

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: November 19, 2020

Item description/summary:

This item has been discussed in committee. Developers within the service area of OPUD have requested that OPUD provide the option of financing their development impact fees and/or public infrastructure requirements through California Municipal Finance Authority's (CMFA) Bond Opportunities for Land Development (BOLD) Program. In particular, Woodside Homes is requesting approval of the BOLD Program so that Woodside Homes may use the BOLD Program to finance OPUD water and sewer infrastructure costs associated with its Douglas 98 project.

CMFA is a Statewide joint powers authority (JPA) whose members are numerous public entities throughout California. Its mission is supporting economic development, job creation and social programs throughout the State of California.

The BOLD Program was created by CMFA to offer a means to finance new or continuing construction of infrastructure and public facilities through bonds issued by the CMFA. The BOLD Program is designed to help local government municipalities, schools and land developers throughout the State work together to cost effectively finance public infrastructure projects and development fees.

In order for OPUD to allow developers to use BOLD Program financing for OPUD projects, the OPUD Board must approve entrance into a joint community facilities agreement (JCFA) with CMFA. There is no cost for OPUD to enter into the JCFA with CMFA, and OPUD does not need to become a member of CMFA.

Under the BOLD Program, bonds are issued by a CFD formed by CMFA under the Mello-Roos Community Facilities Act of 1982 (California Government Code Section 53311 et seq.) (Act). The Act offers substantial financing flexibility and is commonly used by cities, schools and other local agencies throughout the State to generate funds for the payment of public facilities, including development fees for facilities.

The benefits to OPUD are as follows:

- CMFA handles all CFD formation, CFD administration, bond issuance, and bond administration.
- OPUD is not exposed to any default risk and is not liable to repay the bonds issued by CMFA or any special taxes imposed on the participating properties.
- Availability of financing through the BOLD Program may encourage developers to pull permits and pay fees earlier and in larger blocks.

The form of JCFA approved by the Resolution details the terms and conditions under which financing for public capital improvements will be provided and establishes the procedures for disbursement of bond proceeds. The form of JCFA also authorizes miscellaneous related actions and makes certain findings and determinations required by law.

The JCFA confirms that OPUD will still have its customary rights to approve all aspects of all infrastructure improvements financed with bond proceeds. OPUD's only material affirmative obligations to CMFA are (i) to provide commercially reasonable assistance in determining compliance by the developers with OPUD requirements, and (ii) to take commercially reasonable actions to avoid classification of the bonds as "arbitrage bonds" or the loss of tax

exemption for the bonds. These obligations are believed reasonable in this context, and should not subject OPUD to unreasonable risks.

Fiscal Analysis:

There is no cost for OPUD to authorize entrance into the JCFA. CMFA pays for the costs of application processing, bond financing and managing the ongoing special tax administration, including submitting the annual tax roll for the applicable CFDs. CMFA recovers its cost through special taxes levied on participating developers and property owners. Administrative costs of OPUD's impact fee programs are recovered through the impact fee and no significant additional costs are expected to administer the BOLD Program. Any additional administrative costs that may be incurred as a result of the BOLD Program will be submitted to CMFA for reimbursement in accordance with applicable law.

Employee Feedback

None

Sample Motion:

Move to approve OPUD Resolution 2367 joining the JCFA with CMFA for the BOLD Program.

Prepared by:

John Tillotson, P.E., General Manager

RESOLUTION NO. 2367

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE OLIVEHURST PUBLIC UTILITY DISTRICT AUTHORIZING EXECUTION
AND DELIVERY OF A JOINT COMMUNITY FACILITIES AGREEMENT WITH
CALIFORNIA MUNICIPAL FINANCE AUTHORITY (CMFA) FOR ITS BOLD
PROGRAM**

WHEREAS, the California Municipal Finance Authority (the “CMFA”) is a joint exercise of powers authority, the members of which include numerous cities, counties and other local agencies in the State of California (the “State”); and

