



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: May 30, 2007 REPORT NO. 07-094

ATTENTION: Council President and City Council  
Docket of June 5, 2007

SUBJECT: Formation of Proposed 1913 Act Assessment District for Undergrounding  
Utilities in the La Jolla Mesa Vista Neighborhood

REFERENCE: None

REQUESTED ACTIONS:

In accordance with Council Policy 800-03, "Public Infrastructure Financing Assessment Districts and Community Facilities," a property owner petition containing a sufficient number of signatures was filed with the City to initiate assessment district proceedings for formation of the proposed La Jolla Mesa Vista Undergrounding Utilities Assessment District. The City Council is requested to adopt the resolutions that would begin the legislative action required to form the proposed district.

STAFF RECOMMENDATION:

Consider the resolutions to initiate the proceedings to form the proposed La Jolla Mesa Vista Undergrounding Utilities Assessment District; by approving the resolutions, a public hearing date would be set for July 23, 2007 on formation of the proposed district, and an assessment ballot procedure would be commenced.

SUMMARY:

**I. BACKGROUND**

Certain property owners within the La Jolla Mesa Vista [LJMV] neighborhood have expressed interest in forming a special assessment district (the "LJMV District") under the Municipal Improvement Act of 1913 [1913 Act], where they would pay for the cost to underground their utilities by means of special assessments.

In May 2006, at the request of district proponents, and with information provided by the various utility companies, City staff assisted in formulating a petition (the "Petition") to be circulated among the affected property owners requesting that district formation proceedings under the Municipal Improvement Act of 1913 be initiated on their behalf. The Petition contained a cost estimate for the project and a boundary map of the proposed LJMV District. The Petition was

signed in favor of initiating formation proceedings by property owners representing 77% of the land area proposed to be assessed, which exceeds the 75% level required pursuant to Council Policy 800-03 (Attachment 1).

In addition to the 1913 Act district formation proceedings, in some cases, provisions of the Improvement Bond Act of 1915 are also used for the issuance of improvement bonds to finance repayment of the cost of the facilities over a number of years. The Petition did not contemplate the issuance of bonds, but instead provided for the assessments to be paid in not more than two installments to be either included on property tax bills or billed manually. The issuance of bonds in this case would not be feasible or cost effective, given the significant additional costs that would be incurred by property owners to issue the bonds and provide for on-going district administration expenses, relative to the costs of this project.

## **II. DISCUSSION:**

Council Policy 600-08 “Underground Conversion of Utility Lines By Utility Company” established in 1968 and last amended by resolution on May 28, 2002, provides policy direction on the underground conversion of utility lines and associated facilities. Since 1967, most underground conversions in the State are performed under the direction of California Public Utility Commission (CPUC) Rule 20. The most used and preferred portion of Rule 20 is referred to as the “20A Program.” Under the 20A Program, undergrounding is paid for and performed by the local electrical utility, which, for the City, is San Diego Gas & Electric Company (SDG&E). SDG&E is then reimbursed by CPUC approved expenses as part of their periodic electricity ratemaking case. Thus, the cost recovery for SDG&E is embedded within the electricity rates that it charges to all the customers that it serves. However, most residential streets do not qualify for Rule 20A undergrounding.

While the 20A Program remains intact for major roads, an electric surcharge (commonly referred to as the “Surcharge Program”) is used for residential areas that do not meet Rule 20A criteria. The Surcharge Program has more than quadrupled the pace of undergrounding within the City of San Diego. The City’s Master Plan for undergrounding currently estimates that the complete undergrounding of all residential areas will take approximately 50 years.

According to the most recent Master Plan, funding will not be allocated for the LJMV neighborhood until 2028, and the project is not scheduled to start until 2031.

In an effort to accelerate the undergrounding process within their neighborhood, certain LJMV property owners approached the City to explore the potential for establishing the LJMV District to generate funding for the project well in advance of the time frame provided in the Master Plan. The 1913 Act provides for a local agency to form an Assessment District to finance certain infrastructure, including the undergrounding of overhead utility lines, upon a successful petition signed by owners of property who want the improvement. If an Assessment District is formed, the City may levy assessments that can be utilized to directly fund the public improvements. Pursuant to the 1913 Act, the San Diego Improvement District Procedural Ordinance (Chapter 6, Article 1, Division 23 of the San Diego Municipal Code), and other applicable provisions of state

law, the assessments that are levied upon each parcel must be based upon the direct and special benefit received by the property.

The City has hired a registered professional engineer certified by the State of California, Bureau Veritas North America, Inc. (the "Assessment Engineer"), to prepare the Preliminary Engineer's Report (Engineer's Report) (Attachment 2), as required by the 1913 Act, Article XIID of the California Constitution and Proposition 218. Bureau Veritas was selected from an as-needed list of Assessment Engineers established through a request for proposals process.

