Title: Delta Shores Community Facilities District No. 2019-01 (Improvements):
Ordinance Levying Special Taxes within the Delta Shores Community Facilities
District No. 2019-01 (Improvements); Resolution Establishing Accounting Funds
for the District; and Ordinance Approving Second Amendment to Development
Agreement (City Agreement No. 2009-0060) [Noticed 10/11/2019; Passed for
Publication 10/15/2019; Published 10/18/2019]

Location: Districts 7 and 8

Recommendation: Conduct a public hearing and upon conclusion: 1) adopt an Ordinance
levying a special tax on land within the Delta Shores Community Facilities District No. 2019-01
(Improvements) (the “CFD”); 2) adopt a Resolution establishing new accounting funds for the
CFD; and 3) adopt an Ordinance approving the Second Amendment to the Development
Agreement between the City of Sacramento and the M & H VI Projects, LLC, Delta Shores
Wetlands, LLC and Delta Shores Detention Ponds, LLC (2009-0060).

Contact: Arwen Wacht, Program Specialist, (916) 808-7535; Sheri Smith, Special Districts
Manager, (916) 808-7204, Department of Finance

Presenter: Arwen Wacht, Program Specialist, (916) 808-7535, Department of Finance

Attachments:
1-Description/Analysis
2-Background
3-Schedule of Proceedings
4-Ordinance – Levy of Special Tax
5-Resolution – Create Accounting Funds
6-Ordinance – Second Amendment to Development Agreement
7-Exhibit A – Draft Amendment to Development Agreement
Description/Analysis

Issue Detail:

1. Tax Ordinance and Fund Creation

On September 24, 2019, the City Council adopted Resolution Nos. 2019-0375, 2019-0376, and 2019-0377 calling for special mailed-ballot elections on whether to levy a special tax within each of the three improvement areas within the Delta Shores Community Facilities District No. 2019-01 (Improvements) (the “CFD”) and whether to issue bonds supported exclusively by the special tax to partially reimburse the developer for the cost of public infrastructure supporting the CFD. The election in each of the improvement areas was in the affirmative, and on October 15, 2019, the City Council passed for publication an ordinance levying the special taxes.

Staff recommends that the City Council adopt the ordinance levying the tax and pass the resolution creating new accounting funds for the CFD.

2. Development Agreement Amendment

On January 13, 2009, the City Council passed the following in connection with the Delta Shores project:

- Resolution No. 2009-030, approving an environmental impact report and a mitigation monitoring plan.
- Ordinance No. 2009-003, approving City Agreement No. 2009-0060 (the “Development Agreement”) with M&H Realty Partners VI, L.P., a California limited partnership (the “Original Landowner”).
- Resolution No. 2009-037 approving amendments to the Delta Shores Public Facilities Financing Plan (the “Finance Plan”).
- Ordinance No. 2009-002 and Resolution Nos. 2009-031, -032, -033, -034, -035, and -036, approving other land-use entitlements.

The Development Agreement was amended on October 6, 2010, to include mitigation measures relating to toxic air contaminants emitted by motor vehicles on Interstate 5 (City Agreement No. 2009-0060-1).

A few years later, the Original Landowner transferred several parcels within the Delta Shores project to three Delaware limited-liability companies: M&H VI Projects, LLC; Delta Shores Wetlands, LLC; and Delta Shores Detention Ponds, LLC (the “New Landowners”; the New Landowners and the Original Landowner are the “Landowners”). Then, in 2016, the Original
Landowner assigned to the New Landowners its rights under the Development Agreement with respect to the transferred parcels, the New Landowners assumed the Original Landowner’s obligations under the Development Agreement with respect to those parcels, and the City released the Original Landowner from those obligations.

Section 6 of the Development Agreement provides for the payment of various fees, charges, assessments, and taxes; it also requires the Landowners to participate in, and comply with, the Finance Plan, which can include each Landowner’s payment of its fair-share of the cost of regional facilities. Among the costs included in the Finance Plan is the fair-share cost of library facilities, which was estimated in the Finance Plan as amended in 2009 at $3.9 million (2008 dollars; to be adjusted for inflation).

The City Council approved an update to the Finance Plan on September 24, 2019 (Resolution No. 2019-0378), and the City and Landowners would like to ensure that the Delta Shore project’s fair share of regional library costs, as set out in the updated Finance Plan, is expended only on library services and facilities within the boundaries of Delta Shores. To that end, the City and the Landowners propose to amend the Development Agreement by adding a new subsection E to section 6:

E. **Library Facilities.** Notwithstanding any other provision of this Agreement, any portion of a fee imposed on the Project for the fair share cost of library services or facilities (the “Library Fee Portion”) shall only be used to provide such services and facilities within the Property boundaries. Further:

1. The amount of the Library Fee Portion shall not exceed the sum of $4,639,000 in 2019 dollars, to be adjusted for inflation in the same manner as fee amounts are adjusted in the Delta Shores Finance Plan.

2. Prior to issuance of the 3,375th residential building permit at the Property, the City shall have commenced using, or have adopted a plan setting forth the future use of, the Library Fee Portion to provide services and facilities within the Property boundaries (the “Library Fee Plan”).

