

STAFF REPORT*CITY OF OCEANSIDE*

DATE: November 4, 2009

TO: Honorable Mayor and City Councilmembers

FROM: City Treasurer's Office

SUBJECT: **ADOPTION OF RESOLUTIONS OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT 2000-1 (OCEAN RANCH) AND 2001-1 (MORRO HILLS), ORDERING JUDICIAL FORECLOSURE OF DELINQUENT SPECIAL TAXES PURSUANT TO THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982 COMMENCING WITH SECTION 53311 OF PART 1 OF DIVISION 2 OF TITLE 5 OF THE GOVERNMENT CODE**

SYNOPSIS

Staff recommends that the City Council adopt resolutions, acting in its capacity as the legislative body of Community Facilities District 2000-1 (Ocean Ranch Corporate Centre) and Community Facilities District 2001-1 (Morro Hills Development), ordering judicial foreclosure of delinquent special taxes pursuant to the Mello-Roos Community Facilities Act of 1982 commencing with Section 53311 of Part 1 of Division 2 of Title 5 of the Government Code.

BACKGROUND

The Mello-Roos Community Facilities Act was enacted in 1982 to provide alternate means for financing infrastructure following the passage of Proposition 13. The Act allows cities, counties and special districts to create defined areas within their jurisdiction and, by a two-thirds vote within the area, impose special taxes to pay for the public improvements and services required by the area. The Community Facilities District (CFD) may provide for the purchase, construction, expansion, or rehabilitation of any real or tangible property with a useful life of at least five years. The CFD may also finance soft costs, such as planning and consulting, involved in the formation of the CFD.

There are two CFDs being addressed under these resolutions. They are the Ocean Ranch Corporate Centre and the Morro Hills Development.

The Ocean Ranch Corporate Centre, CFD 2000-1, is an industrial subdivision of approximately 289 net developable acres. The site is located north of Oceanside Boulevard and west of College Boulevard. On March 7, 2001, the landowners within Ocean Ranch Corporate Centre voted to incur indebtedness and issue bonds in the

maximum amount of \$25 million. The first bond issue took place in December 2002 for a face value of \$12,265,000. The second bond issue took place in November 2004 for a face value of \$12,735,000.

Morro Hills Development, CFD 2001-1, is a master-planned community of approximately 588 acres located in northeastern Oceanside’s San Luis Rey Valley, just south of the intersection of Vandegrift Road and Douglas Drive. One thousand seven hundred and seven (1,007) residential units are being developed in this CFD around an 18-hole championship public golf course. The master plan also includes a public park, elementary school, village center, a country store, church and day-care center. The land owners within the District authorized the issuance of not to exceed \$25,000,000 for the District and \$11,000,000 for Improvement Area No. 1. In October 2002, the City issued the first phase of bonds in the amount of \$9,915,000. The second phase of bonds was issued in February 2004 in the amount of \$11,000,000 to finance construction of a new elementary school by Bonsall Unified School District required for the development of the property within Improvement Area No. 1 within the District. The final phase of bonds was issued in December 2004 for a face value of \$16,085,000.

ANALYSIS

A Community Facilities District is a public finance tool to provide infrastructure for new development that has a broad public benefit. The underlying principles contained in the City’s CFD policy are that the public interest is protected, that there is fairness in the application of the special taxes, that there is full disclosure to potential buyers, and that the City’s financial position is protected. The Bonds issued by the Community Facilities Districts are secured by special taxes levied on property within the Community Facilities Districts. In order to make the bonds marketable, the City was required to covenant that it will commence, and diligently pursue to completion, judicial foreclosure proceedings against Assessor’s parcels with delinquent Special Taxes as follows:

CFD No.	Description of Foreclosure Covenant	Delinquency Status
2000-1 (Ocean Ranch)	(i) commence foreclosure proceedings against parcels with delinquent special taxes in excess of \$10,000, and (ii) commence foreclosure proceedings against all parcels with delinquent special taxes in any fiscal year in which the CFD receives special taxes in an amount which is less than 95% of the total special taxes levied <u>AND</u> the amount on deposit in the Reserve Account is at less than the Reserve Requirement.	(i) As of September 22, 2009, there were six (6) parcels delinquent in excess of \$10,000. (ii) As of September 22, 2009, CFD No. 2000-1 collected 91.21% of the FY 2008-09 special tax levy and the Reserve Account meets or exceeds the Reserve Requirements as of August 31, 2009.

