

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

SUBJECT: INTENT TO FORM
COMMUNITY FACILITIES
DISTRICT NO. 13

DATE: July 23, 2012

Approved

Date 8/2/12

COUNCIL DISTRICT: 10

RECOMMENDATION

Adopt a resolution of intention to form Community Facilities District No. 13 (Guadalupe Mines) to authorize the levy of special tax pursuant to the City of San José Community Facilities District Financing Procedure, to set a public hearing on October 2, 2012 at 1:30 p.m. regarding the formation of the District, to hold an election immediately following the close of the public hearing and authorizing other related actions.

OUTCOME

The desired outcome for these proceedings is the commencement of the formation of CFD No. 13 to provide for the operation and maintenance of necessary improvements to develop this site.

BACKGROUND

On September 16, 2011 the Director of Planning, Building and Code Enforcement approved PD10-024 for an 89 unit residential development located on the west side of Guadalupe Mines Road approximately 1,130 feet southerly of Via Campagna. The project includes construction of typical roadway improvements with the exception of two elements, a set of stormwater treatment facilities to comply with the Municipal Regional Stormwater Permit and a sanitary sewer pump station needed to serve the new development.

Recent changes to storm water regulations have caused additional consideration to new site developments. These requirements have a multitude of potential solutions which often require additional maintenance considerations. The designed solution for this project involves several

July 23, 2012

Subject: Intent to Form Community Facilities District No. 13

Page 2

bioretention swales adjacent to the roadways that treat the site's post construction stormwater runoff.

Additionally, the unique topography of this site create a downhill sanitary sewer collection on-site that require a pump station to convey the sewage to an existing gravity sewer system along Guadalupe Mines Road. Since a gravity sewer solution is not feasible and the City does not have funding to accept the additional maintenance burden associated with pump stations, the developer, as a condition of project approval, has to provide a maintenance funding alternative.

The Developer has requested that the City initiate the formation of a Community Facilities District ("District") to fund the maintenance of these non-standard facilities. The special tax for these improvements will be apportioned equally among all units.

ANALYSIS

Staff recommends that Council initiate formation proceedings to form Community Facilities District No. 13 (Guadalupe Mines) ("CFD No. 13") to fund the operation and maintenance of the enhanced improvements and other items associated with the project.

For CFDs, an election with two-thirds voter approval is required to approve the special tax. Because there are fewer than 12 registered voters residing within the proposed district boundaries at the time of the public hearing, the qualified elector will be the Developer (property owner) who will cast a ballot based on acreage. If the district is approved by the Developer, a maximum tax rate is established with an annual inflation adjustment which may not be raised above the adjusted amount for that future year without subsequent approval from qualified electors.

To expedite the process and avoid delays, the Developer has submitted a waiver of time requirements required by law to allow the election to be accelerated and held immediately following the close of the public hearing.

Three attachments as listed below provide detail for the district:

Attachment A	Proposed Boundaries Map
Attachment B	Description of Proposed Services
Attachment C	Rate and Method of Apportionment of Special Tax

The proposed schedule of events for the formation of CFD No. 13 follows:

1.	City Council	Adopt a Resolution of Intention Set Public Hearing Set Election	8/14/2012
2.	Public Works	Mail Ballots and Notice of Public Hearing	9/3/2012

July 23, 2012

Subject: Intent to Form Community Facilities District No. 13

Page 3

3.	City Clerk	Publish Notice of Public Hearing	9/25/2012
4.	City Council	Conduct Public Hearing	10/02/2012
5.	City Council	Conduct Special Election	10/02/2012
6.	Public Works	Record Notice of Special Tax Lien	10/24/2012
7.	Public Works	Property Owner Invoices	11/01/2012

The Public Hearing on October 2, 2012, will allow for public testimony to be presented to Council. Council must consider all objections or protests to the proposed special tax. At the close of the Public Hearing, Council will conduct a special election whereby the Developer will cast a ballot in favor of or opposed to the special tax, with votes weighted by the acreage of land owned. If approved, the proposed special tax will commence immediately and will be adjusted annually beginning Fiscal Year 2012-2013.

The Notice of Public Hearing is scheduled to be published on September 25, 2012 and mailed along with the property owner ballot on or before September 3, 2012. The notice will include the text of the Resolution of Intention, the time and place of the hearing, a statement that public testimony will be heard, and a description of the voting procedure. Each completed ballot must be received by the City Clerk prior to the close of the public hearing in order to be included in the tabulation. Although this is a mailed ballot election, the Developer may submit its ballot to Council at the hearing.

