TO: BOARD OF DIRECTORS

FROM: BRUCE BUEL BBB

DATE: MAY 18, 2007

AGENDA ITEM
D-1
MAY 23, 2007

SAIC PRESENTATION

ITEM

Dr. Brad Newton of SAIC re 2007 Groundwater Storage Update and Report on Coastal Monitoring Well Water Quality Results [RECEIVE PRESENTATION].

BACKGROUND

Attached is a copy of SAIC Memorandum on the Coastal Monitoring Well Water Quality Results.

Staff will distribute the 2007 Groundwater Storage Update following reception from SAIC.

RECOMMENDATION

The presentation is for information only. Staff is not recommending action at this time.

ATTACHMENT

- COASTAL MONITORING WELL WATER QUALITY RESULTS

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\BOARD LETTER 2007\SAIC Presentation.DOC

TECHNICAL MEMORANDUM

TO: Bruce Buel, General Manager, Nipomo Community Services District

FROM: Joel Degner, Brad Newton, Robert G. Beeby

RE: Nipomo Mesa Potential for Seawater Intrusion, 01-0236-00-9100

DATE: April 26, 2007

INTRODUCTION

The Nipomo Community Service District (NCSD) previously requested SAIC to comment on the various interpretations of how many years Nipomo has until there is a seawater intrusion problem (Technical Memorandum #2, dated October 24, 2007). After a review of the previous analyses, SAIC determined that water quality data had not been taken from the coastal monitoring wells since 1996 and any projection would be overly speculative without current water quality data. As part of establishing the groundwater monitoring program for the NMMA, Conoco Phillips worked with the County of San Luis Obispo and California Department of Water Resources (DWR) to provide for an independent consultant (Secor International Incorporated) to collect groundwater samples and measure the groundwater surface elevations at each of the three nested wells 12C01S (screened interval 280'-290'), 12C02S (screened interval 450'-460'), and 12C03S (screened interval 720'-730') at the coastal monitoring location, 11N36W12C. The samples were sent to a certified laboratory (BC Laboratories, Inc.) to analyze water quality (Attachment). Water samples were collected on February 28, 2007. (Figure 1: Water Quality at Coastal Monitoring Location 11N36W12C).

SUMMARY OF FINDINGS

- The amount of chloride measured in water samples collected from the three wells, 12C01S, 12C02S, and 12C03S (nested at location 11N36W12C) has been stable over time (See Figure 1).
  - ➢ The chloride measurements in the well 12C03S (screened interval 720'-730') screened in the Careaga Formation are nearly double the concentrations of wells 12C01S (screened interval 280'-290') and 12C02S (screened interval 450'-460'), that are screened in the Paso Robles Formation. It is possible the difference in chloride concentration is due to the different geologic formations.
- Preliminary reports from Steve Bachman (pers. comm.) describe all three wells as having had a potentiometric surface above ground level and were flowing artesian.
  - ➢ This indicates:
    1. that there is a confining layer, and
    2. that the flow of fresh water from the Nipomo Mesa is likely toward the ocean.

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5464 Carpinteria Ave., Suite K • Carpinteria, CA 93013 • Telephone 805/566-6400 • Facsimile 805/566-6427

- Furthermore the potentiometric water elevations measured in all wells at the coastal monitoring location have historically been above sea level and all wells often flow artesian (as they were on February 28, 2007).
- Based on the laboratory analysis of the water samples taken on February 28, 2007 and the elevation of the groundwater potentiometric surface, there is no evidence of seawater intrusion in the coastal zone of the Nipomo Mesa.
- Additional information is needed to determine the stratigraphic interface of the coastal fresh water aquifer with the seawater.
- Previous water balance analyses by DWR (2002) and SAIC (2003), and evaluations of groundwater in storage (TM #1) indicate a decrease in the groundwater volume over time due to a shortfall of supplies as compared to demands on the Nipomo Mesa. It is currently unknown whether or not the current volume of groundwater flow to the ocean is over the long term sufficient to hold at bay the seawater from entering the freshwater aquifer under the NMMA.
- A three-dimensional model of the NMMA hydrogeology would be needed to improve the understanding of the dynamics of the seawater intrusion and to temporally estimate the threat to the Nipomo Mesa groundwater resource.

METHODOLOGY

An indicator of seawater intrusion is the increased chloride concentration in the freshwater aquifer. Seawater contains approximately 35,000 milligrams per liter (mg/L) of dissolved solids, which includes about 19,000 mg/L of chloride. Fresh ground water in nearby wells typically contains 40-50 mg/L of chloride. Water samples containing a chloride concentration of 100 mg/L or more are likely an indicator for seawater intrusion. Additionally, groundwater surface elevations above sea level typically indicate a freshwater flow to the ocean likely sufficient to keep the seawater from intruding the fresh water aquifer.

