



DATE: March 13, 2013

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 2001-1 (MORRO HILLS DEVELOPMENT), AND 2001-1 (MORRO HILLS DEVELOPMENT) IMPROVEMENT AREA NO. 1, 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 2001-1 (Morro Hills Development) and Community Facilities District 2001-1 (Morro Hills Development) Improvement Area No. 1, 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.

The CFD being addressed under these resolutions is the 2001-1 Morro Hills Development. 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 were approved for development in this CFD around an 18-hole championship public golf course. The master plan also

included 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 bonds in an amount 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, as 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.

In November 2009, City Council adopted a resolution to commence foreclosure proceedings on two parcels within the CFD 2001-1 (Morro Hills Development) and Improvement Area No. 1. One of the parcels was settled in July 2011; the second is still in litigation.

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
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 less than the Reserve Requirement. 	<ul style="list-style-type: none"> (i) As of October 17, 2012, there was one (1) delinquent parcel in excess of \$10,000. (ii) As of October 17, 2012, CFD No. 2001-1 collected 99.43% of the FY 2011-12 special tax levy and the Reserve Account meets or exceeds the Reserve Requirement as of August 31, 2012.
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 less than the Reserve Requirement. 	<ul style="list-style-type: none"> (i) As of October 17, 2012, there was one (1) delinquent parcel in excess of \$10,000. (ii) As of October 17, 2012, IA No. 1 collected 99.61% of the FY 2011-12 special tax levy and the Reserve Account meets or exceeds the Reserve Requirements as of August 31, 2012.

RECOMMENDATIONS

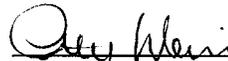
Staff recommends that the City Council adopt resolutions, acting in its capacity as the legislative body of Community Facilities District 2001-1 (Morro Hills Development) and Community Facilities District 2001-1 (Morro Hills Development) Improvement Area No. 1, ordering judicial foreclosure of delinquent 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

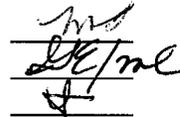
SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

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



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. 2001-1 of the City of Oceanside (Morro Hills Development).
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) Improvement Area No. 1.

The Resolution recommended for adoption by CFD 2001-1 (Morro Hills Development) includes one (1) property which exceeds the \$10,000 threshold for foreclosure pursuant to the bond covenant as seen in the table.

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. In October 2012, the City's special tax consultant sent a letter to the delinquent owners of the property stating the dollar amount of delinquency and notification of pending foreclosure proceedings due to non-payment. The City did not receive a payment of the delinquent taxes by the established deadline and began taking the necessary steps to foreclose as required by the bond covenant. 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 property, 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 upon 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 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.

ATTACHMENT 1

RESOLUTION NO. _____

RESOLUTION OF 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) 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.

WHEREAS, Community Facilities Districts No. 2001-1 of the City of Oceanside (Morro Hills Development) ("CFD No. 2001-1") has incurred bonded indebtedness and levied special taxes for the payment of bonds pursuant to the provisions of 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) (the "Mello-Roos Act"); and

WHEREAS, pursuant to the Mello-Roos Act CFD No. 2001-1 has duly levied and recorded the unpaid special taxes, which special taxes and each installment thereof and interest and penalties thereon constitute liens against the lots and parcels of land against which they are made, until the same are paid; and

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

WHEREAS, under the provisions of the Mello-Roos Act, the City Council of the City of Oceanside ("City Council") acting in its capacity as the legislative body of CFD No. 2001-1 is authorized and may order that a foreclosure action be brought to collect the delinquent special taxes due against the properties within CFD No. 2001-1 not later than four (4) years after the date of delinquency of the last installment due on the bond; and

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

WHEREAS, the City Council acting in its capacity as the legislative body of CFD No. 2001-1 has determined that the public convenience and necessity require prompt action at the City's discretion, to initiate foreclosure proceedings.

NOW, THEREFORE, 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), does resolve as follows:

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

5 SECTION 2. Community Facilities District No. 2001-1 of the City of Oceanside (Morro
6 Hills Development) is hereby authorized and directed to have the law firm of Stradling Yocca
7 Carlson & Rauth, 660 Newport Center Drive, Suite 1600, Newport Beach, California 92660,
8 institute such actions in the name of CFD No. 2001-1 and the City of Oceanside to foreclose
9 delinquent special taxes.