EVALUATION AND FOLLOW-UP

On October 2, 2012, Council will conduct a Public Hearing and a special election. If the district is approved, staff will bring forward appropriation and funding sources recommendations for Council approval.

PUBLIC OUTREACH

- 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 a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum will be posted on the City's website for the August 14, 2012 Council Agenda. These actions were initiated at the request and with support from the Developer and were

July 23, 2012

Subject: Intent to Form Community Facilities District No. 13

Page 4

prepared by Public Works. City staff has met with the Developer regularly regarding the district and their development plans. Staff will mail the notice and ballot for the proposed special tax to the Developer at least 30 days prior to the date set for the public hearing and election.

COORDINATION

This memorandum and related documents were prepared in cooperation with the Departments of Environmental Services, Transportation, Parks, Recreation and Neighborhood Services, the City Attorney's Office, and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

These actions are in compliance with the Council-approved Budget strategy in that staff costs are funded by the Developer's deposit. If district formation is approved by the qualified voters, the costs of services provided through the district will be funded through annual special taxes on the properties within the district.

COST IMPLICATIONS

The formation of the Community Facilities District would commit the City to an ongoing contribution to cover the proportionate share of the storm water treatment associated with the public streets. The Environmental Services Department reviewed the calculations determining the proportionate share for treatment of public area stormwater. The City's share, roughly 48 percent, is estimated to be \$10,121 annually. It is anticipated that a recommendation to establish a transfer of these funds from the Storm Sewer Operating Fund (Fund 446) ending fund balance to the CFD will be brought forward at a later date upon creation of the CFD and construction of the stormwater treatment systems.

The Developer has deposited funds sufficient to pay formation costs for the district. Any unused funds will be returned to the Developer. If all funds are exhausted prior to the certification of election results, the Developer must provide additional funds to continue the process or the formation process will be discontinued. It should be noted that the developer funds were recognized in 2011-2012 and inadvertently not rebudgeted as part of the Adopted Budget process. It is anticipated that these funds will be recommended for rebudget into 2012-2013 as part of the 2011-2012 Annual Report, scheduled for City Council consideration in October 2012.

July 23, 2012

Subject: Intent to Form Community Facilities District No. 13

Page 5

CEQA

Mitigated Negative Declaration, File No. PDC10-005

Planning has issued a mitigated negative declaration for the Brookside Estates Project. The environmental impacts that need to be addressed are identified in the Mitigation Monitoring and Reporting Program (MMRP) for the project. The mitigations that are required for this project have been incorporated into the project design and the construction documents.

Construction activities shall adhere to the guidelines as stated in the MMRP for the following required mitigation measures:

- Air Quality
- Biological Resources
- Cultural Resources
- Geology and soils
- Greenhouse Gas Emissions and Energy
- Hazardous Materials
- Hydrology and Water Quality
- Noise

