

**ORDINANCE NO. 2001-01**

**ORDINANCE OF COMMUNITY FACILITIES DISTRICT NO. 95-1 OF THE DEL MAR UNION SCHOOL DISTRICT AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN TERRITORY ANNEXED TO COMMUNITY FACILITIES DISTRICT NO. 95-1**

**WHEREAS**, on February 21, 2001, the Board of Trustees ("Board") of the Del Mar Union School District ("DMUSD"), adopted Resolution No. CFD 95-25 stating its intention to annex territory ("Annexation No. 2001-1") to Community Facilities District No. 95-1 of the Del Mar Union School District ("CFD 95-1") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, ("Act"); and

**WHEREAS**, in March, 2001, CFD No. 95-1 completed proceedings for the authorization for annexation of certain specified territory into CFD No. 95-1 pursuant to the provisions of Resolution Nos. CFD 95-25 and CFD 95-26, which territory is described within documents, maps and within Resolution No. CFD 95-27 and is hereinafter referred to as the "Subject Property"; and

**WHEREAS**, proceedings for the authorization for levying the special taxes and annexing such Subject Property into CFD No. 95-1 by the owners of such Subject Property have been completed pursuant to the provisions and directives of Resolution Nos. CFD 95-25 and CFD 95-26

**WHEREAS**, the Board, subsequent to such proceedings, adopted Resolution No. CFD 95-27, on April 25, 2001, making determinations and providing for the annexation of the Subject Property to CFD No. 95-1, which Resolution No. CFD 95-27 included a description of the Subject Property, the Rate and Method of Apportionment of Special Taxes to be levied within the annexed territory; and

**WHEREAS**, the Subject Property was annexed into CFD No. 95-1 under the provisions of the Act and the provisions of Resolution No. CFD 95-27.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE DEL MAR UNION SCHOOL DISTRICT, ACTING AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 95-1, AS FOLLOWS:**

**Section 1.** By the passage of this Ordinance, the Board authorizes the levy of a special tax pursuant to the formula set forth in Exhibit "A," attached hereto and incorporated by reference, in an amount necessary to pay all amounts payable with respect to the bonded indebtedness and other obligations, and to finance school facilities to benefit the property concerned, within the boundaries of the Subject Property annexed to CFD No. 95-1, which boundaries are described in Resolution No. CFD 95-27.

**Section 2.** That the Board is hereby further authorized each year, by resolution, to determine the specific special tax rate and amount to be levied for the next fiscal year, except that the special tax rate to be levied shall not exceed that as set forth in Exhibit "A."

**Section 3.** Pursuant to the provisions of the Act, properties or entities of the state, federal or other local governments shall be exempt from the above authorized special tax except that when property not otherwise exempt from the above-authorized special tax levied pursuant to the Act is acquired by a public entity through a negotiated transaction, or by gift or devise, the above authorized special tax shall, notwithstanding this Ordinance, continue to be levied on the property acquired and shall be enforceable against the public entity that acquired the property.

**Section 4.** No other properties or entities are exempt from the above authorized special tax unless the properties or entities are expressly exempted in Resolution No. CFD 95-25 or the Rate and Method of Apportionment of Special Tax.

**Section 5.** All of the collections of the above authorized special tax shall be used as provided for in the Act and Resolution No. CFD 95-25.

**Section 6.** The above-authorized special tax may be collected in the same manner as ordinary ad valorem taxes are collected and may be subject to the same penalties and the same procedure, sale, and lien priority in cases of delinquency as provided for ad valorem taxes, or another procedure may be adopted by the Board.

**Section 7.** The tax collector may deduct reasonable administration costs incurred in collecting the above authorized special tax.

**Section 8.** As a cumulative remedy, if any amount levied pursuant thereto as a special tax for payment of bond interest or principal together with any penalties and other charges accruing under this Ordinance of DMUSD are not paid when due, the Board may, not later than four (4) years after the due date of the last installment of principal, order that the same be collected by an action brought in the superior court to foreclose any lien therefor.

**Section 9.** The President and Clerk of DMUSD shall sign this Ordinance and the Clerk of the Board shall cause the same to be published within fifteen (15) days after its passage at least once in a newspaper of general circulation published and circulated in DMUSD.

**Section 10.** That this Ordinance relating to the levy of the special tax shall take effect thirty (30) days after adoption hereof.

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APPROVED, ADOPTED AND ORDAINED this 23<sup>rd</sup> day of May, 2007.

