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THOMAS M. MCINERNEY, CA BAR NO. 162055
SETH L. NEULIGHT, CA BAR NO. 184440
GINA M. FORNARIO, CA BAR NO.
THELEN REID BROWN RAYSMAN & STEINER LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Tel. 415.371.1200
Fax 415.371.1211

Attorneys for Intervenors

THE FLOOD MITIGATION LEAGUE OF ROSS VALLEY and
FRIENDS OF THE CORTE MADERA CREEK WATERSHED

RECEIVED

AUG 22 2007

Ford Greene's Hub Law Office

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

AYLSWORTH CRAWFORD GREENE aka
FORD GREENE, an individual elector,

Elector,

vs.

MARIN COUNTY FLOOD CONTROL
AND WATER CONSERVATION
DISTRICT, a body corporate and politic,

Defendant.

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

Intervenors.

Case No.: CV 073767

**EX PARTE APPLICATION FOR ORDER
AUTHORIZING FILING OF
COMPLAINT IN INTERVENTION BY
THE FLOOD MITIGATION LEAGUE
OF ROSS VALLEY AND THE FRIENDS
OF THE CORTE MADERA CREEK
WATERSHED**

Date: August 23, 2007
Time: 9:00 a.m.
Dept: L

Hearing Date: September 7, 2007

1 **EX PARTE APPLICATION**

2 Pursuant to section 387(a) of the California Code of Civil Procedure and Marin County
3 Superior Court Local Rule 1.8, the Flood Mitigation League of Ross Valley ("the League") and
4 the Friends of the Corte Madera Creek Watershed ("Friends") (collectively the "Intervenors")
5 hereby apply for an order authorizing the filing of their Complaint in Intervention, a copy of which
6 is attached as Exhibit A.

7 **A. Background**

8 This action is an election contest filed by an individual, Aylesworth Crawford Greene, who
9 questions the legality of the recent election that passed a storm drainage fee for property owners in
10 the Ross Valley, in Marin County. This election was conducted pursuant to the strict terms of
11 Proposition 218. If Greene's contest is successful, it would prevent the County of Marin from
12 collecting a storm drainage fee that is critical for controlling the chronic flooding problems in the
13 Ross Valley. As organizations based in the Ross Valley with members who are directly impacted
14 by this chronic flooding and the collection of the storm drainage fee, the Intervenors have a direct
15 interest in this litigation.

16 The Ross Valley is an area within Marin County, California, that runs from the San
17 Francisco Bay near the foot of Sir Francis Drake Boulevard to White's Hill in Fairfax. Located
18 within the Ross Valley are the communities of Greenbrae, Larkspur, Corte Madera, Kentfield,
19 Ross, San Anselmo, and Fairfax. The Corte Madera/San Anselmo Creek is the primary drainage
20 channel for the 28 square miles comprising the Ross Valley watershed. In addition, many
21 tributaries to that primary channel flow throughout the various communities within the Ross
22 Valley. The Ross Valley watershed, located beside Mt. Tamalpais, receives some of the highest
23 annual rainfall amounts in the San Francisco Bay Area.

24 The Ross Valley has been subject to chronic flooding for over 50 years. The Ross Valley
25 watershed experienced floods causing major damage in 1951, 1955, 1958, 1960, 1962, 1963,
26 1967, 1969, 1982-1983, and 1986. Although no major flooding occurred between 1987 and 2004,
27 during this period the creeks rose to near or above flood stage on several occasions, such as at the
28 Nokomis bridge in San Anselmo. While flood control efforts were made to address these floods,

1 for a variety of reasons no watershed-wide solution has ever been implemented in the Ross Valley
2 watershed.

3 The most recent major flood occurred in the early morning hours of December 31, 2005.
4 In the two weeks leading up to the 2005 flood, the Ross Valley watershed received up to 7 inches
5 of rainfall, causing extreme saturation of the soil, leaving little or no capacity to absorb this level
6 of rainfall. In the Ross Valley, creeks rise very quickly even during normal storms. With such a
7 heavy storm in December 2005, the creeks rose quickly and dramatically. At approximately 2
8 a.m. on December 31, 2005, Corte Madera/San Anselmo Creek was already at flood stage, and the
9 strongest part of the storm occurred from approximately 3 a.m. to 6 a.m. A flow estimated at
10 763,000 gallons per minute broke creek banks and flooded streets.

