



Board Agenda Item 7

DATE: December 6, 2016

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Boundary Change and Benefit Assessment Proceedings for Zone "AJ" of County Service Area No. 35.

RECOMMENDED ACTION(S):

1. Accept certified voter count on file with the Clerk to the Board, dated November 23, 2016, provided by the Fresno County Clerk/Registrar of Voters, showing the number of registered voters residing in Zone AJ of County Service Area (CSA) No. 35.
2. Conduct a public hearing to hear and consider any protests to the CSA 35AJ Boundary Change No. 2, and upon completion tabulate all written objections received before the close of public testimony and approve Item A or B.
 - A. If written objections are not received from a majority of registered voters residing within the territory covered by CSA 35AJ with boundaries changed as proposed, determine that there is not a majority protest, proceed to Recommended Action No. 3.
 - B. If written objections are received from a majority of registered voters residing within the territory covered by CSA 35AJ with boundaries changes as proposed, determine that there is a majority protest and terminate all proceedings.
3. If there is not a majority protest to the CSA 35AJ Boundary Change No. 2, conduct a public protest hearing to receive and consider all objections or protests, if any, to the proposed benefit assessment for road maintenance purposes for CSA 35AJ Boundary Change No. 2 and upon completion tabulate all ballots returned and approve Item A or B.
 - A. If the ballots submitted in opposition to the proposed benefit assessment exceed the ballots submitted in favor, with ballots weighted according to the proportional financial obligation of each affected property, determine that there is not a majority protest, first adopt "Resolution Changing the Boundaries of County Service Area No. 35, Zone 'AJ,' to Include Tentative Parcel Map 8114 and APNs 580-010-11S, 580-110-12S, 580-010-14S, 580-010-15, 580-010-18S, 580-010-22, 580-010-24, and 580-010-25S, and then adopt "Resolution Approving and Levying Benefit Assessment for Road Maintenance Costs on Real Property in County Service Area No. 35, Zone 'AJ' ".
 - B. If the ballots submitted in opposition to the proposed benefit assessment exceed the ballots submitted in favor, with ballots weighted according to the proportional financial obligation of each affected property, determine that there is a majority protest, terminate the proceedings.

The first recommended action allows the Board to establish the total number of registered voters that reside within Zone AJ of County Service Area No 35 (CSA 35AJ) with boundaries changed as proposed. That determines the method by which a majority protest is calculated for purposes of the third recommended action. The second recommended action allows the Board to conduct a public hearing concerning the proposed boundary change for CSA 35AJ to include the territory within Tentative Parcel Map No. 8114 (PM 8114) and other property (APNs 580-010-11S, 580-110-12S, 580-010-14S, 580-010-15, 580-010-18S, 580-010-22, 580-010-24, and 580-010-25S) located west of Auberry Road accessed via East Reno Avenue, designated CSA 35AJ Boundary Change No. 2. The third recommended action allows the Board to conduct a public protest hearing concerning the levy of a benefit assessment for road maintenance on specially benefitted properties within CSA 35AJ with boundaries changed as proposed in CSA 35AJ Boundary Change No. 2 and if there is no majority protest to the proposed benefit assessment, to adopt a resolution approving and levying the assessment and a resolution approving the CSA 35AJ Boundary Change No. 2.

The two proceedings are also interdependent. If the assessments to fund the service provided through the zone are not approved, the Board must terminate the CSA 35AJ Boundary Change No. 2 proceeding. (Gov. Code, § 25217.1, subd. (d)). However, to levy an assessment on properties receiving a special benefit from the road maintenance services provided, those properties must be within the boundaries of the zone. Therefore, the boundary change must be approved before a benefit assessment for road maintenance services may be levied. If there is a majority protest to either the CSA 35AJ Boundary Change No. 2 or the proposed benefit assessment for road maintenance services, then the zone's boundaries will remain unchanged, and existing assessments to fund road maintenance services will remain. If the CSA 35AJ Boundary Change No. 2 and the proposed benefit assessment are both approved, then the existing benefit assessment to fund road maintenance service in CSA 35AJ will be replaced with the newly levied assessment to fund road maintenance service in CSA 35AJ with boundaries changed as proposed. Although separate procedures are necessary to implement a boundary change and assessment, the proceedings may be performed concurrently.

