
AYES: Brandborg, Maggiore, Tremaine, Weinsoff

NOES: Bragman

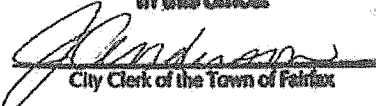
ABSENT: None


Larry Bragman, Mayor

Attest:


Town Clerk

The foregoing document is a correct
copy of the original on record
in this office.


City Clerk of the Town of Fairfax

DEPARTMENT OF PUBLIC WORKS

COUNTY OF MARIN
www.co.marlin.ca.us/pw

P. O. Box 4186, San Rafael, CA 94913-4186 • 415/499-6528 • FAX 415/499-3799 • TTY 415/499-3232

Farhad Mansourian, RCE
Director

February 20, 2007

Board of Supervisors
Marin County Flood Control and Water Conservation District
Civic Center
San Rafael, CA 94903

SUBJECT: Ratification of Annexation of the Town of Fairfax to Flood Control Zone 9 (Ross Valley-Corte Madera Creek) dated January 23, 2007

Dear Board Members:

RECOMMENDATION: Adopt the attached Resolution to ratify your Board's prior Resolution No. 2007-05 of January 23, 2007 amending the boundaries of Flood Control District 9 to include the Towns of San Anselmo and Fairfax.

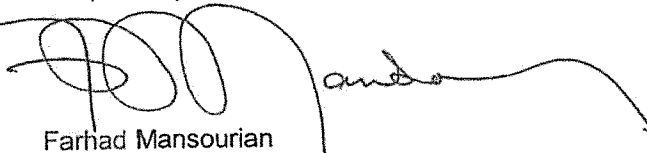
SUMMARY: On January 23, 2007, your Board approved the annexation of property to Flood Control District Zone 9 to include the Towns of San Anselmo and Fairfax. This action was approved with the condition that the Town of Fairfax remove *Condition #2* from its Resolution of November 15, 2006 as said condition was in conflict with the State Water Code Chapter 68.

Fairfax has removed the condition from its resolution, updating that with a new resolution dated February 7, 2007 which is herewith attached. Based on the Town's new resolution, the Flood Control District requests this ratification of its approval of the annexation on January 23, 2007.

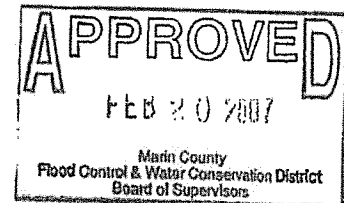
FISCAL IMPACT: None identified.

REVIEWED BY: () Auditor Controller (X) N/A
(X) County Counsel () N/A
() Human Resources (x) N/A

Respectfully submitted,



Farhad Mansourian
Director



c: Town Administrator of San Anselmo
Town Manager of Fairfax
Town Manager of the City of Larkspur
Town Manager of Ross
Directors of Public Works of Fairfax,
Larkspur, Ross, and San Anselmo

Flood Zone 9 Advisory Board Members
Kentfield Planning Advisory Board
Friends of Corte Madera Creek
Flood Mitigation League of the Ross Valley

L:\Jack Curley\CORTE MADERA CREEK PROJECT\Zone 9 Boundary Amendment\Ratify Zone 9 Annexation BOS
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 - BUILDING MAINTENANCE
499-6576 • FAX 499-3250
 - CAPITAL PROJECTS
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 - COMMUNICATION MAINTENANCE
499-7313 • FAX 499-3738
 - DISABILITY ACCESS
499-6528 (VOICE)
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 - FLOOD CONTROL DISTRICT
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 - WASTE MANAGEMENT
499-6647 • FAX 446-7373
- ALL AREA CODES ARE 415

EXHIBIT C

This Memorandum provides a brief overview of the facts relevant to the Initiative. Set forth in this Exhibit C is information pertaining to the status of Fairfax projects (as of July 2017) within the Ross Valley Watershed Flood Risk Reduction Program (Program).

Proposed Town of Fairfax Projects in the Ross Valley Watershed Flood Risk Reduction Program

A. Lefty Gomez Dual-Use Facility

All identified temporary flood diversion storage basins along Fairfax Creek upstream from downtown Fairfax provide flood reduction benefits to downtown Fairfax in addition to other watershed-wide benefits including in San Anselmo, Ross, Kentfield and Larkspur. In addition, the basins do not cause increases in flows downstream and have therefore been placed as top priority Phase 1 Program measures.

The potential storage basin site at Lefty Gomez Field is the second largest volumetric potential storage basin site identified in the Program Flow Reduction Study.

Due to the high cost of the Lefty Gomez Project, funding is not currently available and thus the project is not reflected in the Program's long- or short-term financial planning documents such as the Program Cost and Revenue Estimates, FY 17/18 Program Budget or FY 17/18 Work Plan. Should funding become available and with support of the Zone 9 Advisory Board, the District would continue working closely with the public and the Town of Fairfax through feasibility and into environmental review. Following incorporating public input, selection of a preferred alternative and certification of the EIR, the project would move into design and finally construction. Public engagement and collaboration would be built into all aspects of this process. If priorities are changed and funding secured, next steps would involve incorporating public feedback into a conceptual design. Removing flood diversion storage basin sites in the upper watershed and Fairfax from future consideration in the Program would most likely eliminate the possibility of reaching Ross Valley's flood reduction goal of achieving either a 25-year or 100-year level of flood protection.

B. Loma Alta Flood Diversion Basin

Currently estimated to cost between approximately \$1.6 and \$3.6 million, the identified potential flood diversion site is in feasibility phase and was confirmed as a potential flood diversion site in the Flow Reduction Study and the Program Environmental Impact Report. The site is currently in the FY 17/18 Budget and Work Plan. Next steps involve seeking outside funding opportunities to complete the feasibility phase and begin developing a conceptual design with community input.

C. Deer Park Dual-Use Facility

Currently estimated to cost between approximately \$6.6 and \$14 million, this measure is in feasibility phase and was confirmed as a potential flood diversion site in the Flow Reduction Study and the Program Environmental Impact Report. Funding is not currently available and the proposed project is not in the FY 17/18 Budget and Work Plan.

D. Azalea Avenue Bridge Replacement

The project, led by Town of Fairfax, currently estimated to cost between approximately \$2 and \$4.3 million is in feasibility phase. The site is currently in the FY 17/18 Budget and Work Plan and is eligible to receive federal bridge funding for replacement. The Town awarded an initial contract for preliminary design and environmental phases of the project in September 2016. More information is available from fairfaxbridges.com.

E. Merwin Avenue Bridge Replacement

Currently estimated to cost between approximately \$3 and \$6.3 million, however funding is not currently available for this project and is not in the FY 17/18 Budget and Work Plan. This proposed project is not currently eligible to receive federal bridge funding. The bridge replacement site is being evaluated for future consideration through the Program EIR. If priorities are changed and funding secured, next steps will involve continued study.

F. Sherman Avenue Culvert, Other Bridges and Town Hall Building Bridge

Replacement of the Sherman Avenue Box Culvert, removing or relocating the portion of Town Hall building that overhangs the creek and replacement of Scenic Avenue Bridge were identified in the 2011 Stetson Capital Improvement Plan Study. These measures together with only the replacement of Merwin and Azalea bridges and associated channel enlargements (no upstream flood diversion basin) would provide less than the Phase 1 Program goal of reaching the 25-year level of flood protection. Funding is not currently available for this project.

G. Creek Maintenance Program

The Program performs annual creek maintenance in coordination with the Town of Fairfax and other Ross Valley Towns. Annually funding, guidance and environmental support is provided through the Program to prioritize and perform maintenance within creeks and drainage facilities ahead of the winter season.

EXHIBIT D

This Memorandum provides a brief overview of various policy considerations related to the Initiative. Set forth in this Exhibit D is a more detailed presentation of those policies.

A. Federal Policy on Development in Floodplains

Several federal acts and associated policies are relevant to the Ross Valley.

The Flood Control Act of 1917

The Flood Control Act of 1917 was the most important piece of flood control legislation prior to the Flood Control Act of 1936. While its scope was limited to the lower Mississippi and Sacramento Rivers the act established important precedents and frameworks for the 1936 act.

The Flood Control Act of 1936

In the wake of severe floods of the same year, a flood relief bill already drawn up was expanded into a bill to establish a national policy of river development for flood control.

