

**CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2007-1
(NORTH BEYER #2)**

FORMATION HEARING REPORT

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**CITY OF MODESTO
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(NORTH BEYER #2)**

INTRODUCTION. The City Council (the “City Council”) of the City of Modesto (the “City”) did on May 8, 2007, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (the “Law”), adopt Resolution No. 2007-270, a Resolution declaring its intention to establish the City of Modesto Community Facilities District No. 2007-1 (North Beyer #2) and to authorize the levy of a special tax within the CFD. In the Resolution of Intention, the City Council expressly ordered the preparation of a written Formation Hearing Report (the “Report”) for the proposed Community Facilities District (the “District”), as required by Section 53321.5 of the Law.

Section 53321.5 of the Law does direct that the Report generally contain the following:

1. A brief description of the facilities and services to be funded by the District; and
2. An estimate of the cost of providing the facilities and services.

For particulars, reference is made to the Resolution of Intention for the District, as previously approved and adopted by the City Council.

NOW, THEREFORE, the following data is submitted pursuant to the direction of the City Council:

A. DESCRIPTION OF SERVICES. A description of the services and facilities eligible to be funded by the District is provided in Exhibit “A” attached hereto and hereby made a part hereof.

B. PROPOSED BOUNDARIES OF THE COMMUNITY FACILITIES DISTRICT. The proposed boundaries of the District are those parcels on which special taxes may be levied to pay for the costs of the services and facilities. The proposed boundaries of the District are described in the map of the District recorded in Book 4 on Page 83 of Maps of Assessment and Community Facilities Districts in the office of the County Recorder for the County of Stanislaus, a copy of which map is on file with the City Clerk. Additional property is expected to be annexed into the District in future years; an amended boundary map will be recorded after each annexation.

C. COST ESTIMATE. The cost estimate for funding the authorized services and facilities is set forth in Exhibit “B” attached hereto and hereby made a part hereof.

D. DESCRIPTION OF THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX. A one-time facilities special tax will be levied on all parcels of taxable property at the issuance of a structural building permit. In addition, an annual maintenance special tax will be levied on all parcels of taxable property pursuant to the Rate and Method of Apportionment of Special Tax (the “RMA”). The RMA, in its entirety, is set forth in Exhibit “C” attached hereto and hereby made a part hereof.

EXHIBIT A

CITY OF MODESTO COMMUNITY FACILITIES DISTRICT No. 2007-1 (NORTH BEYER #2)

DESCRIPTION OF AUTHORIZED SERVICES AND FACILITIES TO BE FUNDED BY COMMUNITY FACILITIES DISTRICT NO. 2007-1

The authorized services to be funded by special tax revenues include maintenance and repair of parks, landscaped medians, storm drainage basins, and related facilities, including but not limited to, concrete curbs and walks, trees, shrubs, vines, ground cover, turf, lights and irrigation systems. The services to be provided include, but are not limited to, litter and debris removal, graffiti abatement, painting repairs to landscape structures, building maintenance and repairs, pruning, staking, fertilizing, plant replacement and restoration, fire and weed control, erosion control, mowing of lawns, trimming of vegetation, and maintenance, repair and replacement of lighting systems within the parks.

The facilities authorized to be funded by special tax revenues include installation of the landscaped medians on Oakdale and Coffee Roads, which may but will not necessarily include, concrete curbs and walks, trees, shrubs, ground cover, lights, and irrigation systems.

The District may also fund any of the following: (i) administrative fees of the City related to the District, including costs associated with preparing the annual special tax levy, or (ii) costs associated with legal services, advertising, legal notices, and mailings related to formation or administration of the District.

EXHIBIT B

CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2007-1 (NORTH BEYER #2)

SERVICES COST ESTIMATE (2007\$)*	
Maintenance of Pelandale Median and Parkway, Oakdale Road Median and Parkway, and Coffee Road Median	\$21,417 /Year
Maintenance of Park/Basin and Marble Road	\$35,629 /Year
Annual CFD Administration Costs	<u>\$ 5,000 /Year</u>
Total Estimated Services Costs (2007 \$)	\$62,046 /Year
FACILITIES COST ESTIMATE (2007\$)	
Landscaped Medians on Oakdale and Coffee Roads	\$564,000
Less: funding from CFD No. 1997-1	<u>(\$ 40,000)</u>
Total Costs Funded by CFD No. 2007-1	\$524,000

* Represents total estimated costs for authorized services once all properties anticipated to annex into the District have been annexed. Prior to such time, actual expenditures will be limited to special tax revenues collected within the District.