3. If the City has not commenced using the Library Fee Portion or has not adopted the Library Fee Plan at the time of issuance of the 3,375th residential building permit, the following shall apply:

   a. the public facilities fee component will be reduced for any unpaid Finance Plan specific fees by the amount of the Library Fee Portion then in place, as adjusted for inflation in the same manner as fee amounts are adjusted in the Delta Shores Finance Plan; and

   b. the City shall issue refunds for any Library Fee Portion previously paid to then Owners of any property for which the Library Fee Portion was previously paid.
Section 9 of the Development Agreement requires, among other things, that the Landowner transfer to the City, before the issuance of the 3,375th residential building permit within the Delta Shores project, $4 million for the future development of a regional park. Consistent with the updated Finance Plan, the Landowner and the City propose to include this $4 million obligation as a sub-component of the Public Facilities portion of a new Delta Shores Impact Fee, which can then be used to satisfy this obligation, potentially earlier than the issuance of the 3,375th building permit. To that end, the City and Landowner propose to amend section 9.C in the Development Agreement to read as follows (the new language in italics):

C. **Transfer of Park Funds to CITY.** As set forth in Exhibit C, LANDOWNER shall transfer four million dollars ($4,000,000) to CITY for purposes of future development of a regional park (the “Regional Park Fee”) upon issuance of the 3,375th residential building permit at the Property. *This obligation shall be deemed satisfied if the $4,000,000 amount of the Regional Park Fee is included in an approved updated Delta Shores Finance Plan as a sub-component of the Public Facilities component of a new Delta Shores Impact Fee.* LANDOWNER waives any and all administrative or judicial challenges that it can legally make based on insufficient nexus for the Regional Park Fee.

In addition, the City and the Landowner propose to amend section II.E.3 of Exhibit C to the Development Agreement to read as follows (the new language in italics):

3. **Park Funding Requirement.** As required by subsection 9C of the Development Agreement, LANDOWNER shall transfer four million dollars ($4,000,000) to CITY for purposes of future development of a regional park to be located on or adjacent to the Property (the “Regional Park Fee”) upon or before issuance of the 3,375th residential building permit at the Property. *This obligation shall be deemed satisfied if the $4,000,000 amount of the Regional Park Fee is included in an approved updated Delta Shores Finance Plan as a sub-component of the Public Facilities component of a new Delta Shores Impact Fee.*

**Policy Considerations:**

*The CFD:* The procedures under which the CFD is being formed are set forth in the Mello-Roos Community Facilities Act of 1982, codified as Government Code sections 53311 through 53368.3 (the "**Mello-Roos Act**"). Formation of the CFD is consistent with the City’s Policies and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure and Public Facilities, as amended, adopted August 9, 1994, by Resolution No. 94-941 (the "**Mello-Roos Policy**").
The Development Agreement: The proposed amendment supports implementation of the updated Finance Plan adopted by City Council on September 24, 2019.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): The City prepared an environmental impact report ("EIR") that evaluated the environmental effects of the Delta Shores project (P06-197), and the City Council certified the EIR on January 13, 2009 (Resolution No. 2009-030). The Planning and Design Commission later certified the EIR and an addendum for the commercial-development portion of the Delta Shores project (P14-025) on April 16, 2015.

The proposed amendment of the Development Agreement will clarify the use of library-service fees and the Landowner’s obligation to transfer park funds. The amendment will not result in physical effects on the environment and will not change the conclusions of the EIR. None of the circumstances set forth in CEQA Guidelines that require preparation of a subsequent EIR are present (see 14 Cal. Code Regs. § 15162 [subsequent EIR required if there are substantial changes in the project or in the circumstances under which the project is undertaken, if new information of substantial importance has been received that shows the EIR didn’t discuss significant effect or that mitigation measures will not be implemented]). No additional environmental review or document is required.

Under the CEQA Guidelines, the formation of the CFD does not constitute a project, because it is merely a funding mechanism and is therefore exempt from review (14 Cal. Code Regs. § 15378(b)(4); see also Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District (1992) 9 Cal.App.4th 464).

Sustainability: Not applicable.

Commission/Committee Action: On September 12, 2019, the Planning and Design Commission conducted a public hearing and, upon conclusion, passed (1) a motion to forward to the City Council a recommendation to approve the use of a previously certified EIR (Public Resources Code § 21166; 14 Cal. Code Regs. § 15162 [no further environmental document or review required]); and (2) an ordinance amending the Development Agreement.

Rationale for Recommendation: The recommended actions for the CFD are required by the Mello-Roos Act and the City Charter to complete the formation of the CFD. The proposed
amendment to the Development Agreement is minor and is merely intended to clarify (1) the intent and use of library-service fees for the Delta Shores project and (2) to clarify the obligation for the transfer of park funds. The amendment will not alter the project or the timing of the required payment of fees for library services or the transfer of park funds.

**Financial Considerations:** The Original Landowner, as the developer of the Delta Shores project, will initially fund the construction of authorized public improvements or pay development-impact fees that will be used to construct the improvements. Later, if and when sufficient bond proceeds or special taxes are available, the City will reimburse the Original Landowner in compliance with the City’s Mello-Roos Policy (or any subsequent update to the policy), any associated agreements, and applicable law. The bond proceeds and special taxes will be used for the sole purposes of (1) funding construction costs and development-fee reimbursements to the Original Landowner and (2) paying the City’s administrative expenses. This may be done from bond proceeds, directly from special taxes on a pay-as-you-go basis, or from a combination of bond proceeds and special taxes. The recommended actions will not affect the General Fund or any other funds of the City.

