



Board Agenda Item 10

DATE: October 11, 2016

TO: Board of Supervisors

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

Jean M. Rousseau, County Administrative Officer

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) or direct staff to prepare all necessary documents to proceed with a Board-directed dissolution process for each CFD

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 or direct staff to prepare all necessary documents to proceed with a Board-directed dissolution process for each district. Depending on the determination, approve one of the following Action Items:

- 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 the County will fund all the associated costs of the Mello-Roos change proceedings not covered by the fee and authorize the Clerk to the Board to execute Budget Transfer No. 7 transferring FY 2016-17 appropriations within the General Fund, from Interest and Miscellaneous Expenditures Org 2540 Account 7295 (Professional & Specialized Services) to General Fund, Public Works and Planning Org 4360, Account 7295 in the amount approved by the Board to cover the County's associated costs for the Mello-Roos change proceeding not covered by the fee.**
- C. Waive the entire established fee of \$10,000 for each of the Mello-Roos change proceedings and make a determination that the County will fund all the associated costs of the Mello-Roos change proceedings, and approve and authorize the Clerk to the Board to execute Budget Transfer No. 6 transferring FY 2016-17 appropriations within the General Fund, from Interest and Miscellaneous Expenditures Org 2540 Account 7295 to General Fund, Public Works & Planning Org 4360, Account 7295 in the amount of \$30,000.**

D. Direct staff to prepare all necessary documents to proceed with a Board-directed dissolution process for each district, and approve and authorize the Clerk to the Board to execute Budget Transfer No. 5 transferring FY 2016-17 appropriations within the General Fund, from Interest and Miscellaneous Expenditures Org 2540 Account 7295 to General Fund, Public Works & Planning Org 4360, Account 7295 in the amount of \$15,200.

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 Districts are responsible to pay the fee (Action item A or B), unless waived by the Board (Action item C). If the Board initiated the process (Action item D), then it would allow the Board to hold a hearing and make a determination that the three Mello-Roos Districts will be dissolved. The County would be funding all the associated costs for the process. It is important to note that each District dissolution must have its own set of documents. If the Board were to dissolve all four of the Mello-Roos districts, it would also need to revisit the Mello-Roos policy requirements for new development. The cost of that action has not yet been examined, and would require additional discussion and direction by the Board.

If the Board approves Action item 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 Action item 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 this option is selected, staff will process a Budget Transfer No. 7 to cover the County's associated costs for the Mello-Roos change proceedings not covered by the fee.

If the Board approves Action item 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 with 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 November 1, 2016, with "resolutions of consideration." Budget Transfer No. 6 would effectuate this option by adjusting appropriations to provide the funding necessary to process the change proceedings for the three Mello-Roos districts.

If the Board approves Action item D, then staff will return with an item to dissolve the three Districts, and the County would fund the costs associated with the dissolution. Budget Transfer No. 5 would effectuate this option by adjusting appropriations to provide the funding necessary to process the dissolution proceedings for the three Mello-Roos districts.

ALTERNATIVE ACTION(S):

There are no viable alternative actions. All options to eliminate the special tax and dissolve the three Districts are listed in the action items.

FISCAL IMPACT:

There is no increase in budgeted Net County Cost associated with any of the recommended actions. If the Board approves Action Item A, all costs to perform the change proceeding will be funded by a fee charged to the residents and property owners of each CFD that seeks a change proceeding. If Option B is approved, Budget Transfer No. 7 will be executed transferring FY 2016-17 appropriations from the Interest and Miscellaneous Expenditure Org 2540 to the Public Works and Planning Org 4360 to fund the County's associated cost of the Mello-Roos change proceedings in the amount approved by the Board. If Option C is approved, Budget

Transfer No. 6 will be executed transferring FY 2016-17 appropriations from the Interest and Miscellaneous Expenditure Org 2540 to the Public Works and Planning Org 4360 to fund the full cost of the Mello-Roos change proceedings in the amount of \$30,000. If option D is approved, Budget Transfer No. 5 will be executed transferring FY 2016-17 appropriations from the Interest and Miscellaneous Expenditures Org 2540 to Public Works and Planning Org 4360 in the amounts of \$15,200 to provide funding to prepare all necessary documents to proceed with the dissolution process for each Mello-Roos district.

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) and that the Board may dissolve an existing Mello-Roos CFD by ordinance after making determinations that the district is not obligated to pay any outstanding debt, and that the district has no authorization to levy the special tax (Government Code § 53338.5.)

