

OLIVEHURST PUBLIC UTILITY DISTRICT

RESOLUTION NO. 2063

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE OLIVEHURST PUBLIC UTILITY DISTRICT
DECLARING ITS INTENTION TO ESTABLISH THE
OLIVEHURST PUBLIC UTILITY DISTRICT COMMUNITY FACILITIES DISTRICT
NO. 2004-1 (WASTEWATER TREATMENT FACILITY) AND TO LEVY
A SPECIAL TAX TO PAY FOR CERTAIN PUBLIC FACILITIES**

WHEREAS, the Board of Directors (the “Board”) of the Olivehurst Public Utility District (the “District”) has adopted local goals and policies concerning the use of the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, Part 1, Division 2, Title 5 (commencing with Section 53311) of the California Government Code) (the “Act”);

WHEREAS, the Board has duly considered the advisability and necessity of establishing a community facilities district pursuant to the Act encompassing certain areas within the District and levying a special tax therein to finance the acquisition and construction costs of improvements to its wastewater treatment facility;

WHEREAS, the Board has determined that the establishment of the proposed community facilities district is consistent with and follows the District’s goals and policies for use of the Act;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Olivehurst Public Utility District that:

1. **Recitals.** The above recitals are true and correct.
2. **Intent to Establish Community Facilities District.** The Board proposes and intends to establish a community facilities district pursuant to the provisions of the Act.
3. **Description of Boundaries.** The proposed boundaries of the community facilities district are shown on a map on file in the office of the Deputy Clerk of the Board. The Board hereby directs the Deputy Clerk of the Board to endorse the certificates set forth on the map indicating its filing in the office of the Deputy Clerk of the Board and evidencing the date and adoption of this resolution. The Board further directs the Deputy Clerk of the Board to record a copy of the map with the Yuba County Recorder within 15 days after the adoption of this resolution, in accordance with the provisions of Sections 3111 of the California Streets and Highways Code.
4. **Name of the Community Facilities District.** The community facilities district proposed to be formed shall be known as “Olivehurst Public Utility District Community Facilities District No. 2004-1 (Wastewater Treatment Facility)” (the “CFD”).

5. **Description of Public Facilities.** The facilities proposed to be financed by the District (the “Facilities”) are described in Exhibit A hereto. The Facilities have a useful life of five years or longer. The cost of financing the acquisition and construction of the Facilities includes “incidental expenses,” which include the cost of planning and designing the Facilities and environmental evaluations thereof; costs associated with the creation of the CFD, issuance of bonds, determination of the amount of special taxes, collection or payment of special taxes, or costs otherwise incurred in order to carry out the authorized purposes of the CFD; and any other expenses incidental to the design, construction, completion, and inspection of the Facilities.

6. **Levy of Special Tax.** Except where funds are otherwise available, a special tax sufficient to pay the costs of the Facilities (including incidental expenses and debt service on bonds issued to finance the Facilities), secured by recordation of a continuing lien against all nonexempt real property in the CFD, will be levied annually within the CFD. The rate, method of apportionment, and manner of collection of the special tax are specified in Exhibit B. Exhibit B specifies the conditions under which the special tax may be prepaid and permanently satisfied. Because the special tax will be levied on parcels only prior to issuance of an occupancy permit, the second paragraph of Government Code section 53321(d) does not apply, because the special tax will not be levied on any parcel “used for private residential purposes” as defined in that section.

7. **Public Hearing.** The Board hereby fixes 5:00 p.m., or as soon thereafter as practicable, on Thursday, March 25, 2004, at the regular meeting place of the Board, 1970 9th Avenue, Olivehurst, California, as the time and place for a public hearing on the establishment of the CFD. The hearing on the establishment of the CFD shall be consolidated with the hearing on the bonded indebtedness proposed to be incurred and shall be conducted as a single hearing.

8. **Publication of Notice.** The Board directs the Deputy Clerk to publish a notice of the consolidated hearing, in substantially the form attached hereto as Exhibit C, once not later than seven days prior to the date fixed for the hearing, in a newspaper of general circulation published in the area of the CFD.

