



County of Fresno

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Legislation Text

File #: 20-0411, **Version:** 1

DATE: August 4, 2020

TO: Board of Supervisors

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

SUBJECT: Majority Protest Hearing on Standby Charge Assessment for Water and Sewer Services in County Service Area No. 1 - Tamarack Estates

RECOMMENDED ACTION(S):

- 1. Conduct a majority protest hearing on a proposed standby charge assessment for water and sewer services in County Service Area No. 1, Tamarack Estates; and**
- 2. If there is not a “majority protest” to the standby charge assessment, adopt Resolution approving and levying a standby charge assessment on real property under the Uniform Standby Charge Procedures Act for water and sewer services in County Service Area No. 1.**

Approval of the first recommended action allows the Board to conduct a majority protest hearing on the proposed levy of a standby charge assessment for water and sewer services for County Service Area No. 1 - Tamarack Estates (CSA 1). There is a “majority protest” if the valid ballots submitted, and not withdrawn, in opposition to the proposed standby charge assessment exceed the valid ballots submitted, and not withdrawn, in favor, with each ballot weighted according to the proportional financial obligation of the affected property. The second recommended action, which the Board should only take if there is not a “majority protest,” adopts a Resolution to approve and levy the standby charge assessment. This item pertains to a location in District 5.

ALTERNATIVE ACTION(S):

Staff has not identified any viable alternative action.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. All costs associated with this matter are paid for by the specially benefitted properties within CSA 1.

DISCUSSION:

CSA 1 was formed in 1962 to provide community water, sewer, and snow removal services for the subdivision known as Tamarack Estates, located nine miles south of Huntington Lake. The subdivision contains a total of 45 lots, 38 of which are developed, 6 are undeveloped, and one contains a 10-unit motel. The boundaries of CSA 1 are displayed in Exhibit A.

Beginning in fiscal year 2006-07, the water and sewer service budgets were separated from snow removal services. The water and sewer budget is currently funded with revenue from annual service charges. The water and sewer budget is also funded with a portion of ad valorem property tax revenues allocated to CSA 1.

(Only county service areas that existed before Proposition 13 in 1978, as CSA 1 did, receive allocations of ad valorem property tax revenues.)

The last Proposition 218 hearing, by which the water and sewer annual service charges were increased, was conducted on November 1, 2005. The water and sewer annual service charge was increased to a total of \$1,201.95 per year for developed single family residential parcels (1 Equivalent Dwelling Unit (EDU)), \$4,567.40 for the parcel with the motel (3.8 EDUs), and \$125.52 for vacant parcels. The annual service charges were determined based on services, supplies, and labor costs at the time with no adjustments for inflation.

The costs of operating CSA 1 facilities have exceeded revenues since 2015 and will continue to do so unless the proposed standby charge assessment is levied. For the period from 2015 to today, the average annual operation and maintenance budget was \$97,344, while revenues from the water and sewer annual service charges have been constant at \$49,910. Ad valorem property tax revenues allocated to CSA 1 have not been sufficient to make up the difference. As a result, cash reserves have been depleted. Revenues need to be increased to not only meet expenses, but also, in accordance with the Board of Supervisors (Board) policy adopted November 7, 2006, to build a cash reserve of a minimum of fifty percent of the average of the last three fiscal years' annual operation costs.

The Department of Public Works and Planning staff reached out to the residents of CSA 1 in 2015 to discuss a rate increase and the need for the District to start planning for the replacement of deteriorating capital infrastructure. The community did not support moving forward with a rate increase or funding a capital project at that time. Since 2015 staff has been in communication with individual property owners about the District's situation. The District formed a Citizens Advisory Committee (CAC) in 2019 when staff began preparing the Proposition 218 proceeding.

On June 29, 2019, the Department of Public Works and Planning staff met with the Citizens Advisory Committee (CAC) and CSA 1 community members and discussed the need to initiate the Proposition 218 process to increase revenue due to the deficiency in funds to operate and maintain the CSA 1 facilities. The CAC and community indicated its desire to maintain and appropriately fund their community water and sewer system and recommended a Proposition 218 proceeding to increase CSA 1 revenue. Department staff informed the CAC and CSA 1 community members on October 28, 2019, that Staff would prepare documents and recommend to the Board a Proposition 218 proceeding to levy a standby charge assessment that is designed, in conjunction with the allocation of ad valorem property tax revenues to CSA 1, to generate revenue sufficient to maintain and appropriately fund the community water and sewer system, as desired by the CAC and the community. Department staff met with the Citizens Advisory Committee (CAC) and CSA 1 community members again on May 29, 2020, to review the proposed standby charge assessment and the Proposition 218 process for a standby charge assessment.

The Board started the process to levy standby charge assessments in CSA 1, on June 9, 2020, when it adopted Resolution 20-223 initiating an assessment proceeding under the Uniform Standby Charge Procedures Act. The public hearing today is to hear and consider testimony from all interested persons regarding the assessment, and to determine if there is a majority protest.

The Clerk of the Board mailed notice of today's public hearings on June 19, 2020, Attachment A, as required by law, and the Board's June 9, 2020, resolution to initiate an assessment proceeding.

The June 9, 2020 Board Agenda Item for the approval of the resolution initiating the standby charge assessment proceeding stated that a public meeting would be held on Friday, July 24, 2020, at 5:00 p.m. After the June 9, 2020 Board meeting, the Department changed the date of that meeting to Saturday, July 25, 2020, to make it more accessible to CSA 1 property owners.

