



County of Fresno

Hall of Records, Rm. 301
2281 Tulare Street
Fresno, California
93721-2198

Legislation Text

File #: 16-1065, **Version:** 1

DATE: October 11, 2016

TO: Board of Supervisors

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

SUBJECT: Resolution of Intention to Change the Boundaries of Zone "AJ" of County Service Area No. 35, and Resolution of Intention to Levy Special Benefit Assessments for the Maintenance of Roads within Zone "AJ" of County Service Area No. 35

RECOMMENDED ACTION(S):

- 1. Adopt Resolution of Intention to Change 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 set the time and place for a public hearing to consider the proposed boundary change.**
- 2. Adopt Resolution of Intention to Levy Benefit Assessment for Road Maintenance Costs on Real Property in County Service Area No. 35, Zone "AJ," to direct the preparation and filing with the Clerk to the Board a written Engineer's Report under the Benefit Assessment Act of 1982 and Proposition 218, set and authorize giving notice of the time and place for a public meeting and a public hearing on the proposed assessment, authorize and direct the preparation of assessment ballots and related materials, and designating the Director of Public Works and Planning and/or his designees to tabulate assessment ballots.**

The first recommended action initiates the zone boundary change process necessary to include in Zone "AJ" of County Service Area 35 (CSA 35-AJ) 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. The proposed boundary change proceedings will be Boundary Change No. 2 for CSA 35-AJ. The second recommended action initiates the process to levy an assessment on specially benefitted properties in CSA 35-AJ (with boundaries changed as proposed) for road maintenance.

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 35-AJ 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 in a majority protest proceeding before a benefit assessment for road maintenance services may be levied. Conversely, if there is a majority protest to either the CSA 35-AJ 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 35-AJ Boundary Change No. 2 and the proposed benefit assessment are both approved, then the existing benefit assessment to fund road maintenance service in CSA 35-AJ will be replaced with the newly levied assessment to fund road maintenance service in CSA 35-AJ 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. Zones may be formed within CSA 35 and assessments levied upon specially benefited parcels within each of those zones to fund the maintenance of roads serving the parcels in those zones.

On June 17, 1997, the Board adopted Resolution No. 97-408 forming CSA 35-AJ, 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 35-AJ, which was a condition of approval for Parcel Map No. 8027. Road maintenance within CSA 35-AJ is funded by assessments levied on properties that receive a special benefit from the maintenance of the roads located within CSA 35-AJ. Currently there are 18 lots within CSA 35-AJ, with an additional 9 lots to 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 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 must be in accordance with Article XIID, Section 4 of the California Constitution, the Proposition 218 Omnibus Implementation Act (Gov. Code 53750, et. seq.), and for the purpose of road maintenance 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 with a hearing and (if there is no majority protest) may result in the establishment of a changed boundary of the zone. Today the Board may adopt a resolution initiating the boundary change. Then, on December 6, a public protest hearing would be conducted to hear and consider testimony from all interested persons regarding the boundary change, to receive written objections, if any, and to determine if there is a majority protest.

To initiate CSA 35-AJ Boundary Change No. 2, the Board must adopt a resolution that:

1. States that the proposal is made pursuant to Title 3, Division 2, Part 2, Chapter 2.5, Article 8 of the California Government Code; and

2. Describes the boundaries of the territory to be included in the zone and the boundaries of the territory affected by the proposed change; and
3. States the reasons for the proposed boundary changes; and
4. States the different authorized services, different levels of service, different authorized facilities, or additional revenues that the zone, with boundaries changed as proposed, will provide; and
5. Describes the methods by which authorized services will be financed; and
6. Identifies CSA 35-AJ by name or number, and establishes a designation for the boundary change proceeding (CSA 35-AJ Boundary Change No. 2); and
7. Fixes the date, time, and location of a public hearing to hear and consider testimony regarding CSA 35-AJ Boundary Change No. 2, receive written objections, if any, and determine if there is a majority protest; and
8. States that, at the public hearing, the testimony of all interested persons will be heard; and
9. Includes a summary of the procedures applicable to the completion, return, and tabulation of written objections to the boundary change; and
10. Directs the Clerk to the Board to prepare, mail, post, and publish a notice of public hearing to consider CSA 35-AJ Boundary Change No. 2.