9. **Facilities Report.** The Board directs the General Manager to study the proposed CFD and, at or before the time of the hearing, to cause to be prepared and filed with the Board a report containing a brief description of the facilities by type that will in his opinion be required to adequately meet the needs of the CFD, an estimate of the cost of providing those public facilities; the fair and reasonable cost of any of the facilities to be purchased; and the fair and reasonable cost of incidental expenses to be incurred in connection therewith.

10. **Description of Proposed Voting Procedures.** If, at the conclusion of the public hearing, the Board adopts a resolution establishing the CFD, the Board proposes to order an election by mailed ballot and submit the question of the levy of the special tax to the qualified electors. The Board hereby determines that the proposed special tax will not be apportioned in any tax year on any portion of property in residential use in that tax year (because the special tax is only levied prior to issuance of occupancy permits). In accordance with Government Code section 53326(c), the qualified electors shall be the landowners within the CFD. Each landowner who is the owner of record at the close of the hearing shall have one vote for each acre or portion of an acre of land that such landowner owns within the proposed the CFD.

11. **Tender of Bonds for Payment of Taxes.** The Board reserves to itself the right and authority to allow any interested owner of property within the CFD, subject to the provisions of Government Code section 53344.1 and to those conditions it may impose, and any applicable prepayment penalties as described in a fiscal agent agreement or comparable document providing for the issuance of bonds, to tender to the District in full payment or part payment of any installment of the special taxes or the interest or penalties thereon that may be due or delinquent, but for which a bill has been received, any bond or other obligation secured thereby, the bond or other obligation to be taken at par and credit to be given for the accrued interest shown thereby computed to the date of tender.

PASSED AND ADOPTED this 19th day of February 2004.

OLIVEHURST PUBLIC UTILITY DISTRICT

President, Board of Directors

ATTEST:

Deputy Clerk & ex-officio Secretary

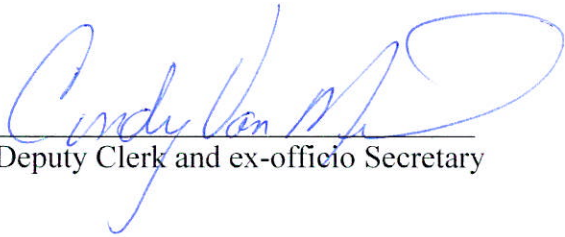
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Jonathan P. Cristy, Bond 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 February 2004, by the following vote:

AYES, AND IN FAVOR THEREOF:		Director Patty, Donahue, Brown, and Miller.
NOES	:	None.
ABSTAIN	:	None.
ABSENT	:	Director Carpenter.


Deputy Clerk and ex-officio Secretary

**Public Capital Facilities
EXHIBIT A**

Community Facilities District No. 2004-1
(Wastewater Treatment Facility)
Olivehurst Public Utility District
Olivehurst, California

LIST OF AUTHORIZED FACILITIES

A. PUBLIC IMPROVEMENTS

The following improvements represent the primary facilities that are authorized to be constructed with Mello-Roos CFD Special Tax proceeds. These facilities are representative of the authorized infrastructure required for development of land within the boundaries of the Olivehurst Public Utility District.

Wastewater Treatment Facility Improvements

Authorized facilities include any and all wastewater treatment facility improvements designed to serve the development needs of Olivehurst Public Utility District. These facilities may include, but are not limited to, wastewater treatment plant construction, land acquisition, capital improvements, related facilities, equipment, and all other appurtenances related to wastewater treatment facility improvements.

B. OTHER EXPENSE

The above listed types of facilities are proposed to include incidental expenses as authorized by the Mello-Roos Community Facilities Act of 1982, including, but not limited to, the cost of planning, engineering, legal costs, and designing of the wastewater treatment facilities (including the cost of environmental evaluation thereof); cost associated with the creation of the District; issuance of bonds thereof; determination of the amount of taxes; collection of taxes; payment of taxes; or costs otherwise incurred in order to carry out the authorized purposes of the District; and any other expenses incidental to the construction, completion, and inspection of the facilities, including the cost of planning and designing the facilities (including the cost of environmental evaluation and environmental remediation or mitigation)

EXHIBIT B

Community Facilities District No. 2004-1

(Wastewater Treatment Facility)

Olivehurst Public Utility District

Olivehurst, California

RATE, METHOD OF APPORTIONMENT, AND MANNER OF COLLECTION OF SPECIAL TAX

1. Basis of Special Tax Levy

A Special Tax authorized under the Mello-Roos Community Facilities Act of 1982 (the “Act”) applicable to the land in Community Facilities District No. 2004-1 (Wastewater Treatment Facility) (the “CFD”) of the Olivehurst Public Utility District (the “District”) shall be levied and collected according to the tax liability determined by the District through the application of the appropriate amount or rate, as described below.