EXHIBIT C

CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2007-1 (NORTH BEYER #2)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES

Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2007-1 (North Beyer #2) [herein "CFD No. 2007-1" or "the CFD"] shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2007-1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2007-1 unless a separate Rate and Method of Apportionment is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

"Administrative Expenses" means any or all of the following: expenses incurred by the City in carrying out its duties with respect to CFD No. 2007-1, including, but not limited to, levying and collecting the Special Taxes; the fees and expenses of legal counsel; charges levied by the County Auditor's Office, Tax Collector's Office, and/or Treasurer's Office; costs related to annexing property into the CFD; costs related to property owner inquiries regarding the Special Taxes; and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Taxes.

"Annual Maintenance Special Tax" means a special tax levied in any Fiscal Year to pay the Annual Maintenance Special Tax Requirement, as defined below.

"Annual Maintenance Special Tax Requirement" means that amount necessary in any Fiscal Year to (i) pay for Authorized Services, (ii) pay Administrative Expenses, and (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year.

“Assessor’s Parcel” or **“Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating parcels by Assessor’s Parcel number.

“Authorized Services” means those services that are authorized to be funded by CFD No. 2007-1.

“CFD Formation” means the date on which the Resolution of Formation to form CFD No. 2007-1 was adopted by the City Council.

“City” means the City of Modesto.

“City Council” means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2007-1.

“County” means the County of Stanislaus.

“Developed Property” means, in any Fiscal Year, the following:

- for Single Family Detached Property, all Parcels for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year but not prior to June 30, 2007,
- for Multi-Family Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year but not prior to June 30, 2007, and
- for Other Property, all Parcels for which a building permit for construction of a building structure was issued prior to June 30 of the preceding Fiscal Year.

“Final Map” means a final map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 *et seq.*) that creates lots which do not need to be further subdivided prior to issuance of a building permit for a residential or non-residential structure. The term “Final Map” shall not include any Assessor’s Parcel Map or subdivision map or portion thereof, that does not create lots that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

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

“Maximum Annual Maintenance Special Tax” means the greatest amount of Annual Maintenance Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D.

“Maximum One-Time Facilities Special Tax” means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

“Maximum Special Taxes” means, collectively, the Maximum One-Time Facilities Special Tax and the Maximum Annual Maintenance Special Tax.

“Multi-Family Property” means all Parcels in CFD No. 2007-1 for which building permits have been issued for construction of a residential structure consisting of two or more residential units that share common walls, including but not limited to, townhomes, condominiums, duplexes, triplexes, fourplexes, and apartment units.

“Net Taxable Acreage” or **“Net Taxable Acre”** means the total acreage within a Final Map or Parcel less arterial road right-of-ways and property that is defined in the Final Map for use as a park site, school site, or City-owned or CFD-owned storm drainage basin. If a Subdivision Map is recorded which is not a Final Map for some or all Parcels created by the subdivision, the Administrator shall calculate the Net Taxable Acreage of such unsubdivided Parcels by identifying the Acreage of the Parcel and (i) adding a portion of the acreage of any non-arterial right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way, and (ii) subtracting a portion of the acreage of any arterial right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way. The Net Taxable Acreage of a Parcel or Final Map shall be determined in the sole discretion of the City.

“One-Time Facilities Special Tax” means a Special Tax, levied and collected in full by the City prior to a structural building permit being issued for new construction on Taxable Property.

“Original Parcel” means an Assessor’s Parcel (or a parcel within a recorded Subdivision Map that has not yet been assigned an Assessor’s Parcel number) that is in CFD No. 2007-1 at the time of CFD Formation or added to the CFD upon annexation. A Successor Parcel that is being further subdivided shall also be considered an Original Parcel for purposes of determining the Maximum Special Taxes pursuant to Section C below.

“Other Property” means, in any Fiscal Year, all Parcels of Taxable Property within the CFD for which building permits have been issued for construction of a non-residential structure.

“Proportionately” means, for Developed Property, that the ratio of the actual Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor’s Parcels of Developed Property, respectively. In addition, for Undeveloped Property, “Proportionately” means that the ratio of the actual Annual Maintenance Facilities Special Tax to the Maximum Annual Maintenance Special Tax is equal for all Assessor’s Parcels of Undeveloped Property, respectively.