ALTERNATIVE ACTION(S):

Staff has not identified any viable alternative actions.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. The applicant has paid the boundary change fee of \$4,242 as specified in the Master Schedule of Fees, Section 2580.2b, as adopted by the Board of Supervisors in Ordinance 07-048.

DISCUSSION:

CSA 35 is a countywide County Service Area formed to provide County maintenance of roads created as part of developments in the unincorporated areas of the County. A zone of benefit may be formed within CSA 35 and assessments levied upon benefiting parcels within that zone to fund the maintenance of roads serving benefiting parcels.

On June 17, 1997, the Board adopted Resolution No. 97-408 forming CSA 35AJ, which was a condition of approval for Parcel Map No. 7644. Resolution No. 08-119 was adopted March 25, 2008, approving Annexation No. 1 to CSA 35AJ, which was a condition of approval for Parcel Map No. 8027. On November 4, 2014, the Department approved Tentative Parcel Map No. 8114, subject to the condition that prior to the recordation of the Parcel Map, annexation to County Service Area 35 Zone AJ shall be required. Road maintenance within CSA 35AJ is funded by assessments levied on properties that receive a special benefit from the maintenance of the road located within CSA 35AJ. Currently there are 18 lots within CSA 35AJ being assessed. An additional 9 lots will be added upon the completion of Boundary Change No. 2. (Since the Annexation No. 1 proceeding, the law has changed to provide that County Service Area zones may undergo "boundary change" proceedings, rather than "annexation" proceedings.)

There are two interdependent procedures required to change the boundary of an existing zone of benefit and to levy an assessment to fund the services provided through that zone. Boundary changes are governed by County Service Area Law (Gov. Code Section 25210, et. seq.), whereas the procedure to levy an assessment on real property for the purposes of road maintenance must be in accordance with Article XIII D, Section 4 of the California Constitution, the Proposition 218 Omnibus Implementation Act (Gov. Code 53750, et. seq.) and the Benefit Assessment Act of 1982 (Gov. Code 54703, et. seq.).

Boundary Change Proceedings

The procedure to change the boundary of an existing zone to annex new territory is almost identical to that prescribed to form a new zone (Gov. Code 25217.2). To change the boundary two separate Board actions are required. The first action initiates the process of annexation and the second action, a public protest hearing, concludes the process and (if there is no majority protest) may result in the establishment of a changed boundary of the zone. The Board initiated the process on October 18, 2016 when it adopted a resolution initiating the boundary change. The public hearing will be conducted today to hear and consider testimony from all interested persons regarding the boundary change, and to determine if there is a majority protest.

The Clerk to the Board has mailed and published notices of today's public hearing as required by the County Service Area law and the Board's October 18, 2016 resolution of intention.

There are 12 or more registered voters residing in the territory covered by CSA 35AJ with boundaries changed as proposed. That means a majority protest occurs if more than 50 percent of the registered voters (or at least 16 of the 31 registered voters) residing within the zone with boundaries changed as proposed have timely filed written objections to the boundary change with the Clerk to the Board (Clerk).

Testimony from all interested persons will be heard, but only written objections from registered voters filed with the Clerk before the close of the public hearing will be counted to determine whether there is a majority protest. If there is a majority protest, as defined above, the Board must determine that there is a majority protest and terminate the proceedings.

If there is a majority protest, both the boundary change and assessment proceedings must be abandoned. If there is no majority protest to the proposed boundary change, the Board may proceed with the majority protest hearing on the proposed assessment. Only if there is also not a majority protest to the proposed assessment (as defined below) may the Board adopt the proposed boundary change.

