



September 29, 2015

The Honorable Glenda Sanders
Presiding Judge of the Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

RE: "Mello-Roos: Perpetual Debt Accumulation and Tax Assessment Obligation".

Dear Judge Glenda Sanders:

This letter is in response to the Orange County Grand Jury's report entitled "Mello-Roos: Perpetual Debt Accumulation and Tax Assessment Obligation", with requisite responses provided below.

The City of Dana Point has one Community Facilities District ("CFD", "District") No. 2006-1, also known as "Headlands". It was formed pursuant to the Act and Resolution No. 06-06-14-11 adopted on June 14, 2006 by the City Council of the City of Dana Point in order to finance the acquisition and construction of certain public improvements. The land within the District is being developed with 118 custom residential homes, 1.6 acres of commercial property and a 2.8 acres of hotel property.

At the time when CFD No. 2006-1 was created, there was only one property owner, who was fully informed of the public facilities financed by the CFD. The facilities financed by the District include street, sewer, water, storm drain, park, landscaping and dry utility improvements, sewer annexation charges, and all appurtenance and appurtenant work.

In addition to capital improvements, there are services financed by the District in perpetuity. Such services include maintenance and operation of park facilities, maintenance of the revetment walkway and revetment, certain storm drain water quality improvements, and related appurtenances.

Information about ongoing maintenance costs is available to homeowners in the District via the City of Dana Point web site where *FY 2014-2015 CFD 2006-1 Maintenance Fund Revenue and Expenses* report and *FY 2014-2015 CFD 2006-1 Annual Fiscal Year* report, prepared by an independent financial firm, are posted <http://www.danapoint.org/index.aspx?page=802>. (See Attachments 1 and 2).

Finally, financial information related to CFD 2006-1 can be found in the City's *Comprehensive Annual Financial Report ("CAFR")*. Please refer to page 26 of the 2014 CAFR located on the City's web-site: <http://www.danapoint.org/index.aspx?page=200>. (See Attachment 3).

We fully support the Grand Jury's effort in addressing the issues of transparency and accountability in managing CFDs, and provide our responses to their findings and associated recommendations below:

Finding 1: There is a lack of transparency to homeowners relative to how CFD funds are being used.

We partially agree with this finding. In most cases the buyer first hears about Mello-Roos while trying to research and purchase a property (some sales actually advertise "No Mello-Roos"). The education of the buyer should happen during the sale, closing, and at the time of signing, a process where the granting agency (e.g. city) is not present.

CFD No. 2006-1 financial information is included in the annual independent audit of the City's financial statements, and financial information is provided in the CAFR reviewed by the City Council during a public meeting and posted on the City's web site. Since the Grand Jury report came out, as mentioned above, we have posted the CFD No. 2006-1 2015 Annual Fiscal Year report prepared by an independent financial firm and a list of revenues and expenses on the City's web site.

Finding 2: There does not seem to be appropriate oversight and auditing of CFDs and special tax expenditures within the County of Orange.

The City disagrees with this finding. The City's CFD No. 2006-1 is audited annually, financial information reported in the CAFR, reviewed by the City Council in an open session, and posted on the city's web site.

Finding 3: While the assumption is that the CFD debt would be repaid in a finite period of time, there is a mechanism available to controlling entities to extend debt obligations and thereby extend the CFD special tax in perpetuity.

The City disagrees with this finding. Established by the CFD No. 2006-1 Resolution of Formation, the Facilities Maximum Annual Special Tax in no event shall be levied later than Fiscal Year 2046-47.

The Maintenance Special Tax was established in perpetuity by the design of the CFD No. 2006-1. The Maintenance Special Tax is not a security of the Bonds and will not be pledged to pay bond debt service.

Recommendation 1: Each local agency that established the CFD should create an oversight committee and an audit committee to provide for an independent, transparent view of the manner in which CFD funds are being expended.

This recommendation will not be implemented. Establishment of an oversight committee and an audit committee would put an additional burden on the tax payer and it is not required by the State Law.

The City of Dana Point has provided a sufficient level of transparency to its CFD finances from the time of the CFD creation. The CFD bond proceeds were expended on specific projects in a timely manner and do not require further oversight. CFD No. 2006-1 balances and transactions are included in the annual independent audit of the City's financial statements, and financial information is included in the annual CAFR reviewed by the City Council during public meeting and posted on the City's web site. The District's annual Revenue and Expenses report is also available to the public via the City's web-site.