WHEREAS, CMFA has conducted, or intends to conduct, proceedings under the Mello-Roos Community Facilities Act of 1982 (California Government Code section 53311 et seq.) (the “Act”) to form community facilities districts (each, a “CFD”) to finance certain public facilities, which may include financing development impact fees used for public facilities, authorized to be financed under the Act (the “CFD Improvements” and the “CFD Fees,” respectively) as part of its Bond Opportunities for Land Development (“BOLD”) program;

WHEREAS, the CFD Improvements and/or CFD Fees will be described in the resolution of formation for each CFD, including CFD Fees payable and/or CFD Improvements to be acquired by the Olivehurst Public Utility District (the “OPUD”);

WHEREAS, CMFA intends to utilize the proceeds of sale of special tax bonds of the CFDs to finance some or all of the CFD Improvements and/or CFD Fees, including CFD Fees payable and/or CFD Improvements to be acquired by the OPUD;

WHEREAS, under Section 53316.2 of the Act, the CMFA may for a CFD to, among other things, finance CFD Improvements to be acquired by the OPUD and/or the CFD Fees payable, provided CMFA and the OPUD enter into a joint community facilities agreement; and

WHEREAS, the OPUD is willing to cooperate with CMFA in accomplishing the financing of the CFD Improvements and/or CFD Fees eligible to be financed by the Act, and to confer upon CMFA full power to provide financing for such items in the event that proceeds of special taxes and/or bonds in a CFD become available and are utilized for such purpose.

NOW, THEREFOR, BE IT RESOLVED by the Board of Directors of the Olivehurst Public Utility District as follows:

Section 1. The Board hereby approves the execution and delivery of a joint community facilities agreement with CMFA, substantially in the form presented to the Board and attached hereto as Exhibit A (the “JCFA”), with such changes as the General Manager (“Authorized Officer”) may deem appropriate or necessary, the execution and delivery of the JCFA being conclusive evidence of the approval of such changes. The Board hereby finds and determines that entrance into the JCFA will be beneficial to the residents within the service area of the OPUD. Each Authorized Officer is, consistent with customary OPUD practices and procedures, hereby further authorized and directed to execute and deliver the executed JCFA on behalf of the OPUD. Each Authorized Officer is hereby further authorized and delegated the ability to approve applications submitted by developers to the BOLD Program and evidence OPUD’s official intent to reimburse itself for capital projects from tax-exempt bond proceeds issued by CMDA in connection with the BOLD Program.

Section 2. The Resolution shall take effect immediately upon its adoption. The Clerk of the Board is hereby authorized and directed to transmit a certified copy of this resolution and the final, executed JCFA to the Secretary of the CMFA.

PASSED AND ADOPTED by the Board of Directors of the Olivehurst Public Utility District on this 19th day of November, 2020.

President, Board of Directors

ATTEST:

District Clerk and ex-officio Secretary

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Deirdre Joan Cox, Legal Counsel

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I hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly adopted and passed by the Board of Directors of the Olivehurst Public Utility District, Yuba County, California, at a meeting thereof held on the 19th day of November, 2020, by the following vote:

AYES, AND IN FAVOR THEREOF :

NOES :

ABSTAIN :

ABSENT :

District Clerk and ex-officio Secretary

**JOINT COMMUNITY FACILITIES AGREEMENT
BETWEEN
CALIFORNIA MUNICIPAL FINANCE AUTHORITY
AND
OLIVEHURST PUBLIC UTILITY DISTRICT**

RELATING TO BOLD PROGRAM COMMUNITY FACILITIES DISTRICTS

This Joint Community Facilities Agreement (the “Agreement”) is entered into this 19th day of November, 2020, by and between the California Municipal Finance Authority (the “CMFA”), a joint exercise of powers authority organized and existing under the laws of the State of California, and Olivehurst Public Utility District (“OPUD”), a public utility district and a political subdivision of the State of California formed pursuant to the Public Utility District Act of the State of California (Public Utilities Code section 15501 *et seq.*).

