

OAKLAND CITY COUNCIL

RESOLUTION NO. 77959

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
C.M.S.

2003 JUN 26 PM 2: 26

*B. Alder*  
*PC*

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**RESOLUTION CALLING SPECIAL MAILED-BALLOT ELECTION**

**Community Facilities District No. 2003-1  
(Werner Court Vegetation Management)**

WHEREAS, on July 15, 2003, at the time set for the public hearing by the Resolution of Intention, adopted by the City Council (the "Council") this same date, the Council conducted the public hearing, and at the close of the public hearing the Council determined that a majority protest under Section 53324 of the Government Code was not made at the hearing; and

WHEREAS, at the conclusion of the public hearing, the Council adopted its Resolution of Formation pursuant to Section 53325.1 of the Government Code, thereby completing its proceedings for formation of proposed Community Facilities District No. 2003-1 (Werner Court Vegetation Management) ("CFD No. 2003-1"), to which resolution reference is hereby made for the description of the authorized maintenance services and administrative expenses and the authorized special tax approved by these proceedings; and

WHEREAS, in order to proceed with (1) the authorized maintenance services, (2) the levy of the authorized special tax and (3) establishment of the appropriations limitation for CFD No. 2003-1, as provided by the Resolution of Formation, the three matters must be submitted to an election of the qualified electors of CFD No. 2003-1; and

WHEREAS, the Council wishes to provide that the three ballot questions just described be combined into a single ballot measure pursuant to Section 53353.5 of the Government Code, as provided in the form of special election ballot attached hereto as Exhibit A and by this reference incorporated herein; and

WHEREAS, a Certificate re Land Ownership has been filed with the City Clerk (the “Clerk”), certifying that at no time relevant to these proceedings were there ever twelve or more persons registered to vote within the territory of CFD No. 2003-1, with the result that, pursuant to Section 53326 of the Government Code, the qualified electors of CFD No. 2003-1 for the proposed special election shall be the landowners of CFD No. 2003-1;

NOW, THEREFORE, BE IT RESOLVED by the City Council of City of Oakland as follows:

1. The Council finds and determines that the foregoing recitals are true and correct.
2. The Council accepts the Certificate re Land Ownership heretofore filed in these proceedings and finds, in accordance therewith, that there presently are, and at all times relevant to these proceedings there have been fewer than twelve registered voters residing within the boundaries of CFD No. 2003-1. Accordingly, under Section 53326 of the Government Code, the qualified electors of CFD No. 2003-1 for the proposed special election shall be the landowners of CFD No. 2003-1.
3. The Council further finds and determines that the sole landowner of record owning private property within CFD No. 2003-1 is Werner Development, LLC (“Werner Development”), the entity set forth in the Certificate re Land Ownership (the “Ownership Certificate”) and that, as set forth on the special election ballot attached hereto as Exhibit A, all of the votes which may be cast in said special election are to be cast by Werner Development.
4. The Council further finds and determines that the authorized representative of Werner Development has filed with the Clerk (a) the special election ballot pertaining to Werner Development’s property and (b) a waiver and consent, by which, among other things, the time limits and related requirements respecting preparation and distribution of election materials are waived.

5. Pursuant to Sections 53326 and 53351 of the Government Code, the Council hereby calls an election, to be held and conducted forthwith upon adoption of this resolution, and sets this same date as the election date. Pursuant to Section 53326 of the Government Code, the election shall be conducted by mailed ballot; provided that personal service of the ballot is permitted under the terms of the waiver and consent on file with the Clerk and shall therefore be permitted. The prior receipt of the election ballot by Werner Development is hereby ratified as a form of personal service.

6. The combined measure to be submitted to the qualified electors of CFD No. 2003-1 shall be as set forth in Exhibit A.

7. The Clerk having certified to the receipt of the signed and marked ballot of Werner Development prior to adoption of this resolution, the Council hereby closes the election.