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

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

16 b. All inquiries regarding payment of the delinquent special taxes shall be forwarded
17 to Stradling Yocca Carlson & Rauth c/o Allison E. Burns, Esq., 660 Newport Center Drive, Suite
18 1600, Newport Beach, California 92660.

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

20 PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this __ day
21 of _____, 2013, by the following vote:

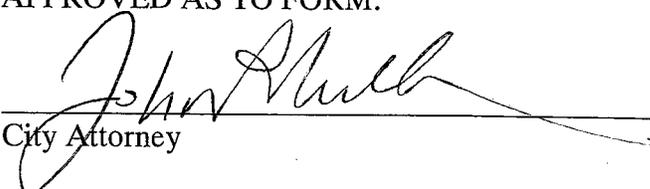
22 AYES:
23 NAYS:
24 ABSENT:
25 ABSTAIN:

26 _____
27 MAYOR OF THE CITY OF OCEANSIDE

28 ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney

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EXHIBIT A

List of Delinquent Property (By Assessor's Parcel Number)

CFD NO. 2001-1

APN	OWNER	FUND NO.	Fiscal Year(s)	Installment Due
122-561-37-00	Verjan Manuel III & Amanda L	6070-47	2008-09, 2009-10, 2010-11, 2011-12	both installments for all fiscal years

ATTACHMENT 2

RESOLUTION NO. _____

1
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. 2001-1 OF THE CITY OF OCEANSIDE
5 (MORRO HILLS DEVELOPMENT) IMPROVEMENT AREA NO. 1 SPECIAL
6 TAX BONDS SERIES A OF 2004 ORDERING JUDICIAL FORECLOSURE
7 OF DELINQUENT SPECIAL TAXES PURSUANT TO THE MELLO-ROOS
8 COMMUNITY FACILITIES ACT OF 1982 COMMENCING WITH SECTION
9 53311 OF PART 1 OF DIVISION 2 OF TITLE 5 OF THE GOVERNMENT
10 CODE.

11 WHEREAS, Community Facilities Districts No. 2001-1 of the City of Oceanside (Morro
12 Hills Development) Improvement Area No. 1 Special Tax Bonds Series A of 2004 (“CFD No.
13 2001-1/IA 1”) has incurred bonded indebtedness and levied special taxes for the payment of
14 bonds pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982
15 (commencing with Section 53311 of Part 1 of division 2 of Title 5 of the Government Code) (the
16 “Mello-Roos Act”); and

17 WHEREAS, pursuant to the Mello-Roos Act CFD No. 2001-1/IA 1 has duly levied and
18 recorded the unpaid special taxes, which special taxes and each installment thereof and interest
19 and penalties thereon constitute liens against the lots and parcels of land against which they are
20 made, until the same are paid; and

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

23 WHEREAS, under the provisions of the Mello-Roos Act, the City Council of the City of
24 Oceanside (“City Council”) acting in its capacity as the legislative body of CFD No. 2001-1/IA 1
25 is authorized and may order that a foreclosure action be brought to collect the delinquent special
26 taxes due against the properties within CFD No. 2001-1/IA 1 not later than four (4) years after
27 the date of delinquency of the last installment due on the bond; and

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

WHEREAS, the City Council acting in its capacity as the legislative body of CFD No.
2001-1/IA 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. 2001-1/IA 1 of the City of Oceanside
3 (Morro Hills Development), 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. 2001-1/IA 1 of the City of Oceanside
9 (Morro Hills Development) 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. 2001-1/IA 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:

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

23 PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this __ day
24 of _____, 2013, by the following vote:

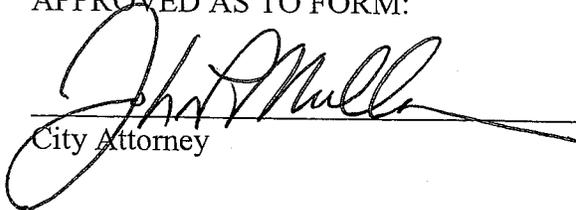
25 AYES:
26 NAYS:
27 ABSENT:
28 ABSTAIN:

MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney

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EXHIBIT A

List of Delinquent Property (By Assessor's Parcel Number)

**CFD NO. 2001-1
IMPROVEMENT AREA NO. 1**

APN	OWNER	FUND NO.	Fiscal Year(s)	Installment Due
122-561-37-00	Verjan Manuel III & Amanda L	6070-49	2008-09, 2009-10, 2010-11, 2011-12	both installments for all fiscal years