

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: SEE BELOW

DATE: August 3, 2018

Approved

D. DSYL

Date

8/3/18

COUNCIL DISTRICT: 8

SUBJECT: COMMUNITY FACILITIES DISTRICT NO. 17 (CAPITOL EXPY - EVERGREEN PLACE) PUBLIC HEARING AND SPECIAL ELECTION

RECOMMENDATION

Conduct a Public Hearing, a special election, and take the following actions related to the formation of Community Facilities District No. 17 (Capitol Expy - Evergreen Place):

(a) Adopt a resolution:

- (1) Establishing Community Facilities District No. 17 (Capitol Expy - Evergreen Place);
- (2) Authorizing the levy of a special tax;
- (3) Preliminarily establishing an appropriations limit; and
- (4) Submitting the levy of special tax to the qualified electors.

(b) Adopt a resolution:

- (1) Declaring the results of the special election; and
- (2) Contingent upon two-thirds qualified voter approval, determining to form Community Facilities District No. 17 (Capitol Expy - Evergreen Place); and
- (3) Directing the City Clerk to record a notice of special tax lien.

If approved by the qualified voters in Community Facilities District No. 17 (Capitol Expy - Evergreen Place):

(c) Approve an ordinance imposing the levy of special taxes for Community Facilities District No. 17 (Capitol Expy - Evergreen Place).

OUTCOME

Approval of the formation of Community Facilities District No. 17 (Capitol Expy - Evergreen Place) will provide funding for the operation and maintenance of unique improvements needed for the development of this site.

BACKGROUND

On December 9, 2014, Council adopted an ordinance rezoning certain real property on the easterly side of East Capitol Expressway, southerly of Quimby Road, and northerly of Meadow Fair Park through Planned Development Rezoning File No. PDC10-022 to allow up to 250 residential units, up to 344,000 square feet of commercial/retail uses, and 17 acres of public parkland on an 81 gross acre site. This development is more commonly known as Evergreen Circle. The public improvements proposed to be maintained by the community facilities district are enhanced landscape and hardscape in median islands, roundabouts and some parkstrips, plus enhanced crosswalks.

On June 12, 2018, Council adopted a resolution of intention to form Community Facilities District No. 17 (Capitol Expy - Evergreen Place), hereinafter “CFD 17,” at the request of the landowners/developers, hereinafter “Owners”, pursuant to the City of San José Community Facilities District Financing Procedure which references and incorporates Mello-Roos Community Facilities Act of 1982, hereinafter “Law”, to authorize the levy of a special tax to fund the operation and maintenance of the enhanced improvements. The resolution of intention contains the Rate and Method of Apportionment which specifies the maximum tax on taxable land within CFD 17. The special tax on undeveloped property is calculated on a per acre basis as shown on Table 1 below. When land develops, residential property will transition to being taxed per dwelling unit and non-residential property will continue to be taxed per acre but at the developed non-residential rate as shown on Table 1. If approved, the proposed special tax will commence in Fiscal Year 2019-2020 and will be adjusted by the Consumer Price Index annually.

**Table 1
Maximum Special Tax**

Taxable Property	Taxable Unit	2019-2020 Maximum Special Tax
Residential	Dwelling Unit	\$396.64
Non-Residential	Acre	\$880.48
Undeveloped	Acre	\$586.98

ANALYSIS

At this August 14, 2018 meeting, Council will open a public hearing to receive and record any public comments. If there is not a majority protest from the qualified electors, in this case the landowners, at the close of the public hearing, Council may adopt a resolution of formation that includes the maximum special tax and authorizes the levy of a special tax within CFD 17. As permitted by law, all qualified electors within CFD 17 have submitted waivers to expedite the election process. The unanimous waiver by the qualified electors, along with the concurrence of the City Clerk as the election officer, authorizes the City to hold the election immediately upon the close of the August 14, 2018 public hearing for the formation of CFD 17.