BOARD OF TRUSTEES OF THE DEL MAR  
UNION SCHOOL DISTRICT, ACTING AS THE  
LEGISLATIVE BODY OF COMMUNITY  
FACILITIES DISTRICT NO. 95-1:

***-Presentation Version-***

By: \_\_\_\_\_  
President/Vice-President

***-Presentation Version-***

By: \_\_\_\_\_  
Clerk of the Board of Trustees

STATE OF CALIFORNIA            )  
                                          ) ss.  
COUNTY OF SAN DIEGO        )

I, Janet Lamborghini, Clerk of the Board of Trustees of the Del Mar Union School District, do hereby certify that the foregoing Ordinance was duly adopted by the Board of Trustees of said District, acting as the Legislative Body of Community Facilities District No. 95-1, at which a quorum of such Board was present and acting throughout and for which notice and an agenda was prepared and posted as required by law, and that it was so adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

***-Presentation Version-***  
By: \_\_\_\_\_  
Clerk of the Board of Trustees of the  
Del Mar Union School District

STATE OF CALIFORNIA            )  
                                                  ) ss.  
COUNTY OF SAN DIEGO        )

I, Janet Lamborghini, Clerk of the Board of Trustees of the Del Mar Union School District, do hereby certify that the above and foregoing is a full, true and correct copy of Ordinance No. 2001-01 of said Board, and that the same has not been amended or repealed.

Dated: May 23, 2007

***-Presentation Version-***

By:

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Clerk of the Board of Trustees of the  
Del Mar Union School District

**EXHIBIT "A"**

**RATE AND METHOD OF  
APPORTIONMENT OF SPECIAL TAX**

**RATE AND METHOD OF APPORTIONMENT FOR  
DEL MAR UNION SCHOOL DISTRICT  
COMMUNITY FACILITIES DISTRICT NO. 95-1**

The following sets forth the Rate and Method of Apportionment for the levy and collection of the special taxes of Del Mar Union School District Community Facilities District No. 95-1 ("CFD No. 95-1"). The special taxes include a One-Time Special Tax, an Initial Maximum Annual Special Tax, a Maximum Annual Special Tax and, if elected by a Property Owner, a One-Time Supplemental Prepayment Special Tax. The initial amounts and annual adjustment of the special taxes are as set forth herein.

A special tax shall be levied on and collected in CFD No. 95-1 each Fiscal Year by the Board of Trustees of the Del Mar Union School District (the "Board") through the application of the appropriate Maximum Annual Special Tax for "Developed Property" as described below. All of the Undeveloped and Developed Property in CFD No. 95-1, unless exempted by law or by the provisions hereof, shall be taxed for the purpose, to the extent and in the manner herein provided.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

**"Administrative Expenses"** means any ordinary and necessary expenses of CFD No. 95-1, including, not by way of limitation, all expenses incurred by the Board, including reasonable staff time and consultant expense, to carry out its duties as the legislative body of CFD No. 95-1.

**"Assessor's Parcel"** means a parcel of land designated on a map of the County of San Diego Assessor which has been assigned a discrete identifying number.

**"Board"** means the Board of Trustees of the Del Mar Union School District acting as the legislative body of CFD No. 95-1.

**"Bond Issue"** means a CFD Bond Issue, a Certificate of Participation issue, or any other type of financing selected by the Board to finance eligible costs of school facilities.

**"Building Square Foot"** means the square footage of internal living space of a Developed Property, exclusive of garages or other structures not used as living space.

**"Developed Property"** means any Assessor's Parcel in CFD No. 95-1 which is Taxable Property and for which a residential building permit was issued prior to March 1 of the previous Fiscal Year.

**"Eligible Costs"** means those costs which can be paid with Special Tax revenues, including: (1) debt service or payments on all Bond Issues or other financing or other periodic costs on the bonds or other indebtedness of CFD No. 95-1, which is expected to have authorization for \$100,000,000 in debt (2) the cost of acquisition of land or facilities, (3) the construction, furnishing or equipping of facilities and busses, (4) the reasonable and necessary Administrative Expenses of CFD No. 95-1, (5) the accumulation of funds reasonably required for future debt service, (6) costs associated with the release of funds from an escrow account, (7) any amounts required to establish or replenish any reserve fund established in association with Bond Issues or other indebtedness of CFD No. 95-1, (8) lease payments for existing or future facilities, and (9) any other payments permitted by law.

**"Final Subdivision Map"** means a final tract map, parcel map, lot line adjustment, or functionally equivalent map or instrument that creates building sites, exclusive of maps created strictly for planning, financing or conveyance purposes, recorded in the County of San Diego Office of the Recorder.