2. Definitions

“**Acre(age)**” means the totals acres of a Parcel as shown in the records of the County Assessor, Tentative Maps, or other records of the County or District.

“**Act**” means the Mello-Roos Community Facilities Act of 1982, as amended, Sections 53311 and following of the California Government Code.

“**Administrative Expenses**” means the following actual or reasonably estimated costs directly related to the administration of the CFD: the costs of computing Special Taxes and preparing the annual Special Tax collection schedules (whether by the District or designee thereof or both); the costs of collecting the Special Taxes (whether by the County, the District, or otherwise); the costs of remitting the Special Taxes to the Trustee; the costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under the Indenture; the costs to the District, CFD or any designee thereof of complying with arbitrage rebate requirements; the costs to the District, CFD or any designee thereof of complying with District, CFD or obliged persons disclosure requirements associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs to the District, CFD or designee thereof related to the appeal of the Special Tax; and the costs associated with the release of funds from an escrow account, if any. Administrative Expenses shall also include amounts estimated or advanced by the District or CFD for any other administrative purposes, including attorney’s fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

“**Administrator**” means the General Manager or designee.

“**Annexation Parcels**” means any Parcel that is annexed to the CFD after the CFD is formed.

“**Annual Costs**” means, for any Fiscal Year, the total of the following:

- i) Debt Service to be paid from Special Taxes collected during such Fiscal Year;
- ii) Administrative Expenses for such Fiscal Year;
- iii) The amount needed to replenish the reserve fund for the Bonds to the level required under the Bond Indenture;
- iv) The amount needed to replenish the Special Tax Stabilization Fund (actual amounts or anticipated shortfalls) to the level required in the Bond Indenture;
- v) An amount equal to the amount of delinquencies in payments of Backup Special Taxes, if any, levied in the previous Fiscal Year and/or anticipated for the current Fiscal Year;
- vi) Pay-As-You-Go Expenditures for Authorized Facilities to be constructed or acquired by the CFD;
- vii) Less any earnings on the reserve fund, special tax stabilization fund, and special tax fund that are transferred to the bond redemption fund pursuant to the Bond Indenture; and
- viii) Early debt retirement through the prepayment of Outstanding Bonds.

“**Assessor’s Parcel Number**” means the Assessor’s Parcel and Assessor’s Parcel number as recorded by the County Assessor on the equalized tax roll.

“**Authorized Facilities**” means those facilities to be financed as identified in the resolution forming the CFD.

“**Backup Special Tax**” means the greatest amount of Special Tax that may be levied against Final Map Parcels, Tentative Map Parcels and/or Undeveloped Parcels, as shown on **Attachment 1**, when the Special Tax revenue from collecting the Maximum One-time Special Tax on Developed Parcels is not adequate to cover Annual Costs in a Fiscal Year. *As the Backup Special Tax is levied against a Taxable Parcel, such Parcel’s Special Tax obligation is for the payment of the Maximum One-time Special Tax is reduced by an equal amount. In the event in any Fiscal Year the levy of the Backup Special Tax at the maximum for a Taxable Parcel causes that Parcel to have paid a Cumulative Backup Special Tax that exceeds the Maximum One-time Special Tax that would be charged against the Parcel in the Fiscal Year, the Backup Special Tax for the Parcel is reduced for the Fiscal Year so that the Cumulative Backup Special Tax is just equal the Maximum One-time Special Tax for the Parcel in the Fiscal Year.*

“**Backup Special Tax Start Date**” means a date selected by the owner of a Parcel in the CFD on which date the Parcel will become subject to the Backup Special Tax. The Backup Special Tax Start Date will be June 1 of a selected Fiscal Year. If a Parcel becomes a Developed Parcel prior to the selected Backup Special Tax Start Date, the Developed Parcel will be subject to any Backup Special Taxes that would have been levied against the Developed Parcel as if the Backup

Special Tax Start Date were June 1 of the Fiscal Year prior to the date at which the Parcel became a Developed Parcel.