By approving the first recommended action the Board will adopt a resolution satisfying the aforementioned requirements to initiate CSA 35-AJ Boundary Change No. 2.

The resolution approved by the first recommended action sets a public hearing on **December 6, 2016 at 9:00 A.M.** (or as soon after as practicable, but in any case before any public protest hearing on the proposed benefit assessment) in the meeting chambers of the County's Board of Supervisors, at the Hall of Records; 2281 Tulare Street, Third Floor, Fresno, California 93721. The public hearing may be continued from time to time by the Board without further notice. At that hearing the Board will hear and consider the testimony of persons interested in CSA 35-AJ Boundary Change No. 2, receive written objections, if any, and determine if there is a majority protest. If the Board determines that there is a majority protest, the boundary change proceeding must be abandoned and the benefit assessment proceeding must be abandoned.

No later than twenty (20) days before the date and time of the public hearing stated in the preceding paragraph and set in the resolution initiating CSA 35-AJ Boundary Change No. 2, the Clerk to the Board shall mail and publish notices of that public hearing. Notices shall be:

1. Mailed to all owners of property within the zone with boundaries changed as proposed; and
2. Published one time in a newspaper of general circulation published within the County; and
3. Posted in at least three public places located within the territory of the zone with boundaries changed as proposed; and
4. Mailed to each city and special district that contains (or whose sphere of influence contains) any portion of the zone with boundaries changed as proposed.

Because 12 or more registered voters reside in the territory covered by CSA 35-AJ with boundaries changed

as proposed, each registered voter residing in the zone may file a written objection with the Clerk to the Board at or before the close of the public hearing. In order for a written protest to be considered, it must be properly executed and must be delivered as follows:

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

To determine if there is a majority protest, the Board must first determine whether the territory within the zone with boundaries changed as proposed is inhabited or uninhabited as defined by Government Code section 25210.2, subdivision (e). If 12 or more registered voters live within the territory under consideration, the territory is inhabited. The territory is uninhabited if there are less than 12 registered voters residing within the territory. There are 31 registered voters residing in CSA 35-AJ with boundaries changed as proposed. That means there will be a majority protest if more than 50 percent of the total number of registered voters (or at least 16 of the 31 registered voters) residing in the zone with boundaries changed as proposed have filed written objections to the boundary change.

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 35-AJ with boundaries changed as proposed is required for CSA 35-AJ 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 35-AJ with boundaries changed as proposed must conform with Article XIID, 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). By approving the second recommended action the Board adopts a resolution initiating that assessment proceeding and makes the following findings, determinations, and authorizations as follows:

1. Designates Hal Lore, PE - Lore Engineering, Inc. as the Assessment Engineer and directs the preparation of a written Engineer's Report to be filed with the Clerk to the Board in conformance with Proposition 218 and the 1982 Act.
2. **Sets a public meeting of the County (the "Public Meeting") for November 16, 2016, at 6:30 P.M.** (or as soon after as practicable) at the Woodward Park Regional Library, 944 East Perrin Avenue, Fresno, California 93720, to hear public testimony concerning the proposed assessment. The Public Meeting may be continued from time to time by the County official conducting the Public Meeting without further notice by the Board, but in any case not later than eight days before the date set for the

public hearing described below.