The act's Declaration of Policy stated that:

it is hereby recognized that destructive floods upon the rivers of the United States, upsetting orderly processes and causing loss of life and property, including the erosion of lands, and in impairing and obstructing navigation, highways, railroads, and other channels of commerce between the States, constitute a menace to national welfare; that it is the sense of Congress that flood control on navigable waters or their tributaries is a proper activity of the Federal Government in cooperation with States, their political subdivisions, and localities thereof; that investigations and improvements of rivers and other waterways, including watersheds thereof, for flood-control purposes are in the interest of the general welfare; that the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, and if the lives and social security of people are otherwise adversely affected.

Watershed and Flood Prevention Act (1954)

The act authorized flood protection structures in upstream watersheds (defined as smaller than 250,000 acres).

The Flood Disaster Protection Act of 1973

This act reaffirmed the use of the 1 percent annual chance flood and contained two major provisions. First, it prohibited federal agencies from providing assistance for acquisition or construction purposes in the designated floodplains of a community unless the community participated in the NFIP (see below). The provisions applied not only to direct federal financial assistance, but also included financial institutions regulated or insured by the federal government, thereby covering virtually all types of financial assistance. Second, if a community participated, federal agencies and federally regulated or insured lenders required flood insurance as a condition of grants and loans.

Executive Order 11988 – Floodplain Management (1977)

The Order requires federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. In accomplishing this objective, "each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by flood plains in carrying out its responsibilities" for the following actions:

- acquiring, managing, and disposing of federal lands and facilities;
- providing federally-undertaken, financed, or assisted construction and improvements;
- conducting federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

Federal guidelines related to this order address an eight-step process that agencies should carry out as part of their decision-making on projects that have potential impacts to or within the floodplain. The eight steps, which are summarized below:

1. Determine if a proposed action is in the base floodplain (that area which has a one percent or greater chance of flooding in any given year).
2. Conduct early public review, including public notice.
3. Identify and evaluate practicable alternatives to locating in the base floodplain, including alternative sites outside of the floodplain.
4. Identify impacts of the proposed action.
5. If impacts cannot be avoided, develop measures to minimize the impacts and restore and preserve the floodplain, as appropriate.
6. Reevaluate alternatives.
7. Present the findings and a public explanation.
8. Implement the action.

Executive Order 13690

On January 30, 2015, the President signed Executive Order (E.O.) 13690, establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, which amended E.O. 11988, Floodplain Management. Once implemented by Federal agencies, the Federal Flood Risk Management Standard (FFRMS) will reduce the risk and cost of future flood disasters by ensuring that Federal investments in and affecting floodplains are constructed to better withstand the impacts of flooding. It will support the thousands of communities across the country that have strengthened their local floodplain management codes and standards and will help ensure Federal projects last as long as intended. The FFRMS will apply to the Hazard Mitigation Assistance Grants, the Public Assistance Program, and any other FEMA grants when they fund construction activities in or affecting a floodplain.

The National Flood Insurance Program (NFIP)

The U.S. Congress established the National Flood Insurance Program (NFIP) with the passage of the National Flood Insurance Act of 1968. The NFIP is a Federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for State and community floodplain management regulations that reduce future flood damages. Participation in the NFIP is based on an agreement between communities and the Federal Government. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, the Federal Government will make flood insurance available within the community as a financial protection against flood losses. This insurance is designed to provide an insurance alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods.

Section 1315 of the 1968 Act prohibits Federal Emergency Management Agency (FEMA) from providing flood insurance to property owners unless the community adopts and enforces floodplain management criteria established under the Act. These criteria are established in the NFIP regulations at 44 CFR §60.3. The community must adopt a floodplain management ordinance that meets or exceeds the minimum NFIP criteria. In addition to the County of Marin, the following Ross Valley cities and towns participate in NFIP:

- Town of Fairfax
- Town of San Anselmo
- Town of Ross
- City of Larkspur

The Program has served as an important impetus for the establishment of floodplain management programs nationwide in the approximately 19,700 participating communities and most States and territories. Community participation in the NFIP is voluntary. Prior to the creation of the NFIP, floodplain management as a practice was not well established – only a few States and several hundred communities actually regulated floodplain development. For many communities, the NFIP was the community's initial exposure to land use planning and community regulations. The power to regulate development in the floodplain, including requiring and approving permits, inspecting property, and citing violations, is granted to communities under a State's police powers. FEMA has no direct involvement in the administration of local floodplain management ordinances. Since the Federal Government does not have land use authority, the NFIP is based on the Federal government's power to spend under the Constitution rather than any Federal authority to regulate land use.

Under the NFIP, the minimum floodplain management requirements that a community must adopt depends on the type of flood risk data (detailed FIS and FIRMs with BFEs or approximate A Zones and V Zones without BFEs) that the community has been provided by FEMA. Under the NFIP regulations, participating NFIP communities are required to regulate all development in SFHAs. "Development" is defined as:

"any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials."

Before a property owner can undertake any development in the SFHA, a permit must be obtained from the community. The community is responsible for reviewing the proposed development to

ensure that it complies with the community's floodplain management ordinance. Communities are also required to review proposed development in SFHAs to ensure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, such as 404 wetland permits from the Army Corps of Engineers or permits under the Endangered Species Act.

Under the NFIP, communities must review subdivision proposals and other proposed new development, including manufactured home parks or subdivisions to ensure that these development proposals are reasonably safe from flooding and that utilities and facilities servicing these subdivisions or other development are constructed to minimize or eliminate flood damage.

In general, the NFIP minimum floodplain management regulations require that new construction or substantially improved or substantially damaged existing buildings in A Zones must have their lowest floor (including basement) elevated to or above the Base Flood Elevation (BFE). Non-residential structures in A Zones can be either elevated or dry-floodproofed.

In addition, to specific development requirements, communities are required to select and adopt a regulatory floodway in riverine A Zones. The area chosen for the regulatory floodway must be designed to carry the waters of the 1-percent-annual-chance flood without increasing the water surface elevation of that flood more than one foot at any point. Once the floodway is designated, the community must prohibit development within that floodway which would cause any increase in flood heights.

Regulatory floodways have been designated throughout the Ross Valley, including within the following creeks:

- Fairfax Creek
- San Anselmo Creek
- Corte Madera Creek
- Ross Creek
- Tamalpais Creek

B. State Policy on Development in Floodplains

The Department of Water Resources (DWR) established the Division of Flood Management in November 1977, though flood forecasting and flood operations have been integral functions of the Department and its preceding agencies for about a century. The Department itself was created following severe flooding across Northern California in December 1955.

The DWR Division of Flood Management, among several others, is carrying out the work of the Department's FloodSAFE California Program which partners with local, regional, state, tribal, and federal officials in creating sustainable, integrated flood management and emergency response systems throughout California.

The Statewide Flood Management Planning (SFMP) program is led by the California Department of Water Resources (DWR) through the FloodSAFE Initiative and the Division of Statewide Integrated Water Management.

The program works in collaboration with local, State, and Federal agencies and tribal entities throughout California to make recommendations to guide flood management policies and investments in the coming decades by:

- Promoting a clear understanding of flood risks in California
- Garnering active support for partnerships at the local, State, and Federal levels
- Coordinating with other California Department of Water Resources (DWR) planning efforts
- Identifying strategies and feasible next steps to better incorporate flood management into integrated water management (IWM)
- Promoting an IWM approach for flood management solutions

Historically, flood management focused on developing narrowly focused flood infrastructure projects to reduce the chance of flooding in a specific geographic area. This infrastructure works effectively to reduce the chance of flooding and avoid damage to lives and property, but certain infrastructure can also alter and confine natural watercourses. These alterations can lead to unintended consequences, such as loss of ecological function and redirection of flood risks upstream or downstream of projects.

Also, traditional approaches to flood management have resulted in enabling urban and agricultural development within floodplains, placing property and people at risk of flooding, many of whom have inadequate awareness regarding residual flood risk.