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 (Exhibit A). 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.

At the hearing on August 23, 2016 the Board directed the Department to study the process and determine the cost of dissolving these three Mello-Roos Districts if the Board were to initiate it and return with an item on September 27, 2016. The Department examined the process and determined that the cost would be \$15,200 for all three Districts (Exhibit B). This includes staff time to go through the process and some publishing of the ordinance that will be required.

Recommended Fee Amounts

The fee amounts for action items A or B 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 (Action items A, B or C)

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 November 1, 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.)

If the Board carried out that *change* proceeding, and if there were no majority protest and the electors voted in favor of the change, the special taxes and services would be terminated in the Districts. But the Districts would still not be *dissolved*. To *dissolve* the districts, the Board would still need to carry out the procedures described below for Action Item D. The fees for the proceeding on the petitions to *change* the Districts do not include the costs of the process to *dissolve* the districts.

Dissolution of the Districts by Ordinance (Action Item D)

The Board could adopt Action item D and direct staff to return with an item for the Board-initiated dissolution processes, for each CFD. Below is a brief description of the process:

1. First, the Board would need to conduct a public hearing to eliminate services or facilities in a district (Gov. Code, § 53330.7).
2. After eliminating the services or facilities provided by the district (at the end of the hearing), the Board would need to make the following determinations: (1) that the district is not obligated to pay any outstanding debt; and (2) that the district has no authorization to levy any special tax (Gov. Code, § 53338.5.).
3. Then the Board would need to adopt an ordinance to dissolve the district (Gov. Code, § 53338.5), requiring a first and second reading.
4. Upon dissolution (when the ordinance passes), the Board would need to direct the Clerk to the Board to record a "Notice of Cessation of Special Tax," which must state that the obligation to pay the special tax and that the lien imposed by the Notice of Special Tax Lien recorded for the district (which must be identified by Recorder's document number) is extinguished. The "Notice of Cessation of Special Tax" must also refer to the book and page of the Book of Maps of Assessment and Community Facilities Districts where the map of the district boundaries is recorded. (Gov. Code, § 53330.5)
5. Furthermore, upon dissolution (when the ordinance passes), the Board would need to cause the recordation of an addendum to the Notice of Special Tax Lien that was recorded for the district under Streets and Highways Code section 3114.5. The addendum must state that the district and all of its associated liens have been dissolved. (Gov. Code, § 53338.5, subd. (b).)

California Environmental Quality Act (CEQA)

The Board Agenda Items of October 28, 2014, and December 9, 2014, raised the need to address CEQA as it relates to the elimination of conditions of approval and/or mitigation measures that were imposed by the County on individual subdivision maps requiring either the formation or annexation to a community facility district. Department staff has continued to review this matter, in concert with County Counsel, and has determined that further environmental review is likely not required prior to Board action to dissolve any or all of the community facility districts. This conclusion is premised on recent decisional law and analysis by staff of exemptions applicable under CEQA. Staff will include additional discussion regarding its analysis in the agenda item(s) related to dissolution of community facilities districts.

REFERENCE MATERIAL:

BAI #21, September 14, 2004
BAI #12, February 1, 2005
BAI #27, May 3, 2005
BAI #6, May 10, 2005
BAI #15, February 7, 2006
BAI #16, March 21, 2006
BAI #57, October 7, 2008
BAI #14, September 14, 2010
BAI #13, October 5, 2010
BAI #15, December 14, 2010
BAI #10, January 11, 2011
BAI #16, July 19, 2011
BAI #30, August 9, 2011

BAI #14, August 30, 2011
BAI #16, June 19, 2012
BAI #22, July 10, 2012
BAI #20, July 9, 2013
BAI #17, August 2, 2013
BAI #31, July 15, 2014
BAI #18, July 29, 2014
BAI #11, October 28, 2014
BAI #6, December 9, 2014
BAI #7, June 2, 2015
BAI #7, July 14, 2015
BAI #8, May 24, 2016
BAI #9.1, June 21, 2016
BAI #11, August 23, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibit A - B
On file with Clerk - Budget Transfer No. 7 (Action Item B)
On file with Clerk - Budget Transfer No. 6 (Action Item C)
On file with Clerk - Budget Transfer No. 5 (Action Item D)

CAO ANALYST:

John Hays