8. This resolution shall take effect from and after its adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 15 2003, 20      


**PASSED BY THE FOLLOWING VOTE:**

AYES: - BROOKS, BRUNNER, CHANG, NADEL, QUAN, ~~REID~~, WAN AND PRESIDENT DE LA FUENTE -7

NOES - -0

ABSENT - Reid -1

ABSTENTION - 0

ATTEST:   
CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

03 JUL 19 PM 2:29

CITY OF OAKLAND  
COMMUNITY FACILITIES DISTRICT NO. 2003-1  
(WERNER COURT VEGETATION MANAGEMENT)

**CERTIFICATE OF CLERK RE RECEIPT OF  
PROPERTY OWNER WAIVER AND CONSENT  
AND ELECTION BALLOT AND  
DECLARING ELECTION RESULTS**

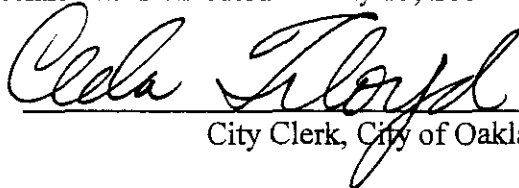
I, CEDA Floyd, the City Clerk of the City of Oakland (the "City"), hereby certify as follows:

In connection with the special mailed-ballot election called by the City Council of the City in the proceedings for the above-entitled community facilities district ("CFD No. 2003-1"), I have received (a) a signed and dated waiver and consent and (b) a signed, dated and marked election ballot for the proceedings for CFD No. 2003-1. Copies of the completed waiver and consent and the completed election ballot, as received and on file in my office, are attached hereto.

As confirmed by the attached copy of the completed ballot, it has been marked "Yes" and signed, and I hereby certify that it is only ballot received with respect to this election.

Based upon the foregoing, all votes that were cast having been cast "Yes", in favor of the ballot measure, the measure has therefore passed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on July 15, 2003.

  
\_\_\_\_\_  
City Clerk, City of Oakland

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2003 JUL -8 PM 4:13

CITY OF OAKLAND  
COMMUNITY FACILITIES DISTRICT NO. 2003-1  
(WERNER COURT VEGETATION MANAGEMENT)

**SPECIAL ELECTION BALLOT**

(Mailed-Ballot Election)

This ballot is for the use of the authorized representative of the following owner of land within Community Facilities District No. 2003-1, City of Oakland, County of Alameda, State of California ("CFD No. 2003-1"):

<u>Name of Landowner</u>	<u>Number of Acres Owned</u>	<u>Total Votes</u>
Werner Development, LLC	All	All

According to the provisions of the Mello-Roos Community Facilities Act of 1982, and resolutions of the City Council (the "Council") of the City of Oakland (the "City"), the above-named landowner, as the sole owner of the privately-owned real property in CFD No. 2003-1, is entitled to cast all of the votes for CFD No. 2003-1.

In order to be counted, this ballot must be executed and certified below and be returned to the City Clerk, either by mail or in person, prior to 7:00 p.m. on July 15, 2003 (the "Election Date"), or as soon thereafter as the matter of the special election for CFD No. 2003-1 shall be considered by the Council at its meeting on said date, to:

City Clerk  
City of Oakland  
1 Frank Ogawa Plaza  
Oakland, CA 94612

Mailing on the Election Date will not be sufficient. The ballot must be physically received by the City Clerk prior to the deadline in order to be counted.

AN "X" OR OTHER MARK WILL CAST ALL VOTES ASSIGNED TO THIS BALLOT.

BALLOT MEASURE

MARK "YES" OR "NO"  
WITH AN "X":

Shall the City Council of the City of Oakland be authorized to levy a special tax on the taxable property within its Community Facilities District No. 2003-1 ("CFD No. 2003-1") and utilize the proceeds thereof to finance certain authorized maintenance services and administrative expenses of CFD No. 2003-1, all as specified in its resolutions pertaining thereto, adopted on the Election Date; and shall the appropriations limit for CFD 2003-1 for fiscal year 2003-2004 be established at \$10,000 in accordance therewith?

