

RESOLUTION NUMBER 3361

A RESOLUTION OF CHANGE OF THE CITY COUNCIL OF THE CITY OF PERRIS AUTHORIZING THE CHANGES TO THE FACILITIES AND SPECIAL TAXES WITHIN IMPROVEMENT AREA NOS. 4, 5, 6 AND 7 OF COMMUNITY FACILITIES DISTRICT NO. 2001-1 (MAY FARMS) OF THE CITY OF PERRIS; AND TAKING CERTAIN OTHER ACTIONS RELATING TO SAID DISTRICT

WHEREAS, the City Council (the “Council”) of the City of Perris, California (the “City”), on November 30, 2004, has heretofore adopted its resolution of consideration (the “Resolution of Consideration”) stating its intention to make certain changes within Improvement Area Nos. 4, 5, 6 and 7 (the “Improvement Areas”) of Community Facilities District No. 2001-1 (May Farms) of the City of Perris (the “District”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, (the “Act”) being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California; and

WHEREAS, the changes to the Improvement Areas of the District include (i) changes to the boundaries of the Improvement Areas; (ii) changes to the description of the facilities to be financed by the Improvement Areas; (iii) changes to the maximum bonded indebtedness for each of the Improvement Areas; and (iv) changes to the special tax and the rate and method of apportionment of the special tax (the “Changes”); and

WHEREAS, a copy of the Resolution of Consideration, incorporating a description and map of the revised boundaries of the Improvement Areas of the District, setting forth the rate and method of apportionment and manner of collection of the special tax to be levied within the Improvement Areas of the District, and describing the facilities authorized to be financed in the Improvement Areas is on file with the City Clerk and incorporated herein by reference with such changes to the terms thereof, including but not limited to, revisions to the rate and method of apportionment of the special tax as have been made and submitted with this Resolution of Consideration; and

WHEREAS, the City Council has heretofore received a “Request and Consent to Modifications to the Resolution of Consideration and the Resolution of Intention to Incur Bonded Indebtedness” (the “Request”) from KB HOME Coastal Inc., the sole landowner (“Owner”) of all the property within Improvement Area Nos. 4, 5, 6 and 7 of the District, requesting that the Council increase the maximum amount of bonded indebtedness to be authorized within the Improvement Area No. 4 of the District to \$18,605,000, within Improvement Area No. 5 of the District to \$11,905,000, within Improvement Area No. 6 of the District to \$13,725,000 and within Improvement Area No. 7 of the District to \$15,895,000; and

WHEREAS, pursuant Resolution No. 3360, adopted by the City Council on January 11, 2005, the City Council has approved the Request and waivers contained therein; and

WHEREAS, a report by each City officer who is or will be responsible for the Improvement Areas of the District (the "Report"), has been filed with the Council pursuant to the Resolution of Consideration; and

WHEREAS, the Resolution of Consideration set January 11, 2005, as the date of the public hearings on the changes within the Improvement Areas of the District; and

WHEREAS, at said hearings all persons within each Improvement Area and not exempt from the special tax desiring to be heard on all matters pertaining to the changes within the Improvement Areas of the District were heard and full and fair hearings were held; and

WHEREAS, at said hearings evidence was presented to the Council on said matters before it, and this Council at the conclusion of said hearings is fully advised in the premises; and

WHEREAS, following such public hearing, this Council adopted a resolution determining necessity to incur bonded indebtedness within each of the Improvement Areas and calling a special election to be held within each of the Improvement Areas (the "Resolution Calling Special Elections"); and

WHEREAS, on January 11, 2005, an election in each Improvement Area on the proposition identified in the Resolution Calling Special Elections was duly held; and

WHEREAS, following such elections, this Council adopted a resolution declaring the results of the special elections, wherein this Council determined that the propositions within each Improvement Area were approved by more than 2/3's of the qualified electors within such Improvement Areas ("Resolution Declaring Results"); and

WHEREAS, the changes approved by this resolution require an amendment to the Acquisition and Funding Agreement, dated April 8, 2003, by and among the City, the District and KB HOME Coastal Inc., and this Council desires to approve of such an amendment;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Perris, California, as follows:

Section 1. That the above recitals are all true and correct.