**"Fiscal Year"** means the period commencing on July 1 of any year and ending the following June 30.

**"Gross Acreage"** unless otherwise determined pursuant to Section F for a given Fiscal Year or Years means either (i) the acreage specified within a recorded Final Subdivision Map, exclusive of regional arterial streets and highways, if any, and parcels of open space, if any, within such recorded Final Subdivision Map, as determined by the Board or (ii) in the case where a Final Subdivision Map has not yet been recorded, the land area of an Assessor's Parcel as shown on an official map of the County of San Diego Assessor.

**"Index"** means the Lee Saylor Class D Construction Index published by the State Allocation Board. In the event the Lee Saylor Class D Construction Index ceases to be published, the index used by the State Allocation Board in place of the Lee Saylor Class D Construction Index shall be applied.

**"Initial Maximum Annual Special Tax"** for a specific Fiscal Year means the Maximum Annual Special Tax for an Assessor's Parcel which has been designated as Developed Property for the first time in that Fiscal Year.

**"Land Use Class"** means any of the five classes listed in Tables I and II.

**"Maximum Annual Special Tax"** means the highest special tax which shall be paid during a Fiscal Year by a Property Owner of Developed Property or Undeveloped Property as determined by the Board in accordance with Section C.

**"One-Time Special Tax"** means the special tax per Building Square Foot collected prior to building permit issuance for a lot or parcel which is Taxable Property as determined in accordance with Section C.

**"One-Time Supplemental Prepayment Special Tax"** for any lot or parcel of Taxable Property means the optional special tax established for that parcel, which may be paid prior to building permit issuance in order to prepay the entire Maximum Annual Special Tax, as determined in accordance with Section C.

**"Proportionately"** means that the ratio of the actual annual special tax levy to the applicable Maximum Annual Special Tax is equal for all Assessor's Parcels falling into the Land Use Classes. For example, for all Developed Property classified as belonging to the Land Use Classes in Tables I and II, Proportionately shall mean that the ratio of the annual special tax levy to the Maximum Annual Special Tax is equal for all Assessor's Parcels classified in any of the Land Use Classes in these tables.

**"Taxable Property"** means property within the boundaries of CFD No. 95-1 which is not exempt from the Maximum Annual Special Tax pursuant to the Act or pursuant to Section E below.

**"Undeveloped Property"** means any Assessor's Parcel of Taxable Property in CFD No. 95-1 zoned for residential development and for which no residential building permit was issued prior to March 1 of the prior Fiscal Year.

**B. ASSIGNMENT TO LAND USE CATEGORIES**

On July 1 of each Fiscal Year, beginning July 1, 1995, all Taxable Property within CFD No. 95-1 shall be classified as Developed Property or Undeveloped Property. At such time, Developed Property will be assigned to one of the five Land Use Classes as described below, and shall be subject to special taxes determined in accordance with Sections C and D of this rate and method of apportionment. Developed Property shall be assigned to a Land Use Class based on the number of residential units per Gross Acre within the Final Subdivision Map in which it is located, as indicated in Tables I and II. Undeveloped Property shall also be taxed in conformance with Sections C and D.

**C. SPECIAL TAX RATES**

Each Assessor's Parcel classified as Taxable Property shall pay the Maximum Annual Special Tax levied by the Board. Taxable Property for which a residential building permit has been issued also shall be subject to the One-Time Special Tax. However, a property owner of such residential Taxable Property may elect, as herein provided in Section C.1.c, to pay the One-Time Supplemental Prepayment Special Tax to prepay all of the future Maximum Annual Special Taxes. All of the special tax rates for each Land Use Class are listed below.

**1. Undeveloped Property**

**a. Maximum Annual Special Tax**

This Maximum Annual Special Tax, subject to any reimbursement as herein provided, may be levied only in cases where delinquencies or

defaults of the Maximum Annual Special Taxes paid by Developed Property owners create a situation in which additional revenues are needed to make principal and interest payments, replenish the reserve fund, or pay Administrative Expenses as discussed in Section D (below). The 1995-96 Fiscal Year Maximum Annual Special Tax for a lot or parcel of Undeveloped Property shall not exceed the lesser of (1) \$500 per Gross Acre or (2) the aggregate amount of the actual delinquencies in the payment of the Maximum Annual Special Taxes for Developed Property for the prior Fiscal Year divided by the total number of Gross Acres of Undeveloped Property of CFD No. 95-1.

