



Board Agenda Item 11

DATE: August 23, 2016

TO: Board of Supervisors

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

SUBJECT: Determine whether to waive some or all of the Established Fees of \$10,000 for Mello-Roos Change Proceedings for each of CFD 2005-01 (Ventana Hills), CFD 2005-02 (Bretz Mountain), and CFD 2005-03 (Wildflower Village).

RECOMMENDED ACTION(S):

Make a determination whether to waive some or all of the established fees of \$10,000 for each of CFD 2005-01 (Ventana Hills), CFD 2005-02 (Bretz Mountain), and CFD 2005-03 (Wildflower Village), charged to residents and property owners of those districts, to compensate the County for all costs incurred in conducting proceedings to change those districts pursuant to petitions filed by registered voters residing in those districts. Depending on the determination, approve Action item A or B or C:

- A. Maintain the established fee of \$10,000 for each of the Mello-Roos change proceedings.**
- B. Waive a portion of the fee for the Mello-Roos change proceedings, establish the amount of the fee to be waived and make a determination that County will fund all the associated costs of the Mello-Roos change proceedings not covered by the fee.**
- C. Waive the entire established fee of \$10,000 for the Mello-Roos change proceedings and make a determination that County will fund all the associated costs of the Mello-Roos change proceedings.**

On June 21, 2016, as provided by Government Code section 53332, subdivision (b), the Board determined the amount of a fee sufficient to compensate the County for all costs incurred in conducting proceedings to change each Community Facilities District (CFD) whose residents successfully petitioned the Board. That fee is \$10,000. The residents and property owners of the CFD are responsible to pay the fee.

If the Board approves recommended action A, the established fee of \$10,000 will remain in place and the residents and property owners of each CFD would be required to pay the fee before the Board takes any further action regarding their petition.

If the Board approves recommended action B, then the Board will be waiving a portion of the established fee and setting the amount of the fee to be waived. Furthermore, the Board will be making a determination that the County will be funding the costs of that portion of the established fee being waived for the Mello-Roos change proceedings. The residents and property owners of each CFD would then be required to pay the remainder of the fee before the Board takes any further action on their petition.

If the Board approves recommended action C, then the Board will be waiving the established fee completely and will be making a determination that the County will be funding all costs associated to the Mello-Roos change

proceedings. The Board will then have 40 days from today's date in which to adopt a "resolution of consideration" for each of the three Districts that filed sufficient petitions. Staff would return to the Board on September 27, 2016, with a "resolution of consideration."

ALTERNATIVE ACTION(S):

There are no viable alternative actions. All possible options are listed in the recommended actions.

FISCAL IMPACT:

If the Board approves recommended action A, there will be no Net County Cost because all costs to perform the change proceedings will be funded by a fee charged to the residents and property owners of each CFD that seeks a change proceeding. However, if the Board approves recommended action B or C there will be a Net County Cost associated with the change proceedings not covered by the residents and property owners. These costs will be absorbed through existing appropriations primarily in the Department of Public Works and Planning and County Counsel.

DISCUSSION:

The Mello-Roos Community Facilities Act of 1982 ("Mello-Roos Act") provides that residents or property owners of a CFD may petition the Board to change the services provided or the special taxes levied within their district, up to and including eliminating both. (Government Code § 53332.)

On May 24, 2016, the Board received petitions signed by residents and property owners from all four of the County's CFDs established under The Mello-Roos Act. Those four districts include CFD 2005-01 (Ventana Hills), CFD 2005-02 (Bretz Mountain), CFD 2005-03 (Wildflower Village), and CFD 2006-01 (Countywide). The petitions from the first three districts (Ventana Hills, Bretz Mountain, and Wildflower Village) were signed by 25 percent or more of the registered voters residing in those districts, which is the statutory threshold to require Board action. The petitions from the last district (Countywide) did not satisfy statutory thresholds for registered voters or property owners.

Upon receiving petitions filed by at least 25 percent of the registered voters residing in a CFD, the Board had 45 days to decide whether to establish a fee for that CFD. The fee is to compensate the County for all costs of conducting proceedings to change the CFD as requested in that petition.