11 The floods caused severe devastation throughout the Ross Valley. Estimates of property
12 damage exceeded \$100 million. Residents and families were displaced from their homes, causing
13 incalculable emotional and financial distress. Merchants were forced to close their businesses,
14 either temporarily or permanently. Government buildings, including schools and the town hall in
15 San Anselmo, suffered substantial damage. Severe erosion, spills of raw sewage, and loss of
16 riparian habitat added to the damage. As a result, everyone in the Ross Valley was impacted by
17 the flood waters that surged through these communities.

18 In January 2006, the Ross Valley Watershed Flood Protection and Creek Restoration
19 Program was initiated by Marin County Supervisor Hal Brown, in order to create a comprehensive
20 strategy for the entire Ross Valley watershed. Led by the County of Marin Department of Public
21 Works, this program is a collaborative effort of partners who have joined together to devise
22 solutions to the chronic flooding that has affected our communities, with the goal to both reduce
23 flooding and enhance the natural creek environments we all value.

24 Partners in this effort include the County of Marin (Board of the Supervisors, Department
25 of Public Works, Flood Control District 9, Marin County Stormwater Pollution Prevention
26 Program), the City of Larkspur, the Towns of Ross, San Anselmo, and Fairfax, the San Anselmo
27 Flood Protection Technical Advisory Committee, Kentfield Planning Advisory Board, Coalition
28 for Corte Madera Creek, California State Coastal Conservancy, Congresswoman Lynn Woolsey,

1 National Oceanic and Atmospheric Administration, National Weather Service, State of California
2 Office of Emergency Services, and the U.S. Army Corps of Engineers.

3 **B. The Intervenors**

4 Intervenor Flood Mitigation League of Ross Valley is an all-volunteer organization formed
5 after the 2005 flood. Its members include residents of the towns of Fairfax, San Anselmo, Ross,
6 and Kentfield, many of whom suffered substantial damage in the flood. The objectives of the
7 Flood Mitigation League of Ross Valley include working for the development of effective flood
8 control systems and infrastructure by ensuring that our cities, county, state, and federal agencies
9 take steps to mitigate flooding in the Ross Valley; educating and informing the public regarding
10 the prevention, mitigation, and hazards of flooding, as well as its environmental and infrastructural
11 causes; and keeping residents and business informed of the progress the governmental and elected
12 officials are making toward mitigating and solving the chronic flooding in the Ross Valley.

13 Intervenor Friends of the Corte Madera Creek Watershed is an all-volunteer, nonprofit
14 organization, founded in 1995 to protect the remaining natural ecosystems of the area, especially
15 those relating to urbanized creeks and wetlands, and where possible to increase the diversity of
16 these ecosystems. The principal goals of the Friends of the Corte Madera Creek Watershed
17 include increasing public awareness and knowledge of the watershed's ecosystems; increasing
18 scientific understanding of the creeks and using this knowledge to improve creek conditions;
19 improving water quality; assuring an adequate freshwater flow to restore and maintain clean,
20 healthy creeks; preserving and restoring the wetlands; restoring diverse and self-sustaining
21 populations of indigenous fish and wildlife; and promoting diverse and self-sustaining native
22 wetlands, riparian, and upland vegetation.

23 As shown by the facts alleged herein, Intervenors have a direct interest in the subject
24 matter of this litigation, as set forth in section 387(a) of the Code of Civil Procedures. Each
25 Intervenor has within its membership residents of the Ross Valley who will be directly impacted
26 by the flood control projects that will be funded by the storm drainage fee. Each Intervenor has as
27 its purpose, in part, to preserving the natural beauty and ecosystems of the Ross Valley watershed,
28 while at the same time promoting safe, healthy, and effective methods of preventing future

1 destruction caused by chronic flooding. Each Intervenor has supported passage of the storm
 2 drainage fee because it believes that the identified flood control projects to be funded by it will
 3 provide an effective and environmentally-healthy avenue for preventing future floods. Each
 4 Intervenor believes strongly that the implementation of the storm drainage fee is vital to the
 5 sustainability, health, and welfare of our Ross Valley communities and it very well may save lives.