The Engineer's Report contains the plans and specifications for the improvements, an estimate of the costs of the improvements and incidental expenses (i.e., design costs and district formation costs), a diagram of the boundaries of the proposed LJMVDistrict, and the apportionment of the total assessment to the parcels within the district, based on the special benefit each parcel would receive from the improvements.

### Formation and Levy Process

Adoption of the proposed resolutions would begin the formal legislative proceedings for formation of the proposed LJMVDistrict and provide for a public hearing on July 23, 2007, regarding the proposed levy of assessments and related matters contained in the Preliminary Engineer's Report. Also, upon adoption of the proposed resolutions, ballots related to the proposed levy of assessment would be mailed to each property owner. At the public hearing, the City Council would receive public testimony and the City Clerk would count the returned ballots. The proceedings would be terminated by ballot protest from property owners representing more than fifty percent (50%) of the total proposed assessments on those parcels for which ballots have been returned. If there is no majority protest, the City Council may adopt a resolution confirming the proposed assessments. Notwithstanding the ballot results, the City Council retains final discretion in authorizing formation of the district.

Upon adoption of the proposed resolutions, the following schedule would be put in place to proceed with the formation of the proposed LJMVDistrict:

- June 5, 2007: City Council adopts Resolutions accepting the property owner Petition, approving the boundary map of the proposed district, declaring its intention to order the conversion of overhead utilities through formation of an Assessment District, preliminarily approves the Engineer's Report, and established the date of the public hearing on the Assessment District as July 23, 2007.
- June 2007: After City Council adoption of the Resolutions, Notice of Public Hearing and assessment ballots mailed to property owners. The Notice would include the estimated total assessment amount, the amount chargeable to each parcel, the basis for the assessment, information regarding the public hearing, and a summary of the procedures for the completion, return, and tabulation of the assessment ballots.
- July 23, 2007: The Public Hearing would be held July 23, 2007, which is not less than 45 days after the Notice of Public Hearing is mailed, as required by the Government Code; returned ballots are tabulated by City Clerk. City Council makes final

decision on whether to form the LJMV District.

- July 2007: City records Notice of Assessment with County Recorder's Office.
- August 2007: Levy one-time assessment on FY 07/08 County Property Tax Bills or bill manually, with installments due by December 10, 2007 and April 10, 2008.
- December 2007: Post first installment assessment collections to District Improvement Fund.
- December 2007: Reimburse district proponent the funds advanced to pay for formation costs.
- April 2008: Post second installment assessment collections to District Improvement Fund.
- May 2008: Construction of underground improvements begins; estimated completion in April 2009.

### Underground Utility District

If the proposed resolutions are adopted to initiate district formation proceedings, it is anticipated Engineering & Capital Projects Department staff would return to City Council with a proposed action to provide for the establishment of an Underground Utility District, the boundaries of which will be contiguous with the proposed Assessment District. The formation of this Underground Utility District would require, by Ordinance, that all individual property owners within the Underground Utility District be wholly responsible for any and all trenching and other related work, including any necessary permits, to convert their individual property to receive electrical, telecommunication and cable television from an underground service.

The expense to convert their private property from the property line to any structures is in addition to the proposed special assessments utilized to finance the underground facilities within the public right-of-way. The estimated cost of this conversion is approximately \$2,000, but may vary among the different parcels within the proposed district. The May 2006 Petition specified that each individual property owner would be responsible for these costs, and that such costs were in addition to the costs to underground facilities within the public right-of-way. The Petition also stated that if all property owners within the proposed district did not convert, the removal of the overhead utilities in the public right-of-way could be delayed.

The establishment of the proposed Underground Utility District would ensure that ALL properties would be required to be configured to accept service from the new undergrounded utilities in order to avoid delays of removing the overhead system that may otherwise still need to remain in order to provide service to only a few customers.

### **III. FISCAL CONSIDERATIONS:**

The estimated total project cost is \$1,070,412, including costs of formation of the district. In accordance with City Council Policy 600-08, the City Council has previously allocated \$280,000 towards the project, including District Formation Costs, as part of its Fiscal Year 2005

Undergrounding of Utilities Annual Allocation (Resolution No. 300051, January 11, 2005) and an additional \$100,000 as part of its Fiscal Year 2006 Undergrounding of Utilities Annual Allocation (Resolution No. 300572, June 21, 2005). The 56 LJMV property owners within the proposed district will bear the remaining costs of the project, estimated at \$690,412. These costs will be apportioned to each property pursuant to the benefit apportionment methodology contained in the Engineer's Report for the proposed district. Based on the Engineer's Report, the average assessment per parcel would be approximately \$12,300. Collections of the assessments will be deposited in a separate Improvement Fund to be established in the name of the District. These funds, in conjunction with the City contributions, will be used to pay the costs of the project. The table below provides a summary of the project costs:

