

and the M & H VI Projects, LLC, Delta Shores Wetlands, LLC, and Delta Shores Detention Ponds, LLC; and 5) pass for publication the title of the ordinance amending the Development Agreement, as required by City Charter section 32(c), the ordinance to be considered on October 22, 2019.

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Presenter: None

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Schedule of Proceedings
- 4-Resolution - Declaring Election Results - Improvement Area No. 1
- 5-Resolution - Declaring Election Results - Improvement Area No. 2
- 6-Resolution - Declaring Election Results - Improvement Area No. 3
- 7-Ordinance - Levy of Special Tax
- 8-Ordinance - Second Amendment to Development Agreement
- 9-Exhibit A - Draft Amendment to Development Agreement

Description/Analysis

Issue Detail:

1. *Election Results and Tax Ordinances*

On September 24, 2019, the City Council adopted Resolution No. 2019-0371 establishing the Delta Shores Community Facilities District No. 2019-01 (Improvements) (the “**CFD**”) and Resolution Nos. 2019-0375, 2019-0376, and 2019-0377 calling for special mailed-ballot elections on whether to (1) levy a special tax within the boundaries of each of the CFD’s three improvement areas and (2) issue bonds supported exclusively by the special taxes to partially reimburse the developer through the CFD for the cost of public infrastructure. The votes for each improvement area were in the affirmative.

Staff recommends that the City Council adopt the resolutions declaring the results of the elections and pass for publication the ordinances to levy the special taxes.

2. *Development Agreement Amendment*

On January 13, 2009, the City Council passed the following in connection with the Delta Shores project:

- Resolution No. 2009-030, approving an environmental impact report and a mitigation monitoring plan.
- Ordinance No. 2009-003, approving City Agreement No. 2009-0060 (the “**Development Agreement**”) with M&H Realty Partners VI, L.P., a California limited partnership (the “**Original Landowner**”).
- Resolution No. 2009-037 approving amendments to the Delta Shores Public Facilities Financing Plan (the “**Finance Plan**”).
- Ordinance No. 2009-002 and Resolution Nos. 2009-031, -032, -033, -034, -035, and -036, approving other land-use entitlements.

On October 6, 2010, the Development Agreement was amended to include mitigation measures relating to toxic air contaminants emitted by motor vehicles on the Interstate 5 (City Agreement No. 2009-0060-1).

The Original Landowner subsequently transferred several parcels within the Delta Shores project to three Delaware limited-liability companies: M&H VI Projects, LLC; Delta Shores Wetlands, LLC; and Delta Shores Detention Ponds, LLC (the “**New Landowners**”; the New Landowners and the Original Landowner are the “**Landowners**”). In 2016, the Original Landowner assigned to the New Landowners its rights under the Development Agreement with respect to the transferred parcels, the New Landowners assumed the Original Landowner’s obligations under the Development Agreement with respect to those parcels, and the City released the Original Landowner from those obligations.

Section 6 of the Development Agreement provides for the payment of various fees, charges, assessments, and taxes; it also requires the Landowners to participate in, and comply with, the Finance Plan, which can include each Landowner’s payment of its fair-share of the cost of regional facilities. Among the costs included in the Finance Plan is the fair-share cost of library facilities, which was estimated in the Finance Plan as amended in 2009 at \$3.9 million (2008 dollars; to be adjusted for inflation).

The City Council approved an update to the Finance Plan on September 24, 2019 (Resolution No. 2019-0378), and the City and Landowners would like to ensure that the Delta Shore project’s fair share of regional library costs, as set out in the updated Finance Plan, is expended only on library services and facilities within the boundaries of Delta Shores. To that end, the City and the Landowners propose to amend the Development Agreement by adding a new subsection E to section 6:

E. Library Facilities. Notwithstanding any other provision of this Agreement, any portion of a fee imposed on the Project for the fair share cost of library services or facilities (the “**Library Fee Portion**”) shall only be used to provide such services and facilities within the Property boundaries. Further:

- (1) The amount of the Library Fee Portion shall not exceed the sum of \$4,639,000 in 2019 dollars, to be adjusted for inflation in the same manner as fee amounts are adjusted in the Delta Shores Finance Plan.
- (2) Prior to issuance of the 3,375th residential building permit at the Property, the City shall have commenced using, or have adopted a plan setting forth the future use of, the Library Fee Portion to provide services and facilities within the Property boundaries (the “**Library Fee Plan**”).
- (3) If the City has not commenced using the Library Fee Portion or has not adopted the Library Fee Plan at the time of issuance of the 3,375th residential building permit, the following shall apply:
 - (a) the public facilities fee component will be reduced for any unpaid Finance Plan specific fees by the amount of the Library Fee Portion then in place, as adjusted for inflation in the same manner as fee amounts are adjusted in the Delta Shores Finance Plan; and
 - (b) the City shall issue refunds for any Library Fee Portion previously paid to then Owners of any property for which the Library Fee Portion was previously paid.

