



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: October 9, 2012

Approved

Date

10/17/12

COUNCIL DISTRICT: 8

**SUBJECT: PUBLIC HEARING AND ELECTION ON THE MAINTENANCE
DISTRICT 15 (SILVER CREEK VALLEY) ANNEXATION**

RECOMMENDATION

- (a) Conduct a public hearing regarding the proposed annexation of Annexation Area No. 1 and formation of Zone I to Maintenance District 15 and at the close of the public hearing, direct the City Clerk to tabulate the property owner ballots and report the results.
- (b) If the majority of the votes tabulated are weighted in favor of the proposal:
 - (1) Adopt a resolution:
 - a. Declaring the ballot tabulation results;
 - b. Approving the engineer's report, base assessment and annual adjustments and annexing territory and forming Zone I in Maintenance District 15; and
 - c. Imposing the assessments on those properties within the district as proposed in the engineer's report.
 - (2) Adopt the following 2012-2013 Appropriation Ordinance and Funding Source Resolution Amendments in the Maintenance District No. 15 (Silver Creek Valley) Fund:
 - a. Increase the estimate for Earned Revenue by \$53,650;
 - b. Establish an estimate for Transfers from Other Funds in the amount of \$22,118;
 - c. Increase the Personal Services appropriation for the Transportation Department by \$2,540;
 - d. Increase the Non-Personal/Equipment appropriation for the Transportation Department by \$63,650;
 - e. Increase the overhead appropriation by \$760; and
 - f. Increase the Ending Fund Balance by \$8,818.

- (3) Adopt the following 2012-2013 Appropriation Ordinance Amendments in the Storm Sewer Operating Fund:
 - g. Establish a Transfer to the Maintenance District No. 15 (Silver Creek Valley) Fund in the amount of \$22,118;
 - h. Decrease the Ending Fund Balance by \$22,118.

OUTCOME

The recommended actions facilitate the proposed annexation and formation of Zone I into Maintenance District 15 (Silver Creek Valley) to enable the implementation and maintenance of the proposed enhanced streetscape improvements.

BACKGROUND

Maintenance District 15 (Silver Creek Valley) (hereafter "MD 15") was formed in 1992 to accommodate the maintenance requirements of the various enhanced public improvements installed around the Silver Creek Valley Country Club area. These improvements include enhanced landscape in the median islands, neighborhood entrances, and along the slopes adjacent to some streets; unique street lighting; and open space trails. Currently, there are seven zones within MD 15 to address specific maintenance needs of the various neighborhoods in the Silver Creek area.

TRI Pointe Homes, LLC currently has a development permit (PDC09-010) to construct 38 homes (Tract 10057) on a 16.5 acre site located on Nieman Boulevard approximately 500 feet south of Sequoia Creek Drive on the west and extends to Cadwallader Avenue approximately 450 feet south of Country Vista Court on the east. This project is on land both within and adjacent to the maintenance district and requires a new public cul-de-sac and various other improvements to facilitate the project. In order to comply with current stormwater guidelines and to improve the overall impact of the addition to the adjacent neighborhood, the project proposes three public underground storm water treatment vaults in public easements, a landscaped Emergency Vehicle Access (EVA) path and various enhanced landscaping areas not typically maintained by the City.

City and State law requires that any new proposed assessment be approved by a simple majority of property owners in the maintenance district through a special election process called an assessment ballot proceeding. For maintenance districts, a four-step process is necessary for Council to hold this type of election.

Completed Council actions

- 1) April 3, 2012 – Adopted Resolution No. 76181 of intention to annex territory and form

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Zone I (Cadwallader) into MD 15 and directed the Director of Public Works to file an engineer's report;

- 2) August 7, 2012 – Adopted Resolution No. 76373 preliminarily approving the engineer's report, and setting the date and time of the public meeting, public hearing and tabulation of ballots; and
- 3) September 18, 2012 – Conducted a public meeting

Council action on October 30, 2012

- 4) Conduct a public hearing, and at the end of the hearing, tabulating the ballots.

The engineer's report, describing the improvements to be maintained, the amount of the assessment and the district boundary map, is available in the City Clerk's Office for public examination. A copy of the boundary map showing Annexation Area No. 1 and Zone I (Cadwallader) and the 38 parcels proposed to be assessed is provided as Attachment A.

Article XIID of the California Constitution provides that only special benefits are assessable. If there are general benefits, they must be separated from the special benefits conferred on a parcel; a special benefit being a particular and distinct benefit over and above general benefits which are conferred on the public at large. General benefits provided by the district landscape maintenance includes maintenance and operation services for the street islands; generally provided by the City at much lower care levels in similar areas.

ANALYSIS

At the October 30, 2012 meeting, Council will conduct a public hearing to receive and record public comment. Council must consider all objections or protests to the proposed annexation and assessments. The hearing may be continued, if necessary, to allow staff to respond to Council's inquiries or to implement changes proposed by Council.

