



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 06/19/07
AGENDA ITEM 5
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Finance Director
SUBJECT: Changes to Community Facilities District No. 1 (Eden Shores)

RECOMMENDATION:

It is recommended that following a public hearing, the City Council adopt the attached resolutions modifying Community Facilities District No. 1 as noted in this report.

DISCUSSION:

In July 2002, the City Council authorized formation of Community Facilities District No. 1 (CFD) pursuant to the Mello-Roos Community Facilities Act of 1982 (Mello-Roos Act) and at the request of the property owner at the time. Additionally, the Council authorized the levy of special taxes in the CFD, and approved the issuance of the City of Hayward Community Facilities District No. 1 (Eden Shores) 2002 Special Tax Bonds, in the amount of \$9,965,000. As allowed under state law, the proceeds from the sale of the bonds were used to finance construction of various infrastructure improvements within the CFD, including portions of the roads and various utilities (water, sewer and storm drains). The special tax associated with the CFD is designed to generate the revenue stream to pay off the bonds. It is important to note that the obligation to retire the bonds rests with the property owners and not the City.

The current property owners in the CFD, Standard Pacific Corp. and Legacy Partners (and their affiliates), have asked the City to make two changes with respect to the CFD. These changes do not functionally affect the original purpose of the CFD; nor do the changes affect the bond holders or the security of the bonds. The property owners have agreed to pay the full cost of processing the requested revision.

The Council is being asked to entertain two modifications to the CFD. First, the property owners are asking that two "improvement areas" be created within the overall CFD, one for property being developed by Standard Pacific Corp. and one for property being developed by Legacy Partners. This is a common action within CFDs and will allow each property owner greater flexibility in development options and schedules. Legacy Partners is most interested in this change because Legacy is still finalizing development plans for its property in the CFD, and creation of separate improvement areas will allow Legacy to adjust the apportionment of special taxes among land uses in the future without involving Standard Pacific Corp. or the purchasers of Standard Pacific's homes.

Second, Standard Pacific has asked for a change in the basis on which special taxes are apportioned among land uses on its property in the CFD: the request is to switch from the current per acre special tax to a per-unit special tax, so that similarly-sized units will pay equivalent special taxes, even if one of the units sits on a larger parcel. This change does not alter the total tax paid by Standard Pacific or subsequent purchasers. It simply changes the basis for assessing owners from parcel size to per-unit. With this change, the owner of an attached unit in FY 2006-07 will pay a maximum of \$910, while the owner of the detached unit will pay maximum of \$1,260. These maximum special tax rates will increase by 2.0% on July 1, 2007 and every July 1 thereafter.

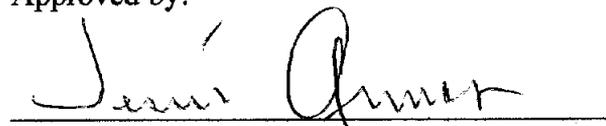
State law establishes certain procedures that are to be followed when modifying a community facilities district. The first step is to adopt a resolution indicating that a change is under consideration and calling for a public hearing. The City Council adopted this resolution of consideration on May 15, 2007.

The City Council is now being asked to take the remaining actions to modify the community facilities district. Following the public hearing and the reporting of the election results, the Council is asked to adopt the attached resolutions.

Recommended by:


Debra Auker, Finance Director

Approved by:


Jesús Armas, City Manager

Attachments: Draft Resolutions (3)

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 07-

Introduced by Council Member _____

**RESOLUTION CALLING SPECIAL ELECTION TO AMEND
AND RESTATE THE RATE AND METHOD OF
APPORTIONMENT OF SPECIAL TAX AND FORM
IMPROVEMENT AREAS FOR COMMUNITY FACILITIES
DISTRICT NO. 1 (EDEN SHORES)**

WHEREAS, the City Council of the City of Hayward (the "City") has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to form City of Hayward Community Facilities District No. 1 (Eden Shores) (the "CFD"), to authorize the levy of a special tax (the "Special Tax") upon the land within the CFD, and to issue bonds secured by the Special Tax, the proceeds of which are to be used to finance certain public improvements, all as described in those proceedings; and

WHEREAS, the City previously issued the City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Bonds, Series 2002 (the "2002 Bonds") in the initial principal amount of \$9,965,000; and

WHEREAS, the Rate and Method of Apportionment of Special Tax for the CFD (the "Rate and Method"), attached as Exhibit B to the City Council's Resolution No. 02-103 adopted by the City Council on July 9, 2002, authorizes the levy of a Special Tax in the CFD in any fiscal year to pay the Special Tax Requirement; and

WHEREAS, the City has been asked by the owners of the property in the CFD (i) to form two improvement areas in the CFD and (ii) to amend and restate the Rate and Method in order to reflect the improvement areas and make certain other changes to the Special Tax; and

WHEREAS, the purpose of the proposed amendment and restatement of the Rate and Method and formation of the two improvement areas is to give the property owners in one improvement area the ability, pursuant to Section 53350 of the Act, to pursue further changes to the Rate and Method in the future as it applies to their respective properties without seeking the approval of the property owners in the other improvement area; and

