



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen
Jennifer A. Maguire

SUBJECT: REIMBURSEMENT OF
CONTINGENT LIEN PROCEEDS

DATE: 06-01-09

Approved

Date

6/8/09

COUNCIL DISTRICT: 8

RECOMMENDATION

It is recommended that Council take the following actions in the Evergreen Benefit Assessment District Fund:

1. Declaring \$2,056,013 in contingent lien proceeds as un-obligated in the Evergreen Benefit Assessment District Fund, and
2. Approval of a reimbursement in the amount of \$2,056,013 to the Evergreen Specific Plan Property Ownership Partnership.
3. Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Evergreen Benefit Assessment District Fund:
 - a. Establish a Beginning Fund Balance estimate in the Evergreen Benefit Assessment District Fund in the amount of \$ 2,056,013.
 - b. Establish an appropriation for the Reimbursement to the Evergreen Specific Plan Property Ownership Partnership in the amount of \$2,056,013.

OUTCOME

Reimbursement of un-obligated contingent lien proceeds to the Evergreen Specific Plan Property Ownership Partnership consistent with the intent of the Cooperation Agreement.

BACKGROUND

On June 27, 1995, Council approved the formation of Benefit Assessment District No. 91-209SJ (Aborn – Murillo) (the “Assessment District”), placing contingent liens on the benefiting properties for their proportionate share of the design and construction of the public infrastructure and facility improvements required by the Evergreen Specific Plan (ESP). Subsequently, due to

the passage of Proposition 218, Community Facilities District No. 4 - Evergreen Improvements (the "CFD") was formed to break out the residential and commercial parcels into their own district resulting in two separate funding districts: the Assessment District funding undeveloped and underdeveloped residential and campus industrial parcels in the Greater Evergreen Area (the "GEA") and the CFD funding infrastructure to support residential and commercial properties in the Evergreen Planned Residential Community (the "EPRC").

On December 12, 1995, and again on December 14, 1998, the City entered into cooperation agreements with the Evergreen Specific Plan Property Ownership Partnership (the "Partnership") and the Evergreen Specific Plan Area Developers (the "Developers") to set the terms and conditions for the funding and construction of public infrastructure improvements and facilities within the two districts; establish methods for determining credits for constructed improvements; and establish methods for the reimbursement of funds. The Evergreen Benefit Assessment District Fund (the "Fund") was established at that time to collect advances from the Partnership for the priority improvements, receive and administer contingent lien payments associated with the funding districts, guarantee deposits and withdrawals for the construction of the improvements, and make reimbursements of unused funds.

As a condition of development of the ESP, the Partnership was required to either fund or construct \$75,037,334 in extraordinary GEA and EPRC public infrastructure improvements. Additionally, a number of other improvements were identified to be funded with proceeds collected from contingent liens such as new traffic signals, traffic signal modifications, storm drainage, and park improvements. These additional improvements were contemplated to be built as development occurred that triggered the need for the improvements. These improvements were identified thoroughly in the agreements such as substitutions of other improvements would not be allowed. The Partnership would be due any unused contingent lien proceeds.

On June 19, 2007 City Council released \$11,063,710 to the Partnership for funds that were determined not necessary to complete construction of the remaining improvements. At this time the Partnership has requested the City to further analyze the fund balance and the remaining improvements, and release un-obligated funds.

ANALYSIS

The public infrastructure and facilities have largely been constructed. Please refer to Attachment A, page 2 for the status of improvements required for the Evergreen Specific Plan development. The last tract in EPRC is currently in development. There is no anticipated completion date for the ultimate development of the GEA. The final infrastructure improvements within EPRC and GEA will be delayed until development occurs that warrants the need. All outstanding construction remains secured by contingent liens on undeveloped property. The Assessment District and the CFD continue to collect the outstanding contingent liens on developing properties, consistent with the existing San José 2020 General Plan and the previous Evergreen Development Policy.