The budget for the annexation area is proposed to be \$53,650 in 2012-2013 and the individual rates for the units are shown in the following table.

| | NIEMAN ACCESS | | CADWALLADER ACCESS |
|--------|---------------------------------------|------------|--------------------|
| | STANDARD | PREMIUM | |
| Zone I | \$1,455.68 | \$1,476.88 | \$1,031.46 |
| Zone B | \$33.60 (\$0.00 if already in Zone B) | | \$0.00 |

The assessments are apportioned among benefiting properties based on proximity and access. The 38 residential unit subdivision of Tract 10057 include nine units that are already within Zone B of MD 15 and the remaining 29 units are proposed for annexation into MD 15. Of the 29 annexation units, 23 units gain street access via Nieman Boulevard and will be annexed into existing Zone B and subject to the same assessment as those properties currently within Zone B,

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which is \$33.60 per unit annually which funds the maintenance of a portion of the enhanced median island landscape on Silver Creek Valley Road, Yerba Buena Road and Nieman Boulevard. The Zone I boundary will encompass all 38 units of the development. The 32 properties within Tract 10057 that gain street access via Nieman Boulevard will be assessed between \$1,455.68 and \$1,476.88 per unit annually for the maintenance of gateway, storm treatment, and EVA improvements. Properties that do not gain street access via Nieman Boulevard will be assessed \$1,031.46 annually for their share of the maintenance of the storm treatment improvements. The assessment will be adjusted annually thereafter by the average annual change in the Consumer Price Index for the San Francisco-Oakland-San José area to attempt to keep pace with inflation in the same manner as the other zones in MD 15.

At the close of the public hearing, Council will conduct a form of an election called an assessment ballot proceeding whereby property owners within the annexation area cast ballots in favor of or opposed to the annexation, with votes weighted by the amount of the assessment on each parcel. The developer has been in the process of selling some of the residential units and will be passing the appropriate ballots to new purchasers at the close of escrow. In the event the ballots submitted in opposition to the assessment exceed the ballots in favor of the assessment, Council cannot form the district and levy the assessment.

A series of appropriation actions are recommended in this memorandum, contingent upon the annexation being approved by the property owners. Special assessment funds in the amount of \$53,650 would be recognized in the Maintenance District No. 15 (Silver Creek Valley) Fund as well as a transfer of \$22,118 from the Storm Sewer Operating Fund, which would cover the proportionate share of the storm water treatment associated with the public street. These funds would cover the anticipated maintenance and operations costs associated with the annexation area, including maintenance of the stormwater quality treatment measures.

EVALUATION AND FOLLOW-UP

This is the final Council action in the annexation and zone formation process for maintenance districts. The results of the public hearing and ballot tabulation will be shared with MD 15 property owners.

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)**

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- 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 action does not meet any of the criteria above; however, this memorandum will be posted on the City's website for October 30, 2012 Council agenda. A notice of public hearing along with a ballot was mailed to each property owner within the annexation area on September 7, 2012. The notice was also published in the *San Jose Post Record* on September 6, 2012. Community outreach included staff meeting with the Developer regularly regarding the district and their development plans.

COORDINATION

This memorandum, related documents and resolutions were prepared in cooperation with the Transportation and Environmental Services Departments and the City Attorney's 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 annexation and zone formation is approved by the property owners, the costs of services provided through the district will be funded through annual assessments on the properties within the district.

COST IMPLICATIONS

The formation of Zone I would commit the City to an ongoing contribution to cover the proportionate share of the storm water treatment associated with the public streets. There are sufficient funds in the Storm Sewer Operation Fund to cover this cost of \$22,118. The addition of resources for the Transportation Department is recommended in this memorandum. The addition of Non-Personal/Equipment resources in the amount of \$63,650 in the Maintenance District No. 15 (Silver Creek Valley) Fund will allow for the contractual maintenance of the improvements while the addition of \$2,400 for Transportation Department Personal Services will allow for associated contract oversight. A recommendation to appropriate associated overhead costs (\$760) is also included in this memorandum.

The Developer has deposited funds to pay annexation costs for the district. Any unused funds will be returned to the Developer. It should be noted that the developer funds were recognized in 2011-2012 and were not rebudgeted as part of the Adopted Budget process. These funds have been recommended for rebudget into 2012-2013 as part of the 2011-2012 Annual Report, scheduled for City Council consideration on October 16, 2012.

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CEQA

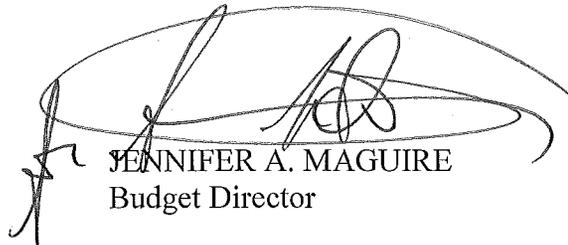
Mitigated Negative Declaration, File No. PDC09-010

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
- Geology and soils
- Hazardous Materials
- Transportation and Traffic

/s/
DAVID SYKES
Director of Public Works



JENNIFER A. MAGUIRE
Budget Director

For questions please contact Thomas Borden, Special Districts Manager, at (408) 535-6831.

