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Funding and Financing of Maintenance and Public Infrastructure Using Special Assessments: Approaches for Achieving Successful Outcomes

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University of California, Davis Extension, Sacramento, CA

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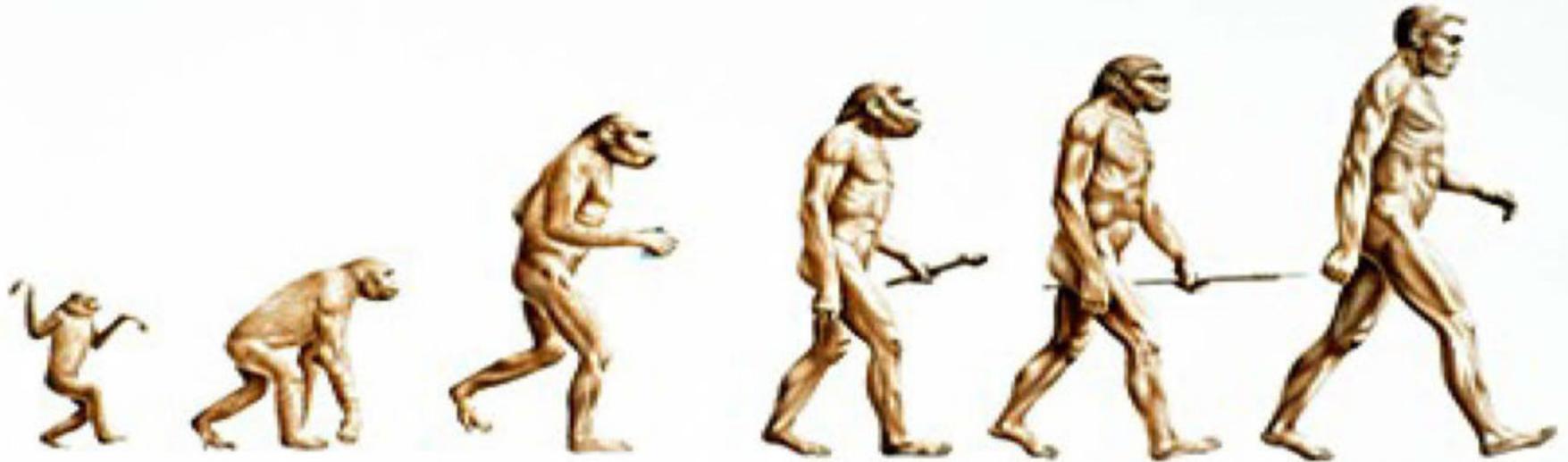
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SESSION ONE:

**PROPOSITION 218 AND THE LEGAL
FRAMEWORK OF ASSESSMENT
DISTRICTS IN CALIFORNIA**

Proposition 218

How did we get here?



Proposition 13 - Background

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- Prior to 1978
 - ▣ Property taxes funded costs of infrastructure and municipal services needed to keep pace with new growth and an expanding population
 - ▣ Mid-60's – in response to scandals among assessors, legislation passed to peg assessed values to market value of properties triggering increased property taxes

Proposition 13 - Background

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- ▣ Property values increased 70% between 1975 and 1978
- ▣ Retired property owners particularly hard hit
- ▣ Triggered initiative measure seeking property taxpayer relief



Proposition 13 (1978)

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- Property tax rate limitation (Article XIII A, section 1)
 - Maximum amount of *ad valorem* tax or real property limited to 1% of full cash value
- Restriction on local taxes (Article XIII A, section 4) – Cities, by a 2/3rds vote of qualified electors, may impose special taxes