“Public Property” means any property within the boundaries of CFD No. 2007-1 that is owned by the federal government, State of California, County, City, or other public agency.

“Single Family Detached Lot” means an individual numbered lot, which is in its final configuration and for which a building permit may be issued for a single family detached unit.

“Single Family Detached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued or will be issued for construction of a residential unit that does not share a common wall with another Unit.

“Special Taxes” means, collectively, the One-Time Facilities Special Tax and the Annual Maintenance Special Tax.

“Subdivision Map” means a Final Map, large lot subdivision map, or other map recorded with the County that results in the subdivision of an Original Parcel into two or more Successor Parcels.

“Successor Parcel” means an Assessor’s Parcel of Taxable Property created by the subdivision or reconfiguration of an Original Parcel on which construction of a residential or non-residential structure is permitted.

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of CFD No. 2007-1 which are not exempt from the Special Tax pursuant to law or Section G below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2007-1 that, at the time of CFD Formation, were expected to be Taxable Property, and, based on this expectation, Maximum Special Taxes were assigned to the Parcels in a prior Fiscal Year.

“Undeveloped Property” means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2007-1 that are not Developed Property.

B. DATA FOR ANNUAL ADMINISTRATION

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property in CFD No. 2007-1. The Administrator shall also determine (i) whether each Assessor’s Parcel of Taxable Property is Developed Property or Undeveloped Property, (ii) the Net Taxable Acreage of each Parcel, and (iii) the Annual Maintenance Special Tax Requirement.

In any Fiscal Year, if it is determined that (i) a Subdivision Map for a portion of property in CFD No. 2007-1 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the Subdivision Map was recorded, the Assessor does not yet recognize the new Parcels created by the Subdivision Map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the Subdivision Map by determining the Special Tax that applies separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Original Parcel or Successor Parcel that was subdivided by recordation of the Subdivision Map.

C. MAXIMUM SPECIAL TAXES

1. Original Parcels

Table 1 below identifies the Maximum One-Time Facilities Special Tax and Maximum Annual Maintenance Special Tax assigned to each Original Parcel in the CFD at the time of CFD Formation. Separate Maximum Special Taxes shall be assigned to Parcels added to the CFD as a result of future annexations.

**TABLE 1
MAXIMUM SPECIAL TAXES
FISCAL YEAR 2007-08**

<i>Fiscal Year 2007-08 Assessor's Parcel Number or Subdivision Map Parcel Number</i>	<i>Fiscal Year 2007-08 Maximum One-Time Facilities Special Tax*</i>	<i>Fiscal Year 2007-08 Maximum Annual Maintenance Special Tax*</i>
082-005-031	\$211,827	\$35,070
Parcel 2 of Parcel Map 55-PM-12	\$114,030	\$18,879

** Special Taxes shown in Table 1 are subject to the annual adjustments described in Section D below.*

2. Successor Parcels

Upon recordation of a Subdivision Map that subdivides an Original Parcel, the Administrator shall apply the appropriate subsection below to determine the Maximum Special Taxes for each Successor Parcel:

a. *All Successor Parcels are Single Family Detached Lots*

If all Parcels created by a recorded Subdivision Map are Single Family Detached Lots, the Administrator shall divide the Maximum Special Taxes assigned to the Original Parcel that was subdivided by the number of Single Family Detached Lots created within the Subdivision Map to determine the Maximum Special Taxes for each Single Family Detached Lot.

b. *No Successor Parcels are Single Family Detached Lots*

If none of the Successor Parcels created by recordation of a Subdivision Map are Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

- Step 1:** Determine the total combined Net Taxable Acreage within all Successor Parcels created from subdivision or reconfiguration of the Original Parcel.
- Step 2:** Divide the Maximum One-Time Facilities Special Tax and the Maximum Annual Maintenance Special Tax assigned to the Original Parcel by the Net Taxable Acreage determined in Step 1 to determine a Maximum One-Time Facilities Special Tax and a Maximum Annual Maintenance Special Tax per Net Taxable Acre.
- Step 3:** Multiply the Maximum Special Taxes per Net Taxable Acre determined in Step 2 by the Net Taxable Acreage of each Successor Parcel of Taxable Property to determine the Maximum One-Time Facilities Special Tax and Maximum Annual Maintenance Special Tax for each Parcel.