**Local Business Enterprise (LBE):** Not applicable.
The Delta Shores project area encompasses approximately 782 acres within the Delta Shores Planned Unit Development. The Delta Shores project is proposed for single-family, multi-family, commercial, and mixed-use development; parks, open space, and detention basins; and schools, a community center, and a fire station. The project area is generally bounded by Freeport Boulevard to the west, the Sacramento Regional Wastewater Treatment Plant to the south and east, the Stone-Boswell property and the Sacramento Job Corps Center to the east, and Meadowview Road to the north.

On January 13, 2009, the City Council approved a series of entitlements relating to the development of Delta Shores (P06-197), including—

- the Delta Shores Planned Unit Development, which envisioned Delta Shores as a mix of commercial and residential development;
- various other entitlements, including a development agreement;
- the original Delta Shores Public Facilities Financing Plan; and
- master and tentative parcel maps.

The City Council also certified an environmental impact report for the project.

Following the approval of the Finance Plan in 2009, development in Delta Shores commenced with the completion of Phase 1 of development (P14-025) along with key regional and backbone infrastructure components.
Amendment of Development Agreement

The development agreement approved in 2009 (City Agreement No. 2009-0060; the “Development Agreement”) is between the City and M&H Realty Partners VI, L.P. (the “Original Landowner”). The Development Agreement was amended in 2010 (City Agreement No. 2009-0060-01) by adding mitigation measures related to toxic air contaminants emitted by motor vehicles on Interstate 5.

The Original Landowner subsequently transferred portions of Delta Shores to three affiliated companies. The Original Landowner and those companies are now requesting a second amendment to the Development Agreement to clarify the use of library-services fees and their obligation to transfer $4 million to the City for the future development of a regional park.

Delta Shores Community Facilities District

The Delta Shores Community Facilities District No. 2019-01 (Improvements) (the “CFD”) covers approximately 535 acres within the Delta Shores Planned Unit Development and is divided into Improvement Area No. 1, Improvement Area No. 2, and Improvement Area No. 3 (located west, southeast, and northeast of Interstate 5 and Cosumnes River Boulevard, respectively). Its purpose is to finance specified development fees and public improvements by levying a special tax in each improvement area and issuing bonds backed by the tax. The maximum principal amounts of bonds to be issued are as follows:

- Improvement Area No. 1 .................. $8.0 million*
- Improvement Area No. 2 ................ $18.8 million*
- Improvement Area No. 3 ................ $39.6 million*

* Plus any interest earned on money in the area’s Improvement Fund and minus all costs of issuing the bonds for the area, the area’s share of all costs to form the CFD when those costs have been reimbursed from the CFD, and the area’s share of all costs to administer the CFD.

As part of the formation proceedings for the CFD, a special election was held in each improvement area on three questions: (1) the levy of the special tax, (2) the establishment of an appropriations limit, and (3) the incurrence of debt. Separate special elections were required because each improvement area has its own rate and method of apportionment of special tax, appropriations limit, and indebtedness limit. The City may levy the tax or incur related debt only if at least two-thirds of the votes cast are in favor of the tax, appropriations limit, and debt.

Because there are fewer than 12 registered voters residing within each improvement area, the vote was by the owners of land, with each owner having one vote for each acre or portion of an acre owned within the improvement area. The election was on September 25, 2019, and more than two-thirds of the votes cast in each improvement area were in favor of the tax, appropriations limit, and debt.
ATTACHMENT 3

SCHEDULE OF FORMATION PROCEEDINGS

DELTA SHORES COMMUNITY FACILITIES DISTRICT NO. 2019-01
(IMPROVEMENTS)

August 13, 2019  City Council – Initiate Proceedings
  o  Pass Resolutions of Intention to Form CFD and Levy Special Tax (sets hearing date and approves boundary map)
  o  Pass Resolution Declaring the Necessity to Incur Bonded Indebtedness

August 23, 2019  Record Boundary Maps

September 9, 2019  Mail Notice of Public Hearing

September 13, 2019  Publish Notice of Public Hearing

September 24, 2019  City Council – Public Hearing and Notice for Special Elections
  o  Conduct Public Hearing and Notice for Special Elections
  o  Pass Resolution of Formation
  o  Pass Resolutions Deeming It Necessary to Incur Debt
  o  Pass Resolutions Calling Special Elections
  o  Pass Motion Approving Acquisition and Shortfall Agreement

September 24, 2019  Landowners Deliver & Return Special-Election Ballots

September 25, 2019  Special Election Held

October 15, 2019  City Council
  o  Pass Resolutions Declaring Results of Special Elections
  o  Pass for Publication Ordinance to Levy Tax

October 22, 2019  City Council
  o  Adopt Ordinance to Levy Special Tax
  o  Pass Resolution Creating Accounting Fund

November 5, 2019  Record Notice of Special Tax
ORDINANCE NO.

Adopted by the Sacramento City Council

Levying Special Taxes for Fiscal Year 2020-2021 and Following Fiscal Years Solely Within, and Relating to, Improvement Area No. 1, Improvement Area No. 2, and Improvement Area No. 3 of the Delta Shores Community Facilities District No. 2019-01 (Improvements), City of Sacramento, County of Sacramento, State of California

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

1. On September 24, 2019, the City Council adopted Resolution No. 2019-0371 (the “Resolution of Formation”), thereby establishing the Delta Shores Community Facilities District No. 2019-01 (Improvements), City of Sacramento, County of Sacramento, State of California (the “CFD”) and designating within the CFD “Improvement Area No. 1,” “Improvement Area No. 2,” and “Improvement Area No. 3” (each an “Improvement Area”).