CFD No.	Description of Foreclosure Covenant	Delinquency Status
2001-1 (Morro Hills)	<ul style="list-style-type: none"> (i) commence foreclosure proceedings against parcels with delinquent special taxes in excess of \$10,000, and (ii) commence foreclosure proceedings against all parcels with delinquent special taxes in any fiscal year in which the CFD receives special taxes in an amount which is less than 95% of the total special taxes levied <u>AND</u> the amount on deposit in the Reserve Account is at less than the Reserve Requirement. 	<ul style="list-style-type: none"> (i) As of September 22, 2009, no parcel was delinquent in excess of \$10,000. (ii) As of September 22, 2009, CFD No. 2001-1 collected 96.59% of the FY 2008-09 special tax levy and the Reserve Account meets or exceeds the Reserve Requirement as of August 31, 2009.
Improvement Area 1 of 2001-1 (Morro Hills)	<ul style="list-style-type: none"> (i) commence foreclosure proceedings against parcels with delinquent special taxes in excess of \$10,000, and (ii) commence foreclosure proceedings against all parcels with delinquent special taxes in any fiscal year in which the CFD receives special taxes in an amount which is less than 95% of the total special taxes levied <u>AND</u> the amount on deposit in the Reserve account is at less than the Reserve Requirement. 	<ul style="list-style-type: none"> (i) As of September 22, 2009, no parcel was delinquent in excess of \$10,000. (ii) As of September 22, 2009, IA No. 1 collected 96.55% of the FY 2008-09 special tax levy and the Reserve Account meets or exceeds the Reserve Requirements as of August 31, 2009.

The Resolution recommended for adoption by CFD 2000-1 (Ocean Ranch) includes six (6) parcels, all of which parcels exceed the \$10,000 threshold for foreclosure pursuant to the bond covenant. In addition to the six parcels that exceed the \$10,000 threshold, the resolution includes thirty-two (32) parcels that fall under the \$10,000 threshold, but are owned by the same entities that have parcels meeting the above foreclosure requirements. In order to ensure that the Reserve Accounts of the CFDs are not depleted to the level that the CFD will be obligated to prosecute foreclosure actions against **all** parcels, regardless of the size of the delinquency, staff recommends that the Council adopt the attached Resolution for CFD 2000-1 Ocean Ranch Corporate Centre.

The Resolution recommended for adoption by CFD 2001-1 (Morro Hills) includes two (2) properties. While these properties do not yet exceed the \$10,000 delinquency threshold for each of the separate assessments for CFD 2001-1 and Improvement Area 1 of CFD 2001-1, their combined delinquencies each exceed \$10,000 and such properties have not paid their special taxes for the last three (3) years. In light of the overall delinquencies on these parcels and as stated previously, in order to ensure that the Reserve Accounts of the CFDs are not depleted to the level that the CFD will be obligated to prosecute foreclosure actions against **all** parcels, regardless of the size of the delinquency, staff recommends that the Council adopt the attached Resolution for CFD 2001-1 Morro Hills Development.

The primary goal of the City is to obtain payment on the delinquent special taxes prior to the commencement of judicial foreclosure action against the owners. The City's special tax consultant has sent letters to all delinquent owners stating the dollar amount of delinquency and notification of pending foreclosure proceedings due to non-payment. As a result, the City has received payment of delinquent special taxes from two of the owners (one for the Ocean Ranch CFD and one for the Morro Hills CFD). After the resolutions are adopted, foreclosure counsel will send a final demand notice to the

owners. If there is no response to the final demand notice, foreclosure proceedings will begin. The owner has one last payment opportunity prior to a summary judgment against the property.

If payment is not received, the property is foreclosed upon and the City is required to place the property for sale at a foreclosure auction held by the Sheriff. Proceeds will then be used to satisfy the delinquent special taxes.

By foreclosing on the delinquent properties, the City protects its financial interests in the event debt service payments cannot be made due to non-payment of special taxes. While the City is not directly responsible for payment on the bonds, it is in the City's best interest to pursue all avenues, including foreclosure, to avoid triggering the bond covenant that requires foreclosure on **every** delinquent parcel in the CFD regardless of the size of the delinquency. As a result, the short-term consequences of that action would include up-front costs of City funds if the CFD Administrative Expense funds are exhausted during the pursuit of foreclosing on all delinquent parcels within the district as required by the bond covenants. Long-term consequences would include the possible negative image on the City's overall ability to market future debt, including General Fund debt, if the CFD were to actually go into default due to failure to collect sufficient special taxes to make debt service payments.