To accommodate this expedited process, the notice and ballots were sent to the qualified electors on July 16, 2018. Following the adoption of the resolution authorizing the tax levy, Council can conduct a special election for the landowners to vote on the special tax, and can direct the City Clerk to tabulate the ballots and report the results. If the election results in two-thirds voter approval, the final actions for Council are the adoption of a resolution declaring the ballot tabulation results and the approval of an ordinance imposing the levy of a special tax on those properties within CFD 17.

The special tax for CFD 17 shall be collected at the same time and the same manner as ordinary ad valorem property taxes, provided that CFD 17 may in any particular case bill the taxes directly to the landowners instead of through the County tax roll. The Director of Public Works of the City of San José, or another officer as designated by the City Manager, is the City officer responsible for preparing annually a roll of special tax levy obligations by assessor's parcel number and who will be responsible for estimating future special tax levies pursuant to Section 53340.2 of the California Government Code. The special tax includes an annual escalator not to exceed the percentage change in the Consumer Price Index.

Three attachments as listed below provide detail for the district:

Attachment A	Proposed Boundaries Map
Attachment B	Description of Proposed Services
Attachment C	Rate and Method of Apportionment of Special Tax

EVALUATION AND FOLLOW-UP

If the formation is approved by qualified voters, a notice of special tax lien will be filed with the Santa Clara County Recorder's Office. The proposed special tax will commence for the 2019-2020 fiscal year. The special tax rate will be adjusted in succeeding years by the average annual percentage change in the Consumer Price Index for the San Francisco-Oakland-San José area.

PUBLIC OUTREACH

These actions were initiated at the request and with support from the Owners and prepared by staff. City staff has met with the Owners regularly regarding the district and their development plans. The ballots and Notice of Public Hearing were mailed to the qualified electors on July 16, 2018. The Notice of Public Hearing will be published in the *San José Post Record* by August 7, 2018.

COORDINATION

This memorandum, related documents and resolutions were prepared in coordination with the Departments of Transportation, the City Attorney's Office, and City Clerk's Office.

COMMISSION RECOMMENDATION/INPUT

The Planned Development Rezoning File No. PDC10-022 to allow up to 250 residential units, up to 344,000 square feet of commercial/retail uses, and 17 acre of parkland was presented to the Planning Commission on November 19, 2014, and the Planning Commission voted 7-0-0 to recommend approval to the City Council.

FISCAL/POLICY ALIGNMENT

These actions comply with Council-approved budget strategy, as staff costs are funded by Owners' deposit. If district formation is approved by the qualified voters, the costs of services provided through the district will be funded through annual special taxes on the properties within the district.

COST SUMMARY/IMPLICATIONS

An Owners' deposit of \$37,629 was previously recognized in 2017-2018 to support staffing costs associated with district formation. Should all funds be exhausted prior to the certification of election results, the Owners must provide additional funds to continue the process. Any unused funds will be returned. Accordingly, no further budget action is recommended.

Subsequent budget action to recognize and appropriate special tax revenue for the installation and maintenance of improvements pursuant to the establishment of Community Facilities District No. 17 (Capitol Expy - Evergreen Place) will be brought forward during development of the 2019-2020 Operating Budget.

HONORABLE MAYOR AND CITY COUNCIL

August 3, 2018

Subject: Community Facilities District No. 17 (Capitol Expy - Evergreen Place) Public Hearing and Election

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CEQA

Determination of Consistency to the Evergreen East Hills Vision Strategy Supplemental (Resolution No. 74742), and Addenda thereto, File No. PDC10-022.