2. In accordance with Government Code sections 53328 and 53340, the Resolution of Formation, and the Rate and Method of Apportionment of Special Tax attached as Exhibit D to the Resolution of Formation (the “RMA for Improvement Area No. 1”), a special tax is hereby levied on all taxable parcels within Improvement Area No. 1 for the 2020-2021 fiscal year and for all subsequent fiscal years in the amount of the maximum authorized special tax for Improvement Area No. 1 under the Resolution of Formation until (a) the City Council, acting not as the legislative body of the City as a whole but solely as the legislative body with respect to the CFD as contemplated by the Mello-Roos Community Facilities Act of 1982, set forth at Government Code sections 53311 through 53368.3 (the “Act”), ceases collecting the tax; and (b) a notice of cessation of special tax is recorded in accordance with Government Code section 53330.5. The amount levied may be adjusted annually, subject to the maximum authorized special tax for Improvement Area No. 1 under the Resolution of Formation.

3. In accordance with Government Code sections 53328 and 53340, the Resolution of Formation, and the Rate and Method of Apportionment of Special Tax attached as Exhibit E to the Resolution of Formation (the “RMA for Improvement Area No. 2”), a special tax is hereby levied on all taxable parcels within Improvement Area No. 2 for the 2020-2021 fiscal year and for all subsequent fiscal years in the amount of the maximum authorized special tax for Improvement Area No. 2 under the Resolution of Formation until (a) the City Council, acting not as the legislative body of the City as a whole but solely as the legislative body with respect to the CFD as contemplated by the Act, ceases collecting the tax; and (b) a notice of cessation of special tax is recorded in
accordance with Government Code section 53330.5. The amount levied may be adjusted annually, subject to the maximum authorized special tax for Improvement Area No. 2 under the Resolution of Formation.

4. In accordance with Government Code sections 53328 and 53340, the Resolution of Formation, and the Rate and Method of Apportionment of Special Tax attached as Exhibit F to the Resolution of Formation (the “RMA for Improvement Area No. 3” and, together with the RMA for Improvement Area No. 1 and the RMA for Improvement Area No. 2, each an “RMA”), a special tax is hereby levied on all taxable parcels within Improvement Area No. 3 for the 2020-2021 fiscal year and for all subsequent fiscal years in the amount of the maximum authorized special tax for Improvement Area No. 3 under the Resolution of Formation until (a) the City Council, acting not as the legislative body of the City as a whole but solely as the legislative body with respect to the CFD as contemplated by the Act, ceases collecting the tax; and (b) a notice of cessation of special tax is recorded in accordance with Government Code section 53330.5. The amount levied may be adjusted annually, subject to the maximum authorized special tax for Improvement Area No. 3 under the Resolution of Formation.

5. The City Treasurer or the City Treasurer’s designee (in the instance of the use of debt financing) or the Finance Director or the Finance Director’s designee (when no debt has been issued) is the Manager of the CFD (the “Manager”). The Manager shall serve as the “CFD Administrator” of each RMA (i.e. as “official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Tax”; section A of each RMA) with the aid of the appropriate officers and agents of the City. The Manager is hereby authorized and directed, without further action by the City Council, to do the following:

   (a) calculate the appropriate amount of the special tax for each Improvement Area each year (as authorized by, and as provided in, the Resolution of Formation and the applicable RMA);

   (b) prepare the annual special-tax roll for each Improvement Area in accordance with the Resolution of Formation and the applicable RMA; and

   (c) provide to the Sacramento County Auditor-Controller all information in proper form, and in proper time, that is necessary and appropriate to effect the correct and timely billing and collection of the special tax for each Improvement Area on the secured property-tax roll of Sacramento County (the “County”).

6. As provided in Government Code section 53340, the Resolution of Formation, and each RMA, the special tax for each Improvement Area is to be collected in the same manner and at the same time and to be subject to the same
enforcement mechanism and the same penalties and interest for late payment as regular *ad valorem* taxes, except that the City Council, acting solely as the legislative body with respect to the CFD as contemplated by the and not as the legislative body of the City as a whole, reserves the right to use any other lawful means of billing, collecting, and enforcing the special tax within each Improvement Area, including direct billing, supplemental billing, and, when lawfully available, judicial foreclosure of the applicable special-tax lien.

7. The appropriate officers and agents of the City are hereby authorized to make adjustments to the special-tax roll for each Improvement Area before the final posting of the applicable special taxes to the County tax roll each year, as may be necessary to achieve a correct match of the applicable special-tax levy for each Improvement Area with the assessor's parcel numbers used by the County in sending out property-tax bills. The County may deduct its reasonable and agreed-upon charges for collecting the special tax within each Improvement Area from the amounts collected before remitting the special-tax collections to the City.

8. Any taxpayer may appeal the levy of the special tax within each Improvement Area by filing a written notice of appeal in accordance with section F of the applicable RMA, with section F of each RMA supplemented as follows:

(a) A taxpayer may file a notice of appeal with the Manager not more than one calendar year after having paid the special tax that is disputed, and the taxpayer's failure to do so within that time constitutes a bar to appeal. The notice of appeal must specify in detail the grounds of the appeal, which are limited to (1) clerical errors in assigning an amount of tax to a parcel and (2) an error in defining the use of a parcel or its classification. No other appeals are allowed.