Integrated Water Management (IWM)

Today, flood management is evolving from narrowly focused traditional approaches toward an IWM approach. The flood management emphasis has shifted to this more integrated approach that includes a mix of multiple measures, including structural and nonstructural approaches. This more integrated approach enhances the ability of undeveloped floodplains and other open spaces to behave more naturally and absorb, store, and slowly release floodwaters during small and medium-sized events. Flood management as part of an IWM approach considers land and water resources on a watershed scale, employing both structural and nonstructural measures to maximize the benefits of floodplains and minimize loss of life and damage to property from flooding, and recognizing the benefits to ecosystems from periodic flooding. Flood management utilizes best management practices (BMPs), which are methods or techniques that are used in a variety of circumstances and fields, from stormwater management to land use planning, to yield superior results. The application of flood management approaches within the context of an IWM approach extends the range of strategies that could be employed beyond the traditional approach. Additionally, the approaches that could be implemented to manage flood risk within a hydrologic region or watershed will vary, depending on the physical attributes of the area, the presence of undeveloped floodplains, the type of flood hazards (e.g., riverine, alluvial fan, coastal), and the areal extent of flooding. Although the primary purpose of flood management is public safety (i.e., reduce flood risk and reduce the impacts of flooding on lives and property), approaches to flood management can serve many purposes, and flood management is a key component of an IWM approach.

One recognized approaches to flood management in California is Retention and Detention Basins. Retention and detention basins are used to collect stormwater runoff and slowly release it at a controlled rate so that downstream areas are not flooded or eroded. A detention basin eventually drains all of its water and remains dry between storms. Retention basins have a permanent pool of water and can improve water quality by settling sediments and attached pollutants.

California Water Code

DIVISION 5. FLOOD CONTROL, PART 1. LOCAL FLOOD CONTROL, CHAPTER 2. Flood Control in Counties, ARTICLE 1. General Powers Relating to Flood

8100.

Under such limitations and restrictions as are prescribed by law, and in addition to jurisdiction and powers otherwise conferred, the boards of supervisors, in their respective counties, may appropriate and expend money from the general fund of the county for any of the following purposes in connection with streams or rivers in the county:

- (a) The construction of works, improvements, levees or check dams to prevent overflow and flooding.
- (b) The protection and reforestation of watersheds.
- (c) The conservation of the flood waters.
- (d) The making of all surveys, maps and plats necessary to carry out any work, construction or improvement authorized by this article.
- (e) The carrying out of any work, construction or improvement authorized by this article outside the county if the rivers or streams affected flow in or through more than one county.

ARTICLE 3. County Flood Control Districts

8110.

The board of supervisors may provide by ordinance for the organization and government of districts for the following purposes:

- (a) To protect and preserve the banks of rivers and streams and lands lying contiguous thereto from injury by overflow or washing.
- (b) To provide for the improvement of rivers and streams.
- (c) To prevent the obstruction of rivers and streams.
- (d) To assess, levy and collect within each district a tax for the district.

CHAPTER 4. Local Plans of Flood Protection

8200.

This chapter shall be known and may be cited as the Local Flood Protection Planning Act.

8201.

- (a) A local agency may prepare a local plan of flood protection in accordance with this chapter.
- (b) A local plan of flood protection shall include all of the following:
 1. A strategy to meet the urban level of flood protection, including planning for residual flood risk and system resiliency.
 2. Identification of all types of flood hazards.

3. Identification and risk assessment of the various facilities that provide flood protection for flood hazard areas, for current and future land uses.
 4. Identification of current and future flood corridors.
 5. Identification of needed improvements and costs of those improvements to the flood protection facilities that are necessary to meet flood protection standards.
 6. An emergency response and evacuation plan for flood-prone areas.
 7. A strategy to achieve multiple benefits, including flood protection, groundwater recharge, ecosystem health, and reduced maintenance costs over the long term.
 8. A long-term funding strategy for improvement and ongoing maintenance and operation of flood protection facilities.
- (c) A local agency that is not a city or county that prepares a plan pursuant to this chapter shall consult with the cities and counties that have jurisdiction over the planning area to ensure that the local plan of flood protection is consistent with local general plans.

Water Code APPENDIX CHAPTER 68- Marin County Flood Control & Water Conservation Act

68-5.

The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, construction, or otherwise, and to hold, use, enjoy, sell, let and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act. Construction or improvement of existing facilities may involve landscaping, related recreational activities, and other aesthetic treatment in order that the facility will be compatible with existing or planned development in the area of improvement.
5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, or otherwise, and to assume the costs and expenses of, any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of,

or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interest of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.
7. To cooperate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies or with the government of the United States, or with any municipality, public district or other public or private corporation or with the County of Marin, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.
8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof.

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Marin County Flood Control and Water Conservation District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual, of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Marin County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.
15. In addition to its other powers, the district shall have the power to preserve and enhance its properties, including related recreational enhancement, and, upon a finding by the board of supervisors that the acquisition is necessary for such purposes, to acquire, preserve, and enhance lands or interests in lands within the County of Marin contiguous to its properties, for the protection and preservation of the scenic beauty and natural environment for such properties or such lands.

C. Local Policy on Floodplain Management

Each local jurisdiction in Marin County has a Floodplain Management ordinance. The following applies to unincorporated lands in Ross Valley.

Marin County Code Chapter 23.09 - FLOODPLAIN MANAGEMENT (Applicable to Unincorporated Areas of Marin County)

23.09.010 - Statutory authorization: The Legislature of the state of California has in Government Code Sections 65302, 65560 and 65800 conferred upon local governmental units authority to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

Therefore, the board of supervisors of the county of Marin does adopt the following floodplain management regulations.

(Ord. 3293 § 1, 1999)

23.09.011 - Findings of fact.

1. The flood hazard areas of Marin County are subject to periodic inundation which results in loss of life and property, disruption of commerce and governmental services, health and safety hazards, extraordinary public expenditures for flood protection and relief, impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are caused by:
 - (a) The cumulative effect of obstructions in floodways and flood fringes, causing increased flood heights and erosive velocities;
 - (b) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damages.
3. This chapter relies upon a reasonable process for analyzing the flood hazard affecting specific lands. The regulatory flood selected for this chapter is representative of large floods known to have occurred in this region and which are reasonably characteristic of what can be expected to occur on the particular watercourses, streams, creeks, rivers, bays and lakes subject to this chapter. It is in this general order of a flood which could be expected to occur on the average once every one hundred years or has a one percent chance of occurrence in any one year.
4. The official flood identification map is adopted by reference and declared to be a part of this chapter and shall be that provided Marin County by the Federal Emergency Management Agency in its Flood Insurance Study dated March 1, 1982, and designated "Flood Insurance Rate Maps" (FIRM) and "Flood Boundary Floodway Maps," "Marin County, California, Unincorporated Area" dated May 5, 1997, and all subsequent amendments to and/or revisions of any of these. These maps delineate those areas determined to be subject to flooding from a flood which has a one percent chance of occurrence in any one year. Copies of said maps are on file with the department of public works, and may be inspected during regular county business hours.

(Ord. 3293 § 2, 1999)

23.09.020 - Statement of purpose.

1. It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize the losses described in this section by provisions designed to:
 - (a) Protect human life and health;
 - (b) Minimize expenditure of public money for flood control projects;
 - (c) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (d) Minimize prolonged business interruptions;
 - (e) Minimize damage to public facilities and utilities, such as water located in areas of special flood hazard;

- (f) Help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
 - (g) Ensure that potential buyers are notified that property is in an area of special flood hazard;
and
 - (h) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
2. In order to accomplish its purposes, this chapter includes methods and provisions for:
- (a) Restricting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
 - (b) Requiring that uses vulnerable to flood, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - (c) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
 - (d) Controlling filling, grading, dredging and other development which may increase flood damage; and
 - (e) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

EXHIBIT E

Questions and Answers

This Memorandum provides a brief overview of the facts relevant to the Initiative. Set forth in this Exhibit E are answers to questions received by the Ross Valley Watershed Flood Risk Reduction Program (Program) about the proposed Lefty Gomez Dual Use Facility via public meetings, written requests and referenced from Frequently Asked Questions posted on the Program Website (rossvalleywatershed.org).

1. Q: Will the Lefty Gomez project help prevent flooding in downtown Fairfax?

A: Yes, Lefty Gomez will help prevent flooding in downtown Fairfax by holding back the excess floodwaters during significant storm events because it is upstream of Fairfax. Flood officials will coordinate with emergency and weather officials during major storm events to monitor creek levels and rain rates to activate use of the flood diversion and storage basin in coordination with the time it takes for water to flow from the basin site to downtown to provide maximum protection.