/s/

MATT CANO

Director of Public Works

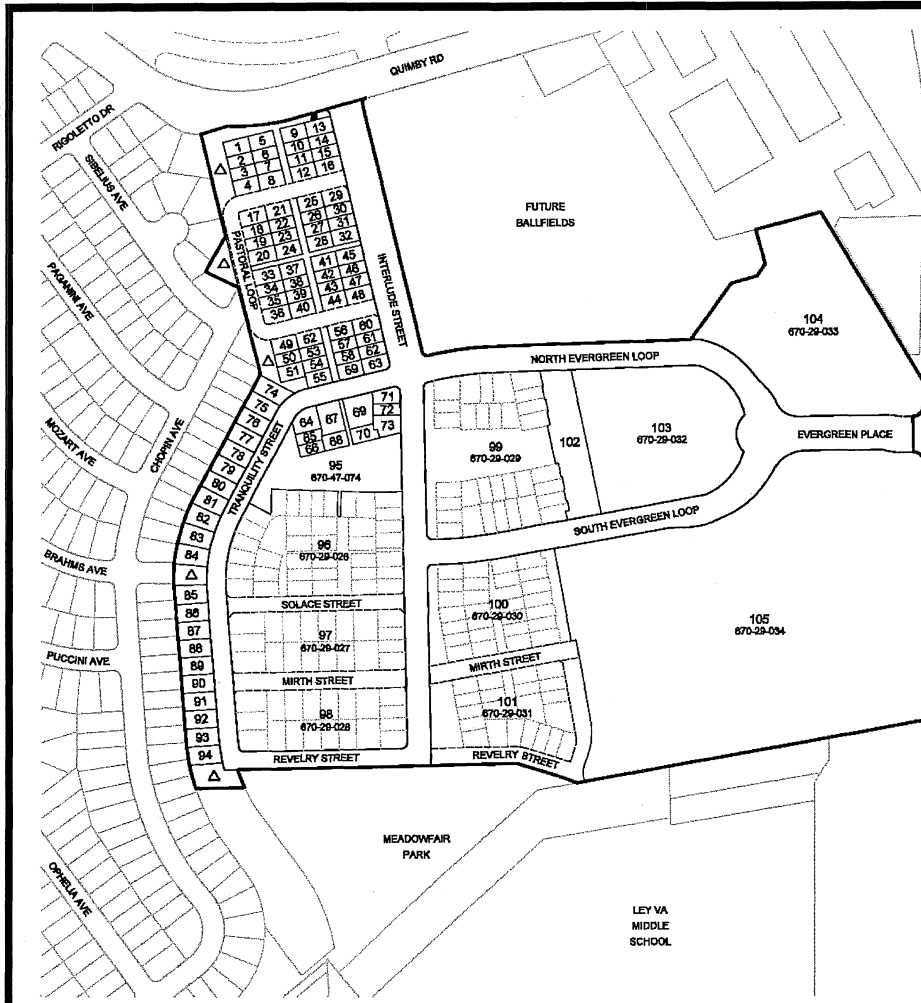
Attachments:

Attachment A - Proposed Boundaries Map

Attachment B - Description of Services

Attachment C - Rate and Method of Apportionment of Special Tax

For questions please contact Thomas Borden, Program Manager, at (408) 535-6831.



REF. NO.	APN	REF. NO.	APN
1	670-47-018	49	670-47-048
2	670-47-015	50	670-47-050
3	670-47-014	51	670-47-051
4	670-47-013	52	670-47-052
5	670-47-012	53	670-47-053
6	670-47-011	54	670-47-054
7	670-47-010	55	670-47-055
8	670-47-009	56	670-47-056
9	670-47-008	57	670-47-057
10	670-47-007	58	670-47-058
11	670-47-006	59	670-47-059
12	670-47-005	60	670-47-060
13	670-47-004	61	670-47-061
14	670-47-003	62	670-47-062
15	670-47-002	63	670-47-063
16	670-47-001	64	670-47-071
17	670-47-028	65	670-47-070
18	670-47-030	66	670-47-069
19	670-47-031	67	670-47-072
20	670-47-032	68	670-47-068
21	670-47-026	69	670-47-073
22	670-47-029	70	670-47-067
23	670-47-027	71	670-47-064
24	670-47-028	72	670-47-065
25	670-47-021	73	670-47-066
26	670-47-022	74	670-46-051
27	670-47-023	75	670-46-002
28	670-47-024	76	670-46-003
29	670-47-017	77	670-46-004
30	670-47-018	78	670-46-005
31	670-47-019	79	670-46-006
32	670-47-020	80	670-46-007
33	670-47-036	81	670-46-008
34	670-47-036	82	670-46-009
35	670-47-034	83	670-46-010
36	670-47-033	84	670-46-011
37	670-47-040	85	670-46-012
38	670-47-039	86	670-46-013
39	670-47-038	87	670-46-014
40	670-47-037	88	670-46-015
41	670-47-044	89	670-46-016
42	670-47-043	90	670-46-017
43	670-47-042	91	670-46-018
44	670-47-041	92	670-46-019
45	670-47-049	93	670-46-020
46	670-47-047	94	670-46-021
47	670-47-046	95	670-46-022
48	670-47-045	102	670-29-035

