

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 9/26/02
Department Name: Treasurer-Tax Collector
Department No.: 065
Agenda Date: 10/8/02
Placement: Departmental
Estimate Time: 60 Minutes plus 10 minutes in
afternoon
Continued Item: Yes
If Yes, date from: 8/13/02

TO: Board of Supervisors

FROM: Gary L. Feramisco
Treasurer-Tax Collector
Debt Advisory Committee Chair

STAFF CONTACT: Harry Hagen, CPA, CPFO (x2150)
John Cuykendall (x3560)
Mary McMaster (x2950)
Jennifer Christensen (x2950)

SUBJECT: Formation of Community Facilities (Mello Roos) District (Orcutt Community Plan)

Recommendation(s):

That the Board of Supervisors, after staff presentations and prior to the public hearing:

- A. Direct staff to prepare a report with a brief analysis of proposed modifications on the probable special tax to be paid by the owners of property within the Community Facilities District.

That the Board of Supervisors at the conclusion of the public hearing:

- B. Find that the Board has considered the environmental effects of those projects that have been identified for funding through the Community Facilities District and that have been considered in the County's land use approval process in conjunction with an approved project, have therefore been thoroughly analyzed under CEQA (environmental documents containing the analysis of relevant projects are set forth in Appendix A), find that the environmental review that was performed for those projects is adequate for the formation of the Community Facilities District, and find that other projects that might be funded by Community Facilities District No. 2002-1 are either projects not subject to CEQA or are projects too speculative to analyze at this time;
- C. Accept Community Facilities District No. 2002-1 (Orcutt Community Plan) Modifications Impact Report which modifies the Rate and Method of Apportionment adopted on July 9, 2002 (Attachment 1);

- D. Accept Community Facilities District No. 2002-1 (Orcutt Community Plan) Report which describes the public services by type which will be required to adequately meet the needs of the CFD and also includes an estimate of the fair and reasonable cost of providing the public services and an estimate of the incidental expenses related thereto (Attachment 2);
- E. Adopt a Resolution of the Board of Supervisors of the County of Santa Barbara Modifying Resolution of Intention and Approving Amended and Restated Rate and Method of Apportionment of the County of Santa Barbara Community Facilities District No. 2002-1 (Orcutt Community Plan) (Attachment 3);
- F. Adopt a Resolution of the Board of Supervisors of the County of Santa Barbara of Formation of the County of Santa Barbara Community Facilities District No. 2002-1 (Orcutt Community Plan), Authorizing the Levy of a Special Tax Within the District and Establishing an Appropriations Limit for the District (Attachment 4);
- G. Adopt a Resolution of the Board of Supervisors of the County of Santa Barbara Calling Special Election for the County of Santa Barbara Community Facilities District No. 2002-1 (Orcutt Community Plan) (Attachment 5) and trail this matter so that the election may be held and the results tallied;

After the election results are tallied, if the vote of qualified electors authorizes the levy of a special tax to finance certain services and sets an annual appropriation limit, that the Board of Supervisors:

- H. Adopt a Resolution of the Board of Supervisors of the County of Santa Barbara Declaring Results of Special Election and Directing Recording of Notice of Special Tax Lien (Attachment 6);
- I. Waive the reading of an Ordinance of the County of Santa Barbara Levying Special Taxes Within The County Of Santa Barbara Community Facilities District No. 2002-1 (Orcutt Community Plan) in its entirety and approve the first reading thereof (Attachment 7); and
- J. Adopt a non-binding Resolution of the Board of Supervisors of the County of Santa Barbara Regarding Funding in the Orcutt Area (Attachment 8).

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with Goal No. 1 - An Efficient Government Able to Respond Effectively to the Needs of the Community; Goal No. 4 - A Community that is Economically Vital and Sustainable; and Goal No. 5 - A High Quality of Life for All Residents.