Recommendation 2: Audit report information, as delineated in California Government Code, 1982 Section 53343.1, should be made available to the CFD taxpayer on a website after each fiscal year for each CFD number.

This recommendation has already been implemented. The link to the CAFR documents is located on the City's website at <http://www.danapoint.org/index.aspx?page=200>.

Respectfully,



Michael A. Killebrew
Assistant City Manager/Director of Administrative Services

Cc: Dana Point City Council
Dana Point City Attorney

ATTACHMENTS:

1. FY 2014 - 2015 CFD 2006-1 Maintenance Fund Revenue and Expenses
2. FY 2014 - 2015 CFD 2006-1 Annual Fiscal Year Report
3. FY 2013 – 2014 City of Dana Point CAFR, *Statement of Revenues, Expenditures and Changes in Fund Balances Governmental Funds*

ATTACHMENT 1



City of Dana Point, CA

CFD 2006-1 Maintenance Fund FY15
Group Summary

For Fiscal: 2014-2015 Period Ending: 06/30/2015

RevenueObject	Original Total Budget	Current Total Budget	MTD Activity	YTD Activity	Budget Remaining
RevenueType: 40 - Use Of Money & Property					
6403 - Investment Income	1,400.00	1,400.00	0.00	1,940.02	-540.02
RevenueType: 40 - Use Of Money & Property Total:	1,400.00	1,400.00	0.00	1,940.02	-540.02
RevenueType: 60 - Charges For Services					
6686 - Charges for Services	90,000.00	324,000.00	0.00	492,295.92	-168,295.92
RevenueType: 60 - Charges For Services Total:	90,000.00	324,000.00	0.00	492,295.92	-168,295.92
RevenueType: 90 - Transfers					
6901 - Tsfs In - Fr General Fund	30,000.00	330,000.00	0.00	330,000.00	0.00
RevenueType: 90 - Transfers Total:	30,000.00	330,000.00	0.00	330,000.00	0.00
Total Surplus (Deficit):	121,400.00	655,400.00	0.00	824,235.94	-168,835.94



City of Dana Point, CA

CFD 2006-1 Maintenance Fund FY15 Group Summary

For Fiscal: 2014-2015 Period Ending: 06/30/2015

ExpenseObject	Original Total Budget	Current Total Budget	MTD Activity	YTD Activity	YTD Activity + Encumbrances	Budget Remaining
ExpenseType: 20 - Materials & Services						
2030 - Equipment Maintenance	97,800.00	97,800.00	0.00	35,723.39	35,723.39	62,076.61
2210 - Utilities	45,000.00	65,000.00	0.00	43,167.47	43,167.47	21,832.53
2230 - Professional Services	7,000.00	7,000.00	0.00	7,270.70	7,270.70	-270.70
2650 - County Facilities	16,000.00	16,000.00	0.00	10,015.25	10,015.25	5,984.75
ExpenseType: 20 - Materials & Services Total:	165,800.00	185,800.00	0.00	96,176.81	96,176.81	89,623.19
ExpenseType: 30 - Capital Outlay						
3010 - Furniture & Equipment	0.00	742,000.00	0.00	517,976.79	517,976.79	224,023.21
ExpenseType: 30 - Capital Outlay Total:	0.00	742,000.00	0.00	517,976.79	517,976.79	224,023.21
ExpenseType: 40 - Insurance						
4030 - Property Insurance Premiums	500.00	500.00	0.00	0.00	0.00	500.00
ExpenseType: 40 - Insurance Total:	500.00	500.00	0.00	0.00	0.00	500.00
ExpenseType: 70 - Other Financing Expenses						
7050 - Debt Service	0.00	0.00	0.00	552.95	552.95	-552.95
ExpenseType: 70 - Other Financing Expenses Total:	0.00	0.00	0.00	552.95	552.95	-552.95
Total Surplus (Deficit):	-166,300.00	-928,300.00	0.00	-614,706.55	-614,706.55	-313,593.45

City of Dana Point Community Facilities District No. 2006-1 Refunding FRAMEWORK

SUMMARY

The following table shows formation proceeding information and applicable bond issue information for the District:

Formation and Bond Issue Information	
Resolution of Formation of the District	06-06-14-11
Date of Resolution of Formation of the District	June 14, 2006
Resolution Authorizing Issuance of 2013 Bonds	13-05-07-03
Date of Resolution Authorizing Issuance of 2013 Bonds	May 7, 2013
Date of Bond Issue (Dated Date)	June 13, 2013
Resolution Authorizing Issuance of 2014 Bonds	14-02-18-05
Date of Resolution Authorizing Issuance of 2014 Bonds	March 11, 2014
Date of Bond Issue (Dated Date)	June 13, 2013
Final Maturity	September 1, 2043
Authorized Debt Amount	\$45,000,000.00
Amount of 2013 Bond Issue	\$17,885,000.00
Amount of 2014 Bond Issue	\$26,245,000.00
Interest Rate Range 2013 Bonds	2.000% – 4.625%
Interest Rate Range 2014 Bonds	2.500% – 5.000%
Bond Call Notice	30 days
Redemption Premium	0.00% – 3.00%
County Fund Number	R1

SYNTHESIS OF PROCEEDINGS

The Mello-Roos Community Facilities Act ("Act") of 1982 came about as a response to the lack of adequate financing for public capital facilities and services in the post-Proposition 13 era. State Legislators Mello and Roos sponsored this Bill, which was enacted into law by the California Legislature and is now Sections 53311 through 53363 of the California Government Code. The Act authorizes a local governmental agency, such as a school district or city, to form a Community Facilities District ("CFD") within a defined set of boundaries for the purposes of providing public facilities and services. A CFD is formed for financing purposes only, and is governed by the agency that formed it.

The Community Facilities District No. 2006-1 (the "District") was formed pursuant to the Act and Resolution No. 06-06-14-11 adopted on June 14, 2006 by the City Council of the City of Dana Point (the "City") in order to finance the acquisition and construction of certain public improvements. The land within the District is

being developed with a total of 118 custom residential homes, 1.6 acres of commercial property and 2.8 acres of hotel property.

THE BONDS

The project site is comprised of approximately 121.3 gross acres within Tract No. 16331 located east of and generally bordered by the Pacific Ocean, north of Scenic Drive, and west of Pacific Coast Highway and Street of the Green Lantern in the City of Dana Point.

THE BONDS

The District issued its first series of bonds, the Community Facilities District No. 2006-1, 2008 Special Tax Bonds (the "2008 Bonds"), on July 2, 2008 pursuant to Resolution 08-06-03-03, adopted on June 3, 2008, by the City Council, in the aggregate amount of \$8,710,000. The District issued its second series of Parity Bonds, the Community Facilities District No. 2006-1, 2013 Special Tax Bonds (the "2013 Bonds"), pursuant to Resolution 13-05-07-03, adopted on May 7, 2013, by the City Council, in the aggregate amount of \$17,885,000. Taking into account the principal amount of authorization allocable to the 2008 Bonds (\$7,840,000), together with the non-refunding portion of the 2013 Bonds in the aggregate amount of \$10,045,000 would leave, based on an original authorization of \$45,000,000, a remaining authorization of \$26,245,000 for the principal amount of future Parity Bonds.

The District has authorized a not-to-exceed amount of \$45,000,000 of bonded indebtedness. The authorized bonded indebtedness was reduced to \$40,000,000 by operation of the First Amendment to Acquisition Agreement entered into by Headlands Reserve LLC and the City on November 8, 2006; however, this action was not formalized by proceedings under the Act and not approved by the qualified electors, thus the reduction in authorization could be rescinded by a future City Council. It is anticipated that additional bonds will be issued on parity with the Bonds up to the full authorization as the debt service is supported by the sale of the lots now held by the Developer and the development of the commercial and hotel property. As the total authorization is reached by the issuance of Parity Bonds, the District and the Developer may agree to request reinstatement of all or a portion of the higher authorization.

On March 13, 2014, the Parity Bonds referenced above were issued in the amount of \$26,245,000 with a maturity date of September 1, 2045.

COVENANT FOR JUDICIAL FORECLOSURE

The District has covenanted with and for the benefit of the owners of the Bonds that it will order, and cause to be commenced as provided in the Fiscal Agent Agreement, and thereafter diligently prosecute to judgment (unless such delinquency is brought current), an action in the superior court to foreclosure the lien of any Special Tax or installment thereof not paid when due.

On or about February 15 and June 15 of each fiscal year, an Authorized Officer shall compare the amount of Special Taxes to be collected on the December 10 and April 10 installments of the secured property tax bills to the amount of Special Tax Revenues actually received by the District in said installments, and proceed as set forth below: If the Authorized Officer determines that any single parcel subject to the Special Tax in the District is delinquent in the payment of Special Taxes, then the Authorized Officer shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination. If the delinquency remains uncured, foreclosure proceeding shall be commenced by the District by October 1 following such determination.