CERTIFICATIONS

(1) CITY CLERK
 FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF SAN JOSE THIS _____ DAY OF _____ 2018.

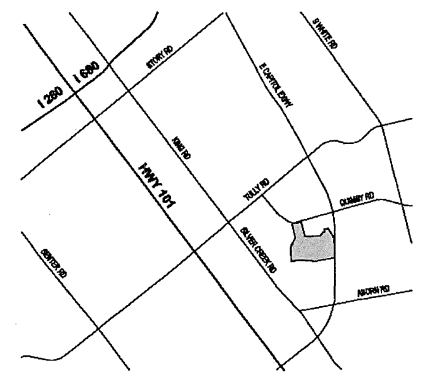
 TOM J. TABER, CMC
 CITY CLERK

(2) CITY COUNCIL
 I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING THE PROPOSED BOUNDARIES OF COMMUNITY FACILITIES DISTRICT NO. 17 (CAPITOL EXPY - EVERGREEN PLACE), CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF SAN JOSE AT A REGULAR MEETING THEREOF, HELD ON THE _____ DAY OF _____, 2018 BY ITS RESOLUTION NO. _____.

 TOM J. TABER, CMC
 CITY CLERK

(3) COUNTY RECORDER
 FILED THIS _____ DAY OF _____, 2018, AT THE HOUR OF _____ O'CLOCK _____ M. IN BOOK _____ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES AT (PAGES) _____, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.
 RECORDER'S SERIES NO. _____ FEE PAID: _____

REGINA ALCONCENDAS
 COUNTY RECORDER, COUNTY OF SANTA CLARA

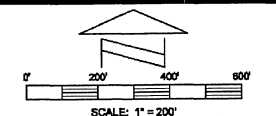


LOCATION MAP



LEGEND

	PROPOSED BOUNDARY LINE		STREET RIGHT OF WAY
	REFERENCE NUMBER		PROPERTY LINE
	ASSESSOR'S PARCEL NUMBER		PRIVATE STREET
	RESIDENTIAL COMMON AREA		FUTURE PROPERTY LINE



CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
**PROPOSED BOUNDARIES OF
 COMMUNITY FACILITIES DISTRICT NO. 17
 (CAPITOL EXPY - EVERGREEN PLACE)**
 FISCAL YEAR 2018-2019

ATTACHMENT B

CITY OF SAN JOSE COMMUNITY FACILITIES DISTRICT NO. 17 (CAPITOL EXPY – EVERGREEN PLACE)

DESCRIPTION OF SERVICES

The Services proposed to be financed by Community Facilities District No. 17 (Capitol Expy – Evergreen Place) (the “CFD No. 17”) of the City of San José will provide for the maintenance of various improvements associated and approved within the Evergreen Area. Maintenance of the improvements may include but will not be limited to necessary repairs, replacements, equipment, supplies, water, fuel, power, electricity, supervision and all other items needed for safe and proper maintenance of the items set forth below. This list of items identifies those improvements and amenities which are authorized to be funded by CFD No. 17; however, not all items on this list are guaranteed to be funded by the CFD.