	<u>Estimated Costs</u>
Project Construction Cost	987,912
Design Cost	12,500
Assessment District Formation Costs*	<u>70,000</u>
<b>Total Estimated Project Cost</b>	<b>\$1,070,412</b>
Breakdown of Funding Sources:	
City Contribution - FY 2005 Council Allocation	280,000
City Contribution - FY 2006 Council Allocation	<u>100,000</u>
<b>Total City Contribution</b>	<b>\$380,000</b>
<b>La Jolla Mesa Vista Assessment District</b>	<b><u>\$690,412</u></b>
<b>Total Estimated Project Cost</b>	<b>\$1,070,412</b>

\* Includes Assessment Engineer costs (\$26,500); outside legal counsel (\$15,000); and City staff costs - City Engineering & Capital Projects, Debt Management Department, and City Attorney's Office (\$25,000); and a contingency (\$3,500).

Certain district formation costs have been advanced by the La Jolla Mesa Vista Homeowner's Association [HOA] on behalf of the property owners within the proposed district, pursuant to a Deposit and Reimbursement Agreement between the HOA and the City. In addition, cost sharing funds from the Fiscal Year 2005 and Fiscal Year 2006 Undergrounding Surcharge Allocations, referenced above, may be used to fund up to 75% of the district formation costs, pursuant to Council Policy 600-08. To date, \$14,146 advanced by property owners and \$42,438 of surcharge allocations have been deposited to fund formation costs. If the district is formed, the formation costs advanced by the HOA will be borne by the district and recovered through the special assessments placed on the properties, and subsequently reimbursed to the HOA. If the district is not formed, any unspent funds from the HOA advance would be refunded. Unspent funds from the surcharge allocations would be returned to the Undergrounding Surcharge Fund.

It is staff's understanding that certain programs (the Homeowner and Renter Assistance Program and the Property Tax Postponement for Senior Citizens, Blind or Disabled Citizens) offered by the State of California for assistance of up to \$472 or postponement of the assessment may be available to property owners if specific eligibility criteria, including financial hardship, are met.

The Notice of Public Hearing will advise property owners that they may contact the California State Controller's Office and the State Franchise Tax Board to obtain information and eligibility requirements for such programs.

#### **IV. PREVIOUS COUNCIL ACTIONS:**

1. Allocation of Underground Conversion Projects for Fiscal Year 2005, Resolution 300051, January 11, 2005, Managers Report 05-001, provided for \$280,000 in cost sharing for the LJMV project.
2. Allocation of Underground Conversion Projects for Fiscal Year 2006, Resolution 300572, June 21, 2005, Managers Report 05-149, provided for \$100,000 in cost sharing for the LJMV project

#### **V. COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

LJMV property owner representatives have worked with Engineering & Capital Projects / Undergrounding Program staff to coordinate with the various utilities to define the project and estimate the costs. At the request of district proponents, Debt Management staff and the City Attorney's Office helped formulate the Petition that was circulated by a primary district proponent.

In addition, on January 4, 2006 and January 25, 2007, the Underground Program Manager and the Debt Management Department, respectively, sent letters to the LJMV property owners providing information regarding the project and the proceedings being undertaken by the City to consider the formation of the district and the levy of assessments on properties for the purpose of undergrounding the overhead utility lines (Attachments 3 and 4).

At the point the Petition was prepared and distributed to the community, the Underground Program Manager met with the community at two different locales and times, both at resident's homes, one during the day and one in the evening, to provide information and answer questions regarding the underground process and information regarding the assessment district formation process.

It is also anticipated that the Debt Management Department is expected to send another letter to the LJMV property owners in late May, which would include updated information regarding the project and the proceedings. As described above, and as required by the 1913 Act, if the proposed resolutions are adopted, the Notice of Public Hearing would be mailed to the LJMV property owners at least 45 days prior to the public hearing.

#### **VI. KEY STAKEHOLDERS & PROJECTED IMPACTS:**

Property owners within the proposed La Jolla Mesa Vista Underground Utility Assessment District.

Business entities involved in the formation of the district include Bureau Veritas North America, Inc. (Assessment Engineer) and Best, Best and Krieger LLP (Outside Legal Counsel).

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Lakshmi Kommi  
Debt Management Director

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Jay M. Goldstone  
Chief Financial Officer

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Patti Boekamp  
Engineering & Capital Projects Director

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R. F. Haas  
Deputy Chief of Public Works

Attachments:

- [1. Petition for Special Assessment Proceedings](#)
- [2. Preliminary Engineer's Report](#)
- [3. Letter to Property Owners from Engineering & Capital Projects, dated January 4, 2006](#)
- [4. Letter to Property Owners from Debt Management Department, dated January 25, 2007](#)
- [5. Map of the Proposed Boundaries of City of San Diego La Jolla Mesa Vista Undergrounding Assessment District No. 4098](#)