Executive Summary:

On August 13, 2002, upon staff's recommendation your Board made a specific finding that because of the need for public participation, and that the complexity of issues involved in this matter require additional time, the public hearing scheduled for that date would be continued to October 8, 2002. Petitioning landowners have requested that staff increase the proposed maximum special taxes that may be levied on developed property. The increase in the maximum special tax will allow the CFD to raise revenues sufficient

to fund increased costs of authorized services incurred as a result of operation and maintenance requirements for additional facilities and infrastructure that may be dedicated to the County within the Orcutt Community Plan through future subdivision approvals. The historical background for this project is more fully set forth in Appendix B.

The steps before you this morning in the Community Facilities District (“CFD”) formation process are your Board’s request for and acceptance of the Modifications Impact Report and the CFD report, and consideration of a resolution modifying the resolution of intention, a resolution of formation and a resolution calling for a special election. Upon passage of these resolutions, and upon the Registrar of Voters’¹ receipt of executed Consent and Waivers from all of the affected property owners and receipt of ballots from those property owners, the Registrar will tally the election results prior to the close of your agenda for October 8, 2002. If the election results allow for the levy of the special tax and the setting of an appropriations limit, your Board will be asked to adopt a resolution declaring the results of the election, direct the recording of the notice of special tax lien, and conduct first reading of the ordinance levying the special tax. In addition, your Board will be asked to adopt a non-binding resolution regarding funding of certain public services in the Orcutt area.

Discussion:

Environmental Review

Pursuant to the California Environmental Quality Act (“CEQA”), all of the projects that have been identified for funding through the Community Facilities District that have been considered in the County’s land use approval process in conjunction with an approved project have been thoroughly analyzed under CEQA. Environmental documents containing the analysis of relevant projects are set forth in Appendix A. Public projects that may be funded through the Community Facilities District but which have not yet received project approval are either not projects subject to CEQA or are too speculative to analyze at this time and will receive full analysis prior to project approval.

Community Facilities District Report

The CFD Report is a required document in the preparation and formation of the Orcutt CFD. The Report must describe the public services by type that will be required to adequately meet the needs of the CFD and includes an estimate of the fair and reasonable cost of providing those public services and an estimate of the incidental expenses related to the CFD, which is primarily related to administration of the CFD.

The public services authorized by the CFD are (1) fire protection services, (2) sheriff protection services, (3) maintenance of parks, parkways and open space, and (4) flood and storm protections services, including, but not limited to, the operation and maintenance of storm drainage systems. The CFD will finance the above listed services only to the extent that they are in addition to existing public services provided within the boundaries of the CFD before creation of the district. The special taxes required to finance the related annual cost of those public services will be apportioned as described in the attached Modifications Impact Report and Rate and Method of Apportionment.

^{1/} For the purpose of today’s election, the Manager of the County Elections Division has been delegated the role of overseeing the election and declaring the election results. Where used in this Board Letter, the term “Registrar of Voters” may mean either the County Registrar of Voters or his designee.

The estimated shortfall associated with new development is addressed in the CFD Report. The maximum annual special tax necessary to pay the cost of these public services for one equivalent dwelling unit (“EDU”) is \$600.00. This amount was increased from \$334.00 per EDU upon requests from developers. It includes, the cost of administering the CFD which has been estimated at approximately \$20,000 per year. All of the special taxes required to fund the CFD are subject to an annual cost adjustment of the greater of the change in the Los Angeles Urban Consumer Price Index, or two percent (2%).

Because the proposed maximum annual special tax as proposed is now greater than set forth in the original Rate and Method of Apportionment, staff recommends that at the conclusion of staff presentations, the Board direct that a report be prepared with a brief analysis of the impact of the proposed modifications on the probable special tax to be paid by owner of property within the district. This step is required under the Community Facilities Act when the proposed tax amount is increased after the adoption of the Rate and Method of Apportionment.