Proposition 13 - Impact

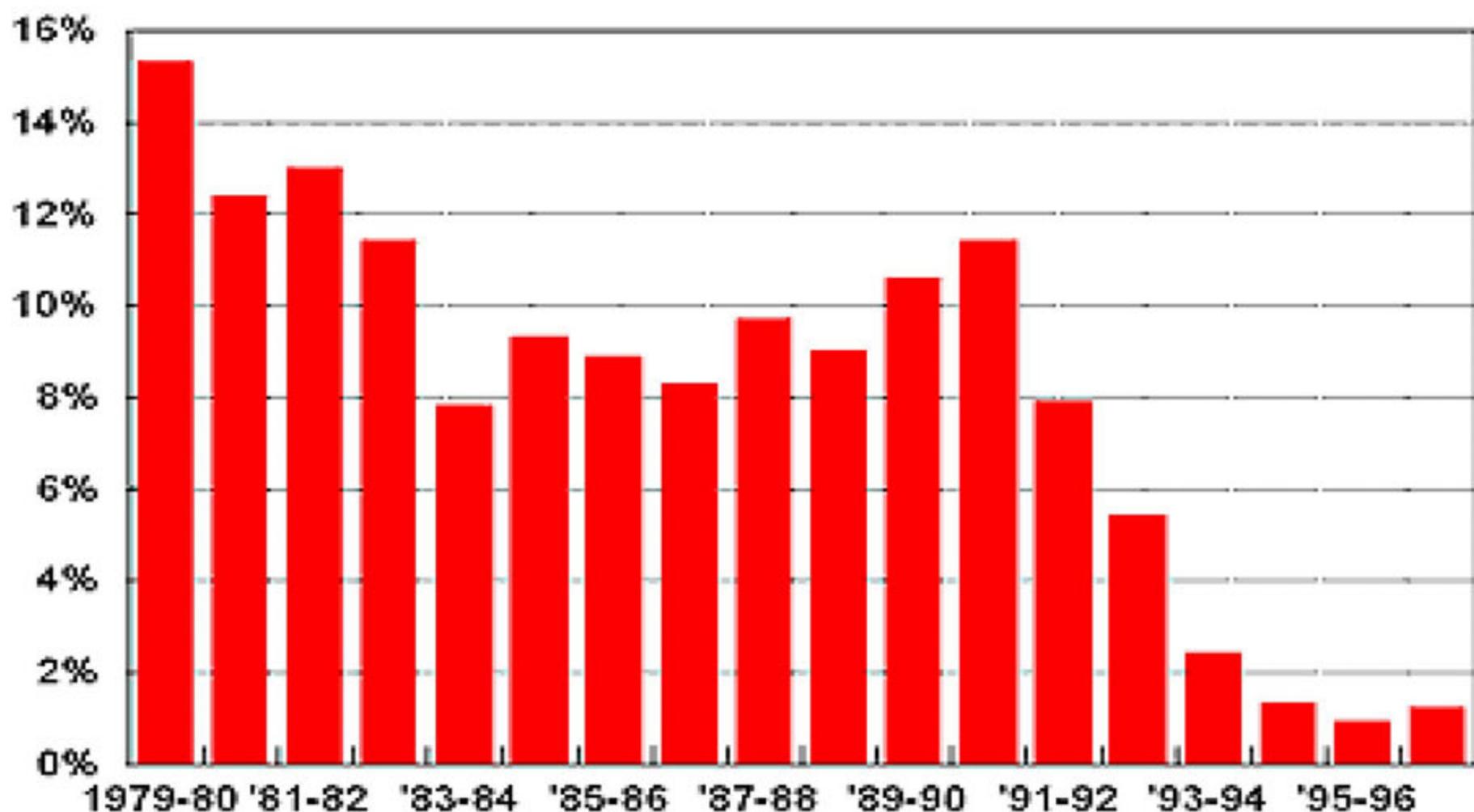
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- Reduced property tax revenues to local governments by more than half (57%)
- Abolished any local control with regard to property taxes
- Forced cities to look for new sources of revenue to fund increasing demands for municipal services

Property Tax Growth Rates

Annual Growth After Proposition 13

Figure 1



Source: State Board of Equalization, Annual Reports

Proposition 13 – Judicial Review

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- *County of Fresno v Malmstrom* (1979) –
 - ▣ 1% limit on *ad valorem* taxes does not apply to special assessments
 - ▣ Special assessment is not a special tax
 - ▣ Special assessment is a charge for benefits conferred upon real property which cannot exceed the benefits conferred on such properties

Proposition 62 (1986)

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- Reaction to various forms of new local taxes and increases in fees in the wake of Proposition 13
- Restated 2/3 voter approval requirements for special taxes and established majority voter approval for general taxes



Increase In Assessment Revenues

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- Cities turned to assessment district revenues to augment tax revenues
- Between time of passage of Prop 13 and 1992-1993, benefit assessment revenues rose

Knox v City of Orland (1992)

The Straw that Broke the Camel's Back

12



- Supreme Court upheld Orland's levy of assessments
- Rejected argument that park maintenance did not specially benefit properties assessed and that assessment was a special tax

Closing the Proposition 13 Loophole

13

Joel Fox, Howard Jarvis Taxpayers Association:

“After Prop 13's success, bureaucrats looked for ways to raise revenues while avoiding Prop 13's restrictions. They hit upon assessment districts, . . .