6 **C. Allowing this Intervention Will Not Delay Adjudication of this**
 7 **Election Contest.**

8 Adjudication of Intervenor's interests will not delay or unduly expand the trial of this
 9 action. Intervenor's seek to join this action on the side of the County of Marin. As such, they will
 10 not seek to delay or impede resolution of this action. To the contrary, it is in Intervenor's interest
 11 that this matter be resolved as soon as possible so that there will not be any impediment to the
 12 collection of the storm drainage fee.

13 **D. Conclusion**

14 Accordingly, the Flood Mitigation League of Ross Valley and the Friends of the Corte
 15 Madera Creek Watershed respectfully request that they be permitted to file the accompanying
 16 Complaint in Intervention and participate in this proceeding.

17 Dated: August 22, 2007

18 THELEN REID BROWN RAYSMAN & STEINER LLP

19
 20 By _____
 21 Thomas M. McInerney
 22 Seth L. Neulight
 23 Gina Fornario

24 Attorneys for Intervenor's
 25 FLOOD MITIGATION LEAGUE OF ROSS
 26 VALLEY and FRIENDS OF THE CORTE MADERA
 27 CREEK WATERSHED
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DECLARATION OF THOMAS M. McINERNEY

I, Thomas M. McInerney, declare as follows:

1. I am an attorney duly licensed by the State Bar of California to practice law in this state. I am a partner with the firm of Thelen Reid Brown Raysman & Steiner, counsel of record for the Flood Mitigation League of Ross Valley and the Friends of the Corte Madera Creek Watershed in this action.

2. The facts as stated are true and correct based on my knowledge and/or my information and belief.

3. On August 22, 2007, I had my assistant fax to Mr. Ford Greene the attached as Exhibit B. This letter was faxed to the number listed on his pleading in this case.

4. On August 17, 2007, I spoke to James Flageollet, counsel for defendant and informed him of my intention to bring this application. He informed me that the defendant had no objection to our receiving leave to file this complaint.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and is signed this 22nd day of August, 2007, at San Francisco, California.

Thomas M. McInerney

1 THOMAS M. MCINERNEY, CA BAR NO. 162055
 2 SETH L. NEULIGHT, CA BAR NO. 184440
 3 GINA M. FORNARIO, CA BAR NO.
 4 THELEN REID BROWN RAYSMAN & STEINER LLP
 5 101 Second Street, Suite 1800
 6 San Francisco, CA 94105
 7 Tel. 415.371.1200
 8 Fax 415.371.1211

9 Attorneys for Intervenors

10 THE FLOOD MITIGATION LEAGUE OF ROSS VALLEY and
 11 FRIENDS OF THE CORTE MADERA CREEK WATERSHED
 12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 COUNTY OF MARIN

15 AYLSWORTH CRAWFORD GREENE aka
 16 FORD GREENE, an individual elector,

Case No.: CV 073767

17 Elector,

COMPLAINT IN INTERVENTION

18 vs.

19 MARIN COUNTY FLOOD CONTROL
 20 AND WATER CONSERVATION
 21 DISTRICT, a body corporate and politic,

22 Defendant.

23 FLOOD MITIGATION LEAGUE OF ROSS
 24 VALLEY and FRIENDS OF THE CORTE
 25 MADERA CREEK WATERSHED,

26 Intervenors.
27
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1 By leave of court, Intervenor FLOOD MITIGATION LEAGUE OF ROSS VALLEY and
2 FRIENDS OF THE CORTE MADERA CREEK WATERSHED ("Intervenor") hereby file this
3 complaint and thereby intervene in this action. Intervenor join with defendant Marin County
4 Flood Control and Water Conservation District in opposing plaintiff Aylsworth Crawford
5 Greene's election contest complaint, and allege as follows:

6 **The Chronic Flooding that Has Affected the Ross Valley Watershed**

7 1. The Ross Valley is an area within Marin County, California, that runs from the San
8 Francisco Bay near the foot of Sir Francis Drake Boulevard to White's Hill in Fairfax. Located
9 within the Ross Valley are the communities of Greenbrae, Larkspur, Corte Madera, Kentfield,
10 Ross, San Anselmo, and Fairfax. The Corte Madera/San Anselmo Creek is the primary drainage
11 channel for the 28 square miles comprising the Ross Valley watershed. In addition, many
12 tributaries to that primary channel flow throughout the various communities within the Ross
13 Valley. The Ross Valley watershed, located beside Mt. Tamalpais, receives some of the highest
14 annual rainfall amounts in the San Francisco Bay Area.