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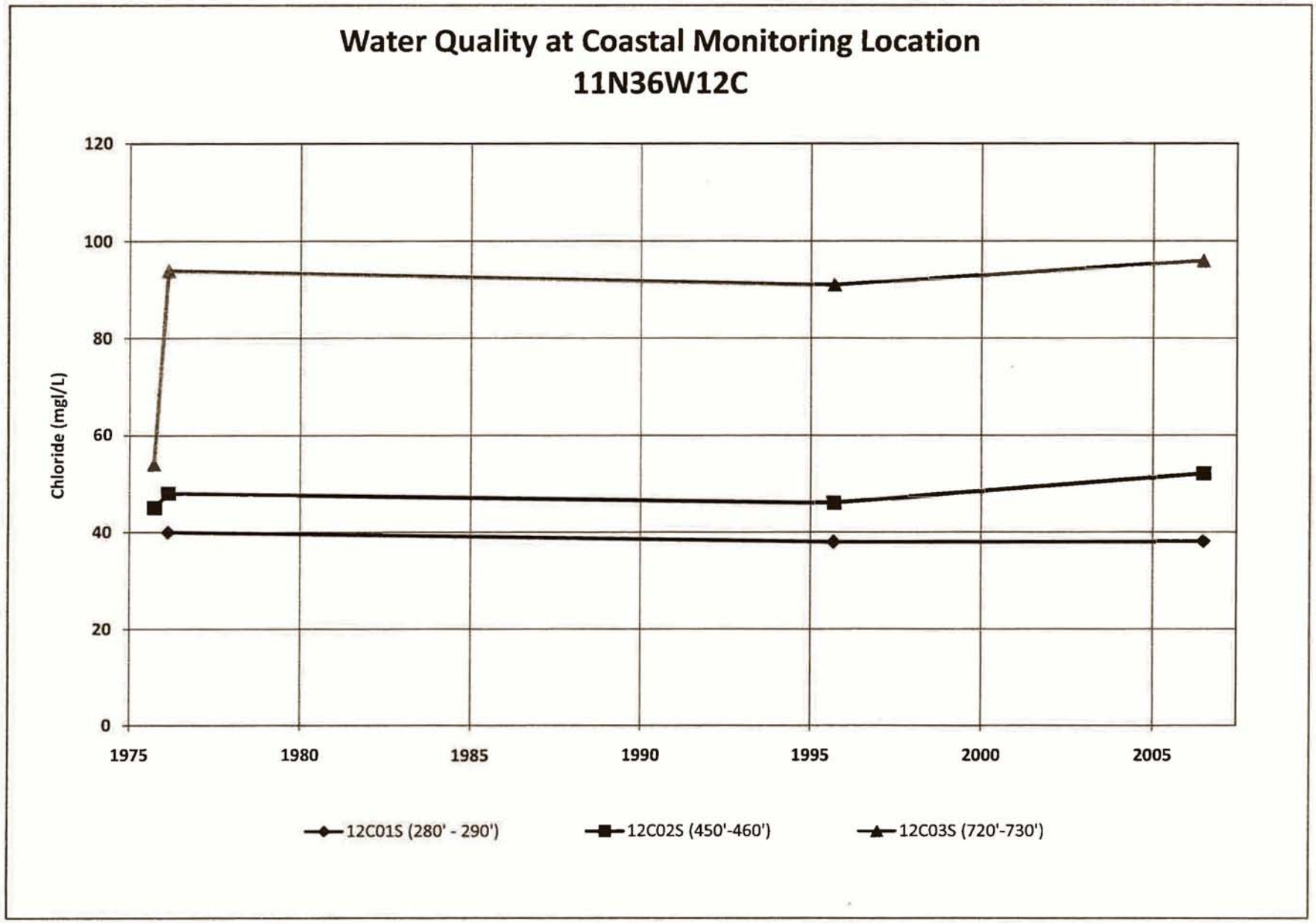

W:\NCSD (9100 9228)\General Consultation - 9100\Activities\TM3 Seawater Intrusion Update\
2007-04-24 Chloride Concentrations 12C.xlsChart1

DRAFT
Subject to Revision

Figure 1
SAIC WRE
Created: 4/26/2007

BC LABORATORIES, INC.

Date of Report: 03/12/2007

Chris Prevost

Secor
3437 Empressa Drive
Suite A
San Luis Obispo, CA 93412

RE: Dune Wells
BC Work Order: 0702559

Enclosed are the results of analyses for samples received by the laboratory on 03/01/2007 20:10. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Molly Meyers
Contact Person: Molly Meyers
Client Service Rep

Steven Bennett
Authorized Signature

BC Laboratories, Inc.

Chain of Custody Form

25025

PLEASE COMPLETE: BCL QUOTE ID:

Page 1 of 1

Report To:
Client: ~~Tom Hopps~~ SECOR
Attn: Chris Prevost
Street Address: 3427 Empresa Ste A
City, State, Zip: San Luis Obispo, CA
Phone: ~~805.546.0455~~ Fax: 805.546.0583
Email Address:
Submittal #: 07-02559

Project #:
Project Name: Dune wells
Project Code:
Sampler(s): Kirk Henning

Analysis Requested

Comments:

Sample #	Description	Date Sampled	Time Sampled	General Minerals (Na, Cl, SO4 only per Kirk) MW 3/2	Sample Matrix: Soil	Sludge	Drinking Water	Ground Water	Waste Water	Other	Turnaround # of work days*
-1	C-1	2/28/07	1520	X				X			
-2	C-2	2/28/07	1510	X				X			
-3	C-3	2/28/07	1730	X				X			

Are there any tests with holding times less than or equal to 48 hours? ☐ Yes ☐ No

* Standard Turnaround = 15 work days

Notes

SHORT HOLDING TIME
Cr^{+6} NO_2 NO_3 OP SS
DO Cl_2 BOD MBAS COT

CHK BY: Aya
DISTRIBUTION: MA COC
SUB-OUT ☐

Billing
☒ Same as above
Client: SECOR
Address:
City: State Zip
Attn:
PO#:

Report Drinking Waters on State Form? ☐ Yes ☐ No

Send Copy to State of CA? ☐ Yes ☐ No

Sample Disposal: ☐ Return to Client ☐ Disposal by lab ☐ Archive: Months

Special Reporting: ☐ QC ☐ WIP ☐ Raw Data

	Relinquished By	Date	Time	Received By	Date	Time
1		3/1/07	1450		3/1/07	1450
2	Jerry Mora	3-1-07	2010	Terri Obafemi	3/1/07	2010
3						

BC LABORATORIES INC. | SAMPLE RECEIPT FORM | Rev. No. 10 01/21/04 | Page ___ Of ___

Submission #: 07-02559 | Project Code: | TB Batch #

SHIPPING INFORMATION

Federal Express ☐ UPS ☐ Hand Delivery ☐
BC Lab Field Service ☑ Other ☐ (Specify)_____

SHIPPING CONTAINER

Ice Chest ☑ None ☐
Box ☐ Other ☐ (Specify)_____

Refrigerant: Ice ☑ Blue Ice ☐ None ☐ Other ☐ Comments:

Custody Seals: Ice Chest ☐ Intact? Yes ☐ No ☐ | Containers ☐ Intact? Yes ☐ No ☐ | None ☑ Comments:

All samples received? Yes ☑ No ☐ All samples containers intact? Yes ☑ No ☐ Description(s) match COC? Yes ☑ No ☐

COC Received ☑ YES ☐ NO

Ice Chest ID RW | Emissivity 1.00 | Date/Time 3/1/07
Temperature: 1.2 °C | Container Pipe | Analyst Init OTO
Thermometer ID: #48

SAMPLE CONTAINERS	SAMPLE NUMBERS 1	2	3	4	5	6	7	8	9	10
QT GENERAL MINERAL/ GENERAL PHYSICAL										
PT PE UNPRESERVED	A, B	A, B	A, B							
QT INORGANIC CHEMICAL METALS										
PT INORGANIC CHEMICAL METALS										
PT CYANIDE										
PT NITROGEN FORMS										
PT TOTAL SULFIDE										
2oz. NITRATE / NITRITE										
100ml TOTAL ORGANIC CARBON										
QT TOX										
PT CHEMICAL OXYGEN DEMAND										
PtA PHENOLICS										
40ml VOA VIAL TRAVEL BLANK										
40ml VOA VIAL	( )	( )	( )	( )	( )	( )	( )	( )	( )	( )
QT EPA 413.1, 413.2, 418.1										
PT ODOR										
RADIOLOGICAL										
BACTERIOLOGICAL										
40 ml VOA VIAL- 504										
QT EPA 508/608/8080										
QT EPA 515.1/8150										
QT EPA 525										
QT EPA 525 TRAVEL BLANK										
100ml EPA 547										
100ml EPA 531.1										
QT EPA 548										
QT EPA 549										
QT EPA 632										
QT EPA 8015M										
QT QA/QC										
QT AMBER										
8 OZ. JAR										
32 OZ. JAR										
SOIL SLEEVE										
PCB VIAL										
PLASTIC BAG										
FERROUS IRON										
ENCORE										

Comments:_____

Sample Numbering Completed By: OTO Date/Time: 3/1/07 2130

BC LABORATORIES, INC.

Secor 3437 Empressa Drive Suite A San Luis Obispo, CA 93412	Project: Dune Wells Project Number: [none] Project Manager: Chris Prevost	**Reported:** 03/12/2007 11:37

Laboratory / Client Sample Cross Reference

Laboratory	Client Sample Information			
0702559-01	**COC Number:**	---	**Receive Date:**	03/01/2007 20:10
	Project Number:	---	**Sampling Date:**	02/28/2007 15:20
	Sampling Location:	---	**Sample Depth:**	---
	Sampling Point:	C-1	**Sample Matrix:**	Water
	Sampled By:	Kirk Henning		
0702559-02	**COC Number:**	---	**Receive Date:**	03/01/2007 20:10
	Project Number:	---	**Sampling Date:**	02/28/2007 15:10
	Sampling Location:	---	**Sample Depth:**	---
	Sampling Point:	C-2	**Sample Matrix:**	Water
	Sampled By:	Kirk Henning		
0702559-03	**COC Number:**	---	**Receive Date:**	03/01/2007 20:10
	Project Number:	---	**Sampling Date:**	02/28/2007 17:30
	Sampling Location:	---	**Sample Depth:**	---
	Sampling Point:	C-3	**Sample Matrix:**	Water
	Sampled By:	Kirk Henning		

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Secor 3437 Empressa Drive Suite A San Luis Obispo, CA 93412	Project: Dune Wells Project Number: [none] Project Manager: Chris Prevost	**Reported:** 03/12/2007 11:37

Water Analysis (General Chemistry)

BCL Sample ID: 0702559-01 | **Client Sample Name:** C-1, 2/28/2007 3:20:00PM, Kirk Henning

Constituent	Result	Units	PQL	MDL	Method	Prep Date	Run Date/Time	Analyst	Instrument ID	Dilution	QC Batch ID	MB Bias	Lab Quals
Sodium	75	mg/L	0.50	0.022	EPA-6010B	03/07/07	03/07/07 15:59	ARD	PE-OP1	1	BQC0342	ND	
Chloride	38	mg/L	0.50	0.037	EPA-300.0	02/28/07	03/02/07 01:07	EDA	IC1	1	BQC0004	ND	
Sulfate	440	mg/L	2.0	0.22	EPA-300.0	02/28/07	03/02/07 10:52	EDA	IC1	2	BQC0004	ND	A01