Over time, bureaucrats molded assessments into property taxes that avoid Proposition 13's restrictions. The courts supported this artistry by ignoring the historical precedent demanding a link between assessments and a direct benefit to property. They held that assessments could be used for operational budgets and maintenance costs and were not covered by Proposition 13's limits and vote requirements.

Assessments have become unrestricted property taxes. They appear on your property tax bill. There are no limits on how high assessments can go. There are no limits to how many assessments can be placed on your property.
..

Prop 218 will continue Prop 13's legacy of protecting property owners from being the cash cow forced to fund most local services ”

Proposition 218 (1996)

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- Expands restrictions on government spending
- Allows voters to repeal or reduce taxes, assessments, fees, and charges by initiative process
- Reiterates voter approval requirements for general taxes (majority) and special taxes (2/3)



Proposition 218

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- Article XIII D, § 4 (Assessments)
 - Establishes new substantive requirements: special benefit and proportionality
 - Establishes new procedural requirements: majority ballot protest procedures

Substantive Requirements

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- Only “special benefits” are assessable
- California Constitution article XIII D, § 2(i):
“Special benefit” means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute “special benefit.”
- Local agency, State and Federal Properties are not exempt from assessment

Substantive Requirements

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- Assessments must be supported by a detailed engineer's report prepared by a registered engineer certified by the State
- Identify all properties that receive special benefit
- Separate the general benefits from the special benefits

Substantive Requirements

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- Calculate the assessment for each identified parcel
- Determine the proportionate special benefit in relationship to the entirety of the cost of the improvement or services
- No assessment shall exceed the reasonable cost of the proportional special benefit conferred on that parcel

Procedural Requirements

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- Hold a public hearing
- Mail Notice of the public hearing to property owners at least 45 days in advance

Procedural Requirements - Notice

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- The Notice must include:
 - ▣ proposed assessment
 - ▣ total of all assessments for the district
 - ▣ the duration of the assessment
 - ▣ the reason for the assessment
 - ▣ the basis upon which it was calculated
 - ▣ date, time, and location of the public hearing
 - ▣ a ballot and summary of procedures for completing it, including a disclosure statement that the existence of majority protest will result in the assessment not being imposed

Procedural Requirements - Ballots

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- Ballots must include:
 - agency's address for receipt
 - a place for the name of the property owner and identification of the parcel
 - a place for the property owner to indicate support for or opposition to proposed assessment

Procedural Requirements - Ballots

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- Ballots must be:
 - ▣ in a form to conceal their contents
 - ▣ signed
 - ▣ mailed or delivered to the public agency prior to the close of the public hearing
- Ballots must remain sealed until the close of the public hearing
- Ballots may be submitted, changed or withdrawn prior to the close of the public hearing
- An agency may provide a return envelope

Procedural Requirements - Envelope

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- The face of the envelope mailed to property owners must include in substantially the following form:
 - “OFFICIAL BALLOT ENCLOSED”
 - Must not be smaller than 16-point type