15 2. The Ross Valley has been subject to chronic flooding for over 50 years. The Ross
16 Valley watershed experienced floods causing major damage in 1951, 1955, 1958, 1960, 1962,
17 1963, 1967, 1969, 1982-1983, and 1986. Although no major flooding occurred between 1987 and
18 2004, during this period the creeks rose to near or above flood stage on several occasions, such as
19 at the Nokomis bridge in San Anselmo. While flood control efforts were made to address these
20 floods, for a variety of reasons no watershed-wide solution has ever been implemented in the Ross
21 Valley watershed.

22 3. The most recent major flood occurred in the early morning hours of December 31,
23 2005. In the two weeks leading up to the 2005 flood, the Ross Valley watershed received up to 7
24 inches of rainfall, causing extreme saturation of the soil, leaving little or no capacity to absorb this
25 level of rainfall. In the Ross Valley, creeks rise very quickly even during normal storms. With
26 such a heavy storm in December 2005, the creeks rose quickly and dramatically. At
27 approximately 2 a.m. on December 31, 2005, Corte Madera/San Anselmo Creek was already at
28

1 flood stage, and the strongest part of the storm occurred from approximately 3 a.m. to 6 a.m. A
2 flow estimated at 763,000 gallons per minute broke creek banks and flooded streets.

3 4. The floods caused severe devastation throughout the Ross Valley. Estimates of
4 property damage exceeded \$100 million. Residents and families were displaced from their homes,
5 causing incalculable emotional and financial distress. Merchants were forced to close their
6 businesses, either temporarily or permanently. Government buildings, including schools and the
7 town hall in San Anselmo, suffered substantial damage. Severe erosion, spills of raw sewage, and
8 loss of riparian habitat added to the damage. As a result, everyone in the Ross Valley was
9 impacted by the flood waters that surged through these communities.

10 **The Partnership Formed to Address this Chronic Flooding**

11 5. In January 2006, the Ross Valley Watershed Flood Protection and Creek
12 Restoration Program was initiated by Marin County Supervisor Hal Brown, in order to create a
13 comprehensive strategy for the entire Ross Valley watershed. Led by the County of Marin
14 Department of Public Works, this program is a collaborative effort of partners who have joined
15 together to devise solutions to the chronic flooding that has affected our communities, with the
16 goal to both reduce flooding and enhance the natural creek environments we all value.

17 6. Partners in this effort include the County of Marin (Board of the Supervisors,
18 Department of Public Works, Flood Control District 9, Marin County Stormwater Pollution
19 Prevention Program), the City of Larkspur, the Towns of Ross, San Anselmo, and Fairfax, the San
20 Anselmo Flood Protection Technical Advisory Committee, Kentfield Planning Advisory Board,
21 Coalition for Corte Madera Creek, California State Coastal Conservancy, Congresswoman Lynn
22 Woolsey, National Oceanic and Atmospheric Administration, National Weather Service, State of
23 California Office of Emergency Services, and the U.S. Army Corps of Engineers.

24 **The Intervening Parties**

25 7. Also joining as partners in this collaborative effort are Intervenor Flood Mitigation
26 League of Ross Valley and Friends of the Corte Madera Creek Watershed.

27 8. Intervenor Flood Mitigation League of Ross Valley is an all-volunteer organization
28 formed after the 2005 flood. Its members include residents of the towns of Fairfax, San Anselmo,

1 Ross, and Kentfield, many of whom suffered substantial damage in the flood. The objectives of
2 the Flood Mitigation League of Ross Valley include working for the development of effective
3 flood control systems and infrastructure by ensuring that our cities, county, state, and federal
4 agencies take steps to mitigate flooding in the Ross Valley; educating and informing the public
5 regarding the prevention, mitigation, and hazards of flooding, as well as its environmental and
6 infrastructural causes; and keeping residents and business informed of the progress the
7 governmental and elected officials are making toward mitigating and solving the chronic flooding
8 in the Ross Valley.

9 9. Intervenor Friends of the Corte Madera Creek Watershed is an all-volunteer,
10 nonprofit organization, founded in 1995 to protect the remaining natural ecosystems of the area,
11 especially those relating to urbanized creeks and wetlands, and where possible to increase the
12 diversity of these ecosystems. The principal goals of the Friends of the Corte Madera Creek
13 Watershed include increasing public awareness and knowledge of the watershed's ecosystems;
14 increasing scientific understanding of the creeks and using this knowledge to improve creek
15 conditions; improving water quality; assuring an adequate freshwater flow to restore and maintain
16 clean, healthy creeks; preserving and restoring the wetlands; restoring diverse and self-sustaining
17 populations of indigenous fish and wildlife; and promoting diverse and self-sustaining native
18 wetlands, riparian, and upland vegetation.

19 **The Flood Fee Will Be Used to Fund Vital Flood Control Projects**

20 10. Following the 2005 flood, and in conjunction with the Ross Valley Watershed
21 Flood Protection and Creek Restoration Program, engineers have begun identifying the locations
22 where flood protection solutions will be most effective. Such projects include removing
23 constrictions that block creeks, adding detention basins upstream to hold water during large storms
24 and release it slowly afterwards, increasing carrying capacity of sections of the creek, and
25 reducing impervious surfaces so that infiltration of storm water can be increased.

26 11. Specific projects have already been identified, and they would involve removing
27 bottlenecks that impede water flow; reducing damage due to flooding; conforming to the FEMA
28 Community Rating System, which could reduce flood insurance premiums over time for affected

1 property owners; improving fish passage; maintaining natural creek functions; reducing pollutants
2 entering the San Francisco Bay; and incorporating habitat enhancements. All projects will go
3 through a required public review process and will comply with all environmental requirements.

4 12. Accordingly, the Marin County Flood Control and Water Conservation District
5 ("the District") called an election for Zone 9, which includes the Ross Valley, on an annual storm
6 drainage fee. This storm drainage fee was adopted pursuant to the strict terms of the "property
7 related fee" provisions in Proposition 218, which is incorporated in the California Constitution,
8 Article XIID, Section 6. The storm drainage fee would be paid by developed properties that
9 contribute runoff to the storm drainage system. The storm drainage fee for each property is related
10 to the estimated amount of stormwater runoff it generates. Land that is developed (e.g., with a
11 house, commercial building, or parking lot) creates "impervious areas" where water cannot soak
12 into the land, resulting in stormwater runoff that exceeds natural runoff. Each fee would be based
13 both on the size of the property and how heavily it is developed (i.e., its impervious percentage).

14 13. The vast majority of single-family residential properties in the Ross Valley would
15 pay \$125 or less per year. Virtually all condo owners would pay about \$33 a year. The fee was
16 capped at \$180 a year for all residential properties. Adjustments for inflation are limited to no
17 more than 3 percent a year as determined by the Board of Supervisors. The storm drainage fee
18 will end in 20 years unless it is extended by a vote of property owners.

19 14. Proceeds from the fee are to be placed in the Flood Control District Zone 9 fund
20 and would be used for vital projects, such as: capital improvements and replacing drainage
21 infrastructure; enhancing and establishing drainage system and floodway maintenance programs;
22 providing hydraulic modeling and flood forecasting; and environmental and habitat restoration
23 projects to enhance the creek drainage systems.

24 15. The District followed procedures set forth in the California Constitution for
25 establishment of this fee. Specifically, the District conducted a noticed protest hearing on May 1,
26 2007. The District received less than a 1% protest and set the matter for a property owner election
27 consistent with constitutional requirements.

28

1 16. The District adopted election procedures. The adopted election procedures provide
2 that "in order to be counted, a ballot must be signed . . . by the record owner as attested to
3 pursuant to the declaration under penalty of perjury." The procedures also provided that, "The
4 Clerk shall not accept a ballot: . . . (ii) that does not contain an original signature."