2. Q: Isn't flooding in downtown Fairfax actually caused by the undersized box culvert, and shouldn't that be fixed instead of building a detention basin?

A: At this point in the evolution of both human development in the watershed and our understanding of the hydrologic processes that cause flooding, we can't remove channel constrictions to fix flooding without offsetting the damage it would do downstream. Floodplains, including the flooding in downtown Fairfax, slow water down and spread it out. If that water were kept in the channel it would cause new areas to flood downstream or make the flooding problem in San Anselmo that much worse. The Flood Control and Water Conservation District (District) is working on projects that increase the channel capacity at the downstream end of the watershed so that the undersized bridges and box culverts in Fairfax could someday be made bigger. Until those projects are complete, flood diversion and storage basins are the best approach to reducing the Town of Fairfax's flood risk.

2. Q: What's happening now with the Lefty Gomez Project and what are the next steps?

A: The District, in consultation with the Ross Valley School District, has performed some preliminary studies to look at joint use opportunities. These provide for ball fields with temporary flood storage during those rare occurrences when a major storm is forecasted that greatly exceeds the capacities of our creeks. The Lefty Gomez Field will be evaluated in the Program Environmental Impact Report because it is important that the community understand the watershed-wide impacts with and without this site. Otherwise, no further detailed study is currently planned as the Program's limited resources are being focused on other projects. The Lefty Gomez flood diversion storage basin site is not currently in the FY17/18 Budget and Work Plan and has no supporting funding currently allocated in the planning document that projects estimated costs and revenue through the end of the Stormwater Fee, 2027. This opportunity will be revisited should funding become available and community consensus on the benefits of the project are reached.

3. Q: Who will make the decisions on what the new field & detention site will look like & how it will function?

A: Public input and partner participation is integral to every step of the process and ample opportunities will exist over throughout all phases to deliver a project that is the right fit for the community. During the initial feasibility assessment phase, several community meetings would be held to present current ideas and obtain feedback on what is important to the community when considering detention at Lefty Gomez field. Once these series of meetings are held, designs will be developed and presented which aim to incorporate feedback received. This iterative process will conclude with the selection of a preferred alternative and the finalization of designs for the preferred alternative.

The community will be engaged to define what aspects of field aesthetics and use, as well as patron health and safety, are important to them. Design and engineering experts will be consulted to take community input and develop preliminary designs for further community review and consideration. A preferred alternative will then be developed that incorporates input and provides a design that preserves or improves on current uses and amenities, while also adding the benefit of a functioning floodwater detention facility.

4. Q: When will flood diversion and storage basin designs be ready for public review?

A: While drawings have been drafted to assess the concept of whether or not a flood diversion and storage basin at Lefty Gomez field might be technically feasible, drawings do not currently reflect public input that will be sought and later incorporated into more refined drawings. Opportunities to review and discuss these more refined drawings will be announced in advance of any plans to conduct future community meetings. However, no further detailed study is currently planned, as the Program's limited resources are being focused on other projects. Stay in touch and be notified of future progress and meetings by selecting "Subscribe for Updates" at RossValleyWatershed.org.

5. Q: How much would the project cost and how would it be funded?

A: The preliminary cost estimate is \$16.0-\$23.5 million, and would be paid for with Ross Valley Flood Control Zone 9 Storm Drainage Fee and potential grant funding sources. Further development of the project may result in changes to these cost estimates.

6. Q: How long will construction take and what would the impacts be?

A: Construction is estimated to take 1 to 2 years. As with any construction project, there would be temporary impacts to neighbors, but they would be mitigated as much as possible and a construction manager would be assigned to ensure that all approved conditions for construction are being followed. The field would be closed for that period, but a transition plan for utilizing other playing fields for games would be developed with the community, recreational sports leaders, and the Ross Valley School District and implemented prior to the start of construction.

7. Q: Why not utilize Low Impact Development (LID) or green solutions (such as bioswales) to solve our flooding issues?

A: Low impact development (LID) strategies offer a "green solution" to help reduce storm water runoff by replacing hardscapes with more permeable surfaces to reduce runoff into creeks.

While LID may help reduce the amount of storm water from reaching the creek during smaller storms, its effectiveness is greatly reduced as soils in the watershed become saturated and there is nowhere else for water to go but the creek. During flood events such as the one in 2005 and our most recent ones in 2016/17, soils were so saturated that LID wouldn't have been able to reduce the runoff necessary to prevent flooding.

8. Q: Can't you just use cisterns and rain barrels to store rainwater and address flooding issues?

A: In order to use rain barrels and cisterns for flood protection during storm events, they would need to stay empty and ready for use. It would require 2,962,273 empty, 55 gallon rain barrels to replace 500 acre feet of needed detention in Ross Valley. This amounts to 344 barrels per residential parcel in the upper Ross Valley. Operationally, every single individual rain barrel would need to remain empty until just when flooding begins, then everyone would need to open the barrels at the exactly same time to capture the same amount of water that the detention basins would hold back.

9. Q: Why not hold the water somewhere other than Lefty Gomez Field?

A: In the past, these flood waters have flowed through our downtown businesses, city halls, homes and streets. The excess floodwaters need to be held back during those severe storms until our creeks recede and have enough room to drain those extra floodwaters that would have otherwise been flowing into homes and businesses. There are limited sites available in Ross Valley and Lefty Gomez is ideally situated to provide direct benefit to reduce peak floodwater levels in downtown Fairfax as well as those communities downstream. A list of the sites is available at www.RossValleyWatershed.org.

10. Q: Why should a flood diversion and storage basin be considered at Lefty Gomez field?

A: Each site was chosen as the best location for temporarily detaining floodwaters and it is essential for all the flood risk reduction measures to work together. With San Anselmo's Memorial Park no longer an option for use as floodwater diversion and temporary storage in Ross Valley, Lefty Gomez Field is critically important to help reach our community's flood protection goals. Lefty Gomez Field was identified as a site that meets the ideal criteria for a flood diversion and storage basin site and it is anticipated that, with the community's input, the field can be improved and enhanced for the community's use while also providing essential flood protection during severe storms. Possible improvement ideas include new concessions, shade, restrooms and changing rooms, improved field drainage, scoreboards and safe routes to school.

11. Q: How would a flood diversion and storage basin at Lefty Gomez Field work?

A: Lefty Gomez field would continue to operate on a day-to-day basis as an important athletic facility for White Hill Middle School and a recreational venue for local youth sporting leagues and the general public. On the rare occasion that it is needed during a severe storm, the basin would be used only for short periods of time for holding floodwater. The fields typically are not in use during these severe storms, as any school PE classes are held inside the school gymnasium and sport games are rescheduled: Floodwater would be diverted from the creek and stored for short periods of time (+8-12 hours) on the field. This would occur during the later stage of a severe storm when monitoring indicates that flooding is imminent. As water in the

creeks recedes, the water stored on the field would be drained back into the creek. The fields would be cleaned, restored & made ready for recreational use.

12. Q: Will the project eliminate a baseball field, a soccer field and a large portion of the usable space?

A: This is yet to be determined, as the project remains in the conceptual phase. However, the District understands that the number, size, and type of sports fields are very important resources to the community and would endeavor to create a design that protects and enhances the recreational opportunities at the site.

13. Q: Will the mature trees around the ball field be removed?

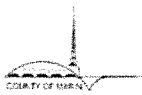
A: This is yet to be determined, as the project is still in the conceptual phase. However, the District understands that mature trees along the project site provide shade, shelter, screening and visual interest. When considering design options, protection of existing mature trees where possible will be considered and replanting and replacing removed trees would also be considered.

14. Q: Where would games and practices be held while the existing fields are under construction?

A: Working with the community, recreational leaders, and the Ross Valley School District, a transition plan during construction would be developed to ensure there are places for games and practices to be held. There are also opportunities for exploring the use of a new site for a temporary play field nearby. These are the types of details that would be worked out as the project takes shape and only following an input and vetting process with the community.

15. Q: How long would the field be closed after a flood & who would be responsible for cleaning the field?

A: The field could be closed approximately 1 to 3 weeks depending on the extent of flood damage. The District would restore the fields according to a specific maintenance plan that is developed and approved as part of the project.