At the conclusion of the public hearing described below, staff recommends that your Board accept the Modifications Impact Report and the CFD Report as contained in Attachments 1 and 2, respectively. In addition, staff recommends that the Board adopt the Resolution Modifying Resolution of Intention and Approving Amended and Restated Rate and Method of Apportionment.

Resolution of Formation

The next step in forming the district is to open the public hearing pertaining to the formation of the County of Santa Barbara Community Facilities District No. 2002-1 (Orcutt Community Plan) and the levying of special taxes within the proposed boundaries of the CFD. This is the appropriate point in the formation process where all written or oral protests may be submitted by any property owners or persons registered to vote within the boundaries of the proposed CFD. If more than 50% of registered voters (at least 6), or if the owners of more than 50% of the land area in the CFD protest, then the CFD must be abandoned for one year. If the majority protests only against specific facilities, services, or special tax, only that facility, service or tax must be dropped.

When the Board has concluded its discussion and consideration of this item, and if there is no majority protest, staff recommends that your Board adopt the resolution of formation, which establishes the boundaries, authorizes the levy of the special tax, and approves the types of services.

Resolution Calling for a Special Election

Your Board’s adoption of a resolution calling for a special election is the next step in the formation process. In order to take this next step, the Registrar of Voters must receive executed Request and Waivers² from

² / This signed document waives any time limit specified by Section 53326 of the Act or requirement including, but not limited to, the conduct of the election, including all notices with respect thereto, any voter qualification requirements, any time limitations, any requirements as to form or content of election materials, any requirements for analysis and arguments with respect to the ballot measure, all publication requirements, all pre-election, election or voting procedures (other than the right to vote) and all canvass, recount and tie vote procedures. The Request and Waiver also requests that the special election be held under the Act on the propositions to levy a special tax with the CFD and to establish an appropriations limit for the CFD be conducted by the County and its officials using mailed or hand-delivered ballots, that such ballots be opened and canvassed at such election, and that the results of such election be certified at the same meeting of the Board of Supervisors as the public hearing.

100% of the validated voters (property owners) in the CFD. Then you may adopt the resolution calling for a special election. If your Board adopts both the resolution of formation of the District and the resolution calling for a special election, then the Registrar of Voters will immediately receive and tally the ballots.

Resolution Declaring the Results of the Election and Ordinance Levying Tax

All of the owners of property included within the County of Santa Barbara Community Facilities District No. 2002-1 (Orcutt Community Plan) have already been sent Request for Waivers and ballots. Based upon contacts with landowners and their representatives, staff estimates that executed Request and Waivers will be received from 100% of the voters. Assuming that the Registrar of Voters does receive executed waivers from 100% of the voters, the remaining actions H, I, and J will be trailed until the Registrar of Voters can open the ballots, tabulate the results, and certify to your Board the Canvass and Statement of Results of Election. Upon returning before the Board with the election results, you will be requested to then adopt the resolution declaring the results of the special election and direct the recording of the notice of special tax lien. Thereafter, we request that you waive the full reading of the ordinance levying the special taxes and approve the first reading thereof. We will also request that you adopt a non-binding resolution indicating your intention to use discretionary money, to the extent lawful and practical, that staff estimates might have otherwise been used to fund services in the CFD, to prevent a service-funding deficit in the Orcutt CFD.

Conclusion

The Orcutt Community Plan requires the County to strive to ensure that funding is available for the operation and maintenance of public facilities in Orcutt, OCP Policy FSCL-0-2. It also provides that all new development should be required to pay its fair share of the cost of operation and maintenance of public facilities, OCP Policy FSCL-0-2. Development Standards for many individual key sites also require the developers of those sites to participate in the formation of a CFD to help fund the maintenance and operation costs associated with new development.