(b) Not more than 30 days after an appeal is filed, the Manager shall review the appeal, meet with the taxpayer (if necessary), and mail the taxpayer a written decision on the appeal. If the Manager finds that the special tax should be modified, then the Manager shall correct the special-tax levy or grant the taxpayer a credit against the next year's special-tax levy, as appropriate under the circumstances. The Manager's failure to timely mail a written decision will constitute a decision denying the appeal.

(c) If the taxpayer disagrees with the Manager's decision, and if the taxpayer is current on payments of the special tax, then the taxpayer may appeal to the City Council by filing a written notice of appeal with the City Clerk not more than 30 days after the Manager mails the notice of decision or has failed to timely mail a written decision, and the taxpayer's failure to do so constitutes a bar to further appeal. The notice of appeal must specify in detail the grounds of appeal. The City Council shall, in accordance with Sacramento City Code chapter 1.24, either hear the appeal itself or refer the appeal to a hearing officer. The hearing on the appeal from the
Manager’s decision is to be conducted not more than 30 days after the taxpayer files the appeal with the City Council, and the City Council or the hearing officer, as appropriate, shall mail a written decision to the taxpayer not more than 30 days after the hearing concludes. The decision of the City Council or the hearing officer will be final for all purposes. The failure of the City Council or the hearing officer to hear the appeal or to render a decision within the specified time will constitute a denial of the appeal.

9. The filing of an appeal under section 8 of this ordinance will not relieve the taxpayer of the obligation to pay the applicable special tax when due.

10. If for any reason a court with jurisdiction finds any portion of this ordinance to be invalid or finds the applicable special tax for any Improvement Area to be inapplicable to any particular parcel, then the balance of this ordinance and the application of the applicable special tax to the remaining parcels within each Improvement Area will not be affected.
RESOLUTION NO.

Adopted by the Sacramento City Council

_______, 2019

ESTABLISHING ACCOUNTING FUNDS FOR
DELTA SHORES COMMUNITY FACILITIES DISTRICT NO. 2019-01 (IMPROVEMENTS)

BACKGROUND

A. The City Council established the Delta Shores Community Facilities District 2019-01 (Improvements) (the “CFD”) on September 24, 2019, designating three separate improvement areas within the CFD: “Improvement Area No. 1 of the Delta Shores Community Facilities District No. 2019-01 (Improvements)”; “Improvement Area No. 2 of the Delta Shores Community Facilities District No. 2019-01 (Improvements)”; and “Improvement Area No. 3 of the City of Sacramento Delta Shores Community Facilities District No. 2019-01 (Improvements).” Fiscal Year 2019-20 is the first year that land within each improvement area will be subject to the CFD’s special taxes. Section 114 of the City Charter requires that a new accounting fund be created for each improvement area.

B. Each improvement area will levy special taxes in an amount sufficient to provide partial reimbursement to the developer for public improvements and fee-related public improvements and to pay administrative expenses.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council finds that the statements in the Background are correct.

Section 2. The City Manager or his designee is authorized and directed to create a new accounting fund to be designated as the Delta Shores CFD 2019-01 Improvement Area No. 1.

Section 3. The City Manager or his designee is authorized and direct to create a new accounting fund to be designated as the Delta Shores CFD 2019-01 Improvement Area No. 2.

Section 4. The City Manager or his designee is authorized and direct to create a new accounting fund to be designated as the Delta Shores CFD 2019-01 Improvement Area No. 3.
ORDINANCE NO.  
Adopted by the Sacramento City Council  
__________, 2019

Approving a Second Amendment to the Development Agreement for Delta Shores  
(City Agreement No. 2009-0060)

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. Background.

On January 13, 2009, the City Council enacted Ordinance No. 2009-003, thereby approving City Agreement No. 2009-0060 (the “Development Agreement”) with M&H Realty Partners VI, L.P., a California limited partnership (the “Original Landowner”). The following year, on October 6, 2010, the Development Agreement was amended to include mitigation measures relating to toxic air contaminants emitted by motor vehicles on the Interstate 5 (City Agreement No. 2009-0060-1). The Original Landowner subsequently transferred several parcels covered by the Development Agreement to three Delaware limited-liability companies: M&H VI Projects, LLC; Delta Shores Wetlands, LLC; and Delta Shores Detention Ponds, LLC (the “New Landowners”; the New Landowners and the Original Landowner are the “Landowners”). In 2016, the Original Landowner assigned to the New Landowners its rights under the Development Agreement with respect to the transferred parcels, the New Landowners assumed the Original Landowner’s obligations under the Development Agreement with respect to those parcels, and the City released the Original Landowner from those obligations. The Landowners now desire to enter into a second amendment to the Development Agreement to clarify the use of library-services fees and their obligation to transfer $4 million to the City for the future development of a regional park.

Section 2. Incorporation of Second Amendment

This ordinance incorporates the Second Amendment to the Development Agreement for Delta Shores Project # P-06-197 between the City of Sacramento and the Landowners, a copy of which is attached to this ordinance as Exhibit A (the “Second Amendment”).

Section 2. Hearing before the Planning and Design Commission.

On September 12, 2019, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the Planning and Design Commission conducted a noticed public hearing on the Second Amendment. During the hearing, the Planning and Design Commission received and considered evidence and testimony. After the hearing concluded, the Planning and Design Commission forwarded to the City Council a recommendation to approve the Second Amendment.
Section 3. Hearing before the City Council; Findings.