“**Base Year**” means Fiscal Year 2003-2004.

“**Board**” means the Board Members of the District.

“**Bond(s)**” means bond(s) issued by the District under the Act for the CFD.

“**Bond Indenture**” means the indenture, resolution, fiscal agent agreement, or other financing document pursuant to which the bonds are issued.

“**Cash Discount Payment Period**” means that period of time up until the adoption of the Resolution of Formation to form the CFD that a Parcel or Fee Prepayment Parcel may pay the Connection Fee. Once a Parcel or Fee Prepayment Parcel has paid the Connection Fee, it has completely fulfilled that Parcel’s Special Tax obligation.

“**CFD**” means Olivehurst Public Utility District Community Facilities District No. 2004-1 (Wastewater Treatment Facility).

“**Commercial/Other Use Parcel**” means a Taxable Parcel that is not designated for residential use, such as commercial, business park, office, retail, light industrial, industrial, or commercial mixed use.

“**Connection Fee**” means the sewer treatment plant connection fee established by the District.

“**County**” means the County of Yuba, California.

“**Cumulative Backup Special Tax**” means the total amount of Special Tax levied against a Parcel over a period of several Fiscal Years. The Cumulative Backup Special Tax shall not exceed the Maximum One-time Special Tax for the Parcel. If levying the required Backup Special Tax for a Fiscal Year causes the Cumulative Backup Special Tax for a Parcel to exceed the Maximum One-time Special Tax for the Parcel, the Backup Special Tax is reduced for the Parcel until the Cumulative Backup Special Tax is just equal the Maximum One-time Special Tax.

“**Debt Service**” means the total amount of bond principal, interest, and the scheduled sinking fund payments of the Bonds for the CFD.

“**Developed Parcel**” means a Parcel in one of the following Parcel categories that has received from the County the applicable development approval for that Parcel category as follows:

<u>Parcel Category</u>	<u>Development Approval</u>
Single Family Residential	=> - Building Permit
Duplexes/Tri-plexes	=> - Building Permit
Multi-family	=> - Building Permit

Mobile Home	=> - Building Permit
Agricultural Residential	=> - Building Permit
Residential Mixed Use	=> - Building Permit
Commercial/Other Use	=> - Building Permit

Prior to the issuance of a building permit, a Taxable Parcel must pay the Maximum One-time Special Tax. Following payment of the Maximum One-time Special Tax, the Administrator will direct the County Recorder to record a Notice of Cessation of Special Tax. Once a Taxable Parcel has paid the Maximum One-time Special Tax, it has completely fulfilled that Parcel's Special Tax obligation.

"District" means the Olivehurst Public Utility District.

"Duplex/Tri-plex Parcel" means a Parcel with an issued building permit for a duplex or a tri-plex residential use. The number of EDUs assigned to a Duplex/Tri-plex Parcel is determined at building permit issuance.

"EDU" means a sewer treatment service factor that is applied to Commercial/Other Use Parcels to determine the Maximum One-time Special Tax for such Parcel. The factor is derived as a multiple of the typical single family dwelling unit sewer treatment service factor. The method of calculating this factor is discussed in the District's ordinance establishing the Connection Fee. If the calculation is not available in the District's ordinance, the Administrator will determine the appropriate factor to apply to Commercial/Other Use Parcels based on the sewer treatment capacity usage for the Taxable Parcel as determined by the proposed usage as shown in the building permit application.

"Exempt Parcel" means a Parcel within the CFD that has a Backup Special Tax Start Date that is later than June 1 of the current Fiscal Year.