Water and Sewer Services Standby Charge Assessment

The water and sewer services standby charge assessment is proposed to be levied in FY 2020-21 and to continue in successive years through FY 2024-25 in the amounts stated in Exhibit B and the Engineer's Report, except that after FY 2024-25, the amount of the assessment may be increased annually by a factor equal to the average annual change for the San Francisco-Oakland-San Jose Consumer Price Index - All Items (SFCPI-U) up to 3% over the prior year, until the standby charge assessment is reduced or terminated, or there is a new proceeding to increase the standby charge assessment pursuant to Proposition 218.

The maximum total annual amount of the proposed standby charge assessment for all assessed properties is \$121,890.00 in fiscal year 2020-21, \$125,546.70 in fiscal year 2021-22, \$129,313.34 in fiscal year 2022-23, \$133,192.79 in fiscal year 2023-24, and \$137,188.39 in fiscal year 2024-25. Each year after that, beginning in fiscal year 2025-26, the maximum annual standby charge assessment may be increased over the previous year's standby charge assessment to account for inflation, as stated in the Engineer's Report.

The maximum total annual amount of the proposed standby charge assessment for residential parcels is \$2,550.00 in fiscal year 2020-21, \$2,626.50 in FY 2021-22, \$2,705.30 in FY 2022-23, \$2,786.46 in FY 2023-24, and \$2,870.05 in FY 2024-25. Each year after that, beginning in FY 2025-26, the maximum annual standby charge assessment chargeable to the residential parcels in CSA 1 may be increased over the previous year's standby charge assessment to account for inflation, as stated in the Engineer's Report.

The maximum total annual amount of the proposed standby charge assessment for the motel is \$9,690.00.00 in FY 2020-21, \$9,980.70 in FY 2021-22, \$10,280.14 in FY 2022-23, \$10,558.55 in FY 2023-24, and \$10,906.19 in FY 2024-25. Each year after that, beginning in FY 2025-26, the maximum annual standby charge assessment chargeable to the residential parcels in CSA 1 may be increased over the previous year's standby charge assessment to account for inflation, as stated in the Engineer's Report.

If there is not a majority protest, the recommended resolution approves and levies the assessment, and provides that it will be collected annually at the same time, and in the same manner, and subject to the same penalties, as the general taxes of the County. The recommended resolution also provides that the Director of the Department of Public Works and Planning (Director) is authorized and directed to timely deliver (or cause their designee to timely deliver) a true and complete roll of the standby charge assessment to the Auditor-Controller/Treasurer-Tax Collector. Beginning in FY 2025-26, the Director is authorized and directed to perform (or cause their designee to perform) the inflation calculation for purposes of the annual roll.

If there is a majority protest, staff will conduct another public meeting with the property owners involved to discuss alternative options, such as discontinuing water and sewer services to CSA 1 or initiating another Proposition 218 proceeding to levy a standby charge assessment.

Standby Charge Assessment Ballot Process and "Majority Protest"

The process of levying a standby charge assessment on real property must conform to the requirements of Proposition 218 as passed by the voters of the State in November 1996 and placed in the California Constitution as Articles XIII C and XIII D. The particular requirements applicable to assessments are in Article XIII D, section 4. These requirements apply to the standby charge assessment proceeding before the Board in this item.

Under Proposition 218, a notice, including a standby charge assessment ballot, was mailed to all of the property owners within the District on June 19, 2020, 45 days before the public protest hearing before the Board today.

For a standby charge assessment ballot to be counted, it must be properly executed and delivered, as follows:

- (1) By U.S. mail so that it is received by the Clerk of the Board no later than 9:00 A.M. on August 4, 2020;
or
- (2) Otherwise delivered to the Clerk of the Board no later than 9:00 A.M. on August 4, 2020; or
- (3) Delivered at the Board's public protest hearing on August 4, 2020, before the close of public testimony during said hearing.

Standby charge assessment ballots will remain unopened and in the charge of the Clerk of the Board until they are opened and tabulated after the conclusion of public testimony at the public protest hearing.

The following types of standby charge assessment ballots have been available to property owners of the specially benefitted parcels:

Substitute standby charge assessment ballots (for change or withdrawal of a standby charge assessment ballot, or owner claims that he or she did not receive or lost the standby charge assessment ballot, or that the standby charge assessment ballot is unusable).

New owner standby charge assessment ballot (for changed ownership after date of Engineer's Report).

Co-owner standby charge assessment ballots (for more than one of the record owners of a parcel wishes to submit a standby charge assessment ballot for his or her interest).

The foregoing alternate forms of standby charge assessment ballots are provided by the Clerk of the Board once the property owner executes an appropriate County request form. All such alternate forms of standby charge assessment ballots will have the same standby charge assessment ballot measure as a standby charge assessment ballot.

All properly completed and timely returned standby charge assessment ballots will be tabulated only after the conclusion of the public protest hearing. The proposed standby charge assessment shall not be imposed if the total weighted value of the standby charge assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the total weighted value of the standby charge assessment ballots submitted, and not withdrawn, in favor of the proposed standby charge assessment (i.e., a "majority protest"). All standby charge assessment ballots are weighted according to the proportional financial obligation of the affected property.

REFERENCE MATERIAL:

BAI #35, June 9, 2020

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibits A - B
Attachment A
On file with Clerk - Resolution

CAO ANALYST:

Debbie Paolinelli