On __________, 2019, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the City Council conducted a noticed public hearing on the Second Amendment. During the hearing, the City Council received and considered evidence and testimony concerning the Second Amendment. Based on the information in the application and the evidence and testimony received at the hearing, the City Council finds as follows:

(a) The Second Amendment is consistent with the City’s general plan and the goals, policies, standards, and objectives of each applicable specific plan and community plan.

(b) The Second Amendment will facilitate the Landowners’ development of the property subject to the Development Agreement, which should be encouraged to meet important economic, social, environmental, and planning goals of each applicable specific plan and community plan.

(c) Without the Second Amendment, the Landowners would be unlikely to proceed in the manner proposed with development of the property subject to the Development Agreement.

(d) The Landowners will incur substantial costs to provide public improvements, facilities, and services that will benefit the general public.

(e) The Landowners will participate in all programs established or required under the general plan and any applicable specific or community plan or under the approving resolutions (including any mitigation-monitoring plan) and has agreed to the financial participation required under the applicable financing plan and its implementation measures, all of which will benefit the public.

(f) The Landowners have made commitments to a high standard of quality and have agreed to all applicable land-use and development regulations.

(g) The project site is within an area for which the local flood-management agency has made adequate progress (as defined in California Government Code section 65007) on the construction of a flood-protection system that will result in flood protection equal to, or greater than, the urban level of flood protection in urban or urbanizing areas for property within a flood-hazard zone that is intended to be protected by the system, as demonstrated by the Sacramento Area Flood Control Agency Urban (“SAFCA”) Urban Level of Flood Protection Plan and Adequate Progress Baseline Report dated June 10, 2016, and the SAFCA Adequate Progress Toward an Urban Level of Flood Protection Engineer’s Report dated June 2016, each accepted by the City Council on June 21, 2016 (Resolution No. 2016-0226); and the SAFCA 2018 Urban Level of Flood Protection Annual
Report dated August 21, 2018, and accepted by the City Council on November 20, 2018 (Resolution No. 2018-0445).

Section 4. Approval and Authorization

The City Council hereby approves the Second Amendment and authorizes the Mayor to sign the Second Amendment on the City’s behalf on or after the effective date of this ordinance.

Table of Contents:

Exhibit A: Draft Second Amendment to Development Agreement
No fee required, as recording benefits the City of Sacramento, a government entity (Gov. Code, §§ 6103 & 27383).

Recording requested by, and when recorded return to—

City Clerk
City of Sacramento
915 "I" Street, Fifth Floor
Sacramento, CA 95814

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT FOR DELTA SHORES PROJECT # P-06-197

This Second Amendment to Development Agreement for Delta Shores Project # P-06-197 ("Amendment"), dated __________, 20__, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation (the "City"); and M & H Realty Partners VI L.P., a California limited partnership, the original Landowner, M&H VI Projects, LLC, a Delaware limited liability company, DELTA SHORES WETLANDS, LLC, a Delaware limited liability company and DELTA SHORES DETENTION PONDS, LLC, a Delaware limited liability company, each an assignee of the original Landowner under separate assignment and assumption agreements (collectively, "Landowners"). Landowners own the parcels described in Exhibit A, to which this Second Amendment pertains.

Background

The City and Landowners are parties to the Development Agreement for Delta Shores Project # P-06-197, which is designated as City Agreement No. 2009-0060 and was recorded with the Sacramento County Clerk/Recorder on February 27, 2009, in book number 20090227 at page 0082, as amended by that certain First Amendment to Development Agreement dated October 6, 2010, and recorded with the Sacramento County Clerk/Recorder on October 18, 2010, in Book 20101018 and Page 1169, (the "Development Agreement").

Section 6 of the Development Agreement provides for the payment of various fees, charges, assessments and taxes, as well as requiring Landowners to participate in and comply with the Delta Shores Finance Plan, which can include Landowners’ payment of their fair share of the cost of regional facilities, including such facilities located off-site. Among those costs is the fair share cost of library facilities, estimated in the 2009 Finance Plan at $3,900,000, in 2008 dollars to be adjusted for inflation. Consistent with an updated Delta Shores Finance Plan, the City and the Landowners desire to insure that Delta Shores’ fair share of regional library costs shall only be expended on library services and facilities located within the boundaries of the Property.
Section 9 of the Development Agreement identifies certain Landowner Obligations, including an obligation set forth in subsection C providing for the future transfer by Landowners of $4,000,000 to the City for future development of a regional park. Consistent with an updated Delta Shores Finance Plan, the parties desire to include this $4,000,000 obligation as a sub-component of the Public Facilities component of a new Delta Shores Impact Fee, which can be used to satisfy this $4,000,000 future transfer obligation.

*With these background facts in mind, the City and the Landowners agree as follows:*

1. **Amendment of Section 6.** Section 6 of the Development Agreement is amended by adding a new sub-section E, which is made a part of the Development Agreement:

   E. **Library Facilities.** Notwithstanding any other provision of this Agreement, any portion of a fee imposed on the Project for the fair share cost of library services or facilities (the “Library Fee Portion”) shall only be used to provide such services and facilities within the Property boundaries. Further:

   (1) The amount of the Library Fee Portion shall not exceed the sum of $4,639,000 in 2019 dollars, to be adjusted for inflation in the same manner as fee amounts are adjusted in the Delta Shores Finance Plan.

