Staff Report

File#: 16-0275**, Item#: 4.**

A. RESOLUTION NO. 2016-153 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA ADOPTING A MAP SHOWING THE BOUNDARIES OF THE TERRITORY PROPOSED TO BE INCLUDED IN COMMUNITY FACILITIES DISTRICT NO. 16-I (MILLENIA) AND THE IMPROVEMENT AREAS THEREIN

B. RESOLUTION NO. 2016-154 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DECLARING ITS INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT NO. 16-I (MILLENIA) AND DESIGNATE TWO IMPROVEMENT AREAS THEREIN TO AUTHORIZE THE LEVY OF A SPECIAL TAX THEREIN TO FINANCE THE ACQUISITION OR CONSTRUCTION OF CERTAIN PUBLIC FACILITIES

C. RESOLUTION NO. 2016-155 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DECLARING THE NECESSITY TO INCUR A BONDED INDEBTEDNESS OF COMMUNITY FACILITIES DISTRICT NO. 16-I (MILLENIA) FOR IMPROVEMENT AREA NO. 1 AND IMPROVEMENT AREA NO. 2 THEREIN TO BE SECURED BY SPECIAL TAXES LEVIED WITHIN EACH RESPECTIVE IMPROVEMENT AREA TO PAY FOR THE ACQUISITION OR CONSTRUCTION OF CERTAIN PUBLIC FACILITIES

RECOMMENDED ACTION

Council adopt the resolutions.

SUMMARY

SLF IV - Millenia, LLC has requested the City to initiate proceedings to form a Community Facilities District No. 16-I ("CFD No. 16-I" or "District") for the acquisition or construction of certain public facilities serving property within the Millenia master planned community. Tonight's action will (a) declare the intention of the City Council to: (i) establish such a Community Facilities District and designate two improvement areas therein, (ii) authorize the levy of special taxes within such Community Facilities District pursuant to the proposed rate and method of apportionment for each improvement area of the Community Facilities District and (iii) declare the necessity of such Community Facilities District to incur a bonded indebtedness for each improvement area secured by special taxes levied within each respective improvement area, (b) adopt a boundary map of the Community Facilities District and the improvement areas therein, (c) describe the facilities authorized to be financed by such Community Facilities District, (d) request the applicable officer of the City to prepare the Community Facilities District Report and (e) set the public hearing for the Community Facilities District for September 13, 2016.

ENVIRONMENTAL REVIEW

Environmental Notice

The activity is not a “Project” as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Environmental Determination

The Director of Development Services has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines because the proposed activity consists of the creation of a governmental fiscal/funding mechanism which does not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Thus, no environmental review is required.

BOARD/COMMISSION RECOMMENDATION

Not Applicable

DISCUSSION

SLF IV - Millenia, LLC, is the master developer (“Master Developer”) of the property located within the proposed development commonly known as Millenia, a mixed-use, pedestrian oriented, urban master planned community. Millenia was formerly referred to as the Eastern Urban Center and is included in the Eastern Urban Center Sectional Planning Area. Final Maps have been recorded for the majority of Millenia, which consists of approximately two-hundred and six (206.6) acres located south of Birch Road Parkway, west of Eastlake Parkway, and east of State Route 125 (SR-125). Millenia is proposed to contain approximately 2,983 multi-family units, approximately 40.5 acres of commercial (office and retail) development, a business class hotel (2.2 acres), a public school (6.84 acres) and six neighborhood parks (12.88 acres).

The City and McMillin Otay Ranch, LLC (“McMillin”) entered into a Development Agreement in October 2009 pertaining to the development of Millenia. The Master Developer is the assignee to McMillin under the Development Agreement. The Development Agreement provides for certain terms and conditions under which City and Master Developer, as assignee to McMillin, will cooperate to establish a Community Facilities District (CFD) to finance the acquisition and construction of eligible public facilities in connection with development of the Millenia project. CFDs provide the necessary funding for the acquisition or construction of public improvements by levying an annual “special tax”, which is collected from the property owners in conjunction with the property taxes and by issuing bonds secured by the levy of such special taxes, with no direct cost to the City.