FISCAL IMPACT

Although all costs of foreclosure proceedings will ultimately be recovered from the sale of the properties, the Administrative Funds of each of CFD 2000-1 and 2001-1 will be required to pay certain up-front costs, including title documentation, associated with pursuing these actions. These actions will have no impact on the City's General Fund.

CITY ATTORNEY'S ANALYSIS

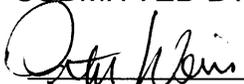
The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATIONS

Staff recommends that the City Council adopt resolutions, acting in its capacity as the legislative body of Community Facilities District 2000-1 (Ocean Ranch Corporate Centre) and Community Facilities District 2001-1 (Morro Hills Development), ordering judicial foreclosure of delinquent special taxes pursuant to the Mello-Roos Community Facilities Act of 1982 commencing with Section 53311 of Part 1 of Division 2 of Title 5 of the Government Code.

PREPARED BY:

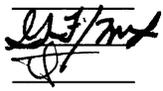

Michele C. Lund, CCMT
Treasury Manager

SUBMITTED BY:


Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager
Gary Felien, City Treasurer
Teri Ferro, Financial Services Director

A handwritten signature in black ink, appearing to be 'LJ/mf', written over a set of horizontal lines.

Attachments

1. Resolution of the City Council of the City of Oceanside, Acting in its Capacity as the Legislative Body of Community Facilities District No. 2000-1 of the City of Oceanside (Ocean Ranch Corporate Centre).
2. Resolution of the City Council of the City of Oceanside, Acting in its Capacity as the Legislative Body of Community Facilities District No. 2001-1 of the City of Oceanside (Morro Hills Development).

1 RESOLUTION NO. _____

2 RESOLUTION OF CITY COUNCIL OF THE CITY OF OCEANSIDE ACTING
3 IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY
4 FACILITIES DISTRICT NO. 2000-1 OF THE CITY OF OCEANSIDE (OCEAN
5 RANCH CORPORATE CENTRE) ORDERING JUDICIAL FORECLOSURE
6 OF DELINQUENT SPECIAL TAXES PURSUANT TO THE MELLO-ROOS
7 COMMUNITY FACILITIES ACT OF 1982 COMMENCING WITH SECTION
8 53311 OF PART 1 OF DIVISION 2 OF TITLE 5 OF THE GOVERNMENT
9 CODE.

10 WHEREAS, Community Facilities District No. 2000-1 of the City of Oceanside (Ocean
11 Ranch Corporate Centre) (“CFD No. 2000-1”) has incurred bonded indebtedness and levied
12 special taxes for the payment of bonds pursuant to the provisions of the Mello-Roos Community
13 Facilities Act of 1982 (commencing with Section 53311 of Part 1 of division 2 of Title 5 of the
14 Government Code) (the “Mello-Roos Act”); and

15 WHEREAS, pursuant to the Mello-Roos Act CFD No. 2000-1 has duly levied and
16 recorded the unpaid special taxes, which special taxes and each installment thereof and interest
17 and penalties thereon constitute liens against the lots and parcels of land against which they are
18 made, until the same are paid; and

19 WHEREAS, certain special tax installments have not been paid when due, and certain
20 installments of those special taxes may not be paid in the future; and

21 WHEREAS, under the provisions of the Mello-Roos Act, the City Council of the City of
22 Oceanside (“City Council”) acting in its capacity as the legislative body of CFD No. 2000-1 is
23 authorized and may order that a foreclosure action be brought to collect the delinquent special
24 taxes due against the properties within CFD No. 2000-1 not later than four (4) years after the
25 date of delinquency of the last installment due on the bond; and

26 WHEREAS, the City has covenanted to bondholders to institute judicial foreclosure
27 proceedings pursuant to the provisions of Section 53311 of Part 1 of division 2 of Title 5 of the
28 Government Code of the State of California; and

WHEREAS, the City Council acting in its capacity as the legislative body of CFD No.
2000-1 has determined that the public convenience and necessity require prompt action at the
City’s discretion, to initiate foreclosure proceedings.