The County's Debt Advisory Committee has determined that the formation of a CFD is the best way for the County to fund the net additional operations and maintenance costs associated with new development in Orcutt. County staff, affected developers, community members and the Debt Advisory Committee have worked together to develop and identify the boundaries of the proposed district, the services to be funded through it, the special tax rates, and the properties that would be subject to the special tax. The boundaries of the territory proposed for inclusion in the CFD are described in the attached map. The Rate and Method of Apportionment for the special taxes is also attached. A historical background of the county's work in forming this CFD is provided as Appendix B. Major legal requirements regarding the formation of a Community Facilities District and other aspects of the Mello-Roos Act have been included in Appendix C.

Mandates and Service Levels:

The Orcutt Community Plan requires consideration of alternative funding mechanisms for operations and maintenance.

Fiscal and Facilities Impacts:

Formation of a Community Facilities District would help offset the increased demands on the County's general fund related to new development in Orcutt.

Special Instructions:

Please send copies of the minute order on this item to John Cuykendall and to Harry Hagen. Also, send two fully executed sets of the resolutions and ordinance to Harry Hagen, as these documents will be included in the closing transcripts.

Pursuant to the resolution declaring special election results and directing recordation of notice of special tax lien (Attachment 6), the Clerk of the Board of Supervisors is requested to record in the office of the County Recorder a notice of special tax lien in the form required by the act no later than fifteen days following these proceedings.

Pursuant to the ordinance levying the special taxes (Attachment 7), the Clerk of the Board of Supervisors is requested to publish the ordinance at least once in the Santa Barbara News Press, a newspaper of general circulation, no later than fifteen days following these proceedings.

Attachments:

Attachment 1: Modifications Impact Report

Attachment 2: Orcutt CFD Report

Attachment 3: Resolution Modifying Resolution of Intention and Approving Amended and Restated Rate and Method of Apportionment

Attachment 4: Resolution of Formation

Attachment 5: Resolution Calling Special Election

Attachment 6: Resolution Declaring Special Election Results and Directing Recording of Notice of Special Tax Lien

Attachment 7: Ordinance Levying Special Taxes

Attachment 8: Non-binding Resolution Regarding Funding in the Orcutt Area

cc: Stephen Shane Stark
Bob Geis
Michael Brown
Tom Urbanske
Bernice James
Theo Fallati
Jim Anderson
John Scherrei
Phil Demery
Jeff Stone

APPENDIX A: ENVIRONMENTAL REVIEW

The documents listed below contain environmental analysis of public projects that will be maintained through funding by the Community Facilities District No. 2002-1 and have already received environmental clearance. All of the environmental documents listed herein are in the custody of the Secretary of the Santa Barbara County Planning Commission, in Planning and Development, 123 E. Anapamu Street, Santa Barbara, California 93101.

Public projects that may be funded through the Community Facilities District but have not yet received project approval are either projects not subject to CEQA or projects too speculative to analyze at this time and will receive full analysis prior to project approval.

Environmental Documents

Orcutt Community Plan

EIR (95-EIR-01)

Addendum dated July 7, 1999

Addendum dated February 5, 2000

Addendum dated April 2, 2002

99-SD-1 (Oak Knolls Shopping Center)

APPENDIX B – HISTORICAL BACKGROUND

Orcutt

The Orcutt Planning Area is located immediately south of the City of Santa Maria and encompasses approximately 14,000 acres. The area encompassed straddles U.S. Highway 101 and includes area that is traversed by S.R. 135 and S.R. 1. The area currently includes more than 10,000 existing residential dwelling units. Presently, within the Orcutt Planning Area there are approximately 33,000 residents. Population is expected to increase at full build out to approximately 42,000 persons. This increase in population will place increased demands for new public infrastructure.

The Orcutt Community Plan, adopted by the County in July 1997, updates the 1980 Santa Barbara County Comprehensive Plan for the Orcutt Planning Area. The Orcutt Community Plan establishes objectives, policies, and standards for the implementation of potential private development plans, and creates certain goals for financing the various elements of public infrastructure that are required to support such development. The Orcutt Community Plan allows for the addition of 2,978 new residential units and more than 400,000 square feet of new commercial development mostly contained within certain key sites in the Orcutt Planning Area over a 10-year period.

Local Goals and Policies

During the adoption of the Orcutt Community Plan, the Board of Supervisors conceptually endorsed the proposal of using special district financing for key infrastructure improvements and for selected ongoing operation and maintenance services. In support of that direction, the Debt Advisory Committee compiled the Mello-Roos Local Goals and Policies and the Board of Supervisors adopted them at the February 10, 1998 meeting as a supplement to the County's existing policies for debt issuance. The purpose of that document was to provide the residents and the owners and developers of property located within the County with guidance in application for and consideration of the establishment of Community Facilities Districts ("CFDs"). The underlying principles behind the Local Goals and Policies are the protection of the public interest, ensuring fairness in the application of CFD special taxes to current and future property owners, ensuring full disclosure of the existence of any special tax liens, protection of the County and its dependent districts' financial positions and ensuring each applicant for CFD proceedings pay all costs associated with the formation of any such CFD.

Application To Debt Advisory Committee

On January 2, 2001, the County received an executed Deposit and Reimbursement Agreement, followed by a County CFD Finance Program Application Form dated February 5, 2001, from the owners/developers of specific parcels within key sites 5, 6, 7, 8, 9, and 12. In that finance application, the applicants proposed the use of a CFD to be formed under the provisions of the Mello-Roos Community Facilities Act of 1982, to finance certain public infrastructure that must be built to accommodate development. Additionally, the applicants proposed the imposition of a special tax levy to fund the ongoing expenses of operating and maintaining these public facilities.

The total cost of the improvements proposed for financing in the February application was approximately \$6.4 million. Costs of bond issuance and pre-funding of debt service reserves and capitalized interest were

estimated by the applicants at approximately \$2.6 million. Accordingly, the application requested that the County issue special tax bonds in the approximate amount of \$9.0 million to finance the designated infrastructure improvements.

The County contracted with the firm of Fieldman, Rolapp & Associates to provide financial advisory and analysis services in conjunction with the development of plans and policies for the funding and financing of these infrastructure improvements. The consultants report was to specifically address whether the use of such capital financing is appropriate to the requirements of the project and is consistent with prudent and accepted standards prevailing in the marketplace.

Shortly after submittal of the application, the owners of key site 12 withdrew their interest in financing the public infrastructure assets through the CFD. That reduced the total cost of improvements proposed for financing to \$1.5 million, and the requested issuance of bonds to \$2.09 million.

Fieldman, Rolapp & Associates fiscal feasibility analysis reported that the total financing requirement of just \$1.5 million is well below the level that would be cost effective to finance on a stand-alone basis. Costs of issuance on an issue that size would amount to as much as \$150,000, or 10% of the value of the assets to be financed. Therefore, the cost to the taxpayer bearing the burden of the special tax would rise proportionately. They recommended that Mello-Roos bond issues be sold in minimum size of \$5.0 million in order to more efficiently spread the fixed transaction costs.

Accordingly, the Debt Advisory Committee at its July 10, 2001 meeting, and in conjunction with the owners/developers in attendance, jointly agreed not to further pursue any Mello-Roos debt financing related to the key sites included in this application, but to only analyze and determine the most appropriate structure(s) available for funding the operations and maintenance of the infrastructure required.

Fiscal Impact Of Ongoing Operations And Maintenance

The requirements of the Orcutt Community Plan and conditions of development imposed on each key site specify that an annual charge for operations and maintenance costs for the subject area be levied on each developed property. David Taussig and Associates was retained to identify and analyze the recurring revenue and cost impacts from development of the Orcutt Community Plan on the County of Santa Barbara and prepare a Fiscal Impact Report ("FIR") to report those findings.