Section 2. Pursuant to Section 53325.1(b) of the Government Code, the Council finds and determines that the proceedings prior hereto were valid and in conformity with the requirements of the Act including, without limitation, the following:

- A. Filing of a petition of a landowner requesting institution of change proceedings to the District;
- B. Adoption of a Resolution of Consideration regarding the changes to the Improvement Areas of the District;

- C. Adoption of a Resolution of Intention to Incur Bonded Indebtedness in an amount not to exceed \$50,000,000 within Improvement Area Nos. 4, 5, 6 and 7 of the District;
- D. Publication and mailing of notice of public hearings on the changes to the Improvement Areas of the District and of the proposed debt issue;
- E. Conducting of public hearings on the changes to the District, the proposed public facilities and services and the incurring of the proposed debt, at which time all interested persons or taxpayers not exempt from the special tax within each Improvement Area of the District were permitted to protest orally or in writing against the changes to the Improvement Areas of the District, were permitted to file written protests to the regularity or sufficiency of the proceedings, and any person interested, including persons owning property within the Improvement Areas of the District, were permitted to appear and present any matters material to the questions set forth in the Resolution of Intention to Incur Bonded Indebtedness.
- F. Adoption of a Resolution Calling Special Elections.
- G. Holding of Special Elections within each of the Improvement Areas on the proposition of approving the Changes.
- H. Adoption of the Resolution Declaring Results.

Section 3. The Report, as now submitted, is hereby approved and is made a part of the record of the hearing, and is ordered kept on file with the transcript of these proceedings and open for public inspection.

Section 4. The description and map of the boundaries of the District on file in the City Clerk's office and as described in said Resolution of Consideration and incorporated herein by reference, shall be the boundaries of the District. The map of the proposed boundaries of the District has been recorded in the Office of the County Recorder of Riverside County, California as Document No. 2004-1015218.

Section 5. The type of public facilities and fees ("Facilities") authorized to be provided within the Improvement Areas of the District include certain real and other tangible property with an estimated useful life of five years or longer, including public infrastructure facilities, and other governmental facilities which the City is authorized by law to construct, own or operate, within or without the District, which is necessary to meet increased demands placed upon the City as result of development or rehabilitation occurring within the District. The Facilities are more fully described in Exhibit "B" attached hereto and by this reference incorporated herein.

Section 6. Except where funds are otherwise available, there shall be levied annually in accordance with procedures contained in the Act a special tax within each Improvement Area of the District, secured by recordation of a continuing lien against all nonexempt real property in the District, sufficient to pay for: (i) the Facilities and Incidental Expenses; and (ii) the principal and interest and other periodic costs on bonds or other indebtedness issued to finance the Facilities and Incidental Expenses, including the establishment and replenishment of any reserve funds deemed necessary by the District with respect to each Improvement Area, and any remarketing, credit enhancement and liquidity facility fees (including such fees for instruments which serve as the basis of a reserve fund in lieu of cash). The rate and method of apportionment and manner of collection of the special tax within the District is described in detail in Exhibit "A" attached hereto and incorporated herein by this reference.

Section 7. If special taxes of an Improvement Area of the District are levied against any parcel used for private residential purposes, (i) the maximum special tax rate shall not be increased over time except that it may be increased by an amount not to exceed two percent (2%) per year to the extent permitted in the rate and method of apportionment; (ii) such tax shall be levied for a period not to exceed forty (40) years commencing with Fiscal Year 2004-2005, as further described in Exhibit "A" hereto; and (iii) under no circumstances will such special tax be increased more than ten percent (10%) as a consequence of delinquency or default by the owner of any other parcels within the District by more than ten percent.

Section 8. The special tax within each Improvement Area of the District is based on the expected demand that each parcel of real property within each Improvement Area of the District will place on the Facilities, on the benefit that each parcel derives from the right to access the Facilities, and on other factors. The Council hereby determines the rate and method of apportionment of the special tax set forth in Exhibit "A" to be reasonable. The special tax within each Improvement Area of the District is apportioned to each parcel on the foregoing basis pursuant to Section 53325.3 of the Act and such special tax is not based upon the value or ownership of real property. In the event that a portion of the property within an Improvement Area of the District shall become for any reason exempt, wholly or partially, from the levy of the special tax specified on Exhibit "A", the Council shall, on behalf of the District, cause the levy to be increased, subject to the limitation of the maximum special tax for a parcel as set forth in Exhibit "A," to the extent necessary upon the remaining property within such Improvement Area of the District which is not delinquent or exempt in order to yield the special tax revenues required for the purposes described herein. The obligation to pay special taxes may be prepaid as set forth in Exhibit "A."

Section 9. Pursuant to and in compliance with the provisions of Government Code Section 50075.1, the City Council hereby establishes the following accountability measures pertaining to the levy by the District of the Special Tax with respect to each Improvement Area as described in Section 7 above:

- A. Such Special Tax within each Improvement Area shall be levied for the specific purposes set forth in Section 6 hereof.

- B. The proceeds of the levy of such Special Tax within each Improvement Area shall be applied only to the specific purposes set forth in Section 6 hereof.
- C. Each Improvement Area of the District shall establish an account or accounts into which the proceeds of such Special Tax with respect to such Improvement Area shall be deposited.
- D. The City Manager, or his or her designee, acting for and on behalf of the CFD, shall annually file a report with the City Council as required pursuant to Government Code Section 50075.3.