Assessment Proceedings

The approval and levy of an assessment to fund the cost of road maintenance services in CSA 35AJ with boundaries changed as proposed is required for Boundary Change No. 2 to be finalized.

The process to levy an assessment on real property for the cost of road maintenance services within CSA 35AJ with boundaries changed as proposed must conform with Article XIII D, Section 4 of the California Constitution and the Proposition 218 Omnibus Implementation Act (Proposition 218) and the Benefit Assessment Act of 1982 (Gov. Code, § 54703, et seq.) (1982 Act). An Engineer's Report was prepared in accordance with the provisions of Article XIII D of the California Constitution and the Benefit Assessment Act of 1982. The Engineer's Report includes the cost to fund the continued maintenance of the roads serving CSA 35AJ with boundaries changed as proposed.

Owners of property within CSA 35AJ with boundaries changed as proposed will be given the opportunity, in assessment ballot proceedings (also called a "majority protest proceeding") to indicate their support of or opposition to (in a single assessment ballot measure) an assessment imposed on their parcels, specific to each parcel's financial obligation, for the maintenance of roads within CSA 35AJ with boundaries changed as proposed.

A single assessment ballot per parcel, along with a detailed notice and related assessment ballot instructions, was mailed by the Clerk to the owners of record whose names and addresses appear on the last equalized property tax roll for all parcels located in CSA 35AJ with boundaries changed as proposed. To be counted toward a majority protest, a ballot must be properly executed and delivered as follows:

1. By U.S. mail so that it is received by the Clerk no later than 9:00 A.M. on December 6, 2016; or
2. Delivered to the Clerk no later than 9:00 A.M. on December 6, 2016; or
3. Delivered at the Public Hearing itself on December 6, 2016, prior to the close of public testimony during the Public Hearing.

Assessment ballots will remain unopened and in the charge of the Clerk until they are opened and tabulated by the Board's designated officials after the conclusion of the Public Hearing.

Substitute assessment ballots will also be made available for owners who previously returned their assessment ballot (or substitute assessment ballot) and wish to change or withdraw their assessment ballot (or substitute assessment ballot). Substitute assessment ballots will also be made available for owners who claim that they did not receive or lost their assessment ballot, or that their assessment ballot (or substitute assessment ballot) is unusable.

If more than one of the record owners of an identified parcel wishes to submit an assessment ballot, they may do so prior to the conclusion of public testimony at the Public Hearing but only by using the County-provided co-owner assessment ballot for such purpose. Co-owner assessment ballots will indicate the amount of the proposed assessment to be imposed upon the identified parcel, but there shall be allocated to each properly completed and timely submitted co-owner assessment ballot the assessment in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the Board by documentation provided by the record owner. In either case, co-owner assessment ballots and substitute assessment ballots will be provided once the property owner executes an appropriate County request form, also to be made available upon request to the Clerk, to ensure orderly assessment ballot proceedings.

All properly completed and timely returned assessment ballots will be tabulated at the conclusion of the Public Hearing. If the assessment ballots submitted in opposition to the proposed assessment exceed the assessment ballots submitted in favor of the proposed assessment, with the assessment ballots weighted according to the proportional financial obligation of the affected property, there is a majority protest and the assessment shall not be imposed and CSA 35AJ Boundary Change No. 2 shall not be finalized.

If there is no majority protest to the proposed assessment, and there was also no majority protest to CSA 35AJ Boundary Change No. 2, then the Board may adopt a resolution to approve and levy the assessment and a resolution to approve and establish the changed boundaries for CSA 35AJ.

REFERENCE MATERIAL:

BAI #13, June 17, 1997
BAI #16, March 25, 2008
BAI #30.1, October 18, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map
On file with Clerk - Resolution (Boundary Change)
On file with Clerk - Resolution (Benefit Assessment)
On file with Clerk - Certified Registered Voter Count

CAO ANALYST:

John Hays