If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.

c. *Some, But Not All, Successor Parcels are Single Family Detached Lots*

If a Subdivision Map divides an Original Parcel into Successor Parcels, of which some are Single Family Detached Lots and some are not, the Administrator shall apply the following steps to determine the Maximum Special Taxes for each Successor Parcel:

- Step 1:** Separately identify: (i) the total Net Taxable Acreage created within the Subdivision Map, and (ii) the combined Net Taxable Acreage of all Single Family Detached Lots created within the Subdivision Map.
- Step 2:** Divide the Maximum One-Time Facilities Special Tax assigned to the Original Parcel by the total Net Taxable Acreage created within the Subdivision Map to determine the Maximum One-Time Facilities Special Tax per Net Taxable Acre.
- Step 3:** Divide the Maximum Annual Maintenance Special Tax assigned to the Original Parcel by the total Net Taxable Acreage created within the Subdivision Map to determine the Maximum Annual Maintenance Special Tax per Net Taxable Acre.
- Step 4:** Multiply the Maximum One-Time Facilities Special Tax per Net Taxable Acre that was calculated in Step 2 by the total combined Net Taxable Acreage of all Single Family Detached Lots (as determined in Step 1), and divide the product by the number of Single Family Detached Lots created in the Subdivision Map to calculate the Maximum One-Time Facilities Special Tax for each Single Family Detached Lot.

Step 5: Multiply the Maximum Annual Maintenance Special Tax per Net Taxable Acre that was calculated in Step 3 by the total combined Net Taxable Acreage of all Single Family Detached Lots (as determined in Step 1), and divide the product by the number of Single Family Detached Lots created in the Subdivision Map to calculate the Maximum Annual Maintenance Special Tax for each Single Family Detached Lot.

Step 6: Multiply the Maximum One-Time Facilities Special Tax per Net Taxable Acre that was calculated in Step 2 by the Net Taxable Acreage of each Parcel of Taxable Property created within the Subdivision Map that is not a Single Family Detached Lot to determine the Maximum One-Time Facilities Special Tax for each Parcel.

Step 7: Multiply the Maximum Annual Maintenance Special Tax per Net Taxable Acre that was calculated in Step 3 by the Net Taxable Acreage of each Parcel of Taxable Property created within the Subdivision Map that is not a Single Family Detached Lot to determine the Maximum Annual Maintenance Special Tax for each Parcel.

If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.

After each reallocation of the Maximum Special Taxes upon subdivision or reconfiguration of Original Parcels, the sum of the Maximum Special Taxes assigned to Successor Parcels shall never be less than the Maximum Special Taxes assigned to the Original Parcels prior to such reallocation.

D. ESCALATION OF MAXIMUM SPECIAL TAXES

1. One-Time Facilities Special Tax

Beginning in January 2008 and each January thereafter, the Maximum One-Time Facilities Special Tax assigned to each Parcel shall be adjusted by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. Annual Maintenance Special Tax

Beginning in January 2008 and each January thereafter, the Maximum Annual Maintenance Special Tax assigned to each Parcel shall be adjusted by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as

published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

E. METHOD OF LEVY OF THE SPECIAL TAX

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2007-1 and shall be collected as set forth in Section F below.

2. Annual Maintenance Special Tax

Each Fiscal Year, the Administrator shall determine the Annual Maintenance Special Tax Requirement for the Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Taxable Property as follows:

- Step 1:** The Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year.
- Step 2:** If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel of Undeveloped Property for such Fiscal Year.
- Step 3:** If additional revenue is needed after applying the first two steps, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Maintenance Special Tax assigned to each Parcel of Taxable Public Property.

F. COLLECTION OF SPECIAL TAX

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within CFD No. 2007-1, and shall be immediately delinquent if not so paid.

The Annual Maintenance Special Tax for CFD No. 2007-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual

Maintenance Special Taxes through foreclosure or other available methods. The Annual Maintenance Special Tax shall be levied and collected unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay Authorized Services and all Administrative Expenses have been reimbursed.

G. EXEMPTIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Taxes, no Special Taxes shall be levied on Public Property except Taxable Public Property, as defined herein.

H. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the Rate and Method of Apportionment of Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Taxes.

I. ENFORCEMENT

All delinquent One-Time Facilities Special Taxes, or delinquent Annual Maintenance Special Taxes billed off the County tax roll, shall be subject to an immediate 10% penalty plus interest charges of 1.5 % as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City's discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following January 1. This shall not prevent the City from simultaneously pursuing the delinquency by an action on a contract of guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.