The Fund is comprised of cash advances from the Partnership for the priority improvements to develop ESP, revenue from annually inflated contingent liens placed on the properties for the construction of the infrastructure and facilities within the GEA, and the interest earned on those monies. It was intended that the fund would reimburse the Partnership at regular intervals through completed work reconciliations. To date the majority of the smaller developers have reconciled, but some of the major partners such as Shapell and Citation have not. At this point in time, the Fund balance is \$3,728,347. In addition there is \$7,122,767 in outstanding contingent liens that will be collected and deposited in the Fund as industrial land and other smaller GEA development occurs. Obligations against the Fund's current balance in 2009 dollars are \$1,672,334, as shown in Attachment A, page 1. For fund maintenance purposes, it is recommended that the City return the current un-obligated funds to the Partnership.

Staff has completed an administrative analysis of the Fund consistent with the intent of Article 8 of the Cooperation Agreement concerning Special Tax Proceeds, Attachment C, and provides the following determination regarding the continued management of the Fund:

1. Fund administration costs, outstanding construction costs, and a contingency for increases in construction costs are reserved.
2. City advances have been transferred, except for \$800,544 a portion of which will be reserved to fund any outstanding creekside mitigations required by the Evergreen Specific Plan Environmental Impact Report.
3. The Evergreen Development Plan Group has been reimbursed for expedited improvements.
4. All requested Developer reconciliations have been completed and associated funds reimbursed. All remaining reconciliations will be handled by the Partnership in accordance with the Cooperation Agreement.
5. Funding for a final corrective action needed for Fowler Creek Park, as per the Cooperation Agreements, is reserved, completing the partnerships obligation for the park.
6. The Partnership was reimbursed for the difference between the initial and final contingent assessments.

The terms and conditions of the Cooperation Agreements remain in effect until all outstanding contingent liens are collected, all claims against the Fund have been satisfied, and the City declares and returns all surplus funds to the Partnership and Developers; or until terminated, either by the City or by mutual consent, as designated by the Cooperation Agreements.

Since excess funds are available for reimbursements and the terms and conditions of the Cooperation Agreements allow for the reimbursements of funds, staff finds the Partnership's request reasonable. It is therefore recommended that the Council approve the reimbursement of \$2,056,013 to the Partnership for un-obligated contingent lien proceeds.

EVALUATION AND FOLLOW-UP

Staff will continue to collect outstanding contingent liens against properties within district boundaries as development occurs. Future Council action will be required when the City declares and returns all surplus funds to the Partnership and Developers after all outstanding contingent liens are collected and all claims against the Fund have been satisfied.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meeting, Notice in appropriate newspapers)**

While this action does not meet the \$1 million threshold for public funds under Criterion 1, this memorandum will be posted on the City's website for the June 23, 2009 Council Agenda.

COORDINATION

This memorandum and related documents were prepared in cooperation with the City Attorney's Office, the Finance Department, and the department of Parks, Recreation and Neighborhood Services.

FISCAL/POLICY ALIGNMENT

The release of these funds to the Partnership aligns with the City's fiscal responsibility priorities by returning appropriate funds to the participating developers.

COST SUMMARY/IMPLICATIONS

There is no fiscal impact associated with this Council recommendation.

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$2,056,013

2. COST ELEMENTS OF AGREEMENT/CONTRACT

EVERGREEN SPECIFIC PLAN FUND:

Current Fund Balance:	\$3,728,347
Reserve for Administration:	(\$35,000)
*Reserve for Creekside Mitigations	(\$500,000)
*Reserve for Fowler Creek Park	(\$200,000)
*Reserve including contingency for Projects:	(\$937,334)
Reimbursement to Partnership:	\$2,056,013

* Note: Amounts include contingencies

3. SOURCE OF FUNDING: Fund 699 Evergreen Benefit Assessment District Fund

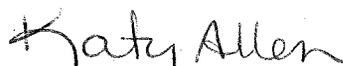
4. OPERATING COSTS: Not Applicable.