As permitted under the Development Agreement, certain portions of Millenia such as rental and affordable projects have intentionally been excluded from the proposed District boundaries. The Master Developer currently owns all of the property within the proposed District with the exception of approximately 10 acres sold to Shea Homes for a for-sale residential project and approximately 7 acres sold to Chesnut Properties for an office development. Staff has reviewed the District boundary map and has found it acceptable and ready for approval by Council. Staff believes that adequate information has been reviewed and analysis has been conducted to evaluate the Master Developer’s financial ability to bring the Millenia project to completion in compliance with City criteria. Therefore, staff is recommending that Council accept report and initiate the formal proceedings to consider the formation of CFD No. 16-I and the designation of the improvement areas therein and to declare the necessity of by CFD No. 16-I to incur bonded indebtedness for each of the proposed improvement areas. The City has retained the services of Willdan Financial Services as special tax consultant and Best Best and Krieger LLP as legal counsel to provide assistance during the proceedings.

All expenses incurred by the City in undertaking the proceedings to consider the formation of CFD No. 16-I ("the District") and subsequently authorizing, issuing and selling bonds of the District to finance the acquisition or construction of the eligible public facilities (except those costs and expenses which are contingent upon the issuance of bonds for the District and are payable solely from the proceeds of such bonds) will be paid for by advances made by the Master Developer pursuant to the Advance Deposit and Reimbursement Agreement previously entered into between the City and Master Developer. All ongoing expenses related to the District administration (including levying and collecting the special taxes) are to be funded from annual special taxes collected by the District. Additionally, in the event a second series of bonds are issued for an improvement area, the Master Developer is required to deposit additional funds at the time of bond issuance, pursuant to the Development Agreement, in order to establish a reserve account for administrative expenses.

The ultimate security for the bonds are the properties located within the District, not the City's General Fund or its ability to tax property within its jurisdiction outside of the District. This District will be formed in conformance with the "City of Chula Vista Statement of Goals and Policies Regarding the Establishment of Community Facilities Districts" ("CFD Policy") and the terms and conditions of the "Financing Plan" contained within the Development Agreement which provides for certain exceptions to the CFD Policy.

The Final Environmental Impact Report (SCH# 2007041074) pertaining to the entire Millenia project was certified by the City Council on September 15, 2009. The Tentative Map for the entire Millenia project was approved by City Council on September 15, 2009 and, to date, all Final Maps for property within the proposed District have been recorded.

District Boundaries

Staff has reviewed the District boundary map and has found it acceptable and ready for approval by Council. A reduced copy of the map is presented in **Attachment 1**.

The Master Developer owns approximately 74% of the 67 acres of taxable property within the proposed District with the remainder being owned by Shea Homes and Chesnut Properties. At buildout, the portion of Millenia within the District is proposed to contain a total of approximately 865 residential units and approximately 26.3 acres of commercial development, as follows:

- Improvement Area No. 1: approximately 24 acres planned for 416 condominium/townhome units and approximately 18 acres planned for commercial development.
- Improvement Area No. 2: approximately 16.5 acres planned for 449 condominium/townhome units and approximately 8.3 acres planned for commercial development.

The Improvements

The special tax consultant has reviewed and confirmed a preliminary tax spread and bond sizing analysis prepared by the Master Developer that is based on estimated house sizes and prices (see

Attachment 2).

This tax spread sets the amount of maximum special tax that may be levied by the District within each improvement area of CFD No. 16-I. The proposed taxes are discussed below in the section “Proposed Special Taxes”. Additional calculations show that the maximum special tax revenue (using the proposed taxes) from all the properties would support a total bonded indebtedness of approximately $12.5 million for Improvement Area No. 1 and $13.2 million for Improvement Area No. 2 (assuming a 5.0% interest rate and a 30-year bond term). Aggregate bond issuances of $25.7 million will finance approximately $20.7 million in facilities (i.e. grading, landscaping, streets, utilities, drainage, sewer, parks, pedestrian bridge, etc). The balance would provide for a reserve fund, capitalized interest, initial administration expenses, district formation and bond issuance costs.