3. **Sets a public hearing of the Board (the “Public Hearing”) for December 6, 2016 at 9:00 A.M., or as soon thereafter as practicable**, but in any case only after completion of the public hearing on CSA 35-AJ Boundary Change No. 2, and only if there is no majority protest in that boundary change hearing, in the meeting chambers of the Board, Hall of Records, 2281 Tulare Street, Third Floor, Fresno, California, 93721, to hear all objections and protests to the proposed assessment as set forth in the Engineer’s Report. The Public Hearing may be continued from time to time by the Board without further notice by the Board.
4. Authorizes and directs the Director of Public Works and Planning (Director) or his designee to prepare assessment ballots and assessment ballot instructions, any materials for the change, withdrawal, or substitution of assessment ballots, including substitute assessment ballots and substitute assessment ballot instructions, any materials for co-owner assessment ballots, including co-owner assessment ballots, and any other forms and materials the Director or his designee deems necessary for the submission of assessment ballots by record owners of the property in CSA 35-AJ with boundaries changed as proposed.
5. Authorizes the Director or his designee to prepare Joint Notices of the Public Meeting and the Public Hearing. Each of the Joint Notices shall include the following: (a) the total amount of the proposed assessment chargeable to the entire territory to be assessed, together with the proposed assessment formula or range; (b) the amount chargeable to the record owner’s parcel; (c) the duration, method and frequency of the proposed assessment; (d) the reason for the assessment and basis upon which the amount of the assessment was calculated; (e) the date, time, and place of the Public meeting; and (f) the date, time, and place of the Public Hearing; (g) the contact information of an individual, office, or organization that interested persons may contact to receive additional information; (h) the address to which property owners may mail or deliver assessment ballots; (i) an assessment ballot; (j) a summary of the procedures for the completion, return, and tabulation of the assessment ballot; and (k) a statement that a finding of majority protest will cause the assessment to be abandoned, and cause CSA 35-AJ Boundary Change No. 2 to be terminated. Envelopes containing the Joint Notices must be labeled, in no smaller than 16-point bold type, “OFFICIAL BALLOT ENCLOSED.” The Director or his designee shall deliver the Joint Notices to the Clerk to the Board no later than Wednesday, October 12, 2016.
6. Authorizes and directs the Clerk to the Board to assign and mail, upon filing of the Engineer’s Report and no later than Friday, October 21, 2016, the Joint Notices to the record owners of the property to be assessed CSA 35-AJ with boundaries changed as proposed.
7. Establishes procedures for the receipt and custody of assessment ballots, and designates and authorizes the Director of Public Works and Planning, and his designees, to tabulate properly completed and timely submitted assessment ballots. The Board also finds and determines that each of such persons is an impartial person who does not have a vested interest in the outcome of the proposed assessment.

Engineer’s Report

Pursuant to approval of the second recommended action, an Assessment Engineer is designated and an Engineer’s Report will be prepared and filed with the Clerk. The Engineer’s Report must be prepared by a qualified and licensed engineer. The report will be made available for public inspection in its entirety.

The Engineer’s Report must be prepared in accordance with Proposition 218 and the 1982 Act. The Engineer’s Report will include the cost to fund the continued maintenance of the road serving CSA 35-AJ with

boundaries changed as proposed.

Assessment Ballot Measure

Owners of property in CSA 35-AJ 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 in CSA 35-AJ with boundaries changed as proposed.

Assessment Ballot Process

A single assessment ballot per parcel, along with a detailed Notice and related assessment ballot instructions, will be mailed by the Clerk to the Board to owners of record whose names and addresses appear on the last equalized property tax roll for all parcels located in CSA 35-AJ 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 to the Board no later than 9:00 A.M. on December 6, 2016; or
2. Delivered to the Clerk to the Board no later than 9:00 A.M. on December 6, 2016; or
3. Delivered to the Clerk to the Board at the Public Hearing on December 6, 2016, before the close of public testimony.

Assessment ballots will remain unopened and in the charge of the Clerk to the Board 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 before the conclusion of public testimony at the Public Hearing but only by using the County-provided co-owner assessment ballot for that 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.

In either case, co-owner assessment ballots and substitute assessment ballots will be provided once the property owner executes a County request form, which will be made available upon request to the Clerk to ensure orderly 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 35-AJ 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 35-AJ 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 35-AJ.

REFERENCE MATERIAL:

BAI #13, June 17, 1997
BAI #16, March 25, 2008

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map
On file with Clerk - Resolution of Intention (Boundary Change)
On file with Clerk - Resolution of Intention (Benefit Assessment)

CAO ANALYST:

John Hays