If the majority of the votes tabulated support the proposal, I hereby certify that there will be available for appropriation in the Maintenance District No. 15 (Silver Creek Valley) Fund in the Fiscal Year 2012-2013 moneys in excess of those heretofore appropriated therefrom, said excess being at least \$53,650.



JENNIFER A. MAGUIRE
Budget Director

Attachment

| DPN | APN | DPN | APN | DPN | APN |
|-----|------------|-----|------------|-----|------------|
| 901 | 878-01-021 | 914 | 878-01-034 | 927 | 878-01-047 |
| 902 | 878-01-022 | 915 | 878-01-035 | 928 | 878-01-048 |
| 903 | 878-01-023 | 916 | 878-01-036 | 929 | 878-01-049 |
| 904 | 878-01-024 | 917 | 878-01-037 | 930 | 878-01-050 |
| 905 | 878-01-025 | 918 | 878-01-038 | 931 | 878-01-051 |
| 906 | 878-01-026 | 919 | 878-01-039 | 932 | 878-01-052 |
| 907 | 878-01-027 | 920 | 878-01-040 | 933 | 878-01-053 |
| 908 | 878-01-028 | 921 | 878-01-041 | 934 | 878-01-054 |
| 909 | 878-01-029 | 922 | 878-01-042 | 935 | 878-01-055 |
| 910 | 878-01-030 | 923 | 878-01-043 | 936 | 878-01-056 |
| 911 | 878-01-031 | 924 | 878-01-044 | 937 | 878-01-057 |
| 912 | 878-01-032 | 925 | 878-01-045 | 938 | 878-01-058 |
| 913 | 878-01-033 | 926 | 878-01-046 | | |



CERTIFICATIONS

(1) DIRECTOR OF PUBLIC WORKS
 FILED THIS _____ DAY OF _____, 2012, IN THE OFFICE OF THE DIRECTOR OF PUBLIC WORKS OF THE CITY OF SAN JOSE.

DAVID SYDES
 DIRECTOR OF PUBLIC WORKS

(2) CITY CLERK
 FILED THIS _____ DAY OF _____, 2012, IN THE OFFICE OF THE CITY CLERK OF THE CITY OF SAN JOSE.

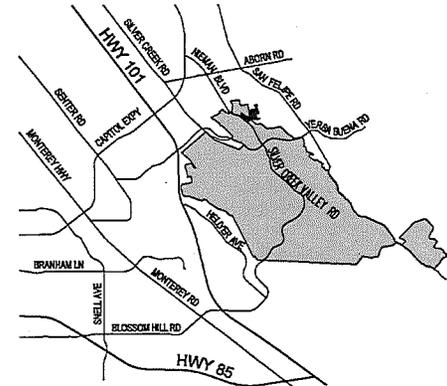
DENNIS D. HAWKINS, CMC
 CITY CLERK

(3) CITY COUNCIL
 BY RESOLUTION NUMBER _____ ON THE _____ DAY OF _____, 2012, AN ASSESSMENT WAS LEVIED BY THE CITY COUNCIL ON THE LOTS, PRECES, AND PARCELS OF LAND SHOWN ON THIS DIAGRAM. THE APPROVED DIAGRAM AND ASSESSMENT ROLL, FILED IN THE OFFICE OF THE DIRECTOR OF PUBLIC WORKS CONTAINS THE EXACT AMOUNT OF EACH ASSESSMENT LEVIED AGAINST EACH PARCEL OF LAND SHOWN ON THIS DIAGRAM.

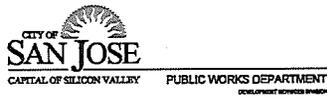
DENNIS D. HAWKINS, CMC
 CITY CLERK

(4) COUNTY RECORDER
 FILED THIS _____ DAY OF _____, 2012, AT THE HOUR OF _____ O'CLOCK _____ A.M. IN BOOK _____ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS PAGE(S) _____ IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA. RECORDER'S SERIES NO. _____ FEE PAID: _____

REGINA ALCOMENDRAS, COUNTY RECORDER
 COUNTY OF SANTA CLARA

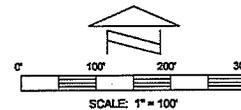


LOCATION MAP



LEGEND

| | | | |
|--|----------------------------|--|-------------------------------|
| | ANNEXATION AREA NO. 1 | | STREET RIGHT OF WAY |
| | PROPOSED ZONE I BOUNDARY | | PROPERTY LINE |
| | PROPOSED ZONE B ANNEXATION | | DISTRICT PARCEL NUMBER (DPN) |
| | | | ASSESSORS PARCEL NUMBER (APN) |



CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
ANNEXATION AREA NO. 1
 AND
ZONE I (CADWALLADER)
 ANNEXATION TO
MAINTENANCE DISTRICT 15
 (SILVER CREEK VALLEY)
 FISCAL YEAR 2012-2013