According to the FIR, at build-out the Orcutt Community Plan was projected to generate total ongoing revenues of \$18.9 million and total ongoing costs of \$24.1 million for a net annual deficit of \$5.2 million. Existing development was responsible for \$4.3 million of the deficit and new development is responsible for \$977,000. The number of new Equivalent Dwelling Units ("EDU") at build-out was projected to be 3,158. In addition to the information presented in the FIR, additional conditions for development have increased the expected and potential dedications of property to the County such that the costs of authorized services will increase.

Based upon the projected annual shortfall, the expected number of EDU's in the Orcutt Community Plan area (both residential and non-residential), and additional operation and maintenance cost data, it was determined that the County would need to collect a maximum special tax of \$600 per EDU to offset the projected annual shortfall in operating revenues and administrative expenses.

According to the Act, if a CFD were established to fund the entire shortfall created by new development, specific services would need to be excluded. The shortfall derived from the road facilities is not an eligible service pursuant to the Act. The library costs would also need to be excluded because a landowner election may not be used to authorize the levy of such a tax.

It was determined by county staff, supported by county counsel and special counsel, and endorsed by the Debt Advisory Committee, that so long as special taxes collected are (1) used for the types of services authorized under the Act and the proceedings for the CFD, (2) are used only for the purposes for which they are collected, and (3) are used only to finance services that are in addition to the services provided in the territory of the CFD before it was created, than those services can be funded entirely with special taxes. This allows more of the general discretionary property tax money collected in the area to be used to fund those services that cannot be funded at all through a CFD.

This structure is supported pursuant to Government Code Section 53314.8, which permits, but does not require, the legislative body to contribute any amount, from any legal source, revenues for the purposes set forth in the ordinance establishing the CFD. Similarly, Section 53314 permits, but does not require, a legislative body to transfer monies to a CFD or an improvement area within the district.

Petition

On January 23, 2002, the landowners of specific parcels within key sites 5, 6, 7, 8, 9, 12, 17, and 29 submitted and executed a Petition (Including Consent And Waiver) Requesting The Establishment Of A Community Facility District. This reflected additions of key sites 17 and 29 to the previously executed application dated February 5, 2001. The petition requested that the proceedings be commenced to establish a community facilities district solely for the purpose of funding maintenance and operation expenditures and to establish an appropriations limit for the CFD.

APPENDIX C – MELLO-ROOS ACT AND FORMATION PROCEDURES

The Mello-Roos Community Facilities Act

The Mello-Roos Community Facilities Act (the “Act”), enacted in 1982, provides cities, counties and special districts the ability to form Community Facilities Districts (“CFDs”) over specific defined areas within their jurisdiction. A CFD is a special financing entity through which a local government is empowered to levy special taxes and/or issue bonds authorized by a two-thirds vote of the qualified electors of such district.

The special taxes are not assessments, and there is no requirement that the special tax be apportioned on the basis of benefit to the property being taxed. This affords greater flexibility in designing the special tax. A special tax levied by a district is not an ad valorem property tax under Article XIII A of the California Constitution, however the lien of the special taxes has the same priority as property taxes.

The Act may be used to finance the construction, expansion, rehabilitation, or acquisition of any real or other tangible property, which is or will be constructed, owned or operated by a public entity. A CFD may finance a broad range of facilities including facilities which benefit property in a general way as opposed to benefiting specifically identified parcels. Therefore, a CFD may finance facilities, which have a special benefit such as streets, water, sewer, and drainage facilities as well as facilities with a general benefit such as parks, schools, libraries, childcare facilities, jails and administration facilities.

The Act also provides an alternative method for financing certain public operations and maintenance services such as:

1. Police protection services, including but not limited to, jails, detention facilities and juvenile halls.
2. Fire protection and suppression services and ambulance and paramedic services.
3. Recreation program services, library services and operation and maintenance of parks, parkways, open space, museums, cultural facilities, and elementary and secondary school sites and structures.
4. Flood and storm protection services, including the operation and maintenance of storm drainage systems.
5. Removal or remedial action services for the cleanup of any hazardous substance released or threatened to be released into the environment.

