

OFFICE OF THE
COUNTY COUNSEL



COUNTY OF SANTA CRUZ

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GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

HARRY A. OBERHELMAN III
MARIE COSTA
JANE M. SCOTT
RAHN GARCIA
TAMYRA CODE
PAMELA FYFE
ELLEN LEWIS
KIM BASKETT
LEE GULLIVER
DANA McRAE

ASSISTANTS

Agenda August 18, 1998

To: The Board of Supervisors

Re: Claim of Robert Copren and Marjorie Lunderville, No. 899-016

Original Document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

Robert Copren and Marjorie Lunderville, No. 899-016

1. X Deny the claim of _____ and refer to County Counsel.

Deny 2 the application to file a late claim on behalf of _____ and refer to County Counsel.

Grant 3 the application to file a late claim on behalf of _____ and refer to County Counsel.

_____ 4. Approve the claim of _____ in the amount of _____ and reject it as to the balance, if any, and refer to County Counsel.

5. Reject the claim of _____ as insufficiently filed and refer to County Counsel.

cc: John Fantham, Director
Department of Public Works

RISK MANAGEMENT

By Bret McKinley

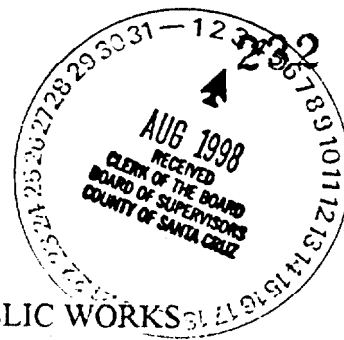
COUNTY COUNSEL

By [Signature]

LTR9.WPT

PER 5107 Rev 4, 97

899-016



GOVERNMENTAL CLAIM
(Government Code 900, et seq.)
TO: COUNTY OF SANTA CRUZ
SANTA CRUZ COUNTY DEPARTMENT OF PUBLIC WORKS

YOU ARE HEREBY NOTIFIED of the claims of the individuals identified below for damages against the County of Santa Cruz, County of Santa Cruz Department of Public Works, ("the governmental entities").

1. Name and address of Claimant:

Robert Copren and Marjorie Lunderville
235 Lake Court
Aptos, CA 95003

2. Notices

All notices concerning this claim should be sent to Joseph G. Haselton, Esq., Haselton & Haselton, 2425 Porter Street, Suite 6, Soquel, California 95073, telephone (408) 462-91 12, facsimile (408) 462-9 115.

3. Description of Occurrence

(a) Date: On or about February 2, 1998, and continuing thereafter.

(b) Place: City of Aptos Drainage system, damages occurring more particularly at the address of the claimant set forth at Item #1.

(c) Names of Public Employees: The names of the public employees who contributed to the occurrence are not presently known to the claimant.

(d) Circumstances: The governmental entities against whom claims are asserted here owned, constructed, planned, improved, and/or had a fee or lesser interest in, and/or maintained and/or had a duty to maintain certain street and roadway drainage systems and other works of public improvement within the city of Aptos, County of Santa Cruz (hereinafter "drainage systems"). These governmental entities owed duties to the claimants, including but not limited to, maintaining the real property and improvements such that they would not cause or result in the obstruction, diversion and/or overflowing of the drainage systems and not direct water in such a fashion as to create a dangerous and defective condition. These duties further included, but were not limited to, the duty to regulate water flow, clear foliage and debris from in and around the drainage systems and maintain said systems so as to prevent and/or regulate flood conditions. The governmental entities against whom the claims are asserted breached these duties. As a result of these breaches of duty, the drainage systems directly contributed to the failure of a slop immediately adjacent to 235 Lake Court, Aptos. This failure damaged claimants' real property, personal property, business property, and caused claimants to suffer physical injuries as a result of exposure to soils and waters, and to suffer emotional distress and economic losses, including loss of profits and loss of income.

1 Finally, the governmental entities as listed provided unreasonable conduct in the
 2 maintenance, control and design of dedicated roads, rights of way, culverts, drains, and other
 3 public improvements in the city of Aptos, and, further for the unreasonable discharge of
 4 service waters collected and discharged, which said discharge increased and was a substantial
 5 factor and additional legal cause of the damage as sustained by claimants. All governmental
 6 entities failed to act reasonably and with due care by permitting surface water to be channeled
 through inadequate drainage systems in their control, without remedial action to protect
 adjacent properties with result that erosion, undercutting and destabilization occurred causing
 the damages as alleged herein.