1 NOW, THEREFORE, the City Council of the City of Oceanside, acting in its capacity as
2 the legislative body of Community Facilities District No. 2000-1 of the City of Oceanside
3 (Ocean Ranch Corporate Centre), does resolve as follows:

4 SECTION 1. The delinquent special taxes on parcels listed in Exhibit A attached hereto
5 and incorporated herein, and all future installments of special taxes which are not paid when due
6 shall be collected by action brought in the Superior Court of San Diego County to foreclose the
7 delinquent special taxes to the extent allowed by law.

8 SECTION 2. Community Facilities District No. 2000-1 of the City of Oceanside (Ocean
9 Ranch Corporate Centre) is hereby authorized and directed to have the law firm of Stradling
10 Yocca Carlson & Rauth, 660 Newport Center Drive, Suite 1600, Newport Beach, California
11 92660, institute such actions in the name of CFD No. 2000-1 and the City of Oceanside to
12 foreclose delinquent special taxes.

13 SECTION 3. The Director of Finance of the City of Oceanside is authorized and directed
14 to transmit a certified copy of this resolution to the Auditor/Controller's office of the County of
15 San Diego with a letter that shall state that:

16 a. The City Council has ordered that the delinquent special tax installments be
17 collected by action brought in the Superior Court of San Diego County to foreclose the
18 delinquent special taxes.

19 b. All inquiries regarding payment of the delinquent special taxes shall be forwarded
20 to Stradling Yocca Carlson & Rauth c/o Allison E. Burns, Esq., 660 Newport Center Drive, Suite
21 1600, Newport Beach, California 92660.

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SECTION 4. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this

_____ day of _____, 2009, by the following vote:

AYES:

NAYS:

ABSENT:

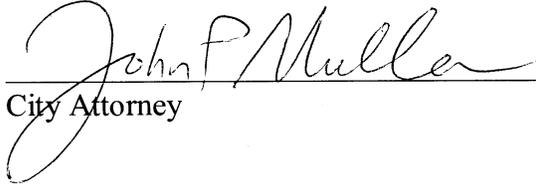
ABSTAIN:

MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney

EXHIBIT A

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**List of Delinquent Property (By Assessor's Parcel Number)-Community Facilities District
No. 2000-1 (Ocean Ranch Corporate Centre)**

PARCEL

160-680-2900
160-690-0300
160-690-0800
160-691-0100
160-692-0200
160-692-1300

1 RESOLUTION NO. _____

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4 FACILITIES DISTRICT NO. 2001-1 OF THE CITY OF OCEANSIDE
5 (MORRO HILLS DEVELOPMENT) ORDERING JUDICIAL FORECLOSURE
6 OF DELINQUENT SPECIAL TAXES PURSUANT TO THE MELLO-ROOS
7 COMMUNITY FACILITIES ACT OF 1982 COMMENCING WITH SECTION
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9 CODE.

10 WHEREAS, Community Facilities Districts No. 2001-1 of the City of Oceanside (Morro
11 Hills Development) ("CFD No. 2001-1") has incurred bonded indebtedness and levied special
12 taxes for the payment of bonds pursuant to the provisions of the Mello-Roos Community
13 Facilities Act of 1982 (commencing with Section 53311 of Part 1 of division 2 of Title 5 of the
14 Government Code) (the "Mello-Roos Act"); and

15 WHEREAS, pursuant to the Mello-Roos Act CFD No. 2001-1 has duly levied and
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17 and penalties thereon constitute liens against the lots and parcels of land against which they are
18 made, until the same are paid; and

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20 installments of those special taxes may not be paid in the future; and

21 WHEREAS, under the provisions of the Mello-Roos Act, the City Council of the City of
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23 authorized and may order that a foreclosure action be brought to collect the delinquent special
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AYES:

NAYS:

ABSENT:

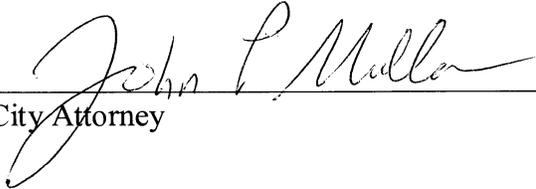
ABSTAIN:

MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney

EXHIBIT A

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List of Delinquent Property (By Assessor's Parcel Number)-Community Facilities District
No. 2000-1 (Morro Hills Development)

PARCEL
122-523-2200
122-531-4800
122-561-4400