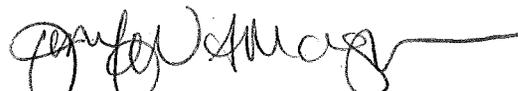
BUDGET REFERENCE

There is no City budget associated with this Council recommendation. Council's action will distribute un-obligated funds from a private fund managed by the City for the Partnership and Developers back to the Partnership for distribution to its members.

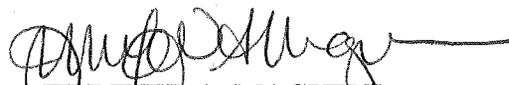
CEQA

CEQA: Not a project.


KATY ALLEN
Director, Public Works


JENNIFER A. MAGUIRE
Budget Director

I hereby certify that there will be available for appropriation in the Evergreen Benefit Assessment District Fund in the Fiscal Year 2008-2009 moneys in excess of those heretofore appropriated therefrom, said excess being at least \$2,056,013.


JENNIFER A. MAGUIRE
Budget Director

For questions, please contact TIMM BORDEN, DEPUTY DIRECTOR, PUBLIC WORKS DEPARTMENT, at 408-535-8300.

Attachment

ATTACHMENT A

CURRENT OBLIGATION AND PROPOSED DISTRIBUTION

CURRENT FUND 699 BALANCE		\$3,728,347
Funding for currently needed improvements		\$1,672,334
<i>Active Improvements</i>		
Fowler Creek Park	\$200,000	
Quimby and Folwer Creek Environmental mitigation	\$500,000	
<i>List of Local Intersections designated in cooperation agreement</i>	\$937,334	
* Intersections where modifications are currently possible if designated funding (\$937,334) is aggregated.		
*Traffic Signal - Capitol/Story		
*Traffic Signal - King/Tully (requires land)		
*Traffic Signal - Aborn/White		
*Traffic Signal - Quimby/White		
*Traffic Signal - Story/White		
<i>Construction unlikely at this time</i>		
Traffic Signal - Quimby/Arcade		
Traffic Signal - Ocala/White		
Traffic Signal - Story/Mcguiness		
 PW Fund Management	\$35,000	
POTENTIAL REFUND		\$2,056,013

ATTACHMENT A

FUTURE LIENS AND DEFERRED CONSTRUCTION

FUTURE LIENS TO BE COLLECTED **\$7,122,767**

Outstanding liens for Off Site Properties	\$1,421,642
Outstanding liens for Campus Industrial lands	\$5,701,125

Deferred improvements to be constructed from Future Liens **\$4,718,041**

CAMPUS FRONTAGE **\$3,371,109**

Traffic Signal - Aborn/Murillo	\$173,466
Traffic Signal - Yerba Buena/Altia	\$173,466
Traffic Signal - Yerba Buena/Verona	\$173,466
Aborn Utility undergrounding (2 locations)	\$780,000
Relocation of Fowler Creek Basin	\$368,711
Fowler Road Utility undergrounding	\$280,000
Aborn Road - south side frontage (2 sections)	\$1,422,000

OTHER IMPROVEMENTS **\$1,346,932**

Traffic Signal - Quimby/Murillo	\$173,466
Intersection improvements - Aborn/White	\$173,466
Land acquisition for signal or lane mods above	\$1,000,000

ADDITIONAL INFORMATION

IMPROVEMENTS CAMPUS INDUSTRIAL LIENS WERE BASED ON:

Items already constructed by ESP partnership

- Evergreen interceptor (37% of cost)
- 18" water main (no percentage defined)
- Zone 3-4 water tank / pump station (45% of cost)

Items partially constructed by ESP partnership

- Altia Half street (No percentage defined)

Not Yet Constructed

- Undergrounding utilities Aborn and Fowler (50%)
- Aborn Road half street (Campus frontage)
- Traffic Signal - Aborn/Murillo (Campus frontage)