The Master Developer has requested that the District be authorized to finance backbone and internal streets and associated improvements (i.e. grading, sewer, streets, bus rapid transit guideways, landscaping, utilities, etc.) including eligible Transportation Development Impact Fee (TDIF) facilities, public parks, storm drain facilities, sewer facilities, pedestrian bridge facilities, a library, a fire station, and other public facilities. **Attachment 3** shows a preliminary list of facilities with a total cost estimate of approximately $94.4 million. Tonight, Council would only be approving the types of the improvements to be financed by the District. As noted above, it is estimated that only $25.7 million in bonds may be supported by this District, generating approximately $20.7 million of project proceeds. A final list and cost estimate of the improvements eligible for District financing will be brought later to Council in conjunction with the Acquisition/Financing Agreement.

Ultimately, as subdivision exactions, the Master Developer will finance improvements that this District cannot finance. The actual amount to be financed by the District will depend on a number of factors including the final interest rate on the bonds, value-to-lien ratio and revisions to the cost estimates (higher or lower) for the estimated $20.7 million of project proceeds. As previously stated, the bond interest rate assumption for purposes of the estimated bond amounts and project proceeds used in this report is 5%; however, if interest rates are ultimately lower, the actual bond amount and proceeds will be higher. For example, at a 3% bond interest rate the bond amount is estimated at $20,800,000 for Improvement Area No. 1 and $22,000,000 for Improvement Area No. 2. Also of note, due to the 2% annual escalation in special taxes, the special tax revenue stream for bonding increases with each fiscal year, so up until such time as the bonds are issued, the bonding capacity will increase by approximately 2% with each fiscal year that passes. Thus, staff recommends that Council approve a maximum authorized indebtedness not to exceed $20,000,00 for Improvement Area No. 1 and $21,000,000 for Improvement Area No. 2 which is specified in the “Resolution Declaring Necessity to Incur Bonded Indebtedness” that is before Council tonight. The Master Developer concurs with staff’s recommendation.

Relationship to Development Impact Fees (“DIF”)

Consistent with past practice, any facility associated with a DIF program constructed by the developer, once audited, can be used in lieu of paying the DIF fees that would otherwise be collected at building permit. To the extent that the Master Developer assigns these fee “credits” to property outside of the Millenia Infrastructure CFD, the corresponding dollar amount of the underlying facility cost will not be eligible to be reimbursed with CFD bond proceeds. If fee credits are split among CFD property and Non-CFD property, the portion assigned to CFD property would remain eligible for CFD reimbursement subject to the terms and conditions of the Acquisition/Financing Agreement.

Proposed Special Taxes

Tonight, Council will consider a separate “Rate and Method of Apportionment” (“RMA”) for each improvement area (see **Attachment 4**) that establishes the procedures for levying the special taxes within the District.

The District generally encompasses the land south of Birch Road, west of Eastlake Parkway, and east of State Route 125 (SR-125).

The developed residential and non-residential parcels would be taxed at rates based on the location of the parcel and the square footage of the residential unit or the acreage of the non-residential parcel. Developed parcels are those parcels for which a building permit has been issued. These special tax rates have been determined by a preliminary tax spread analysis that shows a total effective tax rate that is less than 2% for all planned residential units. Said analysis, which is based on estimated house sizes and prices, sets the amount of the assigned special tax that may be levied by the District on developed residential parcels. It should be noted that a final test is required at escrow closing using actual house sale prices. If the 2% limit is exceeded, the developer/builder is required to buy down the lien to an amount sufficient to meet the 2% criteria. There are three tax zones within Improvement Area No. 1 and two tax zones within Improvement Area No. 2.