FINANCED FACILITIES

The Facilities financed by the District include street, sewer, water, storm drain, park, landscaping and dry utility improvements; sewer annexation charges, and all appurtenances and appurtenant work.

The Facilities include the facilities listed below, and other facilities of the same type or types as may be substituted in the place of one or more of the specific facilities listed below in accordance with the Acquisition Agreement between the City and Headlands Reserve LLC relating to the District. Any of the Facilities to be constructed shall be constructed, whether or not acquired in their completed states, pursuant to plans and specifications approved by the City or the County of Orange or the South Coast Water District ("SCWD"), as applicable and the officials thereof, including the City Engineer. The final nature and location of the Facilities will be determined upon the preparation of final plans and specifications for such Facilities.

The Facilities proposed to be financed by the District are listed below:

City Facilities

1. Storm drain system, including, but not limited to, storm drain lines, catch basins, storm water treatment BMPs, energy dissipation and diversion structures and outfall facilities.

2. Selva Road street improvements, including, but not limited to, retaining walls, curb, gutter, paving, sidewalks, landscaping median, street lights and public utility conversion and relocation and new public utilities within right-of-way.
3. Dana Strand Road cul-de-sac improvements, including, but not limited to, curb, gutter, paving, retaining walls, public utilities, landscaping and streetlights.
4. Scenic Drive and Green Lantern street improvements, including, but not limited to, retaining walls, curb, gutter, sidewalks, paving, landscaping, street lights, public utilities and signage.
5. Pacific Coast Highway improvements, including, but not limited to, curb, gutter, sidewalks, streetlights, public utilities and traffic signals.
6. Hilltop Park and greenbelt/linkage improvements (Lots S and BB)¹, including, but not limited to, trails, stairs, walkways, fencing, benches, signage, irrigation, landscaping, precise grading, area drainage, hardscape, walls, utility conversion and relocation and public utilities.
7. Strand Vista Park (Lots G, Q and R)¹, including, but not limited to, hardscape, landscape, retaining and shoring walls, stairways, public art, irrigation, funicular, fencing, trails, stairs, overlooks, beach restroom, benches, picnic tables and signage.
8. Strand Beach Park improvements (Lots N, P and portion of Lot 59), including, but not limited to, hardscape, landscape, retaining walls, fencing, irrigation, trails, stairs, fencing, ramps, railings, signage, precise grading, area drainage, picnic tables, benches and public utilities.
9. North Strand Beach Access improvements (City portion), including, but not limited to, landscape, hardscape and irrigation.
10. Conservation Park improvements (Lots V and AA)¹, including, but not limited to, trails, fencing and overhead utility relocation and pavement.
11. Harbor Point Park improvements (Lots 126, U and T)¹, including, but not limited to, landscape, hardscape, nature interpretative center, irrigation, trails, stairs, overlooks, fencing, signage, precise grading, area drainage, walls and public utilities.

Public Utilities

1. Phase 1² dry utilities.

2. Phase 2² dry utilities.
3. Phase 3² dry utilities.
4. Phase 4² dry utilities.

County Facilities

1. Harbor parking lot storm water treatment BMPs improvements, including, but not limited to, screens, filters, diversions, storm drain, man holes and structures.
2. Selva parking lot storm water treatment BMPs improvements, including, but not limited to, screens, filters, diversions, storm drain, man holes and structures.
3. Cove Road storm drain line and appurtenances from Green Lantern to Dana Point Harbor parking lot.
4. North Strand Beach access improvements, including, but not limited to, walkway, stairs, overlooks, restroom, landscaping, irrigation, fencing, signage, precise grading, area drainage, hardscape, walls, public utilities and benches.

Water District Facilities

1. Sewer system improvements, including, but not limited to, sewer lines, manholes, clearouts, structure, walls, equipment, force main, backfill, pavement, R/R and testing.
2. Annexation charges.
3. Water system improvements, including, but not limited to, water mains, valves, hydrants, pressure reducing station, man holes, laterals, backfill and testing.

Note:

The descriptions of the Facilities in Exhibit A of the Acquisition Agreement are preliminary and general. The Facilities to be acquired shall be as described in the approved Plans, as such Plans may be revised and approved by the City or applicable public agency.

¹ Habitat restoration and revegetation is not included and will not be financed with CFD Proceeds.