On each July 1, commencing July 1, 1995, the Maximum Annual Special Tax for all Undeveloped Property shall be increased from the previous Fiscal Year's Maximum Annual Special Tax for Undeveloped Property by an amount equal to the percentage change in the Index or two percent (2%), whichever is greater. The Index shall be measured for the twelve month period ending May 31 of the prior Fiscal Year.

**b. One-Time Special Tax**

Prior to the time a residential building permit is issued for a lot or parcel of Taxable Property, the property owner shall pay the One-Time Special Tax based on the square footage of floor space from the building permit to be issued for each lot or parcel. The One-Time Special Tax in the 1994-95 Fiscal Year for Undeveloped Property is \$0.79 per residential Building Square Foot. There shall be no One-Time Special Tax on property for which no residential building permit is being issued.

On each July 1, commencing July 1, 1995, the One-Time Special Tax for all residential Taxable Property will be increased from the previous Fiscal Year's One-Time Special Tax by an amount equal to the annual percentage change in the Index or two percent (2%), whichever is greater. The Index shall be measured for the twelve month period ending May 31 of the prior Fiscal Year.

**c. One-Time Supplemental Prepayment Special Tax**

At the time a residential Final Subdivision Map is recorded for any Taxable Property within CFD No. 95-1, the property owner filing said Final Subdivision Map for recordation concurrently may elect for all lots or parcels created by said Final Subdivision Map to prepay the entire future Maximum Annual Special Taxes through the application of the One-Time Supplemental Prepayment Special Tax. In order to prepay the entire future Maximum Annual Special Taxes of CFD No. 95-1, the residential Final Subdivision Map must contain at least 25 single family detached units or 100 multi-family attached units. Table I below lists the

One-Time Supplemental Prepayment Special Tax in the 1994-95 Fiscal Year for each Land Use Class. While the decision to apply the One-Time Supplemental Prepayment Special Tax to all of the Assessor's Parcels in a Final Subdivision Map shall be made at the time of map recordation, the actual payment of this One-Time Supplemental Prepayment Special Tax shall occur prior to building permit issuance.

<b>TABLE I</b>			
<b>One-Time Supplemental Prepayment Special Taxes Community Facilities District No. 95-1 (Fiscal Year 1994-95)</b>			
<b>Land Use Class</b>	<b>Description</b>	<b>Designation</b>	<b>Supplemental Prepayment One-Time Special Tax</b>
1	Developed Property	Density $\leq$ eight (8) residential units per Gross Acre	\$6,510 per unit
2	Developed Property	Density $>$ eight (8) and $\leq$ fifteen (15) residential units per Gross Acre	\$4,337 per unit
3	Developed Property	Density $>$ fifteen (15) and $\leq$ eighteen (18) residential units per Gross Acre	\$2,021 per unit
4	Developed Property	Density $>$ eighteen (18) and $\leq$ twenty-five (25) residential units per Gross Acre	\$1,516 per unit
5	Developed Property	Density $>$ twenty-five (25) residential units per Gross Acre	\$1,011 per unit

On each July 1, commencing July 1, 1995, the One-Time Supplemental Prepayment Special Tax rates will be increased from the previous Fiscal Year's One-Time Supplemental Prepayment Special Tax by an amount equal to the annual percentage change in the Index or two percent (2%), whichever is greater. The Index shall be measured for the twelve month period ending May 31 of the prior Fiscal Year.

**2. Developed Property**

**a. Maximum Annual Special Tax without One-Time Supplemental Prepayment Special Tax**

The 1995-96 Fiscal Year Initial Maximum Annual Special Tax for a lot or parcel of Developed Property is listed in Table II. This table applies only to those Assessor's Parcels of Developed Property for which the One-Time Supplemental Prepayment Special Tax was not paid at the time of building permit issuance. Developed Property for which this One-Time Supplemental Prepayment Special Tax has been paid is discussed in Section 2b, below.

<b>TABLE II</b> <b>Initial Maximum Annual Special Taxes for Developed Property</b> <b>Community Facilities District No. 95-1</b> <b>(Fiscal Year 1995-96)</b>			
<b>Land Use Class</b>	<b>Description</b>	<b>Designation</b>	<b>Supplemental Prepayment One-Time Special Tax</b>
1	Developed Property	Density $\leq$ eight (8) residential units per Gross Acre	\$788 per unit
2	Developed Property	Density $>$ eight (8) and $\leq$ fifteen (15) residential units per Gross Acre	\$533 per unit
3	Developed Property	Density $>$ fifteen (15) and $\leq$ eighteen (18) residential units per Gross Acre	\$262 per unit
4	Developed Property	Density $>$ eighteen (18) and $\leq$ twenty-five (25) residential units per Gross Acre	\$203 per unit
5	Developed Property	Density $>$ twenty-five (25) residential units per Gross Acre	\$144 per unit

On each July 1, commencing on July 1, 1996, the Initial Maximum Annual Special Tax for lots or parcels of Taxable Property being classified as Developed Property for the first time in that Fiscal Year and for which the One-Time Prepayment Special Tax has not been paid will be increased from the previous Fiscal Year's Initial Maximum Annual Special Tax by an amount equal to the annual percentage change in the Index or two

percent (2%), whichever is greater. The Index shall be measured for the twelve month period ending May 31 of the prior Fiscal Year.