Generally, a district may finance both services and facilities. Services may be financed only to the extent that they are in addition to those provided in the territory of the district before it was created and may not supplant services already available when the district was created. In essence, services may only be financed to the extent of new growth. In addition, a landowner election may not authorize the levy of a special tax for recreation program services, library services, school maintenance services or museum and cultural facility maintenance services. Such restrictions do not apply, however to services authorized by registered voter election.

Proceedings To Create A Community Facilities District

A CFD is a legally constituted governmental entity created for the purpose of financing the facilities and services described above. It is created by an existing public entity and its legislative body is the legislative body of the public entity, which sponsors its creation. The legislative body may institute proceedings on its own initiative and is required to initiate proceedings when a written request is made by two members of the

legislative body, or a petition is signed by not less than 10% of the registered voters residing within the territory proposed to be within the district or by landowners of 10% of the area of land within the proposed CFD.

When the proceedings commence by the petition of the property owners, the petition must be accompanied by payment of a fee determined to be sufficient to pay for costs incurred in conducting the proceedings. Upon receipt of a written request or petition, the legislative body must adopt within 90 days a resolution of intention stating that a CFD is proposed to be established, the name of the proposed CFD, the types of facilities or services to be financed, and that except where funds are otherwise available, a special tax to pay for such facilities and services will be annually levied. The resolution of intention fixes a time and place for a public hearing to occur between 30 and 60 days after the adoption of the resolution of intention that describes the method of levy and apportionment of the special tax and the proposed voting procedure for subsequent CFD formation. If certain findings can be made, the public hearing may be continued for up to six months. At the time of adopting the resolution of intention, the legislative body will direct staff to study the proposed district and to file a report at the public hearing describing the proposed public facilities and services and an estimate of costs.

Notice of the public hearing must be published in a newspaper of general circulation and also may be mailed by first class mail to each registered voter and to each landowner within the proposed district within specified time limits. A map of the proposed boundaries of the CFD is filed with the clerk of the legislative body and with the county recorder prior to the public hearing.

At or prior to the hearing, protests against the formation of the CFD, the extent of the boundaries of the CFD or the furnishing of specified types of public facilities or services may be made orally or in writing by interested persons or taxpayers. If 50% or more of the registered voters, or 6 registered voters, whichever is more, residing within the proposed CFD, or the owners of one-half or more of the area of land in the proposed CFD file written protests against the establishment of the CFD, the proceedings are abandoned. If the protests are directed toward certain types of facilities or services, or against a specified special tax, those specific items may be eliminated from the resolution forming the CFD. The hearing may be continued for up to 30 days without special findings and up to 6 months if the legislative body makes specified findings. The territory within a CFD need not be contiguous. During the public hearing, the proposed boundaries may be altered to include less territory than described in the notice of hearing but may not be altered to include new territory.

If after the public hearing, the legislative body decides to establish the CFD, it adopts a resolution of formation containing the information contained in the resolution of intention and making a determination as to the validity of all prior proceedings related to the CFD.

Election

Once the legislative body forms the CFD it submits the question of whether the special taxes should be levied to the qualified voters of the proposed CFD. The Act provides that the election shall be at the next general election, or a special election, to be held between 90 and 180 days following the close of the protest hearing. The election time limits may be shortened by the unanimous consent of the qualified electors within the proposed district and the concurrence of the election official conducting the election.

Under the Act, in developed areas the “qualified electors” are the registered voters of the area within the CFD. Each registered voter is entitled to one vote. However in CFDs with fewer than 12 registered voters, the qualified electors are the landowners within the CFD. The landowners are entitled to one vote per acre or portion thereof owned within the CFD. Mello-Roos elections have been commonly conducted by mail ballot as specifically provided by the Act.

In order to levy the special tax, it must be approved by two-thirds of the votes cast and thereafter levied by adoption of an ordinance of the legislative body. After a successful election, a Notice of Special Tax Lien is recorded with the county recorder.

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