"Fee Prepayment Parcel" means a Parcel for which Connections Fees were paid prior to formation of the CFD. These fees may be paid prior to the issuance of a building permit for construction of a structure. Prepayment of the fee does not guarantee sewer treatment capacity for the Fee Prepayment Parcel. Only the issuance of the building permit guarantees sewer treatment capacity for such Parcel. A property owner must designate the Parcels that are to be considered by the Administrator as Fee Prepayment Parcels each year prior to July 1. A Fee Prepayment Parcel is a Tax-Exempt Parcel. Once a building permit is issued for the Parcel, the Administrator shall direct the County Recorder to record a Notice of Cessation of Special Tax

"Final Map Parcel" means a Parcel created by the recordation of a Final Subdivision Map. Once a Parcel is classified as a Final Map Parcel, it shall not be reassigned to a Parcel category with a lower Special Tax obligation, such as Tentative Map Parcel or Undeveloped Parcel.

"Final Subdivision Map" means a recorded final subdivision map pursuant to the Subdivision Map Act designating individual Single Family Residential Parcels.

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

“Maximum One-time Special Tax” means the greatest amount of Special Tax that can be charged to a Taxable Parcel as shown in **Attachment 1**. Once a Taxable Parcel has paid the One-time Special Tax, it has completely fulfilled that Parcel’s Special Tax obligation. The Administrator shall direct the County Recorder to record a Notice of Cessation of Special Tax when a Developed Parcel has paid the One-time Special Tax. Any Taxable Parcel that has previously paid the Backup Special Tax shall receive a credit against the Maximum One-time Special Tax equal to the amount of Backup Special Tax levied against the Parcel in previous Fiscal Years. *In the event a Parcel is issued a building permit without paying the Maximum One-time Special Tax, such Parcel shall be obligated to pay the Backup Special Tax in each Fiscal Year after discovery of the nonpayment of the Maximum One-time Special Tax until the cumulative amount of Backup Special Tax levied is equal to the Maximum One-time Special Tax that would have been due when the building permit was issued.*

“Maximum One-time Special Tax Revenue” is the greatest amount of revenue from collecting the Maximum One-time Special Tax in a Fiscal Year on a group of Developed Parcels.

“Mixed Use Parcel” means a Parcel with a building permit for a mix of uses, which includes residential uses. The number of EDUs assigned to a Mixed Use Parcel is determined at building permit issuance for the original structure, or by subsequent building permits issued for further tenant improvements.

“Mobile Home Parcel” means a Parcel with a permit for a mobile home. The number of EDUs assigned to the Mobile Home Parcel is determined at issuance of the permit allowing the land use.

“Multi-Family Parcel” means a Parcel with a building permit for multi-family residential use. The number of EDUs assigned to a Multi-Family Parcel is determined at building permit issuance.

“Outstanding Bonds” means the total principal amount of Bonds that have been issued and not retired or defeased.

“Parcel” means any Assessor's Parcel Number in the CFD based on the equalized tax rolls of the County as of January 1 preceding the Fiscal Year.

“Pay-As-You-Go Expenditure” means the use of annual Special Tax revenues that are not needed for Annual Costs (excluding Pay-As-You-Go Expenditures) to pay for Authorized Facilities to be constructed or acquired by the CFD.

“Prepayment” means the complete fulfillment of a Parcel’s Special Tax obligation, as determined by following the procedures in **Section 7**.

“Public Parcel” means any Parcel that is or is intended to be publicly owned, as designated in any final map, that is normally exempt from the levy of general *ad valorem* property taxes under

California law, including public streets, schools, parks, public drainage ways, public landscaping, wetlands, greenbelts, and public open space. All Public Parcels pay a connection fee when a building is connected to the sewer treatment plant.

“Single Family Residential Parcel” means a single family residential lot created by the recordation of a Final Subdivision Map.

“Special Tax(es)” mean(s) the Maximum “One-time “ Special Tax collected or the Backup Special Tax levied under the Act in the CFD.

“Special Tax Stabilization Fund” means a fund that will be established for the purpose of providing additional Special Tax coverage for Debt Service costs. In the event that Maximum One-time Special Tax Revenues in a given Fiscal Year are not adequate to cover Annual Costs, the funds from the Special Tax Stabilization Fund may be used to pay Annual Costs.