Section 9 of the Development Agreement requires, among other things, that the Landowner transfer to the City, before the issuance of the 3,375th residential building permit within the Delta Shores project, \$4 million for the future development of a regional park. Consistent with the updated Finance Plan, the Landowner and the City propose to include this \$4 million obligation as a sub-component of the Public Facilities portion of a new Delta Shores Impact Fee, which can then be used to satisfy this obligation, potentially earlier than the issuance of the 3,375th building permit. To that end, the City and Landowner propose to amend section 9.C in the Development Agreement to read as follows (the new language in *italics*):

- C. **Transfer of Park Funds to CITY.** As set forth in Exhibit C, LANDOWNER shall transfer four million dollars (\$4,000,000) to CITY for purposes of future development of a regional park (the “Regional Park Fee”) upon issuance of the 3,375th residential building permit at the Property. *This obligation shall be deemed satisfied if the \$4,000,000 amount of the Regional Park Fee is included in an approved updated Delta Shores Finance Plan as a sub-component of the Public Facilities component of a new Delta Shores Impact Fee.* LANDOWNER waives any and all administrative or judicial challenges that it can legally make based on insufficient nexus for the Regional Park Fee.”

In addition, the City and the Landowner propose to amend section II.E.3 of Exhibit C to the Development Agreement to read as follows (the new language in *italics*):

3. **Park Funding Requirement.** As required by subsection 9C of the Development Agreement, LANDOWNER shall transfer four million dollars (\$4,000,000) to CITY for purposes of future development of a regional park to be located on or adjacent to the Property (the “Regional Park Fee”) upon or before issuance of the 3,375th residential building permit at the Property. *This obligation shall be deemed satisfied if the \$4,000,000 amount of the Regional Park Fee is included in an approved updated Delta Shores Finance Plan as a sub-component of the Public Facilities component of a new Delta Shores Impact Fee.”*

Policy Considerations:

The CFD: The procedures under which the CFD is being formed are set forth in the Mello-Roos Community Facilities Act of 1982, codified as Government Code sections 53311 through 53368.3 (the “**Mello-Roos Act**”). Formation of the CFD is consistent with the City’s Policies and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure and Public Facilities, as amended, adopted August 9, 1994, by Resolution No. 94-941 (the “**Mello-Roos Policy**”).

The Development Agreement: The proposed amendment supports implementation of the updated Finance Plan adopted by City Council on September 24, 2019.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): The City prepared an environmental impact report (“**EIR**”) that evaluated the environmental effects of the Delta Shores project (P06-197), and the City Council certified the EIR on January 13, 2009 (Resolution No. 2009-030). The Planning and Design Commission later certified the EIR and an addendum for the commercial-development portion of the Delta Shores project (P14-025) on April 16, 2015.

The proposed amendment of the Development Agreement will clarify the use of library-service fees and the Landowner’s obligation to transfer park funds. The amendment will not result in physical effects on the environment and will not change the conclusions of the EIR. None of the circumstances set forth in CEQA Guidelines that require preparation of a subsequent EIR are present (see 14 Cal. Code Regs. § 15162 [subsequent EIR required if there are substantial changes in the project or in the circumstances under which the project is undertaken, if new information of substantial importance has been received that shows the EIR didn’t discuss significant effect or that mitigation measures will not be implemented]). No additional environmental review or document is required.

Under the CEQA Guidelines, the formation of the CFD does not constitute a project, because it is merely a funding mechanism and is therefore exempt from review (14 Cal. Code Regs. § 15378(b)(4); see also *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464).

Sustainability: Not applicable.

Commission/Committee Action: On September 12, 2019, the Planning and Design Commission conducted a public hearing and, upon conclusion, passed (1) a motion to forward to the City Council

a recommendation to approve the use of a previously certified EIR (Public Resources Code § 21166; 14 Cal. Code Regs. § 15162 [no further environmental document or review required]); and (2) an ordinance amending the Development Agreement.

Rationale for Recommendation: The recommended actions for the CFD are required by the Mello-Roos Act and by the City Charter to complete the formation of the CFD. The proposed amendment to the Development Agreement is minor and is merely intended to clarify (1) the intent and use of library service fees for the Delta Shores project and (2) to clarify the obligation for the transfer of park funds. The amendment will not alter the project or the timing of the required payment of fees for library services or the transfer of park funds.

Financial Considerations: The Original Landowner, as the developer of the Delta Shores project, will initially fund the construction of authorized public improvements or pay development-impact fees that will be used to construct the improvements. Later, if and when sufficient bond proceeds or special taxes are available, the City will reimburse the Original Landowner consistent with the City's Mello-Roos Policy (or any subsequent update to the policy) and any associated agreements. The bond proceeds and special taxes will be used for the sole purposes of (1) funding construction costs and development-fee reimbursements to the Original Landowner and (2) paying the City's administrative expenses. This may be done from bond proceeds, directly from special taxes on a pay-as-you-go basis, or from a combination of bond proceeds and special taxes. There is no impact on the General Fund or any other funds of the City as a result of the recommended actions.

Local Business Enterprise (LBE): Not applicable.