

Memorandum

TO: Paul Andrus, Community Development Director

FROM: Justin Horwitz and Jenica Jacobi

SUBJECT: Mirador PID

DATE: October 1, 2018

Thank you for your questions regarding the operation of public improvement districts (PIDs). On behalf of the developer of the proposed Mirador PID, Site A-19-A-1 Acquisition Group, LLC, we have prepared these answers to the questions you presented.

1. *Governance/composition of the board – how are other district boards composed in NM, e.g., by elected, gov. staff, private?*

Pursuant to NMSA 1978, Sections 5-11-6.A and -9 (2013), PID boards have two forms, both of which have been used by different jurisdictions to administer in a reasonable manner the implementation of the district's general plan (*See* NMSA 1978, Section 5-11-8.D (2017)):

- a. The governing body of the city or county may serve as the PID board, *ex officio*. E.g., Bernalillo County. This form ensures that the governing body maintains an active interest in the PID, although it may cause more complications for scheduling of meetings. In this scenario, the governing body may appoint the County Clerk as the clerk of the district and a developer representative as the treasurer of the district, due to their respective subject matter expertise.
- b. The governing body may appoint board members, typically two representatives from the developer and three government employees with expertise in development or finance matters. E.g. Albuquerque, Rio Rancho, Farmington. In this scenario, the clerk and treasurer of the district will be appointed from the appointed members of the district board (*See* NMSA 1978, Section 5-11-6.A (2013)). The appointed board has the advantage of flexible scheduling for meetings and board members with special expertise and familiarity with the project.

Constitutional requirements mandate that this form of board have an election for board members by the owners/residents after six years, which comes at an expense to the district, which is estimated in the administrative costs in the application (*See* N.M. Const. Art. VII, Sec, 9). The governing body also has the option of resuming direct governing of the board at 6 years in lieu of an election, reverting to the first form of governance.

The developer prefers the second form, at least for the first 6-year period, to ensure the developer will have an active role in implementing the district's general plan through the issuance of special levy revenue bonds and since this form of governance has been successfully modeled in numerous public improvement districts in the state.

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2. *What are the typical on-going maintenance/operational costs for the district, especially once formed (e.g., following the issue of bonds)?*

The PID does not maintain any infrastructure. All infrastructure constructed is conveyed either to the County or to an HOA to maintain. The PID is responsible for its own administrative expenses, which are detailed at pg. 9 of the Feasibility Study (Exhibit 6 to the Petition):

- PID Administrator: \$10,000;
- Continuing Disclosure: \$2,000;
- Trustee: \$4,000;
- Audited Financials: \$12,500;
- Legal: \$15,000;
- Bookkeeping: \$4,500;
- Director's Insurance: \$4,000 and
- PID Board Elections: \$4,167 (\$25,000 every 6 years)

The roles of these consultants are explained in response to question 5 below.

3. *How are the formation costs covered until there is a bond or levy issued and money is in accounts to pay out contract services? Who or how are costs for issues of bonds, legal counsel, accounting services paid if there are no levies being collected for several years?*

The developer will be responsible for the administrative costs described in question 2 above until a special levy is imposed to cover those costs. The costs would be reduced during such period, as many of the services are unnecessary or simplified before the special levy begins. Note that tax counsel will not typically permit bond proceeds to be used for non-capital, administrative expenses.

The costs associated with a bond issuance, including legal and financial, are paid out of the bond proceeds, and are included in such budget on pg. 11 of the Feasibility Study (Exhibit 6 to the Petition), reducing the amount available to reimburse the developer for infrastructure improvements:

Sources of Funds

Principal Amount of Bonds	\$4,740,000
Total Sources of Funds	\$4,740,000

Uses of Funds

Infrastructure Improvements	\$4,012,101
Debt Service Reserve	\$309,899
Capitalized Interest	\$0
Costs of Issuance	\$418,000
Total Uses of Funds	\$4,740,000

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4. *Is the district subject to state or local procurement, inspection of public records, open meeting act, governmental conduct act, and similar accounting/financial reporting requirements as other subdivisions of the State? One issue here is the County, as a home rule municipal/county form of government we are allowed to create and follow our own procurement rules, have our own Code of Conduct, modify some “general laws” of the State for local use, etc. Would this entity as a district follow ours or the State’s rules, procedures, etc.?*

Public improvement districts are political subdivision of the state, separate and apart from the municipality or county (*See NMSA 1978, Section 5-11-8.B (2017)*). The district, accordingly, would not be subject to the County’s local rules and requirements for operation and administration of government. However, important policies could be imported by the district board in its bylaws and by resolution.

The district is a public body and as such is subject to many “government” laws such as IPRA, Open Meetings Act, Government Conduct, as well as audit, budget and other local government finance requirements. However, the PID Act would exempt district contracts from state or local procurement codes and regulations (*See NMSA 1978, Section 5-11-10.D (2001)*). The district board can procure in a way that it finds reasonable. Most of its contracts (see expenses described in question 2 above) are qualified small purchases of professional services.

5. *Describe how a typical district functions once established, e.g. how frequently they meet, etc.? In discussion with the Bernalillo Tax Assessor staff they indicate that there is one accounting firm that supports the annual DFA reporting and processes. Is this the experience of Applicant? Also are there other contract services that are common, such as legal support, or do most PID’s use the founding governing body staff/departments to provide services at costs?*

In Albuquerque we have found the most efficient operations of a PID Board are achieved with two regular meetings, in May and July each year. Like most political subdivisions, the PID’s fiscal year begins July 1. This schedule allows the Board to approve and submit preliminary and final budgets, authorize the imposition of the special levy for the fiscal year, review audits, and authorize public notices required by the PID Act. Additional special meetings will likely be needed from time to time for special actions of the PID Board, such as acceptance of infrastructure, issuance of bonds, or authorizing elections.

PID Boards rely heavily on contractors to perform its operations, which eliminates much of the burden from the individual board members or county/city employees. The contractors and their work typically performed include:

- **PID Administrator:** This is a company with public finance and special levy experience. They will prepare the PID budgets, calculate the special levy, coordinate with the County Treasurer regarding invoicing and collection of the levy, and when necessary, to send delinquency letters.
- **Audited Financials:** PIDs receive annual audits like other local governments. These are selected through the State Auditor’s approved contracts.

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- Bookkeeping: The bookkeeper processes PID accounts payable and reconciles income and expenses of the PID, coordinating between the PID Administrator and the Trustee. The bookkeeper is also primarily responsible for coordinating with the auditor.
- Legal: Legal counsel publishes legal notice of board meetings and prepare agendas, minutes, resolutions, and other materials needed for board meeting packets. The counsel records required notices related to the existence of the district and its powers. Legal counsel might serve as records custodian of the PID and respond to the auditor, IPRA requests or other public inquiries when requested by the board members. They coordinate with the other contractors as needed and participate in the audit exit conference with the board Chairperson.
- Continuing Disclosure: This work is performed by the PID Administrator. After bonds are issued, the PID authorizes the PID Administrator to make these reports to bondholders regarding the condition and operations of the PID.
- Trustee: The Trustee is essentially the banker of the District. The bank will have obligations as a trustee under an indenture agreement with the bondholders.

As noted in your conversations with Bernalillo County, there are a small number of contractors who regularly do this work for PIDs. We are happy to provide information about or make introductions to these contractors.

The PID Board members themselves serve without compensation. In Albuquerque, the city staff liaison coordinates meeting rooms and posts the agenda to the public. In Bernalillo County, county staff members seem to be more involved and handle more of the secretarial duties, which leads to some confusion about tracking time and what County staff time is in service to the PID rather than the County. We recommend following the Albuquerque model or being very clear in the formation process what duties the County would want to assign to County staff, and how that would be calculated and compensated.

6. *Is the intent for the developer to recoup construction and other costs incurred prior to the formation of the PID? Under what authority is this permitted as State and local procurement rules prevent paying for past expenditures not budgeted or approved by the governing body?*

The district may pay the developer for eligible costs incurred prior to formation of the district. The PID Act authorizes special levies be used for any public infrastructure purpose (*See* NMSA 1978, Section 5-11-10.A(1) and (12) (2001)). A public infrastructure purpose includes, among other things, the acquisition of public infrastructure, the funding and paying from bond proceeds district formation costs, and other expenses reasonably necessary to carry out these purposes (*See* NMSA 1978, Section 5-11-2.Q (2013)).

The PID Infrastructure Development and Reimbursement Agreement contemplates that the district would acquire completed infrastructure from the developer following formation. In other words, the financing transaction is not structured as a reimbursement, but rather as an acquisition of completed infrastructure and related costs. To our knowledge, the acquisition approach has been

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taken in every the public improvement district in the state and has been passed upon by nationally recognized bond counsels, including the Modrall Sperling law firm, the Sherman & Howard law firm, and the Brownstein Hyatt Schreck law firm.

Thank you for your careful review of the application to form the Mirador Public Improvement District. Please let us know if you have any further questions. Thank you.

cc: Harry Burgess
Paul Andrus
Adam Thornton
Scott Grady
Mitch Mosesman