“Tax Collection Schedule” means the document prepared by the District for the County Auditor to use in levying and collecting the Backup Special Tax, if required, each Fiscal Year.

“Tax Escalation Factor” means a maximum factor of 3% that may be applied annually in each Fiscal Year after the Base Year to the Maximum One-time Special Tax Rate and the Backup Special Tax Rate for a Taxable Parcel beginning the Fiscal Year following the Base Year.

“Taxable Parcel” means any Parcel that is not a Tax-Exempt Parcel.

“Tax-Exempt Parcel” means a Parcel not subject to the Special Tax or the Backup Special Tax. Tax-Exempt Parcels are:

- (i) Public Parcels,
- (ii) Parcels used solely for recreation and/or open spaces uses, including but not limited to, golf courses and common open space Parcels,
- (iii) Parcels that have paid the Connection Fee during the Cash Discount Payment Period,
- (iv) Parcels identified by property owners as a Fee Prepayment Parcel prior to July 1 of each year,
- (v) Parcels classified as Exempt Parcels for a given Fiscal Year,
- (vi) Parcels that have paid the Maximum One-time Special Tax as a Developed Parcel, and
- (vii) Parcels for which the Special Tax has been fully prepaid under **Section 7** hereof.

“Tentative Map” means a tentative subdivision map as defined by the Subdivision Map Act.

“Tentative Map Parcel” means a Parcel with an approved Tentative Map and no higher level of development entitlement as defined in this Tax Formula. Once a Parcel is designated as a Tentative Map Parcel, it shall not be reassigned to a Parcel category with a lower Special Tax obligation, such as an Undeveloped Parcel.

“Undeveloped Commercial/Other Use Parcel” means a Taxable Parcel that is not designated for residential use, such as commercial, business park, office, retail, light industrial, industrial, or commercial mixed use, for which a building permit has not been issued.

“Undeveloped Residential Parcel” means a Taxable Parcel designated for single family residential uses that is not a Developed Parcel, Final Map Parcel, or Tentative Map Parcel.

“Unit(s)” means a Single Family Residential Parcel, or the number of individual residential dwelling units created by a building permit for a multi-family, duplex, half-plex, or triplex use. A Parcel may be assigned Units for each Single Family Residential Parcel created by a Final Subdivision Map for which individual Assessor Parcel Numbers have not yet been assigned by the County Assessor. Units are also the number of single family residential lots approved in a Tentative Map.

3. Determination of Parcels Subject to Special Tax

The District shall prepare a list of the Parcels subject to the Special Tax. The District shall identify the Taxable Parcels from a list of all Parcels within the CFD boundary by excluding all Tax-Exempt Parcels and Exempt Parcels as of June 1 of the current Fiscal Year.

4. Termination of the Special Tax and/or the Backup Special Tax

The Maximum One-time Special Tax and/or the Backup Special Tax will be levied and collected for as long as needed to pay the principal and interest on debt and other costs incurred in order to construct the Authorized Facilities and to pay the Annual Costs. However, in no event shall the Special Tax and/or the Backup Special Tax be levied on any Parcel in the CFD after Fiscal Year 2052-2053.

A Parcel may be subject to the Backup Special Tax until that time the Cumulative Backup Special Tax is equal to the Maximum One-time Special Tax for such Parcel. If a Parcel pays a Cumulative Backup Special Tax that is equal to the Maximum One-time Special Tax for a Parcel (that would be payable at building permit), then such Parcel has fulfilled the Special Tax obligation for the CFD, and the Administrator shall direct the County Recorder to record a Notice of Cessation of Special Tax.

When all Annual Costs incurred by the CFD have been paid, the Special Tax and/or the Backup Special Tax shall cease to be collected or levied. The Administrator shall direct the County Recorder to record a Notice of Cessation of Special Tax when a Developed Parcel has paid the One-time Special Tax. Such notice will state that the obligation to pay the Special Tax has ceased and that the lien imposed by the Notice of Special Tax Lien is extinguished. The Notice of Cessation of Special Tax shall additionally identify the book and page of the Book of Maps of Assessment and Community Facilities Districts where the map of the boundaries of the CFD is recorded.