Ross Valley Flood Protection and Watershed Program

PROJECT: LEFTY GOMEZ FIELD DUAL-USE FACILITY

FREQUENTLY ASKED QUESTIONS (FAQ) FEBRUARY 2, 2016

What is the Ross Valley Flood Protection & Watershed Program?

After the devastating flood of 2005, the Ross Valley communities came together and agreed that something had to be done to prevent flooding. Elected leaders from throughout the Valley asked the County to study the problem and propose solutions. Experts in hydrology, water resources, and flood protection created a computer model simulating how the watershed works, used the model to test various possible combinations of solutions, and ultimately recommended a regional, watershed-based approach comprised of many projects – removing constriction points, maximizing capacity in the creek channel, and holding back waters in detention basins. Together, these measures would contain a flood like that experienced in 2005.

Why is detention being considered?

Improvements within the creek (such as removing constrictions at key bridges, clearing debris, and constructing modest flood walls) are not enough to prevent the creek from flooding during severe storms like those experienced in 2005 and 1982. The excess storm water that would otherwise damage our community's homes and businesses during these types of severe storms needs to be held back in a more controlled and safe manner if our community is to be protected.

How does detention work?

Detention works by temporarily storing creek flow in a basin adjacent to the creek upstream of where flooding would otherwise occur. The basin is kept empty at all times except when it is needed during a rare, severe storm event. The detention basins would be used only when flooding in the community is imminent. As creek water recedes, floodwater from the detention basin is slowly drained into the creek.

Aren't there other ways of reducing the community's flood risk?

There are many tools for reducing flood risk. The goal of the Ross Valley Flood Protection Program is to work with the community to carefully consider how each can play a part in lowering the likelihood and/or consequences of flooding; however, the digital model created as part of a watershed-wide evaluation demonstrated the need for detaining floodwaters if a severe flooding event like the one experienced in 2005 is to be prevented. Other tools include removing constriction points (e.g, bridge replacements) and maximizing capacity in the creek channel (e.g., floodwalls, berms, creek maintenance); but models demonstrate that these solutions together do not eliminate the need for detaining floodwaters.

There are other ways of reducing the community's flood risk, but none that are as effective, practical, implementable, or sustainable as those outlined in the Program. Some suggest removing creek vegetation, gravel bars, and lowering the creek bed by bulldozer. Current laws largely prohibit these types of activities, as they can be environmentally damaging and may also increase erosion, property loss, and sedimentation in lower creek reaches. Some also suggest collecting rainwater via a network of rain barrels or cisterns placed throughout the community; however, they would fill during the early stages of the storm and be ineffective by the time the intense part of the storm arrives and when creeks begin to flood. Furthermore, coordinating an extensive network of thousands of rain barrels to collect enough rain volume to prevent flooding is impractical and infeasible.

PROPOSED PROJECT: LEFTY GOMEZ FIELD DUAL-USE FACILITY

FREQUENTLY ASKED QUESTIONS (FAQ) FEBRUARY 2, 2016

Why not utilize Low Impact Development (LID) or green solutions to solve our flooding issues?

Low impact development (LID) strategies offer a "green solution" to help reduce storm water runoff by replacing hardscapes with more permeable surfaces to reduce runoff into creeks. While LID may help reduce the amount of storm water from reaching the creek during smaller storms, its effectiveness is greatly reduced as soils in the watershed become saturated and there is nowhere else for water to go but the creek. During flood events such as the one in 2005, soils were so saturated that LID wouldn't have been able to reduce the runoff necessary to prevent flooding.

Why not hold the water somewhere other than Lefty Gomez Field?

Only by working together could the five detention basin sites identified in the 2015 Flow Reduction Study be able to temporarily store the volume of water needed to prevent the type of flooding experienced in December 2005. Each site alone would not hold enough water to prevent flooding. The use of fewer than these sites would require that other, less ideal, sites be identified and/or other flood risk reduction projects be significantly modified (e.g., higher floodwalls downstream) in order to reach the current flood protection goal. A list of the sites is available at www.RossValleyWatershed.org.

Why should detention be considered at Lefty Gomez field?

Each site was chosen as the best location for detaining floodwaters and it is essential for all the flood protection measures to work together. With Memorial Park no longer an option for use as floodwater detention in Ross Valley, Lefty Gomez Field is critically important to help reach our community's flood protection goals. Lefty Gomez Field was identified as a site that meets the ideal criteria for a detention basin site and it is anticipated that, with the community's input, the field can be improved and enhanced for the community's use while also providing essential flood protection during severe storms. Possible improvement ideas include new concessions, restrooms and changing rooms, improved field drainage, scoreboards, and safe routes to school.

How would detention at Lefty Gomez Field work?

Lefty Gomez field would normally not be used for detention and would continue to provide an important athletic facility for White Hill Middle School and a recreational venue for local youth sporting leagues and the general public. On the rare occasion that it is needed during a severe storm, the basin would be used for floodwater detention. Water would be diverted from the creek and stored on the field. This would occur during the later stages of a severe storm when monitoring indicates that flooding is imminent. As water in the creeks recedes, the water stored on the field would be slowly drained back into the creek. The fields would be cleaned, restored & made ready for recreational use.

What are some health and safety concerns with detention sites and how can they be addressed?

Any design for detaining water at a considered site, including Lefty Gomez field, would carefully address health and safety concerns and other risks identified by the community as a potential concern. A detention site could include use of small dams, spillways, berms, as well as flood and retaining walls, as it works to detain and manage floodwaters. These features are not unique to detention sites and are common across Marin County. Examples include existing dams and spillways at Phoenix Lake, and Stafford Lake, and berms at the Civic Center's lagoons.

How long would the field be closed after a flood & who would be responsible for cleaning the field?

The field could be closed approximately 1 to 3 weeks depending on the extent of flood damage. The Marin County Flood Control & Water Conservation District would restore the fields according to a specific maintenance plan that is developed and approved as part of the project.

Where would games be held while the existing fields are under construction?

Working with the community and the Ross Valley School District, a transition plan during construction would be developed to ensure there are places for games and practices to be held. There are also opportunities for exploring the use of a new site for a



PROPOSED PROJECT: LEFTY GOMEZ FIELD DUAL-USE FACILITY

FREQUENTLY ASKED QUESTIONS (FAQ) FEBRUARY 2, 2016

temporary play field nearby. These are the types of details which would be worked out as the project takes shape and only following an input and vetting process with the community.

What's happening now and what are the next steps?

Over the past few years, a lot of work has already been completed to identify the flooding issues experienced in the Ross Valley and to begin considering which types of solutions might work to help prevent a repeat of the type of flooding experienced in December 2005. The point has now come for these ideas to be presented to the community and for discussions to take place that will help shape how these possible solutions might be designed into actual projects which align with the community's unique needs and values. This phase is part of the initial feasibility assessment, which will be occurring over the next 6 – 9 months, and before the commencement of more detailed designs and environmental review.

Following these steps, more work will need to be done to work with the community on the selection of a preferred alternative (1 – 3 months), development of a final design (18 – 24 months), and, finally, construction.

Who will make the decisions on what the new field & detention site will look like & how it will function?

Public input and partner participation is integral to every step of the process and ample opportunities will exist over the coming months and years to deliver a project that is the right fit for the community. At the current initial feasibility assessment phase, several community meetings will be held to present current ideas and obtain feedback on what is important to the community when considering detention at Lefty Gomez field. Once these series of meetings are held, designs will be developed and presented which aim to incorporate feedback received. This iterative process will conclude with the selection of a preferred alternative and the finalization of designs for the preferred alternative.

The community will be engaged to define what aspects of field aesthetics and use, as well as patron

health and safety, are important to them. Design and engineering experts will be consulted to take community input and develop preliminary designs for further community review and consideration. A preferred alternative will then be developed that incorporates input and provides a design that preserves or improves on current uses and amenities, while also adding the benefit of a functioning floodwater detention facility.

When will detention basin designs be ready for public review?

While drawings have been drafted to assess the concept of whether or not detention at Lefty Gomez field might be technically feasible, drawings do not currently reflect public input that will be sought and later incorporated into more refined drawings. Opportunities to review and discuss these more refined drawings will be announced in advance of future community meetings. Stay in touch and be notified of future progress and meetings by selecting "Subscribe for Updates" at RossValleyWatershed.org.

How much would the project cost and how would it be funded?

The preliminary cost estimate is \$6.4 million, paid for with Ross Valley Flood Control Zone 9 Storm Drainage Fee and potential grant funding sources. Further development of the project may result in changes to these cost estimates.