The Maximum Annual Special Tax for all Developed Property which was classified as Developed Property in previous Fiscal Years will equal the Initial Maximum Annual Special Tax for the Fiscal Year in which the Assessor's Parcel was first classified as "Developed Property".

**b. Maximum Annual Special Tax with One-Time Supplemental Prepayment Special Tax**

There shall be no Maximum Annual Special Tax collected from Developed Property for which the One-Time Supplemental Prepayment Special Tax has been paid.

**D. METHOD OF APPORTIONMENT OF THE MAXIMUM ANNUAL SPECIAL TAX TO PROPERTY IN CFD NO. 95-1**

Commencing Fiscal Year 1995-96 and for each subsequent Fiscal Year, the Board shall levy the Maximum Annual Special Taxes as follows:

**First:** The Maximum Annual Special Tax shall be levied on each Assessor's Parcel of Developed Property, except for each Assessor's Parcel for which the property owner previously elected to pay and has paid the One-Time Supplemental Prepayment Special Tax as set forth in Section C.1.c. above, for which the Maximum Annual Special Tax shall be waived. The Maximum Annual Special Tax shall be based on the Initial Maximum Annual Special Tax listed in Table II, which shall be adjusted by the Index as explained in Section C. If the Board chooses to levy less than the Maximum Annual Special Tax or portion thereof, they shall do so Proportionately for all Land Use Classes listed in these tables.

**Second:** In the event of delinquency or default by any Developed Property within CFD No. 95-1 as to the Maximum Annual Special Tax in any Fiscal Year, the Maximum Annual Special Taxes levied under the first step may be insufficient to make all current principal and interest payments, replenish the reserve fund, or pay Administrative Expenses. In such cases, the annual special tax shall be levied Proportionately on all Assessor's Parcels of Undeveloped Property up to the Maximum Annual Special Tax for Undeveloped Property as listed in Section C.1.a., adjusted by the Index as explained in Section C.

In the event that said delinquency or default is satisfied by the Developed Property that was in delinquency or default, the Undeveloped Property owner(s) of record who paid Maximum Annual Special Taxes at the time of the delinquency or default shall be reimbursed to the extent possible under applicable law, subject to the review and approval of the Board. Reimbursements, if any, shall be made only after the obligations

of CFD No. 95-1 for that Fiscal Year (i.e., principal and interest payments, replenishment of the reserve fund, and Administrative Expenses) have been completely satisfied.

**E. EXEMPTIONS**

The Board shall not levy any special taxes on properties owned by the State of California, Federal or other local governments except as otherwise provided in Sections 53317.3 and 53317.5 of the Government Code. Furthermore, the Board shall not levy any special taxes on properties owned by a homeowners' association or properties with public or utility easements making impractical their utilization for other than the purposes set forth in the easement.

**F. APPEALS**

Any landowner or resident who contends that the amount of the Maximum Annual Special Tax levied is in error or pertains to property that the Board determines is reasonably probable to be zoned other than for development purposes may file a notice with the Board appealing the levy of the Maximum Annual Special Tax. A representative of CFD No. 95-1 will then review the appeal and, if necessary, meet with the appellant. If the findings of the representative verify that the amount of the Maximum Annual Special Tax should be modified or changed, then, as appropriate, the Maximum Annual Special Tax levy shall be corrected. If the appellant is in disagreement with the findings of the representative, he may appeal the representative's decision to the Board.

**G. COLLECTION OF MAXIMUM ANNUAL SPECIAL TAX**

The Maximum Annual Special Tax will be collected in the same manner and at the same time as ordinary ad valorem property taxes.

**H. TERM OF MAXIMUM ANNUAL SPECIAL TAX**

Assessor's Parcels for which a building permit was issued prior to March 1 of a given Fiscal Year shall commence paying Maximum Annual Special Taxes in the following Fiscal Year. The Maximum Annual Special Tax shall be levied for a period of 35 years for each Assessor's Parcel of Taxable Property.