WHEREAS, On May 15, 2007, the City Council adopted a "Resolution of Consideration to Amend and Restate the Rate and Method of Apportionment of Special Tax

and Form Improvement Areas” (the Resolution of Consideration”), pursuant to which the City Council (i) designated a portion of the CFD as “Improvement Area No. 1 of the City of Hayward Community Facilities District No. 1 (Eden Shores)” (“Improvement Area No. 1”) and the other portion of the CFD as “Improvement Area No. 2 of the City of Hayward Community Facilities District No. 1 (Eden Shores)” (“Improvement Area No. 2”; together with Improvement Area No. 1, the “Improvement Areas”), (ii) approved an amended map of the CFD and directed its recordation in the office of the Alameda County Recorder, (iii) approved the proposed amended and restated Rate and Method (the “Amended and Restated Rate and Method”) in the form attached as Exhibit A to the Resolution of Consideration, (iv) determined that the proposed Amended and Restated Rate and Method and formation of the Improvement Areas would not interfere with the timely retirement of the 2002 Bonds and (v) set a public hearing for June 19, 2007 on the question of forming the Improvement Areas and amending and restating the Rate and Method; and

WHEREAS, the public hearing was held on this date, and the formation of the Improvement Areas and the proposed amendment and restatement of the Rate and Method were not opposed by more than 50% of the owners of land within the CFD; and

WHEREAS, Government Code Section 53338 authorizes the holding of a special election of the qualified electors in the CFD on the issue of forming the two Improvement Areas and amending and restating the Rate and Method.

NOW, THEREFORE, BE IT RESOLVED:

1. As authorized by Section 53338 of the Act, the proposition to approve the formation of the two Improvement Areas and the Amended and Restated Rate and Method shall be placed upon a ballot, the form of which is attached hereto as Exhibit “A” and by this reference incorporated herein. Said form of the ballot is hereby approved.
2. This City Council hereby finds that fewer than 12 persons have been registered to vote within the CFD for each of the 90 days preceding the close of the public hearing heretofore conducted and concluded by the City Council for the purposes of these proceedings. Accordingly, and pursuant to the Act, this City Council finds that for purposes of these proceedings the qualified electors are the landowners within the CFD and that the vote shall be by said landowners or their authorized representatives, each having one vote for each acre or portion thereof such landowner owns in the CFD as of the close of the public hearing.
3. This City Council hereby calls a special election to consider the measures described in paragraph 1 above, which election shall be held in the City Council meeting room on June 19, 2007, at 9:00 P.M. or as soon thereafter as is practicable, and the results thereof canvassed at the meeting of this City Council on June 19, 2007 or a later date as may be directed by the Council. The City Clerk is hereby designated as the official to conduct said election and to receive all ballots until the close of business on the election date.

This Council hereby further finds that the provisions of Section 53326 of the Act requiring a minimum of period of time before holding the special election are for the protection of the qualified electors of the CFD. There are on file with the Clerk written waivers executed by all of the qualified electors of the CFD allowing for a shortening of the time for the special election to expedite the amendment and restatement of the Rate and Method and waiving any requirement for notice, analysis and arguments in connection with the election. Accordingly, this City Council finds and determines that the qualified electors have been fully apprised of and have agreed to the shortened time for the election and waiver of analysis and arguments, and have thereby been fully protected in these proceedings. This City Council also finds and determines that the City Clerk has concurred in the shortened time for the election. Analysis and arguments with respect to the ballot measures are hereby waived, as provided in Section 53327 of the Act.

4. It is hereby acknowledged that the City Clerk has on filed the Resolution of Consideration, a certified map of the boundaries of the CFD, and a sufficient description to allow the City Clerk to determine the qualified electors of the CFD. Pursuant to Section 53327 of the Act, the election shall be conducted by messenger or mail-delivered ballot pursuant to Section 4000 of the California Elections Code. This City Council hereby finds that paragraphs (a), (b), and (c) (1) and (c) (3) of Section 4000 are applicable to this special election.

5. This City Council acknowledges that the City Clerk will cause to be delivered to each of the qualified electors within the CFD a ballot in the form set forth in Exhibit "A." Each ballot shall indicate the number of votes to be cast by the respective landowner to which it pertains.

Each ballot will be accompanied by all supplies and written instructions necessary for the use and return of the ballot. The envelop to be used to return the ballot will be enclosed with the ballot, have the return postage prepaid, and shall contain the following: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or authorized representative of the landowner entitled to vote and is the person whose name appears on the envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration pursuant to clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing official.

6. The voted ballots shall be returned to the City Clerk no later than 8:00 P.M. on June 19, 2007. The City Clerk shall accept the ballots of the qualified electors in the meeting room of the City Council, whether said ballots be personally delivered or received by mail. The City Clerk shall have available ballots which may be marked at said location on the election day by said qualified electors.

7. This Resolution shall take effect upon its adoption.

EXHIBIT A

FORM OF BALLOT

**City of Hayward
Community Facilities District No. 1
(Eden Shores)**

This ballot is for a special, landowner election in the City of Hayward Community Facilities District No. 1 (Eden Shores). You must return this ballot in the enclosed postage paid envelope to the office of the City Clerk of the City by no later than the hour of 8:00 p.m. on June 19, 2007, either by mail or in person. The City Clerk's office is located at City Hall, 777 B Street, Hayward, California 94541-5007.

