



# Board Agenda Item 44

DATE: December 13, 2016

TO: Board of Supervisors

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

SUBJECT: Dissolution of Mello-Roos Community Facilities Districts 2005-01 (Ventana Hills)  
2005-02 (Bretz Mountain), and 2005-03 (Wildflower Village)

RECOMMENDED ACTION(S):

- 1. Conduct second reading of and adopt an ordinance dissolving Community Facilities District No. 2005-01 (Police Protection) of the County of Fresno (CFD 2005-01) and ordering the recordation of an “Addendum to the Notice of Special Tax Lien and Notice of Cessation of Special Tax,” and waive reading of the Ordinance in its entirety**
- 2. Conduct second reading of and adopt an ordinance dissolving Community Facilities District No. 2005-02 (Police Protection) of the County of Fresno (CFD 2005-02) and ordering the recordation of an “Addendum to the Notice of Special Tax Lien and Notice of Cessation of Special Tax,” and waive reading of the Ordinance in its entirety**
- 3. Conduct second reading of and adopt an ordinance dissolving Community Facilities District No. 2005-03 (Police Protection) of the County of Fresno (CFD 2005-03) and ordering the recordation of an “Addendum to the Notice of Special Tax Lien and Notice of Cessation of Special Tax,” and waive reading of the Ordinance in its entirety**
- 4. Adopt a resolution to rescind Resolution No. 16-316, which adopted and levied the special tax for developed properties within CFD 2005-01 (Police Protection) of the County of Fresno for Fiscal Year 2006-17**
- 5. Adopt a resolution to refund excess revenues from former community facilities districts under Government Code section 7911**

These actions are presented at the direction of the Board, provided to staff at the October 11, 2016 meeting.

Approval of recommended actions allows the Board to dissolve Mello-Roos Districts CFD 2005-01, CFD 2005-02 and CFD 2005-03 pursuant to California Government Code Sections 53338.5 and cause recordation of an “Addendum to the Notice of Special Tax Lien and Notice of Cessation of Special Tax Lien” for each district. Approval of the fourth recommended action repeals the special tax that the Board levied in CFD 2005-01 earlier this year so that Ventana Hills property owners who paid all or part of that special tax can obtain refunds. Approval of the fifth recommended action provides for a refund to current property owners in each of the districts in appropriate equal shares of any excess revenues remaining after payment for services provided before November 15, 2016, when the Board eliminated those services.

ALTERNATIVE ACTION(S):

The Board may choose not to approve any of the recommended actions.

FISCAL IMPACT:

On October 11, 2016, the Board approved the transfer of FY 2016-17 appropriations within the General Fund, from Interest and Miscellaneous Expenditures Org 2540, Account 7295 to Public Works and Planning Org 43601250, Account 7295 to allow for the effectuation of the process when they directed staff to bring this item. Costs associated with the recommended actions will not exceed \$15,200.

DISCUSSION:

In 2005, the Board of Supervisors of the County of Fresno (Board) initiated proceedings under Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at section 53311 of the California Government Code, commonly known as the Mello-Roos Community Facilities Act of 1982 (the "Act") for Police Protection Services, to form CFD 2005-01, CFD 2005-02, and CFD 2005-03.

On March 8, 2005, the Board approved formation of CFD 2005-01 Ventana Hills. Since that date, the Board approved CFD 2005-02 Bretz Mountain (June 7, 2005) and CFD 2005-03 Wildflower Village (September 13, 2005).

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.

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.)

**Dissolution of the Districts by Ordinance**

On October 11, 2016, the Board directed staff to return with an item for the Board-initiated dissolution processes for each of the three 2005 CFDs. 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). This occurred for each of the three 2005 CFDs on November 15, 2016.
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.). This occurred for each of the three 2005 CFDs on November 15, 2016.
3. Then the Board would need to adopt an ordinance to dissolve the district (Gov. Code, § 53338.5), requiring a first and second reading. The first reading of an ordinance for each of the three 2005 CFDs occurred on November 15, 2016.

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.) The Notice of Cessation of Special Tax may be combined with the Addendum to the Notice of Special Tax Lien, described below. The first three recommended actions before the Board with this item would accomplish this requirement for the 2005 CFDs.
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).) The Addendum to the Notice of Special Tax Lien may be combined with the Notice of Cessation of Special Tax, described above. The first three recommended actions before the Board with this item would accomplish this requirement for the 2005 CFDs.

#### **Repeal of Fiscal Year 2016-17 Special Tax in Ventana Hills**

On July 12, 2016, the Board adopted Resolution No. 16-316 to levy the special tax for developed properties within CFD 2005-01 (also known as Ventana Hills) for Fiscal Year 2016-17. The first installment of that tax came due on November 1, 2016, and was delinquent if not paid by 5:00 p.m. or the close of business, whichever was later, on December 10, 2016.

The fourth recommended action before the Board with this item would repeal Resolution No. 16-316 and enable Ventana Hills property owners who paid the first installment, or both installments, of the special tax to obtain a refund of that payment. This action will prevent the accumulation of further revenue for a dissolved district.

If the Board adopts the recommended resolution, the Auditor-Controller/Treasurer-Tax Collector will reach out to such taxpayers to inform them of their overpayment and their right to obtain a refund.

#### **Refund of Remaining Excess Revenues**

The fifth recommended action before the Board would direct the Auditor-Controller/Treasurer-Tax Collector to refund to current property owners in equal shares any balance remaining in the funds of the dissolved districts after payment for services before November 15, 2016, when the Board eliminated those services. (For CFD 2005-01, the balance refunded under this resolution would not include the amounts refundable under the resolution in fourth recommended action.) The refunds would be paid not less than 30 days from the date of the resolution, which is the statute of limitations under Government Code section 7911 for such action.

#### **California Environmental Quality Act (CEQA)**

Approval of the recommended actions has been determined, pursuant to Sections 15061(b)(3) - certainty that there is no possibility activity may have a significant impact, 15378(b)(2) - continuing administrative activities and general policy making activities, 15378(b)(4) - governmental fiscal activities, and 15378(b)(5) - organizational or administrative activities of governments, of the California Environmental Quality Act (CEQA) guidelines, that the proposed project will not have a significant effect on the environment and is not subject to CEQA.

#### **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 #31, July 12, 2016  
BAI #11, August 23, 2016  
BAI #10, October 11, 2016  
BAI #6, November 15, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

Ordinance Dissolving CFD 2005-01  
Ordinance Dissolving CFD 2005-02  
Ordinance Dissolving CFD 2005-03  
On file with Clerk - Resolution to Rescind Special Tax CFD 2005-01  
On file with Clerk - Resolution to Refund Excess Revenues

CAO ANALYST:

John Hays