

OLIVEHURST PUBLIC UTILITY DISTRICT

RESOLUTION NO. 2069

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
OLIVEHURST PUBLIC UTILITY DISTRICT ESTABLISHING THE
OLIVEHURST PUBLIC UTILITY DISTRICT COMMUNITY FACILITIES DISTRICT
NO. 2004-1 (WASTEWATER TREATMENT FACILITY) AND CALLING AN
ELECTION FOR THE PURPOSE OF SUBMITTING THE LEVY OF THE SPECIAL
TAX AND THE ESTABLISHMENT OF AN APPROPRIATIONS LIMIT TO THE
QUALIFIED ELECTORS OF THE COMMUNITY FACILITIES DISTRICT**

WHEREAS, the Board of Directors (the "Board") of the Olivehurst Public Utility District (the "District"), on February 19, 2004, adopted its Resolution No. 2063 (the "Resolution of Intention") (i) declaring its intention to establish Olivehurst Public Utility District Community Facilities District No. 2004-1 (Wastewater Treatment Facility) (the "CFD") pursuant to 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"), (ii) proposing to levy a special tax therein for the purpose of providing for the financing of the construction and acquisition of improvements to its wastewater treatment facility (the "Facilities") described in Exhibit A hereto, and (iii) calling a public hearing on the establishment of the CFD;

WHEREAS, Cresleigh Homes Corporation (owner of the property known as Creekside Village and Woodside Village) and Beazer Homes (owner of a portion of the property known as Rio Del Oro) have prepaid the wastewater facility capacity fees with respect to such property, and, as a result, the Board will exclude such property from the CFD;

WHEREAS, those properties originally proposed to be included within the CFD that have not completed their annexation to the District (namely, those properties known as Draper Ranch North, Draper Ranch South, Summerfield, and Plumas Lake Phase 1) and, as a result, may not now be included within the CFD;

WHEREAS, pursuant to the Act and the Resolution of Intention, a noticed public hearing was convened by the Board on March 25, 2004, at the hour of 5:00 p.m. at the regular meeting place of the Board, 1970 9th Avenue, Olivehurst, California, relative to the establishment of the CFD;

WHEREAS, at the hearing, the testimony of all interested persons, including all taxpayers, property owners, and registered voters within the CFD, desiring to be heard on the establishment of the CFD, the extent thereof, the furnishing of specified types of facilities, the proposed special tax, the establishment of an appropriations limit for the CFD, or any other matters set forth in the Resolution of Intention was heard and a full and fair hearing was conducted thereon;

WHEREAS, written protests against the levying of the special tax have not been filed either by 50% or more of the registered voters or six registered voters (whichever is more)

residing within the territory of the CFD or by the owners of one-half or more of the area of the land within the CFD that is not exempt from the special tax;

WHEREAS, on the basis of all of the foregoing, the Board has determined at this time to establish the CFD and to submit to the qualified electors of the CFD the levy of the special tax therein (as such tax is more particularly described in Exhibit B hereto) and the establishment of an appropriations limit for the CFD;

WHEREAS, the Board has received a written instrument from each landowner in the CFD consenting to the shortening of election time requirements, waiving analysis and arguments, and waiving all notice requirements relating to the conduct of the election;

WHEREAS, the Deputy Clerk has concurred in the election date set forth herein;

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

1. **Recitals.** The foregoing recitals are true and correct.
2. **No Majority Protest.** The proposed special tax to be levied in the CFD has not been precluded by majority protest pursuant to Section 53324 of the Act.
3. **Establishment of CFD.** As proposed in the Resolution of Intention, a community facilities district is hereby established pursuant to the Act, designated "Olivehurst Public Utility District Community Facilities District No. 2004-1 (Wastewater Treatment Facility)."
4. **Finding of Procedural Regularity.** The Board finds and determines that all prior proceedings had and taken by the Board with respect to the formation of the CFD are valid and in conformity with requirements of the Act.
5. **Boundaries of CFD.** The boundaries of the CFD shall be as set forth in the map of the proposed boundaries of the CFD that was filed with the Yuba County Recorder on March 10, 2004 in Book 1 of Maps of Assessment and Community Facilities Districts, at Page 43, less the property shown on the map as Creekside Village, Woodside Village, Beazer Homes Rio Del Oro, Draper Ranch North, Draper Ranch South, Summerfield, and Plumas Lake Phase 1. The Board hereby directs District staff to prepare and file an amended map of the boundaries of the CFD to reflect the exclusion of such property.
6. **Description of Facilities.** The Facilities to be financed by the CFD are set forth 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 construction, completion, and inspection of the Facilities.

7. **Special Tax.** As stated in the Resolution of Intention, 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, which includes modifications to the rate and method specified in the Resolution of Intention to reduce the amount required to prepay the special tax obligation during the period prior to the Board's action to authorize issuance of bonds. 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.
8. **Apportionment of Tax.** The special tax as apportioned to each parcel is based on the cost of making the Facilities available to each parcel, or other reasonable basis, and is not based on or upon the ownership of real property.
9. **Tax Roll Preparation.** The office of the General Manager, 1970 9th Avenue, Olivehurst, California 95961, telephone 530-743-0317, is hereby designated as the office that will be responsible for annually preparing a current roll of special tax levy obligations by assessor's parcel number and that will be responsible for estimating future special tax levies pursuant to Government Code section 53340.2. The General Manager may cause these functions to be performed by his deputies, assistants, or other designated agents.
10. **Appropriations Limit.** The Board proposes that the appropriations limit, as defined by Article XIII B, Section 8(h), of the Constitution of the State of California, for the CFD be established in the amount of special taxes collected.
11. **Accountability Measures.** Pursuant to Sections 50075.1 and 53411 of the California Government Code, the District shall create separate accounts into which tax and bond proceeds will be deposited; and the General Manager annually shall file a report with the Board that will state (a) the amount of funds collected and expended and (b) the status of the Facilities financed in the CFD.
12. **Special Election; Voting Procedures.** The Board hereby submits the questions of levying the special tax and the establishment of the annual appropriations limit for the CFD to the qualified electors within the CFD, in accordance with and subject to the Act. The special election shall be held on Tuesday, April 13, 2004, and shall be conducted as follows:

(a) **Qualified Electors.** The Board hereby determines that the Facilities are necessary to meet increased demands placed upon the District and other local agencies as a result of development occurring within the boundaries of the CFD. Because the special tax will not be apportioned in any tax year on any portion of property in residential use in that tax year, the

qualified electors shall be the landowners within the CFD, and each landowner who was 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 CFD.

(b) Consolidation of Elections; Combination of Propositions on Ballot. As authorized by Government Code section 53351(h), the elections on the questions of levying the special tax, establishing an appropriations limit, and incurring a bonded indebtedness for the CFD shall be consolidated; and, as authorized by Government Code Section 53353.5, the three propositions shall be combined into a single ballot proposition for submission to the voters. The combined ballot proposition shall read as shown in the form of the ballot attached hereto as Exhibit C.

(c) Mail Ballot Election. Pursuant to Government Code section 53327.5, the election shall be conducted as a mail ballot election. The Board hereby ratifies the Deputy Clerk's delivery to each landowner in the CFD of a ballot in the form set forth in Exhibit C.

(d) Return of Ballots. The Deputy Clerk shall accept the ballots of the landowners no later than 4:00 p.m. on April 13, 2004, which is the day of the election. The Deputy Clerk shall have available ballots that may be marked at the Deputy Clerk's office on the election day by voters. Once all qualified electors have voted, the Deputy Clerk may close the election.

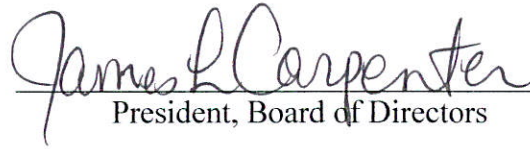
(e) Canvass of Election. The Deputy Clerk shall commence the canvass of the returns of the special election as soon as the election is closed at the Deputy Clerk's office and at the regular meeting place of the Board. At the conclusion of the canvass, the Deputy Clerk shall declare the results of the election.

(f) Declaration of Results. The Board shall declare the results of the special election following the completion of the canvass of the returns and shall cause to be inserted into its minutes a statement of the results of the special election as ascertained by the canvass of the returns.

13. **Filing of Resolution and Amended Map with Deputy Clerk.** The Board hereby directs the Deputy Clerk of the Board to file a copy of this resolution and the amended map of the boundaries of the CFD in her office.
14. **Lien to Secure Special Tax.** Upon a determination by the Board that two-thirds of the votes cast upon the question of levying the special tax were in favor thereof, the Deputy Clerk shall record the notice of special tax lien provided for in Section 3114.5 of the California Streets and Highways Code. Upon recordation of the notice of special tax lien, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the CFD, and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien cancelled in accordance with law or until collection of the tax by the Board ceases.

PASSED AND ADOPTED this 25th day of March 2004.

OLIVEHURST PUBLIC UTILITY DISTRICT



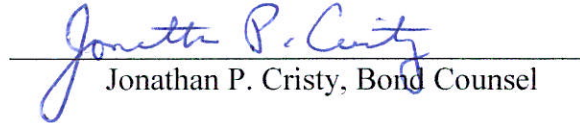
President, Board of Directors

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 25th day of March 2004, by the following vote:

AYES, AND IN FAVOR THEREOF: Directors Patty, Donahue, Brown, Miller, and Carpenter.

NOES, : None.

ABSTAIN : None.

ABSENT : None.

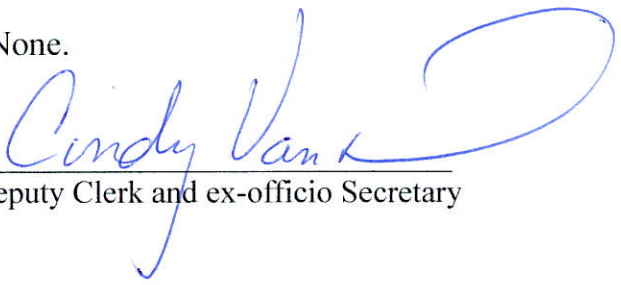

Deputy Clerk and ex-officio Secretary

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

**Olivehurst Public Utility District
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.

“**Capacity Fee**” means the sewer treatment plant capacity fee established by the District.

“**Cash Discount Payment Period**” means that period of time ending thirty (30) days after a written demand for payment is deposited in the mail by the Administrator (General Manager) to those seeking the benefit prepaying the Capacity Fee for a Parcel or Fee Prepayment Parcel. Once a Parcel or Fee Prepayment Parcel has paid the Capacity 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.

“**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 Capacity 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 Capacity Fees were paid during the Cash Discount Payment Period. 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**. The Administrator may collect an amount up to the Maximum One-time Special tax in a Fiscal Year. 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.