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Secor 3437 Empressa Drive Suite A San Luis Obispo, CA 93412	Project: Dune Wells Project Number: [none] Project Manager: Chris Prevost	**Reported:** 03/12/2007 11:37

Water Analysis (General Chemistry)

BCL Sample ID: 0702559-02 | **Client Sample Name:** C-2, 2/28/2007 3:10:00PM, Kirk Henning

Constituent	Result	Units	PQL	MDL	Method	Prep Date	Run Date/Time	Analyst	Instrument ID	Dilution	QC Batch ID	MB Bias	Lab Quals
Sodium	88	mg/L	0.50	0.022	EPA-6010B	03/07/07	03/07/07 15:41	ARD	PE-OP1	1	BQC0342	ND	
Chloride	52	mg/L	0.50	0.037	EPA-300.0	02/28/07	03/02/07 01:26	EDA	IC1	1	BQC0004	ND	
Sulfate	510	mg/L	2.0	0.22	EPA-300.0	02/28/07	03/02/07 11:11	EDA	IC1	2	BQC0004	ND	A01

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Secor 3437 Empressa Drive Suite A . San Luis Obispo, CA 93412	Project: Dune Wells Project Number: [none] Project Manager: Chris Prevost	**Reported:** 03/12/2007 11:37

Water Analysis (General Chemistry)

BCL Sample ID: 0702559-03 | **Client Sample Name:** C-3, 2/28/2007 5:30:00PM, Kirk Henning

Constituent	Result	Units	PQL	MDL	Method	Prep Date	Run Date/Time	Analyst	Instrument ID	Dilution	QC Batch ID	MB Bias	Lab Quals
Sodium	98	mg/L	0.50	0.022	EPA-6010B	03/07/07	03/07/07 15:46	ARD	PE-OP1	1	BQC0342	ND	
Chloride	96	mg/L	0.50	0.037	EPA-300.0	02/28/07	03/02/07 01:45	EDA	IC1	1	BQC0004	ND	
Sulfate	230	mg/L	1.0	0.11	EPA-300.0	02/28/07	03/02/07 01:45	EDA	IC1	1	BQC0004	ND	

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Project: Dune Wells
Project Number: [none]
Project Manager: Chris Prevost

Reported: 03/12/2007 11:37

Water Analysis (General Chemistry)

Quality Control Report - Precision & Accuracy

Constituent	Batch ID	QC Sample Type	Source Sample ID	Source Result	Result	Spike Added	Units	RPD	Percent Recovery	Control Limits RPD	Control Limits Percent Recovery	Lab Quals
Chloride	BQC0004	Duplicate	0702482-04	158.56	160.99		mg/L	1.5		10		A01
		Matrix Spike	0702482-04	158.56	715.92	505.05	mg/L		110		80 - 120	A01
		Matrix Spike Duplicate	0702482-04	158.56	715.13	505.05	mg/L	0	110	10	80 - 120	A01
Sulfate	BQC0004	Duplicate	0702482-04	523.36	531.84		mg/L	1.6		10		A01
		Matrix Spike	0702482-04	523.36	1057.2	505.05	mg/L		106		80 - 120	A01
		Matrix Spike Duplicate	0702482-04	523.36	1054.2	505.05	mg/L	0.9	105	10	80 - 120	A01
Sodium	BQC0342	Duplicate	0702559-01	74.697	76.217		mg/L	2.0		20		
		Matrix Spike	0702559-01	74.697	88.091	10.204	mg/L		131		75 - 125	A03
		Matrix Spike Duplicate	0702559-01	74.697	83.351	10.204	mg/L	42.8	84.8	20	75 - 125	A03,Q02

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San Luis Obispo, CA 93412

Project: Dune Wells
Project Number: [none]
Project Manager: Chris Prevost

Reported: 03/12/2007 11:37

Water Analysis (General Chemistry)

Quality Control Report - Laboratory Control Sample

Constituent	Batch ID	QC Sample ID	QC Type	Result	Spike Level	PQL	Units	Percent Recovery	RPD	Control Limits Percent Recovery	Control Limits RPD	Lab Quals
Chloride	BQC0004	BQC0004-BS1	LCS	105.31	100.00	0.50	mg/L	105		90 - 110		
Sulfate	BQC0004	BQC0004-BS1	LCS	99.730	100.00	1.0	mg/L	99.7		90 - 110		
Sodium	BQC0342	BQC0342-BS1	LCS	10.116	10.000	0.50	mg/L	101		85 - 115		

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Project: Dune Wells
Project Number: [none]
Project Manager: Chris Prevost

Reported: 03/12/2007 11:37

Water Analysis (General Chemistry)

Quality Control Report - Method Blank Analysis

Constituent	Batch ID	QC Sample ID	MB Result	Units	PQL	MDL	Lab Quals
Chloride	BQC0004	BQC0004-BLK1	ND	mg/L	0.50	0.037	
Sulfate	BQC0004	BQC0004-BLK1	ND	mg/L	1.0	0.11	
Sodium	BQC0342	BQC0342-BLK1	ND	mg/L	0.50	0.022	

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Secor 3437 Empressa Drive Suite A San Luis Obispo, CA 93412	Project: Dune Wells Project Number: [none] Project Manager: Chris Prevost	**Reported:** 03/12/2007 11:37

Notes And Definitions

MDL	Method Detection Limit
ND	Analyte Not Detected at or above the reporting limit
PQL	Practical Quantitation Limit
RPD	Relative Percent Difference
A01	PQL's and MDL's are raised due to sample dilution.
A03	The sample concentration is more than 4 times the spike level.
Q02	Matrix spike precision is not within the control limits.