YES  
X

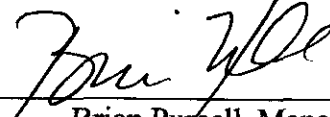
NO  
\_\_\_\_\_

Certification for Special Election Ballot

The undersigned is an authorized representative of the above-named landowner and is a person legally authorized and entitled to cast this ballot on behalf of the above-named landowner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on July 15, 2003.

**WERNER DEVELOPMENT, LLC,**  
a California limited liability company

By:   
Brian Purcell, Manager

CITY OF OAKLAND  
COMMUNITY FACILITIES DISTRICT NO. 2003-1  
(WERNER COURT VEGETATION MANAGEMENT) 2003-JUL -8 PM 4:13

**WAIVER AND CONSENT  
RESPECTING CONDUCT OF PUBLIC HEARING AND  
MAILED-BALLOT, LANDOWNER ELECTION**

The undersigned, Brian Purcell, is the Manager of Werner Development, LLC ("Werner Development"), and is an authorized representative of Werner Development, the sole owner of the 21 parcels of privately-owned land within Community Facilities District No. 2003-1 (Werner Court Vegetation Management), City of Oakland, County of Alameda, State of California ("CFD No. 2003-1").

The undersigned expressly acknowledges having petitioned the City Council of the City of Oakland (the "City") to undertake the proceedings for establishment of CFD No. 2003-1 and having received copies of the boundary map and the hearing report for CFD No. 2003-1, together with any other information the undersigned deemed relevant to an informed decision respecting CFD No. 2003-1, and as the proponent of CFD No. 2003-1 hereby waives any right to protest at the public hearing to be held on July 15, 2003, respecting CFD No. 2003-1.

The undersigned is legally entitled and authorized to cast the ballot for Werner Development in the landowner, mailed-ballot election to be conducted on June 15, 2003, within CFD No. 2003-1 to determine, among other things, whether the 21 subject parcels, all of which are presently owned by Werner Development, shall be subject to special tax pursuant to the Mello-Roos Community Facilities Act of 1982 (Sections 53311 and following, California Government Code) (the "Act"), as provided by Exhibit A of the Resolution of Formation for CFD No. 2003-1 (the "Resolution of Formation"), proposed to be adopted by the City Council of the City of Oakland on July 15, 2003, a copy of which Resolution of Formation has been furnished to the undersigned.

The undersigned, on behalf of Werner Development, hereby waives (and, with respect to Item 5, acknowledges receipt of) each of the following:

1. any and all minimum time periods relative to the public hearing to be held pursuant to Government Code Section 53321 of the Act and the publication or mailing of the notice of hearing pursuant to Government Code Section 53322 of the Act.
2. any and all minimum time periods relative to the landowner-voter election to be held pursuant to Government Code Section 53326(a) of the Act;
3. the preparation and distribution of an impartial analysis of the ballot measure, as well as arguments in favor and against, under the authority of Government Code Section 53327(b) of the Act;

4. the requirement to publish notice of the election under Government Code Section 53352 of the Act;

5. the requirements regarding the time to mail ballots to the qualified electors under Elections Code Section 4101, and acknowledges receipt of the election ballot;

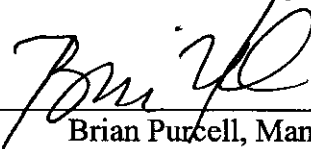
6. the requirements regarding identification envelopes for the return of mailed ballots contained in Government Code Section 53327.5 of the Act; and

7. any and all defects, whether known or unknown, in notice or procedure in the formation of CFD No. 2003-1, including but not limited to the public hearing and conduct of the election.

The undersigned expressly acknowledge, represent and state that the election is being expedited by the City, pursuant to this waiver and consent, at the particular instance and request of the undersigned as an authorized representative of Werner Development.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration is executed on July 15, 2003.

**WERNER DEVELOPMENT, LLC,**  
a California limited liability company

By:   
Brian Purcell, Manager