On June 21, 2016, as provided by Government Code section 53332, subdivision (b), the Board of Supervisors determined the amount of a fee sufficient to compensate the County for all costs incurred in conducting proceedings to change each CFD whose residents successfully petitioned the Board. That fee is \$10,000. The residents and property owners of each CFD are responsible to pay the fee before the Board takes any further action on their petition. The Board will have 40 days from the date of receiving the established fees in which to adopt a "resolution of consideration" and set a hearing on the changes to the services and special taxes for each of the three CFDs whose residents successfully petitioned the Board.

At that hearing on June 21, the Board also directed the Department of Public Works and Planning (Department) to look into saving costs by performing change proceedings for the three Districts simultaneously and return with another item that would provide opportunity for the Board to consider whether to waive some or all of that fee.

The Department examined the change proceeding cost break-down and confirmed that the \$10,000 per District is needed to complete the process. This fee is determined based on the assumption that all three districts go through the Change Proceedings at the same time and therefore no additional savings are anticipated.

Recommended Fee Amounts

The recommended fee amounts are to be paid by the residents and property owners of each CFD that

successfully petitioned the Board. These fees are to cover the costs that will be incurred by the County to perform the change proceedings. These costs consist of, in general, the drafting of agenda items and resolutions for the three hearings to be held concerning the change proceeding, publishing of the notices for public hearings, mailing of the notices to property owners within the CFD, mailing ballots to property owners, posting the notices of public hearings within the CFD, administration of the proceedings, and legal review.

Next Steps on Petitions

If the Board decides to maintain the established fee or waive a portion of it, then the Board will have 40 days from the receipt of each fee in which to adopt a “resolution of consideration” regarding the changes requested in the petitions for the CFD(s) that paid the fee. (Government Code § 53332.) Staff would return to the Board with a “resolution of consideration” for each District within the appropriate time limit.

If the Board decides to waive the entire established fee, then the Board will have 40 days from today’s date in which to adopt a “resolution of consideration” for each of the three Districts that filed sufficient petitions. Staff would return to the Board on September 27, 2016 with a “resolution of consideration.”

The “resolution of consideration” would set the date, time, and place for a hearing, which must be not less than 30 but not more than 60 days from the date the Board adopts that resolution. (Government Code § 53334, subdivision (e).)

Notice of the hearing, containing certain information, would be published once in a newspaper of general circulation that is published in the area of the three Districts whose petitions had enough signatures. (Government Code §§ 53335, 53322, 6061.)

During the hearing for each District, any interested persons would have the opportunity to protest the proposed changes orally or in writing. Written protests submitted and not withdrawn before the close of the hearing must be counted. If 50 percent or more of the registered voters, or six registered voters, whichever is greater, residing in the District; or if the owners of one-half or more of the area of the land in the territory included in the District and not exempt from the special tax, file written protests against the proposed changes, then there is a majority protest.

If there is a majority protest, then the Board may not make the proposed changes, and is barred from including such changes in a “resolution of consideration” for one year from the date of the hearing. (Government Code § 53337.)

If there is not a majority protest, then the Board may submit the proposed changes (which here would be to eliminate both the services provided and the special tax levied) to the “qualified electors” of the District. The qualified electors are owners of the taxable land in the District if there are less than 12 registered voters residing in the District; otherwise, they are the registered voters residing in the District. The election would need to comply with certain requirements of the Elections Code, including the preparation of an impartial statement by County Counsel and the compilation of arguments for and against the measure proposed. After the canvass of that election, if two-thirds of the votes casted are in favor of the proposed changes, the Board would adopt a “resolution of change” stating that the proposed changes are lawfully authorized. The Clerk to the Board would then record notice of that change. (Government Code § 53338.)

Dissolution of the Districts by Ordinance

The actions above would not “dissolve” any of the CFDs, and the recommended fee would not cover the cost of dissolution. After the Board adopts a “resolution of change” for any of the CFDs, then to dissolve the CFDs the Board would also have to make the following determinations and pass an ordinance to dissolve the CFD:

1. That the CFD is not obligated to pay any outstanding debt

2. That the CFD has no authorization to levy any special tax

Upon dissolving a CFD, the Board would then be required to cause an addendum to be recorded to the Notice of Special Tax lien for each CFD to state that the CFD has been dissolved, along with all associated liens, if any. (Government Code § 53338.5.)

REFERENCE MATERIAL:

BAI #8, May 24, 2016

BAI #9.1, June 21, 2016

CAO ANALYST:

John Hays