   (2) Prior to issuance of the 3,375th residential building permit at the Property, the City shall have commenced using, or have adopted a plan setting forth the future use of, the Library Fee Portion to provide services and facilities within the Property boundaries (the “Library Fee Plan”).

   (3) If the City has not commenced using the Library Fee Portion or has not adopted the Library Fee Plan at the time of issuance of the 3,375th residential building permit, the following shall apply:

      (a) the public facilities fee component will be reduced for any unpaid Finance Plan specific fees by the amount of the Library Fee Portion then in place, as adjusted for inflation in the same manner as fee amounts are adjusted in the Delta Shores Finance Plan; and

      (b) the City shall issue refunds for any Library Fee Portion previously paid to then Owners of any property for which the Library Fee Portion was previously paid.

2. **Revision of Landowner Obligation for Transfer of Park Funds.** Section 9.C. of the Development Agreement is amended to read (new language in *italics*):

   “C. Transfer of Park Funds to CITY. As set forth in Exhibit C, LANDOWNER shall transfer four million dollars ($4,000,000) to CITY for..."
purposes of future development of a regional park (the “Regional Park Fee”) upon issuance of the 3,375th residential building permit at the Property. This obligation shall be deemed satisfied if the $4,000,000 amount of the Regional Park Fee is included in an approved updated Delta Shores Finance Plan as a sub-component of the Public Facilities component of a new Delta Shores Impact Fee. LANDOWNER waives any and all administrative or judicial challenges that it can legally make based on insufficient nexus for the Regional Park Fee.”

Section II.E.3 of Exhibit C of the Development Agreement is amended to read (new language in italics):

“3. Park Funding Requirement. As required by subsection 9C of the Development Agreement, LANDOWNER shall transfer four million dollars ($4,000,000) to CITY for purposes of future development of a regional park to be located on or adjacent to the Property (the “Regional Park Fee”) upon or before issuance of the 3,375th residential building permit at the Property. This obligation shall be deemed satisfied if the $4,000,000 amount of the Regional Park Fee is included in an approved updated Delta Shores Finance Plan as a sub-component of the Public Facilities component of a new Delta Shores Impact Fee.”

3. All Other Terms Remain in Force. Except as amended by section 1 above, all terms and conditions of the Development Agreement remain in full force.

4. Effective Date. This Amendment takes effect on the effective date of the ordinance that approves it (Gov. Code, § 65868; Sacramento City Code, §§ 18.16.120 & 18.16.130).

5. Recording. Either party may record this Amendment with the Sacramento County Clerk/Recorder.

6. Counterparts. The parties may execute this Amendment in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

7. Entire Agreement. This Amendment sets forth the parties’ entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those matters (whether written, oral, express, or implied) and may be modified only by another written agreement signed by all parties. This Amendment will control if any conflict arises between it and the Agreement.

(Signature Pages Follow)
LANDOWNERS

M & H Realty Partners VI L.P.,
a California limited partnership

By: MHRP VI L.P.,
a California limited partnership,
its General Partner

By: Merlone/Hagembuch VI Inc.,
a California corporation,
its General Partner

By: __________________________
Signature
Name: Scott A. McPherson
Print Name
Title: Managing Director
Print Title

By: __________________________
Signature
Name: Bradley A. Geier
Print Name
Title: Managing Director
Print Title

M&H VI Projects, LLC,
a Delaware limited liability company

By: M&H VI Investments, LLC,
a Delaware limited liability company
its sole Member

By: M & H Realty Partners VI L.P.,
a California limited partnership
its sole Member

By: MHRP VI L.P.,
a California limited partnership
its General Partner

Second Amendment to the Delta Shores Development Agreement | Page 4 of 7
By: Merlone/Hagenbuch VI Inc.,
a California corporation
its General Partner

By: __________________________
Signature

Name: Scott A. McPherson
Print Name

Title: Managing Director
Print Title

By: __________________________
Signature

Name: Bradley A. Geier
Print Name

Title: Managing Director
Print Title

DELTA SHORES WETLANDS, LLC,
a Delaware limited liability company

By: M & H Realty Partners VI L.P.,
a California limited partnership
its sole Member

By: MHRP VI L.P.,
a California limited partnership
its General Partner

By: Merlone/Hagenbuch VI Inc.,
a California corporation
its General Partner

By: __________________________
Signature

Name: Scott A. McPherson
Print Name

Title: Managing Director
Print Title
DELTA SHORES DETENTION PONDS, LLC,
a Delaware limited liability company

By: M & H Realty Partners VI L.P.,
a California limited partnership
its sole Member

By: MHRP VI L.P.,
a California limited partnership
its General Partner

By: Merlone/Hagenbuch VI Inc.,
a California corporation
its General Partner

By: 

Name: Bradley A. Geier
Print Name: Bradley A. Geier
Title: Managing Director
Print Title: Managing Director
CITY OF SACRAMENTO

By: __________________________
   Darrell Steinberg, Mayor

Attest
Sacramento City Clerk

By: __________________________
   Signature

Approved as to Form
Sacramento City Attorney

By: __________________________
   Signature

[Attach Certificate of Acknowledgment – Civil Code § 1189]
EXHIBIT "A"

PARCEL 1 AS SHOWN ON THAT CERTIFICATE FOR LOT LINE ADJUSTMENT RECORDED IN BOOK 20121121, PAGE 1708, SITUATE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

TOGETHER WITH

PARCEL 2 AS SHOWN ON THAT CERTIFICATE FOR LOT LINE ADJUSTMENT RECORDED IN BOOK 20121121, PAGE 1708, SITUATE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.