To vote, mark a cross (X) on the voting line after the word "YES" or after the word "NO." All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot, return it to the City Clerk and obtain another.

BALLOT MEASURE: Shall (i) the Rate and Method of Apportionment of Special Tax for the City of Hayward Community Facilities District No. 1 (Eden Shores) be amended and restated as set forth in the form of Amended and Restated Rate and Method of Apportionment of Special Tax attached as Exhibit A to the "Resolution of Consideration to Amend and Restate the Rate and Method of Apportionment of Special Tax and Form Improvement Areas" adopted by the City Council of the City of Hayward on May 15, 2007, which Amended and Restated Rate and Method of Apportionment of Special Tax I have read and understand, and (ii) formation of "Improvement Area No. 1 of the City of Hayward Community Facilities District No. 1 (Eden Shores)" and "Improvement Area No. 2 of the City of Hayward Community Facilities District No. 1 (Eden Shores)," as such improvement areas are described in the Amended and Restated Rate and Method of Apportionment of Special Tax, be approved?

YES: _____

NO: _____

By execution in the space provided below, I also indicate my waiver of (i) the time limit pertaining to the conduct of the election, (ii) any requirement for analysis and arguments with respect to the ballot measure, and (iii) any irregularity in the proceedings relating to the Amended and Restated Rate and Method of Apportionment of Special Tax and formation of the two improvement areas.

Number of Votes: _____

Property Owned by Property Owner: _____

The Property Owner is:

By: _____

Name: _____

Title: _____

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION DECLARING RESULTS OF SPECIAL
ELECTION TO AMEND AND RESTATE THE RATE AND
METHOD OF APPORTIONMENT OF SPECIAL TAX AND
FORM IMPROVEMENT AREAS FOR COMMUNITY
FACILITIES DISTRICT NO. 1 (EDEN SHORES)**

WHEREAS, the City Council of the City of Hayward (the "City") has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to form City of Hayward Community Facilities District No. 1 (Eden Shores) (the "CFD"), to authorize the levy of a special tax (the "Special Tax") upon the land within the CFD, and to issue bonds secured by the Special Tax, the proceeds of which are to be used to finance certain public improvements, all as described in those proceedings; and

WHEREAS, the City previously issued the City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Bonds, Series 2002 (the "2002 Bonds") in the initial principal amount of \$9,965,000; and

WHEREAS, the Rate and Method of Apportionment of Special Tax for the CFD (the "Rate and Method"), attached as Exhibit B to the City Council's Resolution No. 02-103 adopted by the City Council on July 9, 2002, authorizes the levy of a Special Tax in the CFD in any fiscal year to pay the Special Tax Requirement; and

WHEREAS, the City has been asked by the owners of the property in the CFD (i) to form two improvement areas in the CFD and (ii) to amend and restate the Rate and Method in order to reflect the improvement areas and make certain other changes to the Special Tax; and

WHEREAS, the purpose of the proposed amendment and restatement of the Rate and Method and formation of the two improvement areas is to give the property owners in one improvement area the ability, pursuant to Section 53350 of the Act, to pursue further changes to the Rate and Method in the future as it applies to their respective properties without seeking the approval of the property owners in the other improvement area; and

WHEREAS, on May 15, 2007, the City Council adopted a "Resolution of Consideration to Amend and Restate the Rate and Method of Apportionment of Special Tax and Form Improvement Areas" (the "Resolution of Consideration"), pursuant to which the City

Council (i) designated a portion of the CFD as "Improvement Area No. 1 of the City of Hayward Community Facilities District No. 1 (Eden Shores)" ("Improvement Area No. 1") and the other portion of the CFD as "Improvement Area No. 2 of the City of Hayward Community Facilities District No. 1 (Eden Shores) ("Improvement Area No. 2"; together with Improvement Area No. 1, the "Improvement Areas"), (ii) approved an amended map of the CFD and directed its recordation in the office of the Alameda County Recorder, (iii) approved the proposed amended and restated Rate and Method (the "Amended and Restated Rate and Method") in the form attached as Exhibit A to the Resolution of Consideration, (iv) determined that the proposed Amended and Restated Rate and Method and formation of the Improvement Areas would not interfere with the timely retirement of the 2002 Bonds and (v) set a public hearing for June 19, 2007 on the question of forming the Improvement Areas and amending and restating the Rate and Method; and

WHEREAS, the public hearing was held on this date, and the formation of the Improvement Areas and the proposed amendment and restatement of the Rate and Method were not opposed by more than 50% of the owners of land within the CFD; and

WHEREAS, Government Code Section 53338 authorizes the holding of a special election of the qualified electors in the CFD on the issue of forming the two Improvement Areas and amending and restating the Rate and Method; and

WHEREAS, following the public hearing, the City Council, acting as the legislative body of the CFD, adopted a "Resolution Calling Special Election To Amend and Restate Rate and Method of Apportionment of Special Tax and Form Improvement Areas" calling for a special landowner election of the qualified electors within the CFD to be held on June 19, 2007; and

WHEREAS, the special election was held on June 19, 2007, and the ballots were submitted to the City Clerk as the official conducting the election; and

WHEREAS, the Clerk has completed a Canvass and Statement of Results of Election (Canvass), a copy of which is attached as Exhibit "A", and the City Council hereby approves the Canvass.