/s/

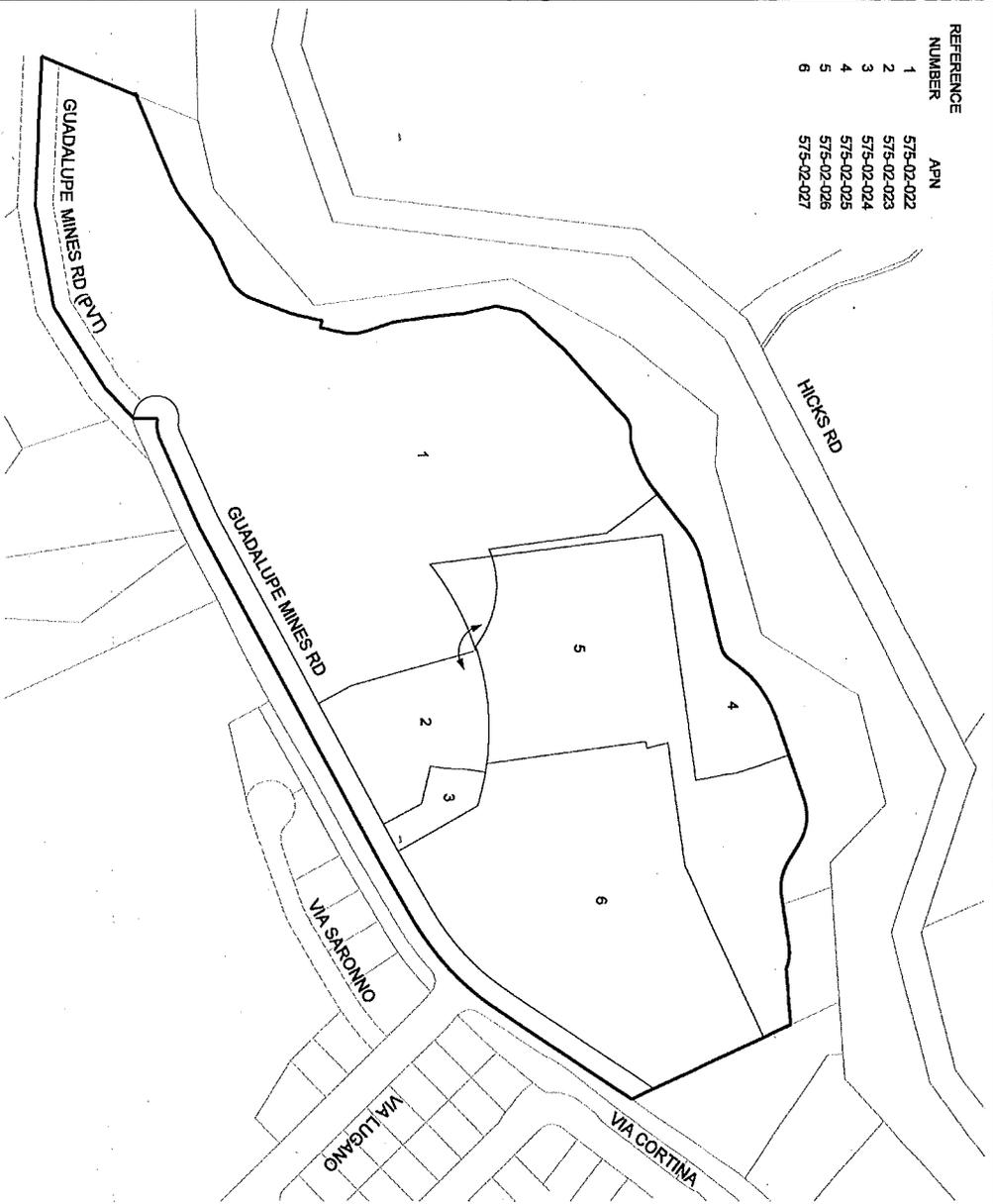
DAVID SYKES
Director of Public Works

For questions please contact Thomas Borden, Special Districts Manager, at (408) 535-6813.

Attachments

ATTACHMENT A

REFERENCE NUMBER	APN
1	575-02-022
2	575-02-023
3	575-02-024
4	575-02-025
5	575-02-026
6	575-02-027

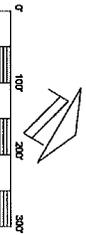


CITY OF SAN JOSE
 PUBLIC WORKS DEPARTMENT
 DIVISION OF PUBLIC UTILITIES
 100 MARKET STREET, SUITE 1000
 SAN JOSE, CALIFORNIA 95113

LEGEND

--- DRAINAGE BOUNDARY
 --- STREET RIGHT-OF-WAY
 --- PRIVATE STREET

1 PROPERTY LINE
 123-12-123 REFERENCE NUMBER
 123-12-123 ASSESSOR'S PARCEL NUMBER (APN)



CERTIFICATIONS

(1) CITY CLERK
 I, _____, do hereby certify that the foregoing is a true and correct copy of the original as filed in the office of the City Clerk of the City of San Jose, California, on this _____ day of _____, 2012.

(2) CITY COUNCIL

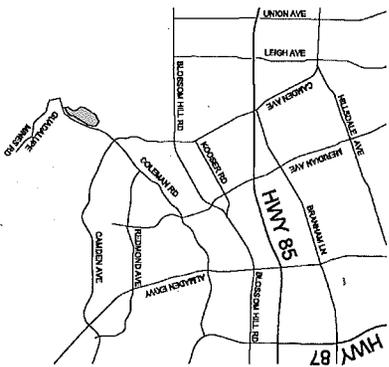
 DEBORAH L. HAYWARD, CHIEF
 CITY CLERK

I hereby certify that the information contained in the attached is a true and correct copy of the original as filed in the office of the City Clerk of the City of San Jose, California, on this _____ day of _____, 2012 by the Resolution No. _____.