TOGETHER WITH

PARCEL 1 AS SHOWN ON THAT CERTIFICATE FOR LOT LINE ADJUSTMENT RECORDED IN BOOK 20130725, PAGE 1062, SITUATE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

TOGETHER WITH

PARCEL 2 AS SHOWN ON THAT CERTIFICATE FOR LOT LINE ADJUSTMENT RECORDED IN BOOK 20130725, PAGE 1062, SITUATE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

EXCEPTING THEREFROM ALL LEGAL GAS RIGHTS OF WAY 500 FEET BENEATH THE SURFACE OF SAID LAND SUBJECT TO THE CONDITION THAT GRANTOR CANNOT ENTER UPON SUBJECT PROPERTY FOR

EXCEPTING THEREFROM ALL OIL, GAS AND MINERALS, BELOW A DEPTH OF 100 FEET BELOW THE SURFACE OF THE ABOVE DESCRIBED PROPERTY EXCEPTED IN QUITCLAIM DEED DATED JANUARY 19, 1960, RECORDED JANUARY 20, 1960, IN BOOK 3980 OF OFFICIAL RECORDS, PAGE 661, EXECUTED BY LESTER C. HUNT AND MARTHA HUNT, HIS WIFE, TO CALIFORNIA PACIFIC TITLE COMPANY, SACRAMENTO DIVISION, A CORPORATION, AND MODIFIED BY DEED DATED FEBRUARY 15, 1960, RECORDED MARCH 25, 1960, IN BOOK 4024 OF OFFICIAL RECORDS, PAGE 939, RECORDED MARCH 25, 1960, IN BOOK 4024 OF OFFICIAL RECORDS, PAGE 940, EXECUTED BY CALIFORNIA PACIFIC TITLE COMPANY, SACRAMENTO DIVISION, A CORPORATION TO LESTER C. HUNT AND MARTHA E. HUNT, HIS WIFE, AS JOINT TENANTS.

TOGETHER WITH

LOTS 1 THROUGH 20, LOTS 22 THROUGH 25, LOT A AND LOT B INCLUSIVE, OF "FINAL MAP OF DELTA SHORES PHASE 1 SUBDIVISION NO. P06-197", IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 392, PAGE 0001 OF TRACT MAPS, IN THE OFFICE OF THE COUNTY OF RECORDER OF SAID COUNTY.

TOGETHER WITH

PARCEL A, PARCEL B, PARCEL C AND PARCEL D AS DESCRIBED IN THAT GRANT DEED TO M & H REALTY PARTNERS VI L.P., A CALIFORNIA LIMITED PARTNERSHIP DATED MAY 5, 2019 RECORDED IN DOCUMENT NO. 201905141227 OF OFFICIAL RECORDS OF SACRAMENTO COUNTY, IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

TOGETHER WITH

PARCEL 1 AS DESCRIBED IN THAT GRANT DEED TO M & H REALTY PARTNERS VI L.P., A CALIFORNIA LIMITED PARTNERSHIP DATED NOVEMBER 2, 2018 RECORDED IN DOCUMENT NO. 201811020929 OF OFFICIAL RECORDS OF SACRAMENTO COUNTY, IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.
TOGETHER WITH

PARCEL ONE AND PARCEL FIVE AS DESCRIBED IN THAT GRANT DEED TO M & H REALTY PARTNERS VI L.P., A CALIFORNIA LIMITED PARTNERSHIP DATED JUNE 30, 2016 RECORDED IN BOOK 20160630, PAGE 1120 OF OFFICIAL RECORDS OF SACRAMENTO COUNTY, SITuate IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

TOGETHER WITH

PARCEL 3 AS SHOWN ON THAT CERTIFICATE FOR LOT LINE ADJUSTMENT RECORDED IN BOOK 20130725, PAGE 1082, SITuate IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

EXCEPTING THEREFROM ALL LEGAL GAS RIGHTS OF WAY 500 FEET BENEATH THE SURFACE OF SAID LAND SUBJECT TO THE CONDITION THAT GRANTOR CANNOT ENTER UPON SUBJECT PROPERTY FOR DRILLING PURPOSES OR FOR ANY PURPOSES CONNECTED WITH EXPLORING OR DEVELOPINGS SAID MINERALS RIGHTS, AS RESERVED IN THE DEED EXECUTED BY HARRY M. TONKIN AND DALTON G. FELDSTEIN, AS TRUSTEES OF THE FREEPORT LIQUIDATING TRUST, RECORDED JUNE 29, 1984, IN BOOK 84 06 29, PAGE 1677, OFFICIAL RECORDS.
CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT CIVIL CODE 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

On October 3, 2019 before me, Barbara A. Davies, Notary Public, personally appeared Bradley A. Geier, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]

Barbara A. Davies (Seal)
CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT  CIVIL CODE 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

On October 3, 2019 before me, Barbara A. Davies, Notary Public, personally appeared Scott A. McPherson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal:

Signature

(Seal)

BARBARA A. DAVIES
Notary Public - California
San Diego County
Commission # 2236526
My Comm. Expires Apr 28, 2022