5 17. These procedures requiring a signature are consistent with section 53753 of the
6 California Government Code, which is part of the "Proposition 218 Omnibus Implementation
7 Act." Section 53753(c) provides, among other things, that each "ballot shall be in a form that
8 conceals its contents once it is sealed by the person submitting the assessment ballot. Each
9 assessment ballot *shall be signed* and either mailed or otherwise delivered to the address indicated
10 on the assessment ballot." (Emphasis added)

11 18. The signature requirement is critical to enforcement of Proposition 218. According
12 to the "Statement of Drafters' Intent" by the Howard Jarvis Taxpayers' Association,
13 (http://www.hjta.org/content/ARC000025A_Prop218.htm), the organization that drafted
14 Proposition 218 and gathered the requisite signatures for its placement on the ballot, the completed
15 ballot was to remain sealed with all pertinent property owner information "so that both *the*
16 *signature* and the information can be verified by the tabulator . . ." (See Statement of Drafters'
17 Intent, p. 6, Article XIID, Sec. 4(d), Drafters' Suggested Procedures).

18 19. The same reasoning underlies the requirement that absentee ballots must be signed
19 before being returned by the voter. Under section 3011 of the Election Code, all absentee ballots
20 must contain a signature on the envelope that is signed with a declaration under penalty of perjury.
21 Section 3011(a)(7) further provides that the identification envelope must contain a "warning
22 plainly stamped or printed on it that the voter must sign the envelope in his or her own
23 handwriting in order for the ballot to be counted." Section 3011 does not require that this warning
24 be positioned in any particular typeface, other than it must be "plainly stamped or printed," nor
25 does it require that it be positioned in a particular location other than on the envelope. If the
26 Legislature intended to require a certain type font or precise placement of the signature line on the
27 envelope, it could have so provided.

28

1 Intervenor has within its membership residents of the Ross Valley who will be directly impacted
 2 by the flood control projects that will be funded by the storm drainage fee. Each Intervenor has as
 3 its purpose, in part, to preserving the natural beauty and ecosystems of the Ross Valley watershed,
 4 while at the same time promoting safe, healthy, and effective methods of preventing future
 5 destruction caused by chronic flooding. Each Intervenor has supported passage of the storm
 6 drainage fee because it believes that the identified flood control projects to be funded by it will
 7 provide an effective and environmentally-healthy avenue for preventing future floods. Each
 8 Intervenor believes strongly that the implementation of the storm drainage fee is vital to the
 9 sustainability, health, and welfare of our Ross Valley communities and it very well may save lives.

10 24. Adjudication of Intervenors' interests will not delay or unduly expand the trial of
 11 this action.

12 **CAUSE OF ACTION FOR DECLARATION RELIEF.**

13 25. Intervenors incorporate herein by reference, as though fully set forth, each of the
 14 allegations in paragraphs 1 through 25, inclusive.

15 26. A present and actual controversy now exists regarding the vote resulting in the
 16 passage of the storm drainage fee. An individual opposed to the fee has brought an election
 17 contest disputing the legality of the ballot and vote. The District, which conducted the vote, has
 18 answered the complaint and alleges that the vote was conducted properly and in strict
 19 conformance with the fee-related provisions of Proposition 218.

20 27. Intervenors seek to intervene on behalf of the district in defending the vote, in order
 21 to ensure that the election contest is dismissed with prejudice and the fee is collected.

22 28. Intervenors seek a declaration from this Court that:
 23 a. A majority of lawful ballots cast voted in favor of the storm drainage fee;
 24 b. The vote was conducted lawfully and in conformity with California election
 25 law as well as the requirements of Proposition 218; and
 26 c. The storm drainage fee should be collected.

27 WHEREFORE, Intervenors pray for judgment as follows:
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1. That the election contest filed on August 14, 2007, shall be rejected, and the case dismissed with prejudice;

2. That the Court issue the declaration set forth in paragraph 28, above;

3. That the District and Intervenors be deemed prevailing parties and be entitled to recover their costs; and

4. The Intervenors receive any other relief or judgment as deemed necessary by this Court.

Dated: August 23, 2007

THELEN REID BROWN RAYSMAN & STEINER LLP

By

Thomas M. McInerney
Seth L. Neulight
Gina Fornario

Attorneys for Intervenors
FLOOD MITIGATION LEAGUE OF ROSS
VALLEY and FRIENDS OF THE CORTE MADERA
CREEK WATERSHED