DEBORAH L. HAYWARD, CHIEF
 CITY CLERK

(3) COUNTY RECORDER
 I, _____, County Recorder, do hereby certify that the foregoing is a true and correct copy of the original as filed in the office of the County Recorder of the County of Santa Clara, State of California, on this _____ day of _____, 2012 by the Resolution No. _____.

_____ COUNTY RECORDER
 COUNTY OF SANTA CLARA



LOCATION MAP

CITY OF SAN JOSE, COUNTY OF SANTA CLARA
 STATE OF CALIFORNIA
COMMUNITY FACILITIES DISTRICT 13
 (GUADALUPE MINES)
 FISCAL YEAR 2012-2013
 SHEET 1 OF 1

ATTACHMENT B

DESCRIPTION OF PROPOSED SERVICES

The services proposed to be financed by Community Facilities District No. 13 (Guadalupe Mines) (the "CFD No. 13") of the City of San José will provide for the maintenance of various improvements associated with the Brookside Estate development project. Maintenance of the improvements may include but will not be limited to necessary repairs, replacements, equipment, supplies, water, fuel, power, electricity, supervision and all other items needed for safe and proper maintenance of the items set forth below. This list identifies those improvements that are authorized for maintenance by the CFD No. 13; however, not all items on this list are guaranteed to be funded by the district.

Items Authorized to be Maintained

- Six bioretention areas along the west side of Sycamore Creek (public) from Aspen Creek to Sycamore Creek (private)
- Surface treatments to the six bioretention areas
- Sanitary sewer pump station
- Fence surrounding the pump station facility
- Litter and graffiti removal at the pump station facility

ATTACHMENT C

RATE AND METHOD OF APPORTIONMENT FOR COMMUNITY FACILITIES DISTRICT NO. 13 OF THE CITY OF SAN JOSE (GUADALUPE MINES)

A Special Tax, hereinafter defined, shall be levied on all Assessor's Parcels of Taxable Property in Community Facilities District No. 13 of the City of San Jose (Guadalupe Mines) ("CFD No. 13") and collected each Fiscal Year commencing in Fiscal Year 2012-2013 in an amount determined by the City Council of the City of San Jose, through the application of this Rate and Method of Apportionment as described below. All of the real property in CFD No. 13, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre" or "Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final map, parcel map, condominium plan, or other map or plan recorded with the County. The square footage of an Assessor's Parcel is equal to the Acreage of such parcel multiplied by 43,560.

"Act" means, collectively, the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 commencing at Section 53311 of the California Government Code, as incorporated into and modified by Chapter 14.27 of Title 14 of the Municipal Code of the City.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 13: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or designee thereof or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 13, or any designee thereof related to the reduction of the Maximum Special Tax in accordance with Section C herein; the costs of the City, CFD No. 13 or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 13 for any other administrative purposes of CFD No. 13, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure as a result of delinquent Special Taxes.

"Assessor's Parcel" or "Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor of the County designating parcels by Assessor's Parcel number.

ATTACHMENT C

“Authorized Maintenance Services” means, for each Fiscal Year, the six bioretention areas, surface treatments to the six bioretention areas, sanitary sewer pump station, and fence surrounding the pump station, and other maintenance services eligible to be funded by CFD No. 13, as defined in the Resolution of Formation.

“CFD Administrator” means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

“CFD No. 13” means Community Facilities District No. 13 of the City of San Jose (Guadalupe Mines).

“City” means the City of San Jose.

“Consumer Price Index” or “CPI” means, for each Fiscal Year, that year’s annual average consumer price index published by the U.S. Bureau of Labor Statistics for All Urban Consumers in the San Francisco-Oakland-San Jose Area. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose Area.

“Council” means the City Council of the City, acting as the legislative body of CFD No. 13.

“County” means the County of Santa Clara.

“Developed Property” means, in any Fiscal Year, all Taxable Property for which a development application has been submitted to the City prior to June 30 of the preceding Fiscal Year.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Land Use Class” means any of the classes listed or described in Sections B and C below.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C below, that can be levied in any Fiscal Year on any Assessor’s Parcel.

“Rate and Method of Apportionment” means this Rate and Method of Apportionment for CFD No. 13.