NOW, THEREFORE, BE IT RESOLVED:

1. The issues presented at the June 19, 2007 special election were the approval of an Amended and Restated Rate and Method of Apportionment of Special Tax and formation of the Improvement Area.
2. Pursuant to said Canvass on file with the Clerk, the issues presented at the special election were approved by the qualified electors within the CFD by more than two-thirds (2/3) of the votes cast at the special election.

3. It is hereby found that all prior proceedings and actions taken by this City Council with respect to the CFD were valid and in conformity with the Act.

4. The Clerk is hereby directed to execute and cause to be recorded in the office of the County Recorder of the County of Alameda an Amended and Restated Notice of Special Tax Lien for the CFD in the form required by the Act, said recording to occur no later than fifteen (15) days following adoption by the City Council of this Resolution.

5. This Resolution shall take effect upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2007

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A

CANVASS AND STATEMENT OF RESULT OF ELECTION

**City of Hayward
Community Facilities District No. 1
(Eden Shores)**

I hereby certify that on June 19, 2007, I canvassed the returns of the election held on June 19, 2007, in the City of Hayward Community Facilities District No. 1 (Eden Shores), and the total number of ballots cast and the total number of votes cast for and against the measure are as follows, and the totals as shown for and against the measure are full, true and correct:

	Qualified Landowner Votes	Votes Cast	YES	NO
City of Hayward Community Facilities District No. 1 (Eden Shores) Special Election - June 19, 2007	92	_____	_____	_____

BALLOT MEASURE: Shall (i) the Rate and Method of Apportionment of Special Tax for the City of Hayward Community Facilities District No. 1 (Eden Shores) be amended and restated as set forth in the form of Amended and Restated Rate and Method of Apportionment of Special Tax attached as Exhibit A to the "Resolution of Consideration to Amend and Restate the Rate and Method of Apportionment of Special Tax and Form Improvement Areas" adopted by the City Council of the City of Hayward on May 15, 2007, which Amended and Restated Rate and Method of Apportionment of Special Tax I have read and understand, and (ii) formation of "Improvement Area No. 1 of the City of Hayward Community Facilities District No. 1 (Eden Shores)" and "Improvement Area No. 2 of the City of Hayward Community Facilities District No. 1 (Eden Shores)," as such improvement areas are described in the Amended and Restated Rate and Method of Apportionment of Special Tax, be approved?

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 19TH DAY OF JUNE , 2007.

By: _____
City Clerk

DRAFT



HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION OF CHANGE FOR COMMUNITY FACILITIES
DISTRICT NO. 1 (EDEN SHORES)**

WHEREAS, the City Council of the City of Hayward (the "City") has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to form City of Hayward Community Facilities District No. 1 (Eden Shores) (the "CFD"), to authorize the levy of a special tax (the "Special Tax") upon the land within the CFD, and to issue bonds secured by the Special Tax, the proceeds of which are to be used to finance certain public improvements, all as described in those proceedings; and

WHEREAS, the City previously issued the City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Bonds, Series 2002 (the "2002 Bonds") in the initial principal amount of \$9,965,000; and

WHEREAS, the Rate and Method of Apportionment of Special Tax for the CFD (the "Rate and Method"), attached as Exhibit B to the City Council's Resolution No. 02-103 adopted by the City Council on July 9, 2002, authorizes the levy of a Special Tax in the CFD in any fiscal year to pay the Special Tax Requirement; and

WHEREAS, the City has been asked by the owners of the property in the CFD (I) to form two improvement areas in the CFD and (ii) to amend and restate the Rate and Method in order to reflect the improvement areas and make certain other changes to the Special Tax; and

WHEREAS, the purpose of the proposed amendment and restatement of the Rate and Method and formation of the two improvement areas is to give the property owners in one improvement area the ability, pursuant to Section 53350 of the Act, to pursue further changes to the Rate and Method in the future as it applies to their respective properties without seeking the approval of the property owners in the other improvement area; and

WHEREAS, on May 15, 2007, the City Council adopted a "Resolution of Consideration to Amend and Restate the Rate and Method of Apportionment of Special Tax and Form Improvement Areas" (the "Resolution of Consideration"), pursuant to which the City Council (i) designated a portion of the CFD as "Improvement Area No. 1 of the City of Hayward Community Facilities District No. 1 (Eden Shores)" ("Improvement Area No. 1") and the other portion of the CFD as "Improvement Area No. 2 of the City of Hayward Community Facilities District No. 1 (Eden Shores)" ("Improvement Area No. 2"; together with

Improvement Area No. 1, the "Improvement Areas"), (ii) approved an amended map of the CFD and directed its recordation in the office of the Alameda County Recorder, (iii) approved the proposed amended and restated Rate and Method (the "Amended and Restated Rate and Method") in the form attached as Exhibit A to the Resolution of Consideration, (iv) determined that the proposed Amended and Restated Rate and Method and formation of the Improvement Areas would not interfere with the timely retirement of the 2002 Bonds and (v) set a public hearing for June 19, 2007 on the question of forming the Improvement Areas and amending and restating the Rate and Method; and

WHEREAS, the public hearing was held on this date, and the formation of the Improvement Areas and the proposed amendment and restatement of the Rate and Method were not opposed by more than 50% of the owners of land within the CFD; and

WHEREAS, Government Code Section 53338 authorizes the holding of a special election of the qualified electors in the CFD on the issue of forming the two Improvement Areas and amending and restating the Rate and Method; and

WHEREAS, following the public hearing, the City Council, acting as the legislative body of the CFD, adopted a "Resolution Calling Special Election To Amend and Restate Rate and Method of Apportionment of Special Tax and Form Improvement Areas" calling for a special landowner election of the qualified electors within the CFD to be held on June 19, 2007; and

WHEREAS, the special election was held on June 19, 2007, and the ballots were submitted to the City Clerk as the official conducting the election; and

WHEREAS, the City Council subsequently adopted "Resolution Declaring Results of Special Election to Amend and Restate Rate and Method of Apportionment of Special Tax and Form Improvement Areas" on June 19, 2007, in which it found that two-thirds (2/3) of the votes cast at the election were in favor of the proposed amendment and restatement of the Rate and Method and formation of the Improvement Areas.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council hereby approves formation of the Improvement Areas and the Amended and Restated Rate and Method of Apportionment of Special Tax attached hereto as Exhibit "A".
2. From the effective date of this Resolution, the special taxes levied in the CFD to satisfy the Special Tax Requirement shall be levied in the Improvement Areas in accordance with the Amended and Restated Rate and Method of Apportionment of Special Tax.

3. The City Clerk is hereby directed to complete, execute, and cause to be recorded in the office of the County Recorder of the County an Amended and Restated Notice of Special Tax Lien in the form required by the Act, such recording to occur no later than fifteen (15) days following adoption of this resolution.

4. This resolution shall be effective upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2007

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A

**AMENDED AND RESTATED
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

**CITY OF HAYWARD
Community Facilities District No. 1
(Eden Shores)**

EXHIBIT A

COMMUNITY FACILITIES DISTRICT NO. 1 (EDEN SHORES)

AMENDED AND RESTATED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX (AS OF JUNE 19, 2007)

A special tax applicable to each Assessor's Parcel in Community Facilities District No. 1 (Eden Shores) (herein "CFD No. 1") shall be levied and collected according to the tax liability determined by the City Council of the City of Hayward, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 1, unless exempted by law or by the provisions of Section F below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed into CFD No. 1 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

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, or other recorded County parcel map.

"**Act**" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2, of Title 5 of the Government Code of the State of California.

"**Administrator**" shall mean the person or firm designated by the City to administer the Special Tax according to this Amended and Restated Rate and Method of Apportionment of Special Tax.

"**APN**" means the Assessor's Parcel number assigned by the County assessor to designate an individual Parcel on an Assessor's Parcel Map.

"**Assessor's Parcel**" or "**Parcel**" means a lot or parcel shown on an Assessor's Parcel Map with an assigned APN.

"**Assessor's Parcel Map**" means an official map of the County Assessor designating Parcels by APN.

"**Bonds**" means any bonds or other debt (as defined in Section 53317(d) of the Act), whether in one or more series, issued by the City for and on behalf of CFD No. 1 under the Act.

“**City**” means the City of Hayward.

“**City Manager**” means the City Manager of the City of Hayward or his/her designee.

“**Council**” means the City Council of the City of Hayward, acting as the legislative body of CFD No. 1.

“**County**” means the County of Alameda.

“**Developed Property**” means, in any Fiscal Year, all Taxable Property for which a construction building permit, in addition to a grading permit, was issued prior to May 1 of the previous Fiscal Year.

“**Expected Land Uses**” means the Residential Units and Acres of residential development, Acres of non-residential development, Acres of Owner Association Property, and Acres of Public Property expected on remaining Undeveloped Property at the time of the Resolution of Change.

“**Expected Maximum Special Tax Revenues**” means the amount of annual revenue, conservatively estimated by the Administrator, that would be available from Expected Land Uses if the Maximum Special Tax was levied.

“**Facilities**” means the public improvements defined as Facilities in the Resolution of Intention.

“**Final Map**” means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 *et seq.*) that creates individual lots on which building permits for new construction may be issued without further subdivision and for which no further subdivision is anticipated pursuant to a Tentative Map approved for the property.

“**Final Mapped Property**” means, for each Fiscal Year, all Taxable Property, exclusive of Developed Property and Public Property, which as of May 1 of the previous Fiscal Year was located within a Final Map. The term Final Mapped Property shall include any parcel map or Final Map, or portion thereof, that creates individual lots for which a building permit may be issued, including parcels that are designated as a remainder parcel.

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

“**Improvement Area**” means one of the two (2) mutually exclusive geographic areas defined below and identified in Attachment 1 of this Amended and Restated Rate and Method of Apportionment of Special Tax, and any subsequent Improvement Areas created to contain property annexed into CFD No. 1.

“**Improvement Area #1**” means the geographic area that is commonly referred to as the Standard Pacific Homes development, encompassing Tract 7489 and Tract 7708, and is specifically identified in Attachment 1 hereto as Improvement Area #1.

“Improvement Area #2” means the geographic area that is commonly referred to as the Legacy Partners development and is specifically identified in Attachment 1 hereto as Improvement Area #2.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C, that can be levied in any Fiscal Year.

“Owner Association Property” means any property within the boundaries of CFD No. 1 owned by a homeowner association or property owner association, including any master or sub-association.

“Proportionately” means, for Developed Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Developed Property. For Final Mapped Property and Undeveloped Property, **“Proportionately”** means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Final Mapped Property and Undeveloped Property.

“Public Property” means any property within the boundaries of CFD No. 1 that is owned by the federal government, State of California, or other local governments or public agencies.

“Residential Unit” means an individual single-family detached, half-plex, duplex, triplex, fourplex, townhome, condominium, or apartment unit.

“Resolution of Change” means the Resolution of Change approved by the Council on June 19, 2007.

“Resolution of Intention” means the Resolution of Intention to Establish a Community Facilities District approved by the Council on May 28, 2002.

“Special Tax” means any special tax to be levied each Fiscal Year on Assessor’s Parcels of Taxable Property to fund the Special Tax Requirement. The Special Tax shall be applied to pay for debt service on outstanding Bonds or directly for the Facilities, including appurtenant expenses such as design, engineering, inspection, and financing costs.

“Special Tax Requirement” means the amount necessary in any Fiscal Year to: (i) pay principal and interest on Bonds; (ii) create or replenish reserve funds; (iii) cure any delinquencies in the payment of principal or interest on Bonds that have occurred in the prior Fiscal Year or (based on delinquencies in the payment of Special Taxes that have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected; (iv) pay administrative expenses of the CFD; and (v) pay construction expenses to be funded directly from Special Tax proceeds.

“Square Foot,” “Square Footage,” or “Square Feet” means the square footage reflected on the original construction building permit issued for construction of a residential or non-residential building.

“**Taxable Property**” means all of the Assessors’ Parcels within the boundaries of CFD No. 1 that are not exempt from the Special Tax pursuant to law or Section F below.

“**Tax Zone**” means a mutually exclusive geographic area, within which particular Special Tax rates may be levied pursuant to this Amended and Restated Rate and Method of Apportionment of Special Tax. Attachment 1 identifies the two Tax Zones in CFD No. 1.

“**Tax Zone A**” means the geographic area that is identified as Tract 7489 of the area commonly referred to as the Standard Pacific Homes development and is designated in Attachment 1 of this Amended and Restated Rate and Method of Apportionment of Special Tax as Tax Zone A.

“**Tax Zone B**” means the geographic area that is identified as Tract 7708 of the area commonly referred to as the Standard Pacific Homes development and is designated in Attachment 1 of this Amended and Restated Rate and Method of Apportionment of Special Tax as Tax Zone B.

“**Tentative Map**” means a map approved by the City: (i) showing a proposed subdivision of an Assessor’s Parcel and the conditions pertaining thereto; (ii) that may be based on a detailed survey; and (iii) that is not recorded at the County Recorder’s Office to create legal lots.

“**Undeveloped Property**” means all Taxable Property in CFD No. 1 not classified as Developed Property or Final Mapped Property.

B. Data for Annual Administration of Special Taxes

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for Taxable Property within CFD No. 1. The Administrator shall: (i) determine which Improvement Area each Parcel is located in; (ii) for Parcels located in Improvement Area #1, determine which Tax Zone such Parcels are located in; (iii) categorize each Parcel of Taxable Property as Developed Property, Final Mapped Property, or Undeveloped Property; and (iv) determine the Special Tax Requirement.

If a construction building permit has been issued for development of a structure on an Assessor’s Parcel in Improvement Area #2, and additional structures are anticipated to be built on the Parcel as shown on the approved site plan for such Parcel, a portion of the Acreage of the Assessor’s Parcel shall be taxed as Undeveloped Property if building permits for all of the structures in the approved site plan for the Assessor’s Parcel were **not** issued as of May 1 of the Fiscal Year prior to the Fiscal Year in which the Special Taxes are being levied. If the Acreage assigned to each building anticipated on the Assessor’s Parcel is not clearly delineated on a Tentative Map or a Final Map, the Acreage of the portion of the Assessor’s Parcel to be taxed as Developed Property shall be equal to the structure’s pro rata share of the total Square Footage anticipated on the Assessor’s Parcel, as determined by the City, multiplied by the total Acreage of the Assessor’s Parcel. The remaining Acreage within the Assessor’s Parcel shall be taxed as Undeveloped Property. Determination of the amount of Developed Property and Undeveloped Property on an Assessor’s Parcel shall be at the sole discretion of the City Manager.

C. Maximum Special Tax

I. *Special Tax Rates, Improvement Area #1*

a. *Developed Property*

Table 1 below identifies the Maximum Special Taxes for Developed Property within Improvement Area #1 of CFD No. 1.

TABLE 1
MAXIMUM SPECIAL TAXES
IMPROVEMENT AREA #1

<i>Tax Zone</i>	<i>Type of Property</i>	<i>Maximum Special Tax Fiscal Year 2006-07</i>
A	Developed Property	\$1,260 per Residential Unit
B	Developed Property	\$910 per Residential Unit

b. *Final Mapped Property*

Table 2 below identifies the Maximum Special Taxes for Final Mapped Property within Improvement Area #1 of CFD No. 1.

TABLE 2
MAXIMUM SPECIAL TAXES
IMPROVEMENT AREA #1

<i>Tax Zone</i>	<i>Type of Property</i>	<i>Maximum Special Tax Fiscal Year 2006-07</i>
A	Final Mapped Property	\$21,160 per Acre
B	Final Mapped Property	\$15,170 per Acre

In each Fiscal Year, the Maximum Special Tax for Final Mapped Property in Table 2 above shall be recalculated pursuant to the following steps:

- Step 1:** Determine the total Maximum Special Tax that can be collected in each Tax Zone. For Fiscal Year 2006-07, the Maximum Special Tax that can be collected in Tax Zone A is \$174,580, and the Maximum Special Tax the can be collected in Tax Zone B is \$110,920;
- Step 2:** Determine separately the total amount of Special Taxes that can be collected from Developed Property in Tax Zone A and in Tax Zone B,
- Step 3:** For each Tax Zone, subtract the amount determined in Step 2 from the amount determined in Step 1 to calculate the total amount of Special Taxes required to be generated from Final Mapped Property within each Tax Zone;
- Step 4:** For each Tax Zone, divide the amount determined in Step 3 by the total number of Final Mapped Property Acres within each Tax Zone to determine the Maximum Special Tax per Acre for Final Mapped Property for that Fiscal Year.

2. Special Tax Rates, Improvement Area #2

Table 3 below identifies the Maximum Special Taxes for Taxable Property within Improvement Area #2 of CFD No. 1.

**TABLE 3
MAXIMUM SPECIAL TAXES
IMPROVEMENT AREA #2**

<i>Type of Property</i>	<i>Maximum Special Tax Fiscal Year 2006-07</i>
Developed Property	\$9,764 per Acre
Undeveloped Property	\$9,764 per Acre

3. Special Tax Increases

On each July 1, commencing July 1, 2007, the Maximum Special Tax applied to Taxable Property for the Fiscal Year commencing such July 1 shall be increased by two percent (2%) of the respective Maximum Special Tax in effect in the previous Fiscal Year.

D. Back-Up Formula

Each time a new or revised Tentative Map or new or revised Final Map ("Land Use/Entitlement Change") is proposed for an Improvement Area, the Administrator shall recalculate the Expected Maximum Special Tax Revenues based on the proposed Land Use/Entitlement Change. If the proposed Land Use/Entitlement Change will reduce debt service coverage on Outstanding Bonds below the amount committed to in the Bond documents, then, before approval of the Land Use/Entitlement Change, the landowner requesting the Land Use/Entitlement Change shall prepay to the City an amount that corresponds to the lost Maximum Special Tax revenue, as determined by applying the steps set forth in Section I below to prepay the Special Tax. Any such prepayment shall be used by the City to call Bonds.

E. Method of Apportionment of the Special Tax

Commencing with Fiscal Year 2007-08 and for each following Fiscal Year, the City Manager shall determine the Special Tax Requirement to be collected from Taxable Property in CFD No. 1 in the Fiscal Year. The Special Tax shall then be levied as follows:

- First:** The Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property that is neither Owner Association Property nor Public Property up to 100% of the Maximum Special Tax for Developed Property, as determined by reference to Section C above;
- Second:** If additional monies are needed to satisfy the costs of the Special Tax Requirement after the first step has been applied, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Final Mapped Property and Undeveloped Property that is neither Owner Association Property nor Public Property up to 100% of the Maximum Special Tax for Final Mapped Property and Undeveloped Property, respectively, as determined by reference to Section C above;
- Third:** If additional monies are needed to satisfy the costs of the Special Tax Requirement after the first two steps have been completed, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Owner Association Property, using the Maximum Special Tax rate for Undeveloped Property in Improvement Area #2; and
- Fourth:** If additional monies are needed to satisfy the costs of the Special Tax Requirement after the first three steps have been completed, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Public Property that is Taxable Property, using the Maximum Special Tax rate for Undeveloped Property in Improvement Area #2.

F. Limitations

As provided in Sections 53317.3 and 53317.5 of the Act, land that subsequently becomes Public Property will continue to be subject to Special Taxes on the terms and in the priorities set forth in Section E above, except that sports park property will not be subject to Special Taxes once it becomes owned by the City (designated as Lot A on the boundary map for CFD No. 1). In any event, no Special Taxes shall be levied on Owner Association Property or Public Property unless it is necessary to satisfy the Special Tax Requirement pursuant to Section E above.

Language in this Amended and Restated Rate and Method of Apportionment of Special Tax pertaining to one Improvement Area is subject to amendment without the participation of property owners in other Improvement Areas.