How long will construction take and what would the impacts be?

Construction is estimated to take 1 to 2 years. As with any construction project, there would be impacts to neighbors but they would be mitigated as much as possible and a construction manager would be assigned to ensure that all approved conditions for construction are being followed. The field would be closed for that period, but a transition plan for utilizing other playing fields for games would be developed with the community and the Ross Valley School District, and implemented prior to the start of construction.

RESOLUTION 17-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADOPTING AN INITIATIVE MEASURE AMENDING THE TOWN OF FAIRFAX
GENERAL PLAN TO PROHIBIT LAND USES THAT ADVERSELY AFFECT
COMMUNITY RECREATIONAL SPORTS FIELDS, INCLUDING LEFTY GOMEZ
PARK, WITHOUT VOTER APPROVAL; IN LIEU OF CALLING AN ELECTION FOR
SAID PURPOSE, PURSUANT TO ELECTIONS CODE SECTION 9215**

WHEREAS, pursuant to authority provided by law, a petition has been filed with the Town Council of the Town of Fairfax, signed by at least fifteen (15%) percent of the number of registered voters of the Town, to submit to the qualified electors a proposed initiative measure amending the Town of Fairfax General Plan to prohibit land uses that adversely affect community recreational sports fields, including Lefty Gomez Park, without voter approval (the “Measure”); and

WHEREAS, the Town Clerk’s office, in coordination with the Marin County Registrar’s office, examined the records of voter registration and ascertained that pursuant to California Elections Code Section 9215 the petition is signed by the requisite number of voters, and has so certified; and

WHEREAS, Elections Code Section 9215 authorizes the Town Council to adopt the Measure, without alteration, in lieu of placing the Measure on an election; and

WHEREAS, the Town Council desires to forego an election and, in turn, adopt the Measure, without alteration; and

WHEREAS, the specific terms of the Measure/General Plan Amendment are attached hereto as Exhibit “A” and by this reference made an operative part hereof;

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX,
CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS
FOLLOWS:**

SECTION 1. Recitals. The Town Council of the Town hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part hereof.

SECTION 2. Adoption of Measure in Lieu of Election. Pursuant to California Elections Code Section 9215, and any other applicable requirements of the laws of the State of California relating to general law cities, the Town Council hereby adopts the Measure, without alteration, in lieu of calling an election within the Town of Fairfax on the Measure. The full text of the Measure is attached hereto as Exhibit “A” and incorporated herein by this reference.

SECTION 3. CEQA. The Town Council hereby finds and determines that adopting the Measure in lieu of placing it on an election is exempt from the California Environmental Quality Act (“CEQA”). CEQA only applies to the “discretionary” actions of the Town that may have a direct or indirect effect on the environment. However, the California Supreme Court has held

that adopting a land use Measure that has qualified through citizens' petition in lieu of placing it on an election is not a "discretionary" action of the Town and is therefore exempt from CEQA. *Tuolumne Jobs & Small Business Alliance v. Superior Court (City of Sonora)*, (2014) 59 Cal. 4th 1029.

SECTION 4. 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 5. Effective Date of Resolution/Voter Approval Required to Repeal/Amend. This Resolution shall take effect immediately upon its adoption. Pursuant to Elections Code Section 9217, this Resolution shall have the same force and effect as a voter-approved measure and may not be repealed or amended without majority approval of Fairfax voters.

The foregoing Resolution was duly and regularly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax on the 2nd day of August, 2017, by the Town Council of the Town of Fairfax, California, at a regular meeting held on this 2nd day of August, 2017, by the following vote:

AYES:
NOES:
ABSENT:

JOHN REED, MAYOR

ATTEST:

Michele Gardner, Town Clerk

EXHIBIT "A"

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING THE TOWN OF FAIRFAX GENERAL PLAN TO PROHIBIT LAND USES
THAT ADVERSELY AFFECT COMMUNITY RECREATIONAL SPORTS FIELDS,
INCLUDING LEFTY GOMEZ PARK, WITHOUT VOTER APPROVAL**

**THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES HEREBY RESOLVE,
DECLARE, DETERMINE, AND ORDER AS FOLLOWS:**

SECTION I. TITLE

This measure shall be known and may be cited as the "White Hill School Lefty Gomez Field Initiative" (the "Initiative").

SECTION II. FINDINGS AND PURPOSES.

A. Purposes. The purpose of the Initiative is to preserve the rights of Fairfax citizens to control the decision on how recreational sports fields in the Town of Fairfax will be utilized in the future. To accomplish this objective, the Initiative amends the Town General Plan as follows:

1. The Initiative amends the General Plan's Land Use Element to add as an objective the preservation of recreational sports fields in the Town of Fairfax in order to enhance and maintain local community activities and character.
2. The Initiative amends the General Plan's Land Use Element to add a policy that the White Hill School property, including Lefty Gomez Field, may not be utilized as a flood detention basin, nor may non-classroom facilities (as that term is utilized in California Government Code § 53094) be permitted that adversely affect or reduce the recreational amenities at the school's sports fields without approval of the citizens of Fairfax as part of a general election.
3. The Initiative amends the General Plan's Land Use Element to add a policy that land uses that adversely affect the community benefits provided by recreational sports activities may not be permitted on lands designated as Public Domain or Open Space that are currently utilized for recreational sports without approval by the citizens of Fairfax as part of a general election, unless such lands are owned by school districts in which case any such uses authorizing non-classroom activities (as that term is utilized in California Government Code §53094) shall not be allowed.
4. The Initiative amends the General Plan's Land Use Element to add an implementation program to amend the Town's zoning code to be consistent with the General Plan amendments made by the Initiative.

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

1. Recreational sports fields in the Town of Fairfax enhance and maintain local community activities and character by allowing local students and nonstudent citizens a place for community gathering and recreational activities within the Town of Fairfax.
2. The Town of Fairfax is currently lacking in parks and recreational facilities on the limited flat land spaces existing in the Town.
3. White Hill School's Lefty Gomez Field is an irreplaceable recreational resource for the citizens of Fairfax. Lefty Gomez Field, in its present form, is the result of many hours of volunteer work and resources donated by the citizens of Fairfax, West Marin Little League and local soccer teams, which has created a unique recreational experience for local citizens.
4. This Initiative would allow the preservation of Lefty Gomez Field in its current form, and would prohibit recreational sports fields in the Town of Fairfax from being used for non-recreational uses that interfere with the existing recreational uses enjoyed by local students and Fairfax citizens. The Initiative will ensure that land use decisions that may adversely affect or reduce the limited amount of recreational sports fields in Fairfax will be made by the citizens of the Town of Fairfax in a General Election vote.
5. This Initiative does not and will not interfere with legally permitted classroom facility uses at Lefty Gomez Field or any other Town lands owned by local school districts and therefore subject to Government Code §53094.

SECTION III. AMENDMENTS TO THE GENERAL PLAN.

A. The Town's General Plan is hereby amended as follows:

1. Add Objective LU 7.3 to the General Plan's Land Use Element as follows: Preserve recreational sports fields in Fairfax to maintain and enhance local community activities and character.
2. Add Policy LU 7.3.1 as follows: Lefty Gomez Field may not be utilized as a flood detention basin, nor may any non-classroom facilities (as that term is utilized in California Government Code §53094) be permitted that adversely affect or reduce the recreational amenities at the school's sports fields without approval of the citizens of Fairfax as part of a general election.
3. Add Policy LU 7.3.2 as follows: No lands designated as Public Domain or Open Space in the General Plan that are currently utilized for recreational sports shall allow land uses that adversely affect the community benefit provided by those recreational sports activities without approval by the citizens of Fairfax as part of a general election, unless such lands are owned by school districts in which case any such use that is a non-classroom facility (as that term is utilized in California Government Code §53094) shall not be allowed without approval of the citizens of Fairfax as part of a general election.

4. Add Program 7.3.1.2 as follows: The Town shall implement Policy LU 7.3.2 by amending its zoning code to implement and be consistent with this General Plan amendment.

SECTION IV. FINDINGS OF CONSISTENCY.