Items Authorized to be Maintained

- Parkstrip landscape fronting the residential development and regional park along the public right-of-way (Quimby Road excluded)
- Median Island landscape
- Roundabout landscape
- Pork chop island landscape
- Tree maintenance within district maintained landscape
- Hardscape in district maintained median islands, roundabout, pork chop islands, and parkstrips
- Decorative crosswalks along residential development
- Graffiti removal on district maintained public improvements

ATTACHMENT C

**CITY OF SAN JOSE
COMMUNITY FACILITIES DISTRICT NO. 17
(CAPITOL EXPY – EVERGREEN PLACE)**

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax, hereinafter defined, shall be levied on all Assessor's Parcels of Taxable Property in Community Facilities District No. 17 (Capitol Expy – Evergreen Place) of the City of San Jose ("CFD No. 17") and collected each Fiscal Year commencing in Fiscal Year 2019-2020 in an amount determined by the City Council of the City of San Jose, through the application of this Rate and Method of Apportionment as described below. All of the real property in CFD No. 17, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre" or "Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final map, parcel map, condominium plan, or other map or plan recorded with the County. The square footage of an Assessor's Parcel is equal to the Acreage of such parcel multiplied by 43,560.

"Act" means, collectively, the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 commencing at Section 53311 of the California Government Code, as incorporated into and modified by Chapter 14.27 of Title 14 of the Municipal Code of the City.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 17: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or designee thereof or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 17, or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 17 for any other administrative purposes of CFD No. 17, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure as a result of delinquent Special Taxes.

"Assessor's Parcel" or "Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

ATTACHMENT C

“Assessor’s Parcel Map” means an official map of the Assessor of the County designating parcels by Assessor’s Parcel number.

“Authorized Maintenance Services” means, for each Fiscal Year, the street maintenance (including maintenance of trees, landscape and hardscape) and other maintenance services eligible to be funded by CFD No. 17, as defined in the Resolution of Intention.

“Building Permit” means, full structural building permits as well as partial permits such as foundation-only permits.

“CFD Administrator” means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

“CFD No. 17” means Community Facilities District No. 17 (Capitol Expy – Evergreen Place) of the City of San José.

“City” means the City of San José.

“Consumer Price Index” or “CPI” means, for each Fiscal Year, the prior calendar year’s annual average consumer price index published by the U.S. Bureau of Labor Statistics for All Urban Consumers in the San Francisco-Oakland-San Jose Area. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose Area.

“Council” means the City Council of the City, acting as the legislative body of CFD No. 17.

“County” means the County of Santa Clara.

“Developed Property” means, for each Fiscal Year, all Taxable Property for which a Planning or Building has been issued on or before June 30 of the prior Fiscal Year. Notwithstanding the foregoing, (a) if a building permit is revoked, expired or otherwise cancelled and a new building permit is issued for the same property, then the building type as indicated on the new building permit shall thereafter be used for purposes of determining the Land Use Class, and (b) if a building permit is revoked, expired or otherwise cancelled and no new building permit is issued for the same property, then the property will continue to be considered Developed Property and taxed based on the original building permit.

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

“Land Use Class” means any of the classes in Section C below.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C below, that can be levied in any Fiscal Year on each Assessor’s Parcel within the boundaries of CFD No. 17.

ATTACHMENT C

“Non-Residential Property” means a Parcel of Developed Property within the boundaries of CFD No. 17 for which a Planning, Building, or Public Works permit(s) was issued for a non-residential use.

“Planning Permit” means a tentative map, parcel map, conditional use permit, site development permit, planned development permit, development agreement, or special use permit, or any discretionary permit excluding general plan amendments, zoning and rezoning, annexation, specific plans, and area development policies.

“Public Property” means property within the boundaries of CFD No. 17 owned by, dedicated to, or irrevocably offered for dedication to the federal government, the State of California, the County, the City, or any other public agency, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

“Rate and Method of Apportionment” means this Rate and Method of Apportionment for CFD No. 17.