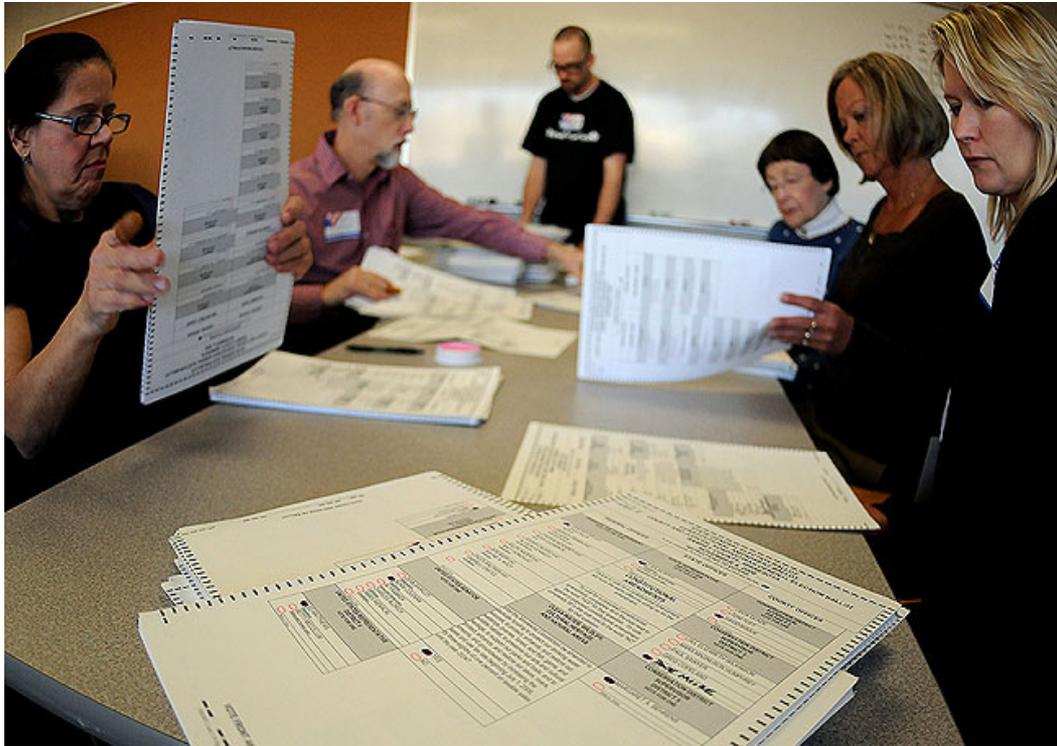


Procedural Requirements – Public Hearing

- Agency shall consider all protests
- Only ballots submitted will be considered as official protests
- After public hearing has been closed, the agency shall tabulate the ballots
- May continue the tabulation at a different time or location accessible to the public, BUT you must announce the time and location

Procedural Requirements - Protests

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- An impartial person shall tabulate the ballots – clerk of the agency
- Must be done in view of the public if agency personnel or a vendor is used

Procedural Requirements - Protests

26

- A majority protest exists if, upon the conclusion of the public hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment - ballots shall be weighted
- Ballots submitted by more than one property owner are allocated based on ownership interest



Burden of Proof

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- Burden is on the agency to demonstrate that the properties in question receive special benefit
- Burden is on the agency to demonstrate that the amount of the assessment is proportional to the benefits conferred

Grandfathering Clause

28

- Assessments existing when Proposition 218 was adopted are grandfathered if they fall within one of 4 categories:
 - ▣ Exclusively finance capital costs and O&M for sidewalks, streets, sewers, water, flood control, drainage systems or vector control
 - ▣ Assessment imposed pursuant to a petition signed persons owning all of the property
 - ▣ Assessments exclusively used to repay bonds
 - ▣ Assessments previously approved by majority vote
- Subsequent increases subject to Proposition 218

Omnibus Act

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- Elections Code § 4000; Government Code § 53753(e)(6) – majority protest proceedings are not elections
- Government Code §§ 53739 & 53750 – CPI provision or range of assessment amounts (i.e., stepped amounts over time) can be implemented without a new protest proceeding

Omnibus Act

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- Government Code § 53750 – definitions
- Government Code § 53753(e)(2) – ballots must be retained for 2 years

Increase - GC § 53753.5

31

- If an agency has complied with the notice, protest, and hearing requirements of section 53753, or if an agency is exempt from the procedures, then those requirements shall not apply in subsequent fiscal years unless:
 - ▣ The assessment methodology is changed to increase the assessment; or
 - ▣ The amount of the assessment is proposed to exceed an assessment formula or range of assessments adopted by an agency in accordance with Article XIII D or GC 53753

Increase - GC § 53750(h)

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- An assessment is not deemed to be "increased" in the case in which the actual payments from a person or property are higher than would have resulted when the agency approved the assessment, if those higher payments are attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land

AB 2618 – PBID's

33

- Amends the Property and Business Improvement District (PBID) Law of 1994
- “Special Benefit” includes incidental, or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if they benefit property or persons not assessed
- Resolution of formation must include funding source for general benefits

Conclusion

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- Proposition 218 is the progeny of a long line of taxpayer relief measures
- Proposition 218 establishes substantive requirements that make it more difficult to fund public facilities and services
- Proposition 218 establishes procedural requirements that provide property owners with a greater say on the levy of assessments to fund public facilities and services

Questions?