RECITALS

WHEREAS, the CMFA anticipates receiving requests from time to time from owner/developers (each, a “Property Owner”) of land (the “Property”) within the service area of the OPUD proposed for development, to establish community facilities districts as part of CMFA’s Bond Opportunities for Land Development (BOLD) Program (each a “CFD”), pursuant to the provisions of Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code, commonly known as the “Mello-Roos Community Facilities Act of 1982” (the “Act”);

WHEREAS, the purpose of each CFD the CMFA and Property Owner(s) desire to form from time to time pursuant to the Act will be to finance of the costs of OPUD public facilities related to new development, which may include the payment of impact fees that pay for OPUD facilities (collectively, the “District Improvements”);

WHEREAS, the CFDs to be formed by the CMFA will incur bonded indebtedness secured by special taxes to be levied on non-exempt property located within the boundaries of the CFDs in an amount sufficient to pay, among other costs, the costs of District Improvements, and the District Improvements will provide benefit to the future residents within the CFDs;

WHEREAS, Section 53316.2 of the Act provides that a public entity may use a CFD to finance facilities owned by an entity other than the agency that forms the CFD, pursuant to a joint community facilities agreement or joint exercise of powers agreement;

WHEREAS, Section 53316.2 of the Act authorizes the legislative bodies of two or more local agencies to enter into a joint community facilities agreement prior to the issuance of bonds if the legislative body of each entity adopts a resolution declaring that such a joint agreement would be beneficial to residents of that entity;

WHEREAS, this Agreement is entered into pursuant to the requirements of Section 53316.2 of the Act and the Board of Directors of the CMFA and the Board of Directors of the OPUD (“Board”) have, prior to the execution of this Agreement, duly considered the contents of

this Agreement and have each determined, by resolution, that the execution of this Agreement would be beneficial to the residents of that entity;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.
2. Sale of Bonds and Use of Proceeds. The CMFA shall use its best efforts to proceed with the sale and issuance of the Bonds, at such time and in such amounts as the CMFA, in its sole discretion and in consultation with the Property Owner(s) may determine are necessary and appropriate to finance District Improvements in addition to other public improvements authorized for the CFDs. The CMFA, on behalf of the CFDs, shall pay disbursements out of the Bond proceeds and/or special taxes of the CFDs to the Property Owner(s) or the CMFA to pay for the District Improvements as provided herein. The CMFA anticipates that proceeds from the sale of Bonds shall be available for the District Improvements substantially as anticipated herein, however, such proceeds may be expended by the CFDs in such amounts for the District Improvements and public improvements to be owned by the CMFA as the CMFA may determine, in its sole discretion, to be appropriate. The CMFA shall maintain records relating to the disbursements of proceeds of the sale of the Bonds and provide copies to OPUD upon OPUD's reasonable request.

The OPUD acknowledges that amount and timing of payments to the Property Owner(s) for the District Improvements shall be in all respects subject to the sole discretion and approval of the CMFA, acting on behalf of the CFDs and in accordance with the Act. In no event will an act or a failure or omission to act, by the CMFA with respect to the disbursement or non-disbursement of the Bond proceeds, or by the CMFA with respect to the provision of any other funding for the District Improvements subject the CFDs or the CMFA to pecuniary liability hereunder.

Nothing in this Agreement will limit OPUD's right to approve all aspects of all District Improvements as otherwise provided by applicable law or agreements with the Property Owner(s), nor obligate the OPUD to take any action inconsistent therewith.

3. Reimbursement to Property Owner(s). Notwithstanding anything in this Agreement to the contrary, the Property Owner(s) shall pay each impact fee for District Improvements to OPUD at the time it is due, which fee shall be held by the OPUD until Bond proceeds are available. Once Bond proceeds are available, the CMFA agrees to reimburse to the Property Owner(s) for impact fees previously paid, as and to the extent that Bonds proceeds have become available, and utilize the Bond proceeds for the payment of the applicable District Improvements. Property Owner shall not be entitled to reimbursement of impact fees payable to OPUD from any other sources except the net proceeds of the Bonds or special taxes of the applicable CFDs. Nothing in this Agreement shall obligate OPUD to make any payments to the Property Owner(s) on account of shortfalls in Bond proceeds or impact fees.