Section 10. Upon recordation of a notice of the amended special tax lien pursuant to Section 3114.5 of the Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in each Improvement Area of the District, and this lien shall continue in force and effect until the special tax obligation is prepaid or otherwise permanently satisfied and the lien cancelled in accordance with law or until collection of the tax by the Improvement Area of the District ceases. The City Clerk is hereby ordered to promptly record an Amended and Restated Notice of Special Tax Lien, in the form approved by the City's bond counsel, for each of the Improvement Areas.

Section 11. The Council finds that the Facilities are necessary to meet the increased demand put upon the City as a result of the development within the Improvement Areas of the District.

Section 12. The Council finds that there is not an *ad valorem* property tax currently being levied on property within the Improvement Areas of the District for the exclusive purpose of paying principal of or interest on bonds or other indebtedness incurred to finance construction of capital facilities which provide the same services to the territory of the District as provided by the Facilities.

Section 13. An appropriation limit for each Improvement Area of the District is hereby established as an amount equal to all the proceeds of the special tax collected annually and as defined by Article XIIB of the California Constitution, as adjusted for changes in the cost of living and changes in population.

Section 14. The form of the First Amendment to the Acquisition and Funding Agreement (the "First Amendment") by and among KB HOME Coastal Inc., the City, and the District, a copy of which is on file with the City Clerk, be and is hereby approved in substantially the form thereof or with such changes as may be approved by the Mayor or City Manager or Finance Director (each, an "Authorized Officer"), said Authorized Officer's execution thereof to constitute conclusive evidence of said officer's approval of all such changes, and each of the Authorized Officers be and is hereby authorized, together or alone to execute and deliver said First Amendment.

Section 15. Pursuant to Section 53338(b) of the Government Code, the Council finds and determines that the new special taxes and Changes within each Improvement Area of the District are lawfully authorized.

Section 16. Upon adoption of this Resolution, the Clerk of the City shall record the amended notice of special tax lien with respect to the Improvement Areas of the District pursuant to Section 3117.5 of the California Streets and Highways Code (the "Notice of Special Tax Lien"). The Notice of Special Tax Lien with respect to the Improvement Areas described therein shall supercede Document No. 2002-323906, recorded on June 6, 2002 (the "Original Lien"), as such Original Lien applies to Improvement Areas Nos. 4 through 7, and the City Clerk is hereby authorized to take whatever action is necessary to effectuate the purposes of this Section.

Section 17. The Office of the City Clerk, 101 North "D" Street, Perris, California or its designee is designated to be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and for estimating future special tax levies within each Improvement Area of the District pursuant to 53340.2 of the Government Code.

ADOPTED, SIGNED and APPROVED this 11th day of January, 2005.

Mayor, Daryl R. Busch

ATTEST:

City Clerk, Margaret Rey

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Margaret Rey, CITY CLERK OF THE CITY OF PERRIS, CALIFORNIA, DO HEREBY CERTIFY that the foregoing Resolution Number 3361 was duly and regularly adopted by the City Council of the City of Perris at a regular meeting thereof held the 11th day of January, 2005, and that it was so adopted by the following called vote:

AYES: Landers, Motte, Yarbrough, Busch

NOES:

ABSENT: Rogers

ABSTAIN:

City Clerk, Margaret Rey

EXHIBIT "A"
(RESOLUTION NUMBER 3361)

[See Attached]

EXHIBIT “B”
(RESOLUTION NUMBER 3361)

TYPES OF FACILITIES TO BE FINANCED BY
EACH OF IMPROVEMENT AREA NOS. 4, 5, 6 AND 7 OF
COMMUNITY FACILITIES DISTRICT NO. 2001-1
(May Farms)

Street facilities, including, but not limited to, roadways, sidewalk, curb, gutters, striping, lighting, signalization, signage, landscaping of public streets and rights-of-way and appurtenant facilities and the Rider Street crossing;

Storm control facilities, including, but not limited to, storm drains, channels, detention, headwalls, riprap pads, retention and/or cache basins and appurtenant facilities;

Sanitary sewers, including, but not limited to, lift stations, force mains, pump stations, transmission and main lines, valves, and appurtenant facilities;

Domestic water facilities, including, but not limited to, reservoirs, pump stations, transmission lines, distribution facilities, lift stations, main lines, valves, fire hydrants and appurtenant facilities;

Park and recreational facilities and appurtenant facilities;

Landscaping and common area improvements and appurtenant costs;

School facilities and appurtenant costs;

Impact and other fees, including but not limited to, development fees, capital facility fees, school fees, water fees, sewer fees, storm drain fees and city fees;

Mitigation costs and incidental expenses.