7 Further, Claimants are informed and believe that the above-referenced parties were
 8 granted maintenance and other easements in the City of Aptos. The resolutions adopted by
 9 the various entities created a duty as to each governmental entity whereby they assumed
 10 control of the work of improvement and agree to maintain said drainage system in such a
 11 condition that it was neither dangerous nor defective. Each party and entity had a contractual,
 12 statutory and common law duty to maintain the drainage systems, including but in no way
 13 limited to following state and federal rules, regulations and guidelines, following state and
 14 federal instructions, preventing the flow of water from being inhibited, preventing debris jams,
 15 preventing road damage and preventing said drainage system from injuring surrounding
 16 property. Said parties failed to properly, and/or adequately maintain, control, manage, and/or
 17 operate their respective projects.

18 In failing to act as described herein, said entities were negligent, failed to discharge
 19 mandatory duties, allowed or maintained dangerous conditions on public property,
 20 unreasonably failed to control a public work of improvement, created a nuisance, converted
 claimant's property and were strictly liable. Further the design, construction and maintenance
 of the drainage systems imposed an unreasonable risk of harm to the claimant, and such
 unreasonable design, construction and/or maintenance constituted a substantial legal and
 proximate cause of the damage sustained by claimant.

21 (e) Basis for Legal Liability: The governmental entities are liable to claimants, based
 22 upon the circumstances described above, but are in no way limited to the legal theories of (1)
 23 negligence; (2) breach of mandatory duty; (3) inverse condemnation; (4) dangerous condition
 24 of property; (5) strict liability; (6) water law; (7) breach of contract/third party beneficiary.

25 4. Description of Injury and Damage

26 Claimants' business, personal, and real property was damaged by the release of waters
 27 causing the land and mudslide referenced herein.. Claimants' business, personal, and real
 28 property required repair and replacement. The losses include, but are in no way limited to,
 destruction of inventory, replacement cost, loss of profits, damage to goods held by claimant
 as bailee, destruction of property, loss of business reputation, and impairment of earning
 capacity.

Personal Injury

Emotional Distress

Claimants' emotional distress includes these symptoms: nervousness, anxiety,
 sleeplessness, digestive system disorders, headaches, fear and other symptoms.

Physical Injury

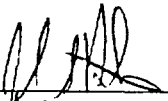
1 Claimants suffered physical injuries and damages to their health and physical well
2 being as a result of the release of waters causing the land and mudslide referenced herein.

3 5. Amount of Claim

4 The amount of damages to date of each claim for property damage and personal injury
is within the jurisdictional limits of the Superior Court.

5 Dated: July 31, 1998

HASELTON & HASELTON

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9 _____
Joseph G. Haselton
Attorney for Claimant

10 Flood/Claim
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STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA CRUZ)

I am a resident of the County of Santa Cruz; I am over the age of eighteen years and not a party to the within above entitled action. my business address is:

2425 Porter Street, Suite 6
Soquel, CA 95073

On July 31, 1998, I served the within GOVERNMENTAL CLAIM (Government Code Section 900, et seq) on the attorneys/parties in said action, by placing a true copy thereof in a sealed envelope for collection and mailing in the mail room of Haselton & Haselton, 2425 Porter Street, Suite 6, Soquel, California 95073 addressed as follows:

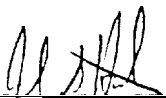
CLERK OF THE BOARD OF SUPERVISORS
SANTA CRUZ COUNTY
701 OCEAN STREET, ROOM 500
SANTA CRUZ, CA 95060

SANTA CRUZ COUNTY DEPARTMENT OF PUBLIC WORKS
701 OCEAN STREET, ROOM 410
SANTA CRUZ, CA 95060

I am readily familiar with the business practice of the within named firm for collection and processing of correspondence for mailing with the United States Postal Service and the above-referenced correspondence will be deposited with the United States Postal Service on the same date as first stated above. in the ordinary course of business.

I declare, under penalty of perjury pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed on July 31, 1998, at Soquel, California



Joseph G. Haselton

Flood POS-107