The special tax rates in Improvement Area No. 1 range from $1,350 to $1,799 per developed residential unit. The special tax rates in Improvement Area No. 2 range from $1,360 to $1,628 per developed residential unit. The undeveloped and backup tax rates are based on the projected total amount of developed special taxes within each zone of each Improvement Area divided by the expected taxable acreage in such zone reduced by a contingency rate (5-10%). This is done to ensure that the special tax levy will be sufficient at each stage of development.

Public Property, Property Owner Association Property and open space will be exempt from the Special Tax on the condition that it does not reduce the sum of all Taxable Property to less than the necessary amount of taxable acres in each zone to generate the required amount of special tax revenues. Any property which cannot be classified as exempt property because such classification would reduce the Acreage of all Taxable Property to less than the minimum taxable acreage in any of the five zones will be classified as Provisional Property and subject to the levy of the special tax at the same rate as Undeveloped Property.

The special taxes will be subject to increase each fiscal year by 2% and bonds would be issued based on debt service that escalates by 2% each year commensurately. This “2% escalator” provision is a specific exception to the CFD Policy pursuant to the Financing Plan of the Millenia (EUC) Development Agreement.

Collection of Taxes

First, the proposed Assigned Special Tax will be levied on the Developed Property. Second, if this pool of funds is not enough to meet the annual debt service, as may be the case in the early years of development, the CFD Administrator will levy a Special Tax on the Undeveloped Property. Again, if additional monies are needed after the first two steps have been completed, the special tax shall be increased proportionately on each parcel of Developed Property from the Assigned Special Tax up to the Maximum Special Tax as determined by the application of the Backup Special Tax. If, after these three steps are exhausted, there is still a need for additional monies, then the special tax shall be levied proportionately on each parcel classified as Provisional Property, pursuant to Section 4 of each RMA.

The proposed RMA for each Improvement Area also includes provisions for the prepayment of the special taxes in the event the developer or a future property owner decides to do so.

Value-to-Lien Ratio Policy
Council policy requires a minimum 4:1 value-to-lien ratio. A ratio of less than 4:1, but equal to or greater than 3:1, may be approved, in the sole discretion of Council, when it is determined that a ratio of less than 4:1 is financially prudent under the circumstances of a particular CFD. A final appraisal and lien ratio analysis will be available for Council consideration prior to the sale of bonds for each Improvement Area. The first bond sale for Improvement Area No. 1 is projected to occur in calendar year 2018. If the final analysis shows parcels which fail to meet the 4:1 or 3:1 ratio, one or more of the following actions would be required:

1 The Master Developer could request the use of an Escrow Bond structure pursuant to the Financing Plan of the Development Agreement; or,
2 The Master Developer could provide cash or letters of credit to maintain the lien ratio within the City criteria; or,
3 The principal amount of the bonds to be issued for CFD No. 16-I will be reduced to comply with City policy; or,
4 The Master Developer may provide sufficient information to convince Council that a lesser lien ratio is still prudent.

Maximum Tax Policy
Council Policy establishes that the maximum annual Community Facilities District special taxes applicable to any newly developed residential property shall be no more than 1% of the sale price of the house. In addition, the aggregate of all annual taxes and assessments, excluding special tax or assessments for maintenance, is limited to 2% of the sale price of the house.

A preliminary calculation of the overall effective total tax rate, using <u>estimated base home prices</u> per a market study prepared for the Master Developer by a third party market study consultant, has been completed and all homes fall within the 2% limit (see **Attachment 2**). A final test will be performed at escrow closing using the <u>actual sale price</u> of the house. Council Policy requires that at or prior to each closing of escrow, the escrow company shall apply a “calculation formula” previously approved by the City Engineer to determine the aggregate of regular County taxes, special taxes and assessment installments. If the 2% limit were exceeded, the developer/builder will be required to provide cash to buy down the lien to an amount sufficient to meet the 2% tax ceiling. Compliance with this procedure would ensure that the aggregate special tax to be paid by the initial purchaser of the house meets the City’s criteria, since the 2% limit is a City policy and the limit itself is not included in the rate and method of the district.

<u>Resolutions</u>
There are three resolutions on today’s agenda that, if adopted, will accomplish the following:

The RESOLUTION ADOPTING THE BOUNDARY MAP is the formal action adopting the map and setting forth the boundaries of the proposed CFD No. 16-I and each of the improvement areas therein.

The RESOLUTION OF INTENTION is the jurisdictional resolution declaring the intention of the City Council to establish CFD No. 16-I and designate the improvement areas therein, authorize the levy of special taxes, set the time, and place for the public hearing for August 23, 2016.

The RESOLUTION DECLARING NECCESSITY TO INCUR BONDED INDEBTEDNESS is the formal declaration of the City Council determining that the public convenience and necessity requires that a bonded indebtedness of CFD No. 16-I be incurred for each of the improvement areas therein to finance certain public facilities proposed by CFD No. 16-I. The proposed maximum bond indebtedness for Improvement Area No. 1 is $20,000,000 and for Improvement Area No. 2 is $21,000,000. The actual amount of the bond sale will depend upon a number of factors including interest rate on the bonds and compliance with the value-to-lien ratio criteria.

Future Actions

Adoption of tonight's resolutions will set the District's' public hearing for September 13, 2016. There will be an election following the public hearing for the landowners to vote on the authorization to levy special taxes, the authorization to incur a bonded indebtedness of CFD No. 16-I for each improvement area and to establish an appropriations limit. Once the votes are cast, Council will be requested to certify the results of the election and, if the ballot measures are approved by 2/3 of the qualified electors (i.e., the landowners) voting on the measures, CFD No. 16-I will be authorized to levy such special taxes and incur such bonded indebtedness. Additional future actions include approval of the Acquisition/ Finance agreement, the levy of special taxes, and actions associated with the issuance of bonds.

DECISION-MAKER CONFLICT

Staff had reviewed the property holdings of the City Council and has found no property holding within 500 feet of the boundaries of the property which is the subject of this action. Staff is not independently aware, nor has staff been informed by any City Councilmember, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. Once the District is formed and bonds are sold, the proceeds will serve two City Strategic Plan majors goals: Economic Vitality, via additional commercial activities, and a Connected Community by way of enhanced roadway improvements and pedestrian oriented facilities and development in the EUC/Millenia are of the City.

CURRENT YEAR FISCAL IMPACT

All expenses incurred by the City in undertaking the proceedings to consider the formation of the District and subsequently authorizing, issuing and selling bonds of the District to finance the acquisition or construction of the eligible public facilities (except those costs and expenses which are contingent upon the issuance of bonds for the District and are payable solely from the proceeds of such bonds) will be paid for by advances made by the Master Developer pursuant to the Advance Deposit and Reimbursement Agreement previously entered into between the City and Master Developer, resulting in no net fiscal impact to the City's General Fund or Development Services Fund.

Staff anticipates that the majority of the CFD No. 16-I administration will be contracted out. The CFD administration cost is estimated not to exceed $75,000 annually.

In accordance with the CFD Policy, as consideration for the City's agreement to use the City's bonding authority to provide the financing mechanism for the construction of the proposed improvements, the Master Developer will pay one percent (1%) of the total bond sale. Said requirement will be memorialized in the Acquisition/Financing Agreement that will be brought to Council for approval at a later date. Based on the proposed bond sizing of $25.7 million in aggregate, said total monetary compensation would be approximately $257,000. Said amount shall be paid prior to each bond sale based on the principal amount of each such sale and will be deposited into the General Fund. The CFD Policy also stipulates that said compensation is not eligible for financing via CFD No. 16-I.

ONGOING FISCAL IMPACT

The costs to administer the District, if established, and the issuance of bonds by the District shall be paid from the proceeds of special taxes to be levied within the District or the proceeds of the bonds issued by the District. There is, therefore, no ongoing fiscal impact on the City's General Fund or Development Services Fund by this action.

ATTACHMENTS

1. Boundary Map
2. Preliminary Tax Spread and Bond Sizing Analysis
3. Facilities List
4. Rate and Method of Apportionment

Staff Contact: Dave Kaplan, Development Services Department