



San Rafael

Agenda Item No: _____

Meeting Date: October 5, 2009

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development Department

Prepared by: Robert Brown, Director (PJ)

City Manager Approval: _____

SUBJECT: Village at Loch Lomond Marina Development (110 Loch Lomond Drive) – Request for interpretation regarding Vesting Tentative Map (TM04-001) condition of approval No. 45, which requires the formation of a Mello-Roos District to fund long-term maintenance of publicly-accessible park and recreation areas on the marina site. File No. P09-002.

RECOMMENDATION:

Staff recommends that the City Council accept the staff recommendation of an interpretation regarding Vesting Tentative Map (TM04-001) Condition No. 45.

BACKGROUND:

Site Description/Setting. The Loch Lomond Marina is located immediately south of Point San Pedro Road and the Loch Lomond residential neighborhood, which is approximately two-miles east of US101. The marina property encompasses 131+ acres of submerged tidelands and upland, which is currently developed with: a) a full-service marina that includes 517 boat berths (of which 52 berths are authorized for 'liveaboard' use by the marina BCDC permit), and marina support facilities such as a public boat launch, a bait sales shop, dry dock boat storage, and yacht club; b) a local-serving grocery store; c) medical office; and d) two undeveloped jetties, a breakwater, seasonal wetlands and submerged tidelands.

Project Description and History. In August 2007, the City granted land use and subdivision approvals for the Village at Loch Lomond Marina Development. The City approvals authorize the development of the 29.7-acre upland portions of the site with: 81 new residential units (detached single-family residential, attached townhomes and condominiums); 22,250 square feet of new neighborhood commercial use (including a new full-service grocery store); upland marina support uses; and bay front park and conservation uses. The approved project does not change the current marina berth and public launch operation and use. The bay front park and recreation uses were approved for public access consistent with both City and BCDC approvals. The publicly-accessible park and recreation improvements that were approved include: a turf-surfaced marina green; the development and use of the two jetties with equipped play areas, picnic facilities; restrooms as well as a kayak launch and fishing stations.

One of the more significant project issues was the ownership and long-term maintenance of the bay front park and conservation areas. Since the bay front park must be publicly-accessible to meet BCDC requirements, various options regarding land ownership and long-term maintenance were studied by the City staff and City Attorney, and carefully considered by the City Council, Planning Commission and Park & Recreation Commission. Ultimately, the City Council approved the project requiring that the publicly-

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accessible bay front park area and the conservation areas be retained in fee by the marina property owner, but that non-exclusive public access easements be offered and recorded over these areas to ensure public access in perpetuity (Vesting Tentative Map [TM04-001] condition of approval #46). Regarding the assurance of long-term maintenance of the publicly-accessible park and conservation areas, the City required that a Mello-Roos District be formed and used as the instrument for this maintenance. The Mello-Roos District requirement is memorialized in Vesting Tentative Map condition of approval #45, which reads as follows:

45. *The Vesting Tentative Map requires and the project sponsor shall agree to the formation of a Mello-Roos District for the purpose of providing and guaranteeing long-term funding and maintenance of park and recreation improvements that are approved for public use and the conservation area (seasonal wetlands) on Parcel V. The boundaries of the District shall cover the entire 131+ acre marina site for assessment to the marina property owner, the owners of the neighborhood commercial/mixed-use parcels and the residential property owners within this development. The 17 below-market-rate (BMR) residential units approved with the Vesting Tentative Map shall be exempt from the Mello-Roos tax. Long-term funding and maintenance of the following above-ground improvements and facilities shall be covered by the Mello-Roos District:*
- a. *The marina green and boardwalk*
 - b. *kayak launch*
 - c. *park play equipment and area*
 - d. *pedestrian pathways along the west jetty/spit, east jetty/spit*
 - e. *viewing areas along the west jetty/spit, east jetty/spit*
 - f. *public rest rooms (2), one on the east jetty/spit and one at the entrance to the breakwater*
 - g. *fishing cleaning station located near the entrance to the breakwater*
 - h. *park and informational signs within these areas*
 1. *lawn/turf, shrubs and groundcover, irrigation systems, storm water drainage inlets within boundaries of the area, lighting pole standards and fixtures above the foundation; benches; trash receptacles; and bicycle racks*
 - j. *conservation/seasonal wetland area (parcel V)*
- The District shall be formed concurrent with the filing of the Final Map.*

As specified in this condition, the Mello-Roos District is to encompass/cover the entire 131+ acre marina site. The inclusion of the entire marina site was intentional, so that the marina property owner would be obligated to participate in the district tax collectively with the future residential and commercial area property owners. By covering the entire marina site, no one group within the district (e.g., the 81 residential property owners) would be fully burdened with the long-term maintenance tax.