G. Appeals

Any taxpayer who believes that the amount of the Special Tax has been incorrectly calculated may file a written notice with the City Manager appealing the Special Tax. Any such notice of appeal must be filed by January 1 of the Fiscal Year for which the Special Tax in question has been levied. The City Manager will then promptly review all such timely-filed appeals, and at the City Manager's discretion, meet with the appellant. If the City Manager determines that the Special Tax should be modified, the Special Tax shall be corrected and, if applicable, a refund for Special Taxes paid shall be granted.

H. Manner of Collection

The Special Taxes will be collected in the same manner and at the same time as ordinary ad valorem property taxes; provided, however, that prepayments are permitted as set forth in Section I below and provided further that the City Manager may directly bill the Special Taxes and may collect Special Taxes at a different time or in a different manner as set forth in the proceedings for the formation of CFD No. 1.

The Special Tax shall be levied and collected until principal and interest on Bonds have been repaid and the Facilities to be constructed from Special Tax proceeds have been completed. However, in no event shall a Special Tax be levied after Fiscal Year 2037-2038.

I. Prepayment of Special Tax

The following definitions apply to this Section I:

“**Indenture**” means the bond indenture, fiscal agent agreement, trust agreement, resolution, or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

“Outstanding Bonds” means all Previously Issued Bonds which remain outstanding, with the following exception: if a Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

“Previously Issued Bonds” means all Bonds that have been issued on behalf of the CFD prior to the date of prepayment.

The Special Tax obligation applicable to an Assessor’s Parcel in CFD No. 1 may be prepaid and the obligation of the Assessor’s Parcel to pay the Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such Assessor’s Parcel at the time of prepayment. An owner of an Assessor’s Parcel intending to prepay the Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Assessor’s Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Special Taxes.

The Prepayment Amount shall be calculated as follows (capitalized terms as defined below):

	Bond Redemption Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
less	<u>Reserve Fund Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount shall be determined by application of the following steps:

- Step 1.** Determine the greater of: (i) the total Maximum Special Tax that could be collected from the Assessor’s Parcel prepaying the Special Tax in the Fiscal Year in which prepayment would be received by the City; or (ii) the Maximum Special Tax that could be collected from the Parcel at buildout based on anticipated land uses at the time the prepayment is calculated. In the event of a prepayment pursuant to Section D, compute the amount by which the Maximum Special Tax revenues will be reduced and use the amount of this reduction as the figure for purposes of this Step 1.
- Step 2.** Divide the Maximum Special Tax computed pursuant to Step 1 for such Assessor’s Parcel by the lesser of: (i) the Maximum Special Tax revenues that could be collected in that Fiscal Year; or (ii) the Maximum Special Tax revenues that could be generated in that Fiscal Year assuming

property in CFD No. 1 is built out based on anticipated land uses at the time the prepayment is calculated.

- Step 3.** Multiply the quotient computed pursuant to Step 2 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (*the "Bond Redemption Amount"*).
- Step 4.** Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (*the "Redemption Premium"*).
- Step 5.** Compute the amount needed to pay interest on the Bond Redemption Amount starting with the first Bond interest payment date after which the prepayment has been received until the earliest redemption date for the Outstanding Bonds. However, if Bonds are callable at the first interest payment date after the prepayment has been received, Steps 5, 6, and 7 of this prepayment formula will not apply.
- Step 6.** Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.
- Step 7.** Take the amount computed pursuant to Step 5 and subtract the amount computed pursuant to Step 6 (*the "Defeasance Requirement"*).
- Step 8.** Determine the costs of computing the prepayment amount, the costs of redeeming Bonds, the costs of recording any notices to evidence the prepayment and the redemption, and any other administrative costs (*the "Administrative Fees and Expenses"*).
- Step 9.** If and to the extent so provided in the indenture pursuant to which the Outstanding Bonds to be redeemed were issued, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (*the "Reserve Fund Credit"*).
- Step 10.** The Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 3, 4, 7, and 8, less the amount computed pursuant to Step 9 (*the "Prepayment Amount"*).
- Step 11.** The amounts computed pursuant to Steps 3, 4, and 7, less the amount computed pursuant to Step 9, shall be deposited in the appropriate fund established under the Indenture and used to retire Outstanding Bonds or make debt service payments. The amount determined in Step 8 shall be deposited in the fund established to pay Administrative Expenses.

With respect to any Parcel that prepays its Special Tax obligation in full, the Administrator shall cause a notice to be recorded in compliance with the Act to release the Special Tax lien on such Parcel, and the obligation of such Parcel to pay the Special Tax shall cease.

A partial prepayment may be made only as required pursuant to Section D; the amount may be equal to any percentage of full prepayment. The Maximum Special Tax that can be levied on an Assessor Parcel after a partial prepayment is made is equal to the Maximum Special Tax that could have been levied prior to the prepayment, reduced by the percentage of a full prepayment that the partial prepayment represents, all as determined by or at the direction of the Administrator.

ATTACHMENT 1

**IMPROVEMENT AREAS AND TAX ZONES OF
CITY OF HAYWARD
COMMUNITY FACILITIES DISTRICT NO. 1
(EDEN SHORES)**