4. Distribution Of Bond Proceeds.

(a) Pursuant to the Bond resolution, fiscal agent agreement or indenture providing for the issuance of the Bonds, CMFA shall establish a separate account (the "Improvement Fund") with the Bond trustee or fiscal agent designated in such agreement, into which the proceeds of the Bonds to be used for the District Improvements and other public improvements authorized to be funded by proceeds from the sale of Bonds, shall be deposited.

(b) Consistent with its agreements with the Property Owners and applicable law, OPUD agrees to provide commercially reasonable assistance to the CMFA in determining compliance by the Property Owner(s) with the requirements of OPUD to pay impact fees to OPUD or construct facilities for OPUD and the eligibility for reimbursement by the CMFA from Bond proceeds of the District Improvements, authorized to be reimbursed to the Property Owner(s) from the CFDs. In no event will an act or a failure or omission to act by OPUD with respect to this assistance subject OPUD to pecuniary liability hereunder.

(c) The CMFA and OPUD shall take all commercially reasonable action which, in the opinion of CMFA's bond counsel, are necessary in order to avoid classification of the Bonds as "arbitrage bonds" or the loss of tax exemption for the Bonds for any other reason. In connection therewith, OPUD acknowledges that tax-exemption requirements include an expectation that that reimbursed impact fees are expected to be timely spent, generally within three years of the date of issuance of the Bonds. Nothing herein will require OPUD to approve or accept defective or inappropriate Public Improvements, or to incur additional costs with respect thereto.

5. Levy of Special Tax and Payment of Debt Service. OPUD obligations hereunder shall be limited to the obligations assumed by it with respect to the acceptance of the District Improvements. OPUD shall have no obligation or responsibility whatsoever with respect to the administration of CFDs, the issuance and sale of the Bonds, for the payment of principal and interest thereon, or for the levy of the special taxes required to provide debt service. CMFA shall have the sole responsibility in such matters.

6. No Separate Entity. The parties do not intend to form a separate joint exercise of powers authority by this Agreement; instead, the parties intend that the Board of Directors of the CMFA act on behalf of the CMFA on all matters for which the CMFA is responsible under the Act and this Agreement, and that the OPUD Board act on behalf of the OPUD in all matters for which it is responsible under this Agreement. Whenever approval of CMFA and OPUD is required under the Act or this Agreement, the parties contemplate that such action be submitted to the Board of Directors of the CMFA or the OPUD Board for approval by resolution, or to the officer to whom approval authority has been delegated, prior to the parties taking such action.

7. Termination. This Agreement shall terminate upon the earliest occurrence of the following events: (a) the dissolution of the CFDs pursuant to section 53338.5 of the Act; or (b) the written agreement of CMFA and OPUD to terminate this Agreement. Notwithstanding the foregoing, this Agreement shall remain in full force and effect for as long as any Bonds are outstanding.

8. Notice. Any notice, payment or instrument required or permitted by this Agreement to any party shall be deemed to have been received when personally delivered to any party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

CMFA: California Municipal Finance Authority
2111 Palomar Airport Road #320
Carlsbad, CA 92011
Attn: BOLD Program Administrator

OPUD: Olivehurst Public Utility District
1970 9th Avenue
Olivehurst, CA 95961
Attn: John Tillotson, General Manager

9. Captions. Captions to sections of this Agreement are for convenience purposes only, and are not part of this Agreement.
10. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.
11. Successors and assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
12. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by both parties.
13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as the day and the year first written above.

OLIVEHURST PUBLIC UTILITY DISTRICT

By _____
Chair of the Board of Directors

Secretary to the Board of Directors

CALIFORNIA MUNICIPAL FINANCE AUTHORITY

By _____
Ed Becker, Executive Director