This measure is consistent with and would promote the objectives and policies of the Town's General Plan. Without limiting the foregoing, this finding of consistency is based on the following:

A. This measure is consistent with the objectives and policies of the General Plan to preserve community and neighborhood character in that it would preserve the recreational uses of Lefty Gomez Field and other recreational sports fields in the Town of Fairfax unless the Town's citizens agreed that such recreational field use could be eliminated or reduced. Recreational sports fields build community and neighborhood character by allowing local students and nonstudent citizens a place for community gathering and recreational activities within the Town of Fairfax, which is lacking in parks and recreational facilities on the limited flat land spaces existing in the Town.

B. This measure is consistent with the objectives and policies of the General Plan, which require the Town to implement updated zoning ordinances that account for the different land use designations and criteria set forth in the General Plan.

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 the Ross Valley School District's currently undeveloped lands used for recreation including Lefty Gomez Field, or as a more general enactment that could otherwise be applied in a manner that addresses any of the following subjects: planning and zoning controls and development standards applicable to any part of the Ross Valley School District's White Hill School Lefty Gomez Field, as set forth in the Town's General Plan, Municipal Code, Zoning Maps or in any other applicable Town law, policy or regulation with the potential for adverse effects on recreational sports fields in the Town of Fairfax. 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. This requirement shall apply only with respect to two zones, Public Domain and Open Space, and shall not affect the Town's ability to amend any provisions of its General Plan or other planning documents that apply to other lands within the Town.

SECTION IX. COMPETING MEASURES.

This measure was circulated and qualified as a citizens' initiative. If the Town Council proposes an alternative measure for placement on the same ballot as this measure, that measure is hereby deemed to be inconsistent with this measure, and the measure receiving the greater number of affirmative votes shall supersede the other measure. No provision of the superseded measure shall be implemented or become effective.

SECTION IX. IMPLEMENTATION.

- A. Upon the effective date of this Initiative, the General Plan amendments contained in this Initiative are hereby inserted into the Town General Plan.
- B. If this Initiative is approved, the Town shall immediately undertake to revise any elements or provisions of the General Plan and Municipal Code, including all exhibits and figures, and all other Town ordinances, policies and implementation programs or policies, in order to remove any inconsistencies which may exist between the purposes of this Initiative as set forth above.

RESOLUTION 17-___

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD IN ITS JURISDICTION ON NOVEMBER 7, 2017, FOR THE PURPOSE OF SUBMITTING TO FAIRFAX VOTERS AN INITIATIVE MEASURE AMENDING THE TOWN OF FAIRFAX GENERAL PLAN TO PROHIBIT LAND USES THAT ADVERSELY AFFECT COMMUNITY RECREATIONAL SPORTS FIELDS, INCLUDING LEFTY GOMEZ PARK, WITHOUT VOTER APPROVAL; REQUESTING THE MARIN COUNTY BOARD OF SUPERVISORS TO CONSOLIDATE WITH ANY OTHER ELECTION CONDUCTED ON SAID DATE AND TO PERMIT THE ELECTIONS DEPARTMENT TO PROVIDE ELECTION SERVICES; AND SETTING RULES FOR ARGUMENTS AND REBUTTALS FOR AND AGAINST SAID MEASURE

WHEREAS, pursuant to authority provided by law, a petition has been filed with the Town Council of the Town of Fairfax, signed by at least fifteen (15%) percent of the number of registered voters of the Town, to submit to the qualified electors a proposed initiative measure amending the Town of Fairfax General Plan to prohibit land uses that adversely affect community recreational sports fields, including Lefty Gomez Park, without voter approval (the “Measure”); and

WHEREAS, the Town Clerk’s office, in coordination with the Marin County Registrar’s office, examined the records of voter registration and ascertained that pursuant to California Elections Code Section 9215 the petition is signed by the requisite number of voters, and has so certified; and

WHEREAS, the Town Council has not voted in favor of the adoption of the Measure, and is therefore required by California law to place it before Fairfax’s voters; and

WHEREAS, the Town Council is authorized and directed by the California Elections Code to submit the Measure to the voters; and

WHEREAS, the Town Council also desires to request specified election services from Marin County to assist with the conduct of the election on the Measure to be held on November 7, 2017; and

WHEREAS, pursuant to California Elections Code, the Town Council further desires to establish rules and regulations for the preparation, submittal and printing of arguments and rebuttals for and against the Measure described herein; and

WHEREAS, the specific terms of the Measure/General Plan Amendment are attached hereto as Exhibit “A” and by this reference made an operative part hereof.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. Recitals. The Town Council of the Town hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part hereof.

SECTION 2. Submission of Ballot Measure. Pursuant to California Elections Code Section 9215, and any other applicable requirements of the laws of the State of California relating to general law cities, the Town Council hereby calls and orders to be held in the Town of Fairfax on Tuesday, November 7, 2017, a General Municipal Election for the purpose of submitting the Measure/General Plan Amendment attached hereto as Exhibit “A” and incorporated herein by this reference to the qualified electors of the Town (the “Measure”).

SECTION 3. Ballot Measure. The Town Council, pursuant to its right and authority, does hereby **ORDER** that the ballot Measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the election to be held at the General Municipal Election on Tuesday, November 7, 2017, in addition to any other matters required by law, there shall be printed substantially the following:

“Shall the Town of Fairfax General Plan be amended to prohibit land uses that adversely affect community recreational sports fields, including Lefty Gomez Field, without voter approval?”	YES	
	NO	

SECTION 4. Election Procedures.

- A. The ballots to be used at the election shall be in the form and content as required by law.
- B. In accordance with Section 10002 of the Elections Code, the Board of Supervisors of Marin County is hereby requested to consent to having the Registrar of Voters render such election services to the Town of Fairfax as may be requested by the Town Clerk of said Town, the County of Marin to be reimbursed in full for such services as are performed.
- C. The election services which the Town of Fairfax requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and polling place cards; the establishment or appointment of precincts, polling places, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places; the canvassing of the returns of the election and the furnishing of the

results of such canvassing to the Town Clerk of the Town of Fairfax; and the performance of such other election services as may be requested by the Town Clerk.

- D. The polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.
- E. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the Town.
- F. Notice of the time and place of holding the election is given and the Town Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.
- G. All ballots shall be tallied at a central counting place and not at the precincts. Said central counting place shall be at a County center as designated by the Registrar of Voters.
- H. The Marin County Registrar of Voters is hereby authorized to canvass the returns of said election.
- I. The Town Clerk of the Town of Fairfax shall receive the canvass as it pertains to the election on the measure, and shall certify the results to the Town Council, as required by law.

SECTION 5. Arguments and Impartial Analysis.

- A. Arguments in favor of or against the Measure shall be prepared and filed with the Town Clerk in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and any other applicable provisions of law. Primary arguments shall be filed with the Town Clerk not later than the deadline to be provided by the Town Clerk.
- B. Pursuant to Section 9280 of the Elections Code, the Town Council directs the Town Clerk to transmit a copy of the Measure to the Town Attorney. The Town Attorney shall prepare an Impartial Analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the operation of the Measure. The Town Attorney shall transmit such Impartial Analysis to the Town Clerk, who shall cause the analysis to be published in the ballot pamphlet along with the ballot Measure as provided by law. The Impartial Analysis shall be filed by the deadline set for filing of primary arguments. The Impartial Analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the Town Council. In the event the entire text of the Measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the Impartial

Analysis, in no less than 10-font bold type, the following: **“The above statement is an impartial analysis of Measure _____. If you desire a copy of the measure, please call the election official’s office at 415-453-1584 and a copy will be mailed at no cost to you.”**

SECTION 6. Rebuttals.

- C. A. That pursuant to Section 9285 of the Elections Code of the State of California, when the Clerk has selected the arguments for and against the Measure which will be printed and distributed to the voters, the Clerk shall send copies of the argument in favor of the Measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the Town Clerk not later than the deadline to be provided by the Town Clerk. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.
- B. That all previous resolutions providing for the filing of rebuttal arguments for Town measures are repealed.
- C. That the provisions herein shall apply only to the election to be held on November 7, 2017, and shall then be repealed.

SECTION 7. Placement on the Ballot. The full text of the Ballot Measure shall be printed in the voter pamphlet, and a statement shall be printed in the ballot pursuant to Section 9223 of the Elections Code advising voters that they may obtain a copy of this Resolution and/or the Ballot Measure, at no cost, upon request made to the Town Clerk.