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TO: BOARD OF DIRECTORS

FROM: BRUCE BUEL BB

DATE: MAY 18, 2007

AGENDA ITEM
D-2
MAY 23, 2007

CFD PRESENTATION

ITEM

Shayne Morgan of David Tausig and Associates re CFD Financing [RECEIVE PRESENTATION].

BACKGROUND

Attached is background information regarding CFD Financing.

RECOMMENDATION

The presentation is for information only. Staff is not recommending action at this time.

ATTACHMENT

- BACKGROUND INFORMATION ON CFD FINANCING

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\BOARD LETTER 2007\CFD Presentation.DOC

FIELDMAN | ROLAPP & ASSOCIATES

There is no substitute for experience.

Usual Sequence of Events for Mello Roos Community Facilities Districts

(Commencing with Section 53311 of the Government Code)

BEGIN HERE

PETITION INITIATED CFD

1. 10% Landowners
2. 10% Registered voters
3. Payment of pre-formation costs

→ Within 90 days →

LOCAL AGENCY INITIATED CFD

1. Written request of 2 members of legislative body, or
2. Majority approval of legislative body

→

1. Adopt Goals and Policies
2. Adopt resolutions to:
   a. Approve boundaries
   b. Designate name of CFD
   c. Identify types of facilities & services
   d. Declare Intention to:
      1) Form CFD
      2) Levy special tax
      3) Issue bonds
   e. Set time and place of public hearing
   f. Establish voting procedures

→ Prepare Report

→ Public hearing held not less than 30 days or not more than 60 days from adoption of Resolution of Intention

→ **REQUIRED** – Publish notice (not later than 7 days before Public Hearing)
OPTION – Mailed notice (not later than 15 days before Public Hearing)

PUBLIC HEARING
May be continued up to 30 days, or with finding up to 6 months.

If no majority protest, resolutions adopted to form CFD* by:
1. Establishing boundaries
2. Determining necessity to incur bonded indebtedness
3. Authorizing levy of special tax
4. Approving types of facilities and services
5. Setting election

If more than 50% of registered voters (at least 6), or if the owners of more than 50% of the land area protest, then CFD abandoned for one year. If majority protest only against specific facilities, services or special tax, only that facility, service or tax must be dropped.

*** Environmental review should be completed before formation of CFD**

GENERAL ELECTION or SPECIAL ELECTION
90/180 days from Resolution of Formation
(unless time period shortened by 100% of electors)

2/3 vote required
(if less than 12 registered voters or if no tax on residential property -- landowner election)

ELECTION

Voters consider:
1. Levy of Special Tax
2. Establish appropriations limit
3. Authorize issuance of bonds

ACTIONS BY LEGISLATIVE BODY

1. Certify election results
2. Enact ordinance to levy special tax
3. Authorize issuance of bonds
4. Approve Preliminary Official Statement and Continuing Disclosure Agreement

1. Record Notice of Special Tax Lien
2. Initiate validation proceedings, if necessary
3. 30 day statute of limitations

1. Sell and deliver bonds and receive bond proceeds
2. Initiate construction or acquisition
3. Commence activities to administer debt, levy and collect special taxes and comply with continuing disclosure requirements

FIELDMAN | ROLAPP & ASSOCIATES

There is no substitute for experience.

BEGIN HERE

Property Owner Petition Initiated District

Landowners of 60% of land area waive 1931 Act requirements

File petitions with Clerk/ Secretary

Actions by Legislative Body

Adopt Resolutions:
1. Approving Boundary Map*
2. Declaring Intention* and directing preparation of 1913 Act Report

File 1913 Act Report

Legislative Body Commences Assessment Proceedings

Adopt Resolutions:
1. Preliminary approving Engineer's Report
2. Setting Public Hearing date
3. Calling for construction bids
4. Making appointments

Local Agency Initiated District

Adopt resolutions:
1. Approving Boundary Map*
2. Declaring Intention* and directing preparation of either:
   a. 1931 Act Report
   b. Combined 1931/1913 Act Report

by simple majority of legislative body

File combined 1931/1913 Act Report

File 1913 Act Report

Actions by Legislative Body

1. Conduct 1931 Act Hearing
2. Proceed and direct preparation of 1913 Act Report if:
   a. No Majority protest AND
   b. Either adequate values or 4/5 vote
3. If not, then abandon

File 1913 Act Report

Within 15 days Boundary Map is filed in the Office of County Recorder

*Timing of adoption of Boundary Map and Resolution of Intention varies

Usual Sequence of Events for 1913 Act Special Assessment District After Proposition 218

(Municipal improvement Act of 1913 Commencing with Section 10000 of the Streets and Highways Code)

not sooner than 45 days from mailed notice and assessment ballots

Public Hearing

1. Present Engineer's Report
2. Receive testimony
3. If no majority protest, legislative body may adopt resolution confirming assessments**

If ballots submitted in opposition to the assessment exceeded ballots submitted in favor, then majority protest. Ballots weighed according to proportional financial obligation of the affected property