“Residential Property” means all Assessor’s Parcels for which a development application has been submitted for the construction thereon of one or more residential dwelling units.

“Resolution of Formation” means the Council resolution establishing CFD No. 13.

ATTACHMENT C

“**Special Tax**” means the special tax to be levied in each Fiscal Year on each Assessor’s Parcel of Residential Property and Subsequent Non-Residential Property within CFD No. 13 to fund the Special Tax Requirement, but in no event greater than the Maximum Special Tax.

“**Special Tax Requirement**” means that amount required in any Fiscal Year for CFD No. 13 to: (i) pay for Authorized Maintenance Services, (ii) create a sinking fund for replacement of facilities that will be maintained by Authorized Maintenance Services, (iii) pay Administrative Expenses of CFD No. 13, (iv) cure delinquencies in the payment of Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected.

“**State**” means the State of California.

“**Subdivision**” means a subdivision of property by recordation of a final map, parcel map, or lot line adjustment, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) and Title 19 of the San Jose Municipal Code or recordation of a condominium plan pursuant to California Civil Code 1352 that, in either case, creates successor Assessor’s Parcels for the purpose of levying property taxes.

“**Subsequent Non-Residential Property**” means (i) a Parcel of Non-Residential Property which had, in any prior Fiscal Year, been taxed as Residential Property. Notwithstanding the foregoing, if the City determines that, in conjunction with a particular Parcel being changed from a residential to a non-residential designation, there was a corresponding transfer of the residential land uses to another Parcel in the CFD, the City may but is not required to categorize that Parcel as Subsequent Non-Residential Property.

“**Taxable Property**” means all of the Assessor’s Parcels within the boundaries of CFD No. 13 which are not exempt from the Special Tax pursuant to law or Section E below.

B. MAXIMUM SPECIAL TAX RATE

The Maximum Special Tax for Residential Property in the CFD is \$747 per Unit for Fiscal Year 2012-13. Beginning January 2, 2013 and each January 2 thereafter, this Maximum Special Tax shall be adjusted by applying the average annual change in the Consumer Price Index that has occurred since the prior year. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

C. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2012-2013 and for each following Fiscal Year, the CFD Administrator shall determine the Special Tax Requirement and levy the Special Tax each Fiscal Year as follows:

Step 1: Determine the Special Tax Requirement for the Fiscal Year in which the Special Tax will be collected;

ATTACHMENT C

Step 2: Calculate the total Special Tax revenues that could be collected from Developed Property within the CFD based on application of the Maximum Special Tax rates determined pursuant to Section B above;

Step 3: If the amount determined in Step 1 is greater than the amount calculated in Step 2, levy the Maximum Special Tax on all Parcels of Developed Property pursuant to Section B above. Even though the Special Tax Requirement is greater than the total Special Tax revenues that can be collected in the CFD, only the Maximum Special Tax may be collected unless a higher Maximum Special Tax is approved by two-thirds of the Electors voting in an election to increase the Maximum Special Tax.

If the amount determined in Step 1 is equal to the amount calculated in Step 2, levy the Maximum Special Tax on all Parcels of Developed Property pursuant to Section B above.

If the amount determined in Step 1 is less than the amount calculated in Step 2, levy the Special Tax on all Parcels of Developed Property in equal percentages up to 100% of the Maximum Special Tax for each Parcel until the amount of the Special Tax levy equals the Special Tax Requirement for that Fiscal Year.

D. LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Tax shall be levied on land that has been conveyed to a Public Agency, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos Community Facilities Act of 1982. If a Parcel had been taxed in any prior Fiscal Year as Residential Property and becomes Subsequent Non-Residential Property, the City has the discretion to levy a Special Tax against such Parcel if the Special Tax revenues generated from the Parcel are needed to meet the Special Tax Requirement.

E. MANNER OF COLLECTION

The Special Tax will be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that CFD No. 13 may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations, and may covenant to foreclose and may actually foreclose on delinquent Assessor's Parcels as permitted by the Act. If the CFD Administrator determines in the first year of the special tax that the improvements do not require maintenance services, then the special tax will commence collection in the subsequent year.

ATTACHMENT C

F. TERM OF SPECIAL TAX

The Special Tax shall be levied in perpetuity to fund the Special Tax Requirement, unless no longer required to pay for Authorized Maintenance Services as determined at the sole discretion of the Council or as may be otherwise terminated pursuant to the Act.

G. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment.