

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	_x_
CM	_x_
CA	_x_

DATE: JUNE 14, 2006

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: INVESTMENT REVIEW COMMITTEE

SUBJECT: PUBLIC HEARING TO CONSIDER FORMATION OF HEADLANDS RESERVE LLC COMMUNITY FACILITIES DISTRICT NO. 2006-1

RECOMMENDED ACTION:

That the City Council concur with the recommendation of the Investment Review Committee to conduct a duly noticed public hearing, receive testimony and approve the necessary actions (as recommended in this report) in accordance with Government Code Section 53311 et seq. to form the Headlands Reserve LLC Community Facilities District (CFD) No. 2006-1.

BACKGROUND:

On February 12, 2002 the City Council adopted Ordinance No. 02-02 approving the Headlands Development Agreement (DA 01-01) between the City of Dana Point and Headlands Reserve LLC. The agreement contains provisions which state that upon the request of the Headlands, both parties shall cooperate in establishing one or more "Financing Districts" for the purpose of financing the Headlands' obligations to construct public facilities and public park and open space facilities in conjunction with the Headlands development.

As recommended by the Investment Review Committee, the City Council took action at its April 26, 2006 meeting to approve and adopt the following documents to initiate the CFD legal proceedings under the Mello Roos Act, and scheduled a public hearing for June 14, 2006 at 6:00 p.m. to consider the official formation of the CFD:

1. City of Dana Point Statement of Goals and Policies for the Use of the Mello-Roos Community Facilities Act of 1982.

The Statement of Goals and Policies is a blanket policy which would apply to any and all community facilities districts formed or proposed to be formed by the City. The purpose of the Statement of Goals and Policies is to provide the City staff, the residents of the City and the owners and developers of property located within the City with guidance in the application for and consideration of the establishment of CFD's within the City for the purpose of financing or assisting in financing the acquisition, construction, or maintenance of public infrastructure or the provision of services to benefit and serve either existing or new development or a combination thereof. The underlying principles behind this policy are the protection of the public interest, assuring fairness in the application of special taxes to current and future property owners, assuring full disclosure of the existence of any special tax liens, insuring the creditworthiness of any CFD bonds, protecting the City's credit rating and financial position and assuring that applicants for all CFD proceedings other than City-initiated proceedings pay all costs associated with the formation of any CFD. **(SUPPORTING DOCUMENT 1)**

2. RESOLUTION NO. 06-04-26-02 OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA DECLARING ITS INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES THEREIN.

This resolution accepts and files the petition of the landowner; designates the CFD name; establishes the boundaries of the CFD; identifies facilities to be funded through the CFD; declares the City's intention to conduct proceedings to form the CFD, levy taxes and issue bonds; sets the time and place for a public hearing on June 14, 2006 at 6:00 p.m. to consider the establishment of the CFD and to determine whether the public interest, convenience and necessity require formation of the CFD and the levy of special taxes; and approves the Rate and Method of Apportionment of Special Taxes, the taxing formula used to determine the amount of special taxes applicable to each taxable parcel within the CFD. **(SUPPORTING DOCUMENT 2)**

3. RESOLUTION NO. 06-04-26-03 OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA DECLARING ITS INTENTION TO INCUR BONDED INDEBTEDNESS FOR PROPOSED COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT.

This resolution declares the estimated cost for the acquisition and or construction of the facilities to be \$31.6 million; and, that it is necessary to incur bonded indebtedness within the boundaries of the proposed CFD in the amount not to exceed \$45 million in order to finance the cost of facilities. The bond authorization (not to exceed \$45 million) is set at an amount to: 1) permit the inclusion of a capitalized bond reserve fund, funded interest, and costs of issuance; 2) allow for any adjustments to the interest rate assumptions, and 3) compensate for adjustments to facilities and services contract costs that may exceed current

estimates. This resolution also set a public hearing for June 14, 2006 at 6:00 p.m. to determine whether the public interest, convenience and necessity require the issuance of bonds for the CFD **(SUPPORTING DOCUMENT 3)**.

A public hearing notice was published according to law in the Dana Point News and mailed to the property owner **(SUPPORTING DOCUMENT 4)**.

DISCUSSION:

A CFD is a method of financing certain public capital facilities and funding certain services by imposing special taxes on a limited geographical area. The process to form a community facilities district includes a noticed public hearing process, a protest procedure and a vote by the qualified electors of the CFD. Once the community facilities district is formed, bonds may be issued to finance authorized public facilities and other eligible costs.

At its meeting of May 31, 2006, the IRC reviewed all of the required documents necessary for the noticed public hearing to consider the official formation of the CFD. The IRC conducted an extensive review of the documents and directed staff to make certain revisions therein. Subsequently, the IRC took action to recommend that the City Council hold the noticed public hearing, approve all necessary documents and proceed with the formation of the CFD. (Draft minutes of the May 31st meeting - **SUPPORTING DOCUMENT 5**.)

At such time as the City Council closes the public hearing, it shall determine whether or not a majority protest exists (for landowner CFDs, by determining if the owners of one-half or more of the area of the land in the territory proposed to be included in the CFD, and not exempt from the special tax, file written protests against the establishment of the CFD). If a majority protest does not exist, the City Council may determine 1) to establish the CFD and 2) the necessity to incur bonded indebtedness by adopting a resolution of formation establishing the CFD and a resolution to incur bonded indebtedness.

The City Council shall then submit the levy of the special taxes, the incurring of bonded indebtedness and the establishment of an appropriations limit to the qualified electors of the CFD (in this case there is a currently a single landowner) by calling a special election during the meeting proceedings. Ballots would then be counted by the City Clerk publicly from the dais. Upon determination by the City Council that the requisite two-thirds of votes cast are in favor of levying the special tax, incurring bonded indebtedness and establishing an appropriations limit, the City Council would then introduce the first reading of an Ordinance of Special Tax (second reading would be held on June 28, 2006) and the Clerk would be directed to record a Notice of Special Tax Lien. The aforementioned activities and actions would conclude the CFD formation proceedings.

The issuance of the bonds will occur, if at all, only after the structure of the bond issuance is finalized to the satisfaction of the bond financing team, City staff and the Investment Review Committee recommends to the City Council adoption of a "bond resolution" at some point in the future. It is not unusual for this process to occur until some months after formation and, in some rare instances, a year or more after formation due to a variety of factors, including the completion of improvements to the land being developed. All matters related to the issuance of bonds will require City Council approval.

Other issues:

Fiscal Agent Agreement: This document is referenced in the Acquisition Agreement and is a key document that provides for the issuance of bonds, the disbursement of proceeds of the bonds, the disposition of the special taxes securing the bonds and the administration and payment of the bonds. Because the document cannot be finalized absent the bond structure, at the IRC's direction, a Draft Fiscal Agent Agreement, minus the specificity of the bond issue structure is being provided for the benefit of the City Council (**SUPPORTING DOCUMENT 6**).

City's accounting and reporting requirements for the CFD: The portion of the bond proceeds which will be used to acquire the improvements will be recorded as an asset (cash held by fiscal agent) in a Capital Projects Fund with an offsetting revenue entry representing the contribution of the asset from the CFD. As the funds are disbursed to the Headlands Reserve LLC an entry will be made to record an expenditure (capital outlay) in the Capital Projects Fund and reduce the balance in the cash held by a fiscal agent account. The net result is that when the funds are fully disbursed the City will have recorded an equal amount of revenues and expenditures associated with the bond proceeds used to acquire the improvements.

The portion of the bond proceeds retained by the fiscal agent that represent capitalized interest (if any) and payment reserves will be recorded by the City in Agency Fund accounts, which have equally offsetting assets and liabilities.

The future assessments on the properties will be recorded as General Fund revenues to the City (to the extent they represent the maintenance portion of the assessment) and in an Agency Fund (to the extent they represent payments due to bondholders).

The bond obligation itself is not recorded on the City's books since it is solely an obligation of the CFD and the City has no contingent payment liability. However, under GASB Statement 6 a description of the bonds will be included in the financial statement footnotes and Comprehensive Annual Financial Report along with a statement that the City is not obligated in any manner for the debt.

Recommendation:

It is the recommendation of the IRC that the City Council hold the public hearing, consider public testimony, close the public hearing, and approve the following actions required to form the CFD:

Approve and adopt:

- A. Acquisition Agreement by and between City of Dana Point and Headlands Reserve LLC Relating to CFD 2006-1; and authorize City Manager to execute agreement

The Acquisition Agreement provides the requirements for Headlands' construction of the public facilities and the procedures for the City's acquisition of same and payment to Headlands of the construction cost.

- B. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT APPROVING A JOINT COMMUNITY FACILITIES AGREEMENT WITH THE COUNTY OF ORANGE AND HEADLANDS RESERVE LLC; and authorize City Manager to execute agreement

The Mello-Roos Act requires the agency forming the CFD to enter into a JCFA with each entity which will acquire facilities financed by the CFD. The JCFA is required to be approved by resolution.

- C. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT APPROVING A JOINT COMMUNITY FACILITIES AGREEMENT WITH THE SOUTH COAST WATER DISTRICT AND HEADLANDS RESERVE LLC; and authorize City Manager to execute agreement

The Mello-Roos Act requires the agency forming the CFD to enter into a JCFA with each entity which will acquire facilities financed by the CFD. The JCFA is required to be approved by resolution.

- D. City of Dana Point Community Facilities District Report for CFD No. 2006-1

A CFD Report is required by the Mello-Roos Act and is intended to provide the particulars of the CFD, the facilities and the special tax.

- E. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT AUTHORIZING FORMATION OF COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT, AUTHORIZING THE LEVY OF SPECIAL TAXES THEREIN, PRELIMINARILY ESTABLISHING AN APPROPRIATIONS LIMIT THEREFOR AND SUBMITTING LEVY OF THE SPECIAL TAXES AND THE ESTABLISHMENT OF THE APPROPRIATIONS LIMIT TO THE QUALIFIED ELECTORS THEREOF

This resolution is required by the Mello-Roos Act and formally establishes the CFD.

- F. A RESOLUTION OF COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT DETERMINING THE NECESSITY TO INCUR BONDED INDEBTEDNESS AND SUBMITTING A PROPOSITION TO THE QUALIFIED ELECTORS THEREOF

The Resolution is required by the Mello-Roos Act for issuance of bonds.

- G. A RESOLUTION OF COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT CALLING A SPECIAL ELECTION FOR THE PURPOSE OF APPROVING SPECIAL TAXES THEREIN, THE ISSUANCE OF BONDS BY SAID DISTRICT AND ESTABLISHMENT OF AN APPROPRIATIONS LIMIT;

1. Accept executed Concurrence of Clerk Ex-Officio of CFD No. 2006-1 and Waiver of Landowner of time period for analysis and arguments;
2. City Clerk to Conduct Election

This resolution is required by the Mello-Roos Act and calls the election to approve the levy of special taxes and bond authorization, but not their actual issuance.

- H. Notice of Special Taxes Lien:

A RESOLUTION OF COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT DECLARING THE RESULTS OF A SPECIAL ELECTION THEREIN AND DIRECTING RECORDING OF A NOTICE OF SPECIAL TAXES LIEN

This resolution simply declares the result of the election. The Notice of Special Taxes Lien is required by the Mello-Roos Act and places a lien on all properties in the CFD for the special taxes to be levied.

- I. Introduce and hold first reading:

AN ORDINANCE OF COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT LEVYING SPECIAL TAXES WITHIN COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT

The ordinance is required by the Mello-Roos Act and formally authorizes the levy of special taxes in future years.

NOTIFICATION AND FOLLOW-UP:

Headlands Reserve LLC
City's CFD Consultant Team

STRATEGIC PLAN INITIATIVE:

Achieve total excellence in municipal services and City administration/planning with excellent customer service and cost-effectiveness.

Maintain, modernize and beautify the City's infrastructure and neighborhoods.

Provide, acquire and retain open space, parks, recreational facilities, greenbelts and trails, and community serving property.

FISCAL IMPACT:

There is no impact to the City's General Fund Budget. While it is anticipated that some of the fees will be contingent upon the sale of bonds (excluding any out of pocket costs and expenses), Section 3.13 of the Headlands Development Agreement (DA01-01) requires the developer to reimburse the City for the actual and reasonable costs incurred to establish the CFD, including administrative staff costs, consultants' costs, and legal fees. On February 28, 2006, the developer provided the City with an advance deposit in the amount of \$75,000 as required under Section 3.13 of the Development Agreement. In lieu of a Reimbursement Agreement, the Headlands also provided a letter dated April 7, 2006 that states "that until such time as the bond sale closes and reimbursement of such costs can occur via bond proceeds, when the \$75,000 deposit is depleted, HRLLC agrees to replenish the account pursuant to monthly statements from the City."

ALTERNATIVE ACTIONS:

Do not approve the recommended actions.
Alternative actions as deemed appropriate by the City Council.

ACTION DOCUMENTS

- A. Acquisition Agreement
- B. RESOLUTION APPROVING A JOINT COMMUNITY FACILITIES AGREEMENT WITH COUNTY OF ORANGE AND HEADLANDS RESERVE LLC

- C. RESOLUTION APPROVING A JOINT COMMUNITY FACILITIES AGREEMENT WITH SOUTH COAST WATER DISTRICT AND HEADLANDS RESERVE LLC
- D. Community Facilities District Report for CFD No. 2006-1
- E. RESOLUTION AUTHORIZING FORMATION OF CFD NO. 2006-1, AUTHORIZING THE LEVY OF SPECIAL TAXES THEREIN, PRELIMINARILY ESTABLISHING AN APPROPRIATIONS LIMIT THEREFOR AND SUBMITTING LEVY OF THE SPECIAL TAXES AND THE ESTABLISHMENT OF THE APPROPRIATIONS LIMIT TO THE QUALIFIED ELECTORS THEREOF
- F. RESOLUTION DETERMINING THE NECESSITY TO INCUR BONDED INDEBTEDNESS AND SUBMITTING A PROPOSITION TO THE QUALIFIED ELECTORS THEREOF
- G. RESOLUTION CALLING A SPECIAL ELECTION FOR THE PURPOSE OF APPROVING SPECIAL TAXES THEREIN, THE ISSUANCE OF BONDS BY SAID DISTRICT AND ESTABLISHMENT OF AN APPROPRIATIONS LIMIT (Concurrence of Clerk Ex-Officio of CFD No. 2006-1 and Waiver of Landowner attached to resolution)
- H. A RESOLUTION OF COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT DECLARING THE RESULTS OF A SPECIAL ELECTION THEREIN AND DIRECTING RECORDING OF A NOTICE OF SPECIAL TAXES LIEN (Notice of Special Tax Lien attached to resolution)
- I. AN ORDINANCE LEVYING SPECIAL TAXES WITHIN COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT

(HARD COPIES OF ALL DOCUMENTS WILL BE PROVIDED)

SUPPORTING DOCUMENTS

- 1. Goals and Policies Statement
- 2. RESOLUTION NO. 06-04-26-02
- 3. RESOLUTION NO. 06-04-26-03
- 4. Public Hearing Notices/Affidavits
- 5. Investment Review Committee Draft Minutes of May 31, 2006
- 6. Draft Fiscal Agent Agreement

(HARD COPIES OF ALL DOCUMENTS WILL BE PROVIDED)