**Environmental review should be completed before formation of District

1. Assessment Roll and Diagram recorded with Superintendent of Streets
2. Diagram and Notice of Assessment recorded with a County Recorder
3. Statement of Assessment mailed to property owners and published (once a week for two successive weeks at at least 5 days apart)

Not less than 30 days after recordation of Diagram and Assessments with the Superintendent of Streets

Receive construction bids

Legislative body:
1. Certifies paid and unpaid assessments
2. Authorizes issuance of bonds***
3. Approves Preliminary Official Statement and Continuing Disclosure Agreement
4. Adopts resolution awarding the construction contract

***1915 Act Bonds = Section 8500 et. seq.
1911 Act Bonds = Section 6400 et. seq.

End of Cash Collections/ Statute of Limitations

1. Sell & deliver bonds & receive bond proceeds
2. Initiate construction or acquisition
3. Commence activities to administer debt, levy and collect assessments and comply with continuing disclosure requirements

Specific requirements of Proposition #218 and S.B. 919

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UCLA EXTENSION
Public Policy Program

MELLO-ROOS AND SPECIAL ASSESSMENT FINANCING: 2007 UPDATE ON ISSUES AND PRACTICES

Friday, April 13, 2007
Sheraton Los Angeles Downtown
711 South Hope Street
Los Angeles, California

General Discussion Outline
Assessment and Community Facilities Districts

A. The Two Basic Structures – A.D.'s and C.F.D.'s

1. History of Each in a Nutshell - Early 1900's (A.D.'s) vs. 1982 (C.F.D.'s)

2. The California Statutes and Related Articles of the California Constitution

   a. A.D.'s – primarily, 1913 Act and 1915 Act, together with Article XIIID of the California Constitution and Section 53753 of the Government Code

   b. C.F.D.'s – the Mello-Roos Act, together with Articles XIIIA and XIIIC of the California Constitution

   Note – Charter Cities can utilize their legislative powers with respect to "municipal affairs" (and many, if not most of them, have done so) to enact their own versions of these statutory schemes, with variations designed to suit their policies and preferences

3. Scope of Eligible Items to Finance (Local Benefit vs. Community Facilities)

4. The Contrasting Exactions Being Imposed – Fixed-Lien Assessment (1913 Act) vs. Special Tax Obligation

5. Special Benefit (A.D.'s) vs. Reasonableness (C.F.D.'s)

B. Pre-Formation Considerations

1. Why do Either? Finding a Public Policy Justification

2. Adoption of Local Goals and Policies – Required for C.F.D.'s, Advisable for A.D.'s

3. The Landowner/Developer District – Public Works Contracting vs. Acquisition

4. Local Agency Staffing Responsibilities

5. Assembling the Resource Team – the Assessment Engineer vs. the Special Tax Consultant

6. Establishing Liaison With Other Affected Local Agencies and Utility Companies

C. The District Formation Process

1. Items Needed Before You Initiate the Formation Process

2. Initiated With or Without Property Owner Petition

3. Procedural Steps Which A.D.'s and C.F.D.'s Have in Common:

   a. approve and record boundary map

   b. obtain any required consent for "extraterritorial" actions

   c. adopt resolution of intention

   d. submit report

   e. provide notice of hearing

   f. conduct hearing, determine if have majority protest

   g. if no majority protest, adopt concluding resolution

   h. establish agreements, as appropriate, with other Local Agencies, Utility Companies and the Landowner/Developer

4. Some Procedural Differences:

a. the notice of hearing:

i. A.D. – must mail (with assessment ballot) not less than 45 days prior to hearing; publication not required

ii. C.F.D. – mailing is optional; must publish one time at least 7 days prior to hearing

b. the report:

i. A.D. – called the "Engineer's Report," it is the central legal document and is formally approved as part of formation

ii. C.F.D. – called the "Hearing Report," it is an informational document only, can be changed at will, and is not approved as part of the process

Note - For C.F.D.'s, the central legal documents is the "Rate and Method of Apportionment" (the "RMA" or "Special Tax Formula")

c. measuring property owner sentiment:

i. A.D. – the assessment ballot procedure:

(1) required by Section 4 of Article XIIID of the California Constitution (added by Prop. 218 in November, 1996), as supplemented by Section 53753 of the Government Code

(2) this is not an election, and therefore California elections laws do not apply

(3) the assessment ballot procedure is conducted concurrently with and as part of the formation process, with the assessment ballots mailed to the owner(s) of each parcel being assessed, along with the notice of hearing

(4) to be counted, must be completed and returned prior to the close of the hearing

(5) the ballots returned are opened and tallied at the close of the hearing

(6) "majority protest" exists if more "No" than "Yes", with ballots weighted by amount of proposed assessment

ii. C.F.D. – the special election procedure:

(1) this is an election, subject to requirements of California elections laws (with special provisions for determining who are the "qualified electors")

(2) the election is called by resolution following the hearing and completion of the formation process

(3) generally, conducted as a mailed-ballot election

(4) generally, 3 separate measures combined in one ballot:

(A) authorization to levy the special tax per the approved RMA

(B) authorization to issue special tax bonds, subject to a specified maximum principal amount

(C) authorization of a separate "appropriations limit" for the C.F.D. as a separate entity, per Article XIIIB of the California Constitution

d. providing for cash payment of exactions prior to bond issuance – required for A.D.'s, not required and generally not done for C.F.D.'s

5. Recording the Liens:

a. A.D.'s – the Assessment Diagram and the Notice of Assessment

b. C.F.D.'s – the Notice of Special Tax Lien

6. Authorizing the Levy and Collection of the Exaction:

a. A.D.'s – if 1915 Act bonds being issued, no additional action required by the Local Agency to authorize the levy and collection of assessment installments

b. C.F.D.'s – the tax levy ordinance

D. Project Implementation

1. Determining Whether the Project will be a Public Works Project of the Local Agency or an Acquisition Project of the Landowner/Developer – the issue of the prevailing wage requirement (Labor Code Section 1720)

2. Expanding the Working Group to Include Staff and Professionals Whose Focus is the Improvement Project Itself

   a. Public Works Staff

   b. Representatives of Other Local Agencies, Utility Companies

   c. Design Engineer, Environmental Consultant

   d. Contract Administrator, Inspection Services

   e. Real Property Appraiser

3. Property Acquisition (e.g., Right-of-Way or Easements), if Necessary

4. Environmental Clearance

5. Review, Approval of Project Plans and Specifications

6. Solicitation of Sealed Bids

E. Bond Issuance

1. Expanding the Working Group to Include Staff and Professionals Whose Focus is the Debt Issuance and Administration:

   a. Other Local Agency Staff Members

   b. Bond Underwriter (May be Selected for Negotiated Sale or Determined by Competitive Bidding)

   c. Fiscal Agent or Trustee for the Bonds

   d. Dissemination Agent (if different from Fiscal Agent, Trustee)

   e. Real Estate Appraiser

   f. Disclosure Counsel

g. Assessment or Special Tax Administrator

Note – Generally speaking, Limited Obligation Assessment Bonds and Special Tax Bonds are not rated and are not credit-enhanced.

2. Determining Whether Bonds will be Sold by Negotiation or by Competitive Sale

3. CDIAC Reports and IRS Form 8038-G Prior to and at Time of Issuance

4. Determining Whether Landowner/Developer is Going to be Required to Provide a Continuing Disclosure Certificate

5. General Considerations for Establishing Debt Issuance Structure:

   a. The 1-to-3 Lien-to-Value Limitation (the Principal Amount of Bonds Should Not Exceed One-Third of the Value of the Property Encumbered by the Assessment or Special Tax)

   b. The General Requirement (Federal Tax Law) to Spend the Bond Proceeds Within 3 Years of Issuance (Except for Reserve Fund)

   c. "Financial Engineering" to Assure a Match Between Projected Revenue and Debt Service on the Bonds

6. Preparing and Obtaining Local Agency Approval of Financing Documents:

   a. Bond Resolution, Fiscal Agent Agreement, Indenture (Sometimes Called the Trust Agreement)

   b. Bond Purchase Contract (Alternatively, the Notice of Sale if Selling the Bonds by Competitive Sale)

   c. Preliminary Official Statement

   d. Continuing Disclosure Certificate or Agreement

7. Conducting the Bond Sale

8. The Pre-Closing and the Closing

9. Disbursing Bond Proceeds, Investing the Retained Bond Proceeds

F. Administration of Liens and Bonds

1. Determining What Functions to Handle In-House With Local Agency Staff and What Functions to Farm Out to Service Providers

2. Lien Administration Considerations:

a. Disclosure to Prospective Property Purchasers

b. Annexation – Permissible with C.F.D.'s but not A.D.'s

c. Apportionment of Liens to Reflect Property Divisions – Special Procedure Required for A.D.'s but Happens Automatically With C.F.D.'s

d. Calculating and Administering Property Owner Prepayments:

i. A.D.'s – prepayment is a property owner entitlement; the formula for calculating the prepayment amount is provided by statute

ii. C.F.D.'s – permitting prepayment is a Local Agency option, not required; if permitted, the formula for calculating the prepayment amount needs to be set forth in the RMA

e. Scheduled Collections on the Property Tax Roll:

i. A.D.'s – installments consist of pro-rata portion of annual debt service on bonds plus authorized administrative expenses; no "coverage" permitted and no allowance for anticipated delinquencies permitted

ii. C.F.D.'s – annual special tax calculated in accordance with RMA; limited "coverage" and allowance for anticipated delinquencies permitted

f. Administering the Funds Collected:

i. the Flow of Funds established in the bond issuance document

ii. providing for investment earnings

g. Delinquency Management:

i. the need for a policy

ii. the foreclosure covenant

iii. special rules for the bond default situation

3. Bond Administration Considerations:

a. Annual Report to NRMSIRs in Compliance with Continuing Disclosure Certificate – using the Central Post Office (DisclosureUSA.org) operated by the Municipal Advisory Council of Texas ("Texas MAC") for continuing disclosure submissions

i. the patent infringement litigation filed by Digital Assurance Certification LLC ("DAC") against Texas MAC

b. Disbursing and Investing Bond Proceeds:

i. governed by the bond issuance document

ii. "Permitted Investments"

iii. the requisition procedure

c. Using Proceeds of Prepayments to Redeem Bonds in Advance of Maturity

d. The Concept of "Bond Yield," Monitoring Investment Earnings for "Arbitrage," and the Need to "Rebate" Some Arbitrage Earnings to the IRS

e. Changes of Ownership in the Bonds – Governed by the Bond Issuance Document and Handled by Paying Agent, Fiscal Agent or Trustee

UCLA EXTENSION
Public Policy Program

MELLO-ROOS AND
SPECIAL ASSESSMENT FINANCING:
2007 UPDATE ON
ISSUES AND PRACTICES

Friday, April 13, 2007
Sheraton Los Angeles Downtown
711 South Hope Street
Los Angeles, California

A.D.s
Assessment Districts

C.F.D.'s vs. A.D.'s

Some Points of Comparison

	Topic	C.F.D.	A.D.
1.	Eligible Facilities	Public improvements with useful life of 5 years or more (very broad – intended to finance the "community facilities")	Public improvements of a local nature providing special benefit to the AD property
2.	Eligible Services	Specified public services (police, fire, library, etc.)	Specified services aimed at maintenance and operation of the special benefit facilities (1972 Act - primary source)
3.	Determining How Costs are Shared	Special tax calculated annually based on the rate and method of apportionment (the "RMA") – may be apportioned on any reasonable basis - very flexible	Liens (for facilities) and annual assessments (for services) must be allocated on the basis of special benefit; cannot assess for general benefits
4.	Annexation	Permitted	Not permitted for 1913 Act AD's but permitted for 1972 Act AD's

	Topic	C.F.D.	A.D.
5.	Formation Process	Notice, RMA, hearing report, hearing, majority protest procedure, followed by special election and 2/3 voter approval required (landowners are the voters if fewer than 12 registered voters in the CFD)	Notice, engineer's report, hearing, assessment ballot protest procedure (not an election), ballots weighted by amount of proposed assessments
6.	Calculating Annual Tax/Assessment	Governed by RMA, with some constraints by statute for private residential parcels; typically have a maximum rate for specified categories, with indexing of the maximum	If annual assessment is for bond debt service, limited to actual debt service plus pre-approved admin. expense; if for maintenance, typically structured much like RMA
7.	Public Property	Cannot impose property tax on public property (exception for possessory interest held by non-exempt person); result is public property universally exempted	Cannot exempt benefited public property; if bonds issued, can't include public property assessments; a problem area generally handled with cash payment
8.	Changes in Parcel Configurations	RMA designed to anticipate, accommodate such changes	Must undertake an apportionment procedure
9.	Changes in Anticipated Land Uses and Development Densities of Property	RMA designed to anticipate, accommodate such changes	For 1913 Act assessments, these changes can be a significant problem because of fixed lien nature of assessment; for 1972 Act, changes can be accommodated much like CFD
10.	Cross Collateralization and Debt Service Coverage	Typical RMA provides for cross collateralization (delinquencies made up by increasing tax to those still paying) and for 110% of bond debt service coverage (subject to max. tax)	No cross collateralization or debt service coverage permitted by statute

	Topic	C.F.D.	A.D.
11.	Pay-As-You-Go Facilities Financing	Permitted and fairly common in combination with debt financing of facilities	Not common but possible
12.	Property Owner Pay-Off of Obligation	Controlled by RMA	Statutory entitlement for 1913 Act obligation; cannot pay-off for 1972 Act obligation
13.	Local Goals and Policies	Required by statute	Not required, but typically included with CFD goals and policies
14.	Acceptance by Public	Varies; generally gaining acceptance after a period of wide-spread resistance	Generally accepted though Prop. 218 has slowed prior expansion of use
15.	Differentiating Between Developed and Undeveloped Property	Controlled by RMA, which typically tax developed property fully before turning to tax on undeveloped	For 1913 Act assessments, differentiation must be justified based on differential benefit which is typically difficult to do; for 1972 Act, much the same as CFD
16.	Debt Service Structure	Usually level debt; not unusual to have ascending debt service (2%)	Almost universally level debt service

Summary of Major Factors Favoring CFD's

A. In general – CFD's are the appropriate choice for financing the acquisition and/or construction of the **general benefit community facilities** (schools, libraries, community parks, fire stations)

B. In general – CFD's are the appropriate choice where **flexibility is needed** to accommodate extended time frames and unfolding development realities (avoiding the potential problems which can come with fixed lien assessments)

1. the land development project which is proceeding in phases

2. the land development project which entails uncertainties about the eventual land uses, parcelization or densities

Keep in mind that the Mello-Roos Act provides for **annexations** and for establishment of **improvement areas** (1913 Act provides for neither)

C. In general – CFD's are the appropriate choice to facilitate specific categories of **targeting of the economic burden** (avoiding the need to allocate estimated costs in proportion to the estimated special benefit to be received from the improvements)

1. exempting publicly-owned parcels (Article XIII of the California Constitution exempts publicly-owned parcels from property taxation, both the general ad valorem taxes and non-ad valorem special taxes)

2. providing senior citizen exemptions (may be a political necessity to secure the required 2/3 voter approval)

3. reducing the burden on select categories of parcels to accomplish a public policy objective (e.g., affordable housing)

Summary of Major Factors Favoring AD's

A. In general – AD's may be the appropriate choice for relatively **small-scale** infrastructure projects affecting a relatively small geographic area

B. In general – AD's, with the "majority protest" assessment ballot procedure in lieu of a special election with a 2/3 voter approval requirement, may be the appropriate choice for some **projects involving multiple property owners** (for example, utility undergrounding projects) for which a 2/3 voter approval may be difficult to achieve

C. In general – AD's may be the appropriate choice for select, **large-scale variable rate bond programs** in which multiple conversions of the bonds to fixed rate are anticipated over a period of years

D. In general – AD's will be the appropriate choice for the **financing of select services and maintenance programs** authorized under specific procedural acts