SECTION 8. Delivery of Resolution to County. The Town Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions. The Town Council directs the Town Clerk to deliver copies of this Resolution, including the Ballot Measure attached hereto as Exhibit “A”, to the Clerk of the Board of Supervisors of Marin County and to the Registrar of Voters of Marin County.

SECTION 9. CEQA. The Town Council hereby finds and determines that placing the Measure on the ballot is exempt from the California Environmental Quality Act (“CEQA”). CEQA only applies to the “discretionary” actions of the Town that may have a direct or indirect effect on the environment. However, the California Supreme Court has held that placing a land use measure on the ballot that has qualified through citizens’ petition is not a “discretionary” action of the Town and is therefore exempt from CEQA. *Tuolumne Jobs & Small Business Alliance v. Superior Court (City of Sonora)*, (2014) 59 Cal. 4th 1029.

SECTION 10. 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 11. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was duly and regularly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax on the 2nd day of August, 2017, by the Town Council of the Town of Fairfax, California, at a regular meeting held on this 2nd day of August, 2017, by the following vote:

AYES:

NOES:

ABSENT:

JOHN REED, MAYOR

ATTEST:

Michele Gardner, Town Clerk

EXHIBIT "A"

RESOLUTION 17-____

A RESOLUTION OF THE PEOPLE OF THE TOWN OF FAIRFAX, CALIFORNIA
AMENDING THE TOWN OF FAIRFAX GENERAL PLAN TO PROHIBIT LAND USES
THAT ADVERSELY AFFECT COMMUNITY RECREATIONAL SPORTS FIELDS,
INCLUDING LEFTY GOMEZ PARK, WITHOUT VOTER APPROVAL

**THE PEOPLE OF THE TOWN OF FAIRFAX DO HEREBY RESOLVE, DECLARE,
DETERMINE, AND ORDER AS FOLLOWS:**

SECTION I. TITLE

This measure shall be known and may be cited as the "White Hill School Lefty Gomez Field Initiative" (the "Initiative").

SECTION II. FINDINGS AND PURPOSES.

A. Purposes. The purpose of the Initiative is to preserve the rights of Fairfax citizens to control the decision on how recreational sports fields in the Town of Fairfax will be utilized in the future. To accomplish this objective, the Initiative amends the Town General Plan as follows:

1. The Initiative amends the General Plan's Land Use Element to add as an objective the preservation of recreational sports fields in the Town of Fairfax in order to enhance and maintain local community activities and character.
2. The Initiative amends the General Plan's Land Use Element to add a policy that the White Hill School property, including Lefty Gomez Field, may not be utilized as a flood detention basin, nor may non-classroom facilities (as that term is utilized in California Government Code § 53094) be permitted that adversely affect or reduce the recreational amenities at the school's sports fields without approval of the citizens of Fairfax as part of a general election.
3. The Initiative amends the General Plan's Land Use Element to add a policy that land uses that adversely affect the community benefits provided by recreational sports activities may not be permitted on lands designated as Public Domain or Open Space that are currently utilized for recreational sports without approval by the citizens of Fairfax as part of a general election, unless such lands are owned by school districts in which case any such uses authorizing non-classroom activities (as that term is utilized in California Government Code §53094) shall not be allowed.
4. The Initiative amends the General Plan's Land Use Element to add an implementation program to amend the Town's zoning code to be consistent with the General Plan amendments made by the Initiative.

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

1. Recreational sports fields in the Town of Fairfax enhance and maintain local community activities and character by allowing local students and nonstudent citizens a place for community gathering and recreational activities within the Town of Fairfax.
2. The Town of Fairfax is currently lacking in parks and recreational facilities on the limited flat land spaces existing in the Town.
3. White Hill School's Lefty Gomez Field is an irreplaceable recreational resource for the citizens of Fairfax. Lefty Gomez Field, in its present form, is the result of many hours of volunteer work and resources donated by the citizens of Fairfax, West Marin Little League and local soccer teams, which has created a unique recreational experience for local citizens.
4. This Initiative would allow the preservation of Lefty Gomez Field in its current form, and would prohibit recreational sports fields in the Town of Fairfax from being used for non-recreational uses that interfere with the existing recreational uses enjoyed by local students and Fairfax citizens. The Initiative will ensure that land use decisions that may adversely affect or reduce the limited amount of recreational sports fields in Fairfax will be made by the citizens of the Town of Fairfax in a General Election vote.
5. This Initiative does not and will not interfere with legally permitted classroom facility uses at Lefty Gomez Field or any other Town lands owned by local school districts and therefore subject to Government Code §53094.

SECTION III. AMENDMENTS TO THE GENERAL PLAN.

A. The Town's General Plan is hereby amended as follows:

1. Add Objective LU 7.3 to the General Plan's Land Use Element as follows: Preserve recreational sports fields in Fairfax to maintain and enhance local community activities and character.
2. Add Policy LU 7.3.1 as follows: Lefty Gomez Field may not be utilized as a flood detention basin, nor may any non-classroom facilities (as that term is utilized in California Government Code §53094) be permitted that adversely affect or reduce the recreational amenities at the school's sports fields without approval of the citizens of Fairfax as part of a general election.
3. Add Policy LU 7.3.2 as follows: No lands designated as Public Domain or Open Space in the General Plan that are currently utilized for recreational sports shall allow land uses that adversely affect the community benefit provided by those recreational sports activities without approval by the citizens of Fairfax as part of a general election, unless such lands are owned by school districts in which case any such use that is a non-classroom facility (as that term is utilized in California Government Code §53094) shall not be allowed without approval of the citizens of Fairfax as part of a general election.
4. Add Program 7.3.1.2 as follows: The Town shall implement Policy LU 7.3.2 by amending its zoning code to implement and be consistent with this General Plan amendment.

SECTION IV. FINDINGS OF CONSISTENCY.

This measure is consistent with and would promote the objectives and policies of the Town's General Plan. Without limiting the foregoing, this finding of consistency is based on the following:

A. This measure is consistent with the objectives and policies of the General Plan to preserve community and neighborhood character in that it would preserve the recreational uses of Lefty Gomez Field and other recreational sports fields in the Town of Fairfax unless the Town's citizens agreed that such recreational field use could be eliminated or reduced. Recreational sports fields build community and neighborhood character by allowing local students and nonstudent citizens a place for community gathering and recreational activities within the Town of Fairfax, which is lacking in parks and recreational facilities on the limited flat land spaces existing in the Town.

B. This measure is consistent with the objectives and policies of the General Plan, which require the Town to implement updated zoning ordinances that account for the different land use designations and criteria set forth in the General Plan.

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 the Ross Valley School District's currently undeveloped lands used for recreation including Lefty Gomez Field, or as a more general enactment that could otherwise be applied in a manner that addresses any of the following subjects: planning and zoning controls and development standards applicable to any part of the Ross Valley School District's White Hill School Lefty Gomez Field, as set forth in the Town's General Plan, Municipal Code, Zoning Maps or in any other applicable Town law, policy or regulation with the potential for adverse effects on recreational sports fields in the Town of Fairfax. 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. This requirement shall apply only with respect to two zones, Public Domain and Open Space, and shall not affect the Town's ability to amend any provisions of its General Plan or other planning documents that apply to other lands within the Town.

SECTION IX. COMPETING MEASURES.

This measure was circulated and qualified as a citizens' initiative. If the Town Council proposes an alternative measure for placement on the same ballot as this measure, that measure is hereby deemed to be inconsistent with this measure, and the measure receiving the greater number of affirmative votes shall supersede the other measure. No provision of the superseded measure shall be implemented or become effective.

SECTION IX. IMPLEMENTATION.

A. Upon the effective date of this Initiative, the General Plan amendments contained in this Initiative are hereby inserted into the Town General Plan.

B. If this Initiative is approved, the Town shall immediately undertake to revise any elements or provisions of the General Plan and Municipal Code, including all exhibits and figures, and all other Town ordinances, policies and implementation programs or policies, in order to remove any inconsistencies which may exist between the purposes of this Initiative as set forth above.

The Mayor is hereby authorized to attest to the adoption of this resolution by signing where indicated below.

I hereby certify that the foregoing resolution was PASSED, APPROVED AND ADOPTED by the People of the Town of Fairfax voting on the 7th day of November, 2017.

By:

John Reed, Mayor

ATTEST:

Michele Gardner, Town Clerk