“Residential Property” means any Parcel of Developed Property within the boundaries of CFD No. 17 for which a building permit for new construction has been issued for purposes of constructing one or more residential dwelling units.

“Resolution of Formation” means the Council resolution declaring the results of the special election for CFD No. 17.

“Special Tax” means the special tax to be levied in each Fiscal Year on each Assessor’s Parcel of Taxable Property within CFD No. 17 to fund the Special Tax Requirement, but in no event greater than the Maximum Special Tax.

“Special Tax Requirement” means that amount required in any Fiscal Year for CFD No. 17 to: (i) pay for Authorized Maintenance Services, (ii) create a sinking fund for replacement of facilities that will be maintained by Authorized Maintenance Services, (iii) pay Administrative Expenses of CFD No. 17, (iv) cure delinquencies in the payment of Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected.

“State” means the State of California.

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of CFD No. 17 which are not exempt from the Special Tax pursuant to law or Section E below.

“Undeveloped Property” means, for each Fiscal Year, all Taxable Property not classified as Developed Property or Property Owner Association Property.

ATTACHMENT C

B. ASSIGNMENT TO LAND USE CLASSES

Each Fiscal Year, all Taxable Property shall be classified as Developed Property, Undeveloped Property and Public Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment determined pursuant to Sections C and D below.

C. MAXIMUM SPECIAL TAX RATES

The Maximum Special Tax for each Land Use Class for Fiscal Year 2019-2020 is as shown below.

Land Use Class	Taxable Property	Taxable Unit	Maximum Special Tax
1	Residential	Dwelling Unit	\$396.64
2	Non-Residential	Acre	\$880.48
3	Undeveloped	Acre	\$586.98

On each July 1, commencing on July 1, 2021, the Maximum Special Tax shall be adjusted based on the prior calendar year's average annual percentage change in the Consumer Price Index. Any increase in the Maximum Special Tax is subject to a maximum annual increase of five percent (5%) per Fiscal Year.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2019-2020 and for each following Fiscal Year, the Council or its designee shall determine the Special Tax Requirement and levy the Special Tax until the amount of Special Tax levy equals the Special Tax Requirement each Fiscal Year as follows:

- Step 1: Determine the Special Tax Requirement for the Fiscal Year in which the Special Tax will be collected.
- Step 2: Calculate the total Special Tax revenues that could be collected from Developed and Undeveloped Property within the CFD based on application of the Maximum Special Tax rates determined pursuant to Section C above.
- Step 3: If the amount determined in Step 1 is greater than the amount calculated in Step 2, levy the Maximum Special Tax on all Parcels of Developed and Undeveloped Property pursuant to Section C above. Even though the Special Tax Requirement is greater than the total Special Tax revenues that can be collected in the CFD, only the Maximum Special Tax may be collected unless a higher Maximum Special Tax

ATTACHMENT C

is approved by two-thirds of the Electors voting in an election to increase the Maximum Special Tax.

If the amount determined in Step 1 is equal to the amount calculated in Step 2, levy the Maximum Special Tax on all Parcels of Developed and Undeveloped Property pursuant to Section C above.

If the amount determined in Step 1 is less than the amount calculated in Step 2, levy the Special Tax on all Parcels of Developed and Undeveloped Property in equal percentages up to 100% of the Maximum Special Tax for each Parcel until the amount of the Special Tax levy equals the Special Tax Requirement for that Fiscal Year

E. EXEMPTIONS / LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment, no Special Tax shall be levied on land that is Public Property, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos Community Facilities Act of 1982.

F. MANNER OF COLLECTION

The Special Tax will be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that CFD No. 17 may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations, and may covenant to foreclose and may actually foreclose on delinquent Assessor's Parcels as permitted by the Act.

G. TERM OF SPECIAL TAX

The Special Tax shall be levied in perpetuity to fund the Special Tax Requirement, unless no longer required to pay for Authorized Maintenance Services as determined at the sole discretion of the Council or as may be otherwise terminated pursuant to the Act.