Voting Nuance Associated with the Formation of a Mello-Roos District. For the past several months, City staff has been working with Real Estates Strategies and Solutions, the new project managers for the Village at Loch Lomond Marina development project. During our working process on the Mello-Roos District, a nuance was discovered in the district formation procedures, which focuses on the City requirement that the district cover the entire 131+ acre marina site. The State law regulating the formation of a Mello-Roos District (Government Code Section 53326[b]) mandates that when there are 12 or more registered voters within the boundaries of the proposed district, it is the registered voters, not the property owner (in this case, the marina landlord) that must vote in the tax election, with each voter getting one vote. When the Mello-Roos District requirement was established, it was presumed that the only registered voter would be the developer, as owner of all the affected parcels, and therefore only the developer would be voting on establishment of the District. (This is how Mello-Roos districts are typically formed during the development process.)

In fact, it has been learned that because the marina is residence to 52 liveaboards, many of whom are registered voters, there are more than 12 voters residing within the boundaries of the development, and under Government Code Section 53326(b), all the registered voters included within the boundaries of the District would need to vote on the tax. A majority of these voters would be the marina liveboard residents, even though they would not be required to pay the tax, which is assessed only on the property owner.

It is clear from the record of proceedings when the Mello-Roos District requirement was imposed that it was never the intent of the City or the developer, nor is it logical, to require the marina berth liveaboards to participate in the Mello-Roos District process as they would not be party to the district tax.

In response to this nuance, the project managers have filed a request for interpretation to clarify the intent of the Mello-Roos District condition of approval. This request and their approach to address this issue are presented in the attached letter dated September 3, 2009. In brief, the representatives are suggesting that, as required, the district boundaries include the marina acreage of the underlying water and upland but exclude the marina berths above the water surface. By doing so, the voting right for forming the Mello-Roos District and tax burden would be held by the marina property owner.

ANALYSIS:

City staff and the City Attorney's Office have reviewed the rationale and approach to the request filed by the project managers finding that it is consistent with the parties' intent, understanding and purpose to form the Mello-Roos District. As noted above, the district boundary was intentionally defined to include the entire marina site so that marina property owner would be obligated to participate in the district tax collectively with the future residential and commercial area property owners. As such, the interpretation that the district boundaries include the 'marina acreage of the underlying water and upland' but 'exclude the marina berths located above the water surface' would be consistent with the intent of Vesting Tentative Map (TM04-001) condition #45. This interpretation would not change the requirement previously established by the City Council, nor would it compromise or change any of the project approvals, nor would it change the relative amount of tax to be assessed to the residences, businesses and marina owner. Because the proposed interpretation is consistent with the City's goals and intentions in adopting Vesting Tentative Map (TM04-001) condition #45, and generally for the formation of the Mello-Roos District, Staff recommends that the City Council discuss and accept the interpretation as presented.

NOTICING/CORRESPONDENCE:

This matter involves a request for an interpretation of a Vesting Tentative Map condition of approval. Since the request is limited to an interpretation and would not result in a change, modification or revision to Vesting Tentative Map condition of approval 45, no public hearing is necessary. However, notice of this request was mailed to the representatives of the three neighboring property/homeowner associations and to the Federation of Neighborhoods.

FISCAL IMPACT:

As requested, the City's interpretation of an approved project condition would have no fiscal impact on the City of San Rafael. As initially reported when the Village at Loch Lomond Marina was being reviewed for action by the City Council, all costs associated with the formation and maintenance of the Mello-Roos would be initially borne by the marina property owner and subsequent property owners within the future marina development.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Accept Staff Recommendation (of Interpretation) as presented
2. Continue matter for additional information and response to Council comments and concerns
3. Deny the request for interpretation

ACTION REQUIRED:

It is recommended that the City Council accept the staff recommendation to accept the applicant's interpretation as set forth in Exhibit A regarding the application, intent and coverage of the required Mello-Roos District

ATTACHMENTS:

Exhibit A – Letter and Map from Real Estate Strategies & Solutions, September 3, 2009

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