- ² Phase 1 consists of Oceanfront Lane, Beach View Avenue, White Water Lane, Strand Beach Drive, Scenic Drive, Street of the Green Lantern and off-site improvements on Magellan Isle, Cabrillo Isle and Ritz Carlton Drive. Phase 2 consists of Shoreline Drive, Pacific Ridge Place and Seabreeze Terrace. Phase 3 consists of Pacific Wave Circle, Beach View Avenue, Strand Beach Drive and Selva Road. Phase 4 consists of Shoreline Drive and Coral Cove Way.

SERVICES

The Services proposed to be financed by the District include the maintenance and operation of park facilities consisting of a public funicular (inclined elevator) and landscaped slopes in Lot Q and a portion of Lot BB, maintenance of the revetment walkway and revetment, and certain storm drain water quality BMP improvements located on adjoining County of Orange property, and related appurtenances. The cost of the Services shall include incidental expenses, determination of the amount of the Maintenance special tax, collection of the Maintenance special tax, costs incurred in order to carry out the authorized purposes of the District with respect to the Services, and the costs of inspecting, coordinating, completing, planning and designing the Services, including the costs of environmental evaluations, if applicable.

Any of the Services shall be provided, pursuant to plans and specifications approved by the City or the County of Orange, as applicable and the officials thereof, including the City Engineer. The final nature of the Services will be determined upon the preparation of final plans and specifications for such Services.

The Services proposed to be financed by the District are listed below:

City Facilities

1. Strand Vista Park slope and landscape maintenance (Lot Q and portion of Lot BB of Tract Map No. 16331) as further described in that certain "Landscaping Irrigation and Maintenance Agreement" by and between the City and Developer dated December 1, 2005 and recorded in the Official Records of the County of Orange on December 20, 2005 as Instrument No. 2005001015930.
2. Funicular Improvements within Strand Vista Park as further described in that certain "Revetment and Funicular Maintenance Agreement" by and between the City and Developer dated December 1, 2005 and recorded in the Official Records of the County of Orange on December 20, 2005 as Instrument No. 2005001015931.

3. Revetment, revetment walkway (including stairs) and railing within Strand Beach Park (Lot N) as further described in the Revetment and Funicular Maintenance Agreement described above.

County Facilities

1. Harbor parking lot storm water filter/diversion improvements.
2. Selva parking lot storm water/filter/diversion improvements.

CITY OF DANA POINT
Statement of Revenues, Expenditures and
Changes in Fund Balances
Governmental Funds
For the Year Ended June 30, 2014

	<u>Special Revenue Fund</u>		<u>Capital Projects Funds</u>	
	General Fund	Headlands CFD 2006-1 Maintenance	Capital Improvements	Headlands CFD 2006-1 Acquisition
Revenues:				
Taxes	\$ 27,358,728	\$ -	\$ -	\$ -
Licenses, fees and permits	1,112,116	-	-	-
Fines, forfeitures and penalties	262,425	-	-	-
Intergovernmental	402,206	-	317,906	-
Charges for services	1,743,311	115,967	-	-
Investment earnings	239,727	906	-	-
Contributions from property owners	-	-	-	23,935,028
Other	81,112	-	6,157	-
Total Revenues	<u>31,199,625</u>	<u>116,873</u>	<u>324,063</u>	<u>23,935,028</u>
Expenditures:				
Current:				
General government	4,744,758	-	-	-
Public safety	9,941,164	-	-	-
Community development	3,038,144	-	-	-
Parks and recreation	4,988,891	-	-	-
Public works	5,090,863	151,425	-	256,160
Capital outlay	308,865	-	6,600,515	23,736,528
Total Expenditures	<u>28,112,685</u>	<u>151,425</u>	<u>6,600,515</u>	<u>23,992,688</u>
Excess (deficiency) of revenues over (under) expenditures	<u>3,086,940</u>	<u>(34,552)</u>	<u>(6,276,452)</u>	<u>(57,660)</u>
Other Financing Sources (Uses):				
Transfers in	769,370	30,000	8,744,010	-
Transfers out	(7,748,859)	-	-	-
Sale of capital assets	3,625,000	-	-	-
Total Other Financing Sources (Uses)	<u>(3,354,489)</u>	<u>30,000</u>	<u>8,744,010</u>	<u>-</u>
Net Changes in Fund Balances	(267,549)	(4,552)	2,467,558	(57,660)
Fund Balances, Beginning of Year	21,970,393	141,036	6,386,453	57,660
Fund Balances, End of Year	<u>\$ 21,702,844</u>	<u>\$ 136,484</u>	<u>\$ 8,854,011</u>	<u>\$ -</u>

The accompanying notes are an integral part of these financial statements.