

MEMORANDUM

To: El Dorado County Board of Supervisors
From: Tim Youmans and Russ Powell
Subject: CFD No. 1992-1 Over Payment of Special Taxes
Date: July 20, 2010

The Economics of Land Use



EPS prepared the Special Tax Formula for CFD No. 1992-1, with input from the County's Financing Team and the El Dorado Hills Specific Plan developer. EPS has prepared hundreds of Special Tax Formulas for public agencies, including those for Promontory and Blackstone in El Dorado Hills. Our Special Tax Formula are designed to provide flexibility in the administration of the CFD over the term of outstanding bonds, 30 years or more. We include flexibility in the administration of the CFD as situations sometimes arise within the life of the CFD that may not have been anticipated at the initial drafting of the Special Tax Formula.

Flexibility is provided in three sections of the CFD No. 1992-1 Special Tax Formula under the following areas:

- The definition of Annual Costs,
- The definition of "Debt Service", and
- Section 8 - Appeals

Annual Costs

The definition of Annual Costs states that "an amount equal to the amount of delinquencies in the previous Fiscal Year and an anticipated amount of delinquencies for the current year, **LESS credit** for earnings on the bond reserve fund, less credit for applicable development fees, less any *reimbursements*...". EPS wrote this definition understanding that sources of revenue would become available to the CFD that could be used to offset the amount that needed to be levied in each fiscal year.

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In addition to the bond reserve fund, special taxes held in other funds would earn interest. This interest can be used to fund Annual Costs of the CFD and thereby reduce the levy of the special tax.

While EPS provided an allowance for delinquencies under the term of Annual Cost, these delinquencies are not considered a *permanent* cost of the CFD. The RMA allows for the collection of actual and estimated delinquencies for cash flow considerations, as needed, on an annual basis to ensure debt service can be paid. The Indenture instructs the County to diligently pursue judicial foreclosure on parcels that are significantly delinquent in the payment of the annual special taxes. Actual delinquencies are collected in almost all cases prior to the start of the next fiscal year. Collection of the delinquent special taxes should be considered in the calculation of Annual Costs as reduction or adjustment to annual debt service, as discussed below.

Debt Service

The definition of debt service states that any amount of principal and interest due in a fiscal year is to be offset by any applicable credits from other revenue sources available to the County available to pay debt service. The collection of past due special taxes (delinquencies) are such a revenue source. There may be other sources of revenue not specifically identified at the formation of CFD No. 1992-1 that could be available to reduce the annual special tax levy on taxpayers in the future. EPS structured this definition so that the County would utilize available revenues to reduce the tax burden on taxpayers when possible.

Appeals

Section 8 of the Special Tax Formula allows the Board to make interpretations of the Special Tax Formula in the case of vagueness or ambiguities as it relates to portion of the Special Tax Formula. This language was included to allow the Board the flexibility to adopt resolutions providing clarifications of the intent of the Special Tax Formula.

EPS purposely design tax formulas to fully pay for debt service, administrative expenses, and pay-as-you-go expenditures. The RMA is also designed to minimize the special tax levy each fiscal year. Flexibility in the RMA is needed to achieve these goals. We believe that the features of the RMA should be interpreted liberally to allow the County to use any funds legally available to the County to reduce the amount of the annual special tax levy on taxpayers.

EPS believes that there would have not been an over-collection of special taxes had the County *reasonably* interpreted the RMA in determining the annual special

tax levy requirements. EPS did not craft an RMA that would deliberately instruct the Administrator to over-collect the Special Tax.

EPS believes the County over-collected the annual special taxes by not using a careful analysis of annual special tax revenue requirement and reasonable application of the RMA. If the County had correctly applied the RMA they would have acknowledged that continuing to collect actual and estimated delinquencies would result in the over-collection of taxes. The County should have reduced the special tax levy when the special tax cash flow analysis showed that a reasonable positive balance in the special tax fund would occur at the end of the following bond year.