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SESSION TWO:

**COURT DECISIONS AND WHAT THEY
MEAN TO ASSESSMENT DISTRICTS**

The New Normal



HJTA v. City of Riverside (1999)

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- Pre-Proposition 218 1972 Act Assessment need not comply with Article XIII D, § 4 until increased
- Streetlights are streets within the meaning of Article XIII D, § 5

Silicon Valley Taxpayers' Association v. Santa Clara Open Space Authority (2008)

39



- 1994 - Santa Clara Open Space Authority (“OSA”) forms assessment district for acquisition and maintenance of open space

Background

40

- 2000 – OSA needed additional funding for open space acquisition and maintenance
- OSA initiated proceedings to form a new assessment district for open space
- Assessment for all single-family residences in county set at same rate – assessment revenues will produce ~ \$8 million

Background

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- No parcels are identified in the report for open space acquisition
- Majority of property owners approve assessments
- Taxpayers Association challenges assessments, claims assessments:
 - ▣ Fail to satisfy special benefit requirements
 - ▣ Fail to meet proportionality requirements

Standard of Review – Pre-Prop 218

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Deferential standard of review - A special assessment will not be set aside unless it clearly appears on the face of the record before the legislative body, or from facts which may be judicially noticed, that the assessment is not proportional to the benefits to be bestowed on the properties to be assessed or that no benefits will accrue to such properties.

Standard of Review – Pre-Prop 218

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- Assessments are presumed valid
- Burden is on the challenger
- Prop 218 targets deferential standard of review

Standard of Review – Post-Prop 218

44

- Validity of assessments has become a constitutional question
- Courts are responsible for enforcing the provisions of the Constitution
- Independent Judgment Standard of Review - Courts must exercise their independent judgment
- Burden is on the agency

Special Benefit

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Court refines the meaning of special benefit:
“[A] special benefit must affect the assessed property in a way that is particular and distinct from its effect on other parcels and that real property in general and the public at large do not share.”

Special Benefit

46

- “Special benefits” identified in Engineer’s Report:
 - ▣ Enhanced recreational activities and expanded access to recreational areas;
 - ▣ Protection of views, scenery, other resources;
 - ▣ Increased economic activity;
 - ▣ Reduced costs of law enforcement, health care, fire prevention, natural disaster response;
 - ▣ Enhanced quality of life and desirability of area;
 - ▣ Improved water quality, pollution reduction and flood prevention; and
 - ▣ Enhanced property values

Special Benefit

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- All of the listed benefits are general benefits shared by everyone
- Report fails to recognize that the “public at large” means all members of the public, not just transient visitors



Special Benefit

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- Report fails to show any distinct benefits to parcels



Proportionality

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- Report fails the proportionality requirements of Article XIII D, section 4(a):
 - ▣ Failed to identify any permanent public improvements to be financed with the assessments



Proportionality

50



- ❑ Failed to estimate or calculate the cost of any of the proposed improvements
- ❑ Failed to directly connect any proportionate costs of the benefits to the specific assessed parcels

Town of Tiburon v. Bonander (2009)

51

- Case decided after *Silicon Valley*, provided further clarification of special benefit and proportionality
- Court exercised its independent judgment
- Special benefits were invalid because:
 - They were allocated among three zones based on cost considerations rather than proportional special benefit
 - Properties paid for special benefits conferred on other parcels

Background

52

- After forming assessment the project costs were more than originally projected
- Supplemental assessment was necessary to cover the shortfall



Background

53

- Engineer's report identified 3 special benefits:
 - ▣ Improved aesthetics
 - ▣ Increased safety
 - ▣ Improved service reliability



Special Benefits

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- Properties did receive special benefits from the improvements
- Aesthetics special benefits equally assigned to all properties was appropriate
- Almost every assessment that confers a particular and distinct advantage on a parcel will also enhance its property value

Proportionality

55

- Benefit zones were not based on differential benefits enjoyed within each zone, but were largely based on variances in the costs of undergrounding utilities in each zone
- Apportionment resulted in properties that received identical benefits paying vastly different assessments
- Apportionment is a function of the total cost of the project

Proportionality

56

- Properties that receive special benefit may not be excluded from the district
- By excluding properties that receive special benefit, the assessments on other properties necessarily exceeded the proportionate special benefit conferred on them



Dahms v. Downtown Pomona PBID

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- Services for PBID included security, streetscape, marketing, promotion, and special events
- Plaintiff claimed City failed to comply with procedural and substantive requirements of Article XIII D, §4.

Procedural Requirements

58

- Plaintiff argued that because the hearing took place on the 45th day, the City violated the procedural requirements of Article XIII B, § 4(b)
- Court finds that the City may hold the public hearing on the 45th day after the mailing of the notice of the public hearing

Substantive Requirements

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- Assessment for non-profit entities were discounted
- Residential properties exempted from assessments
- Court held that Article XIII D, § 4(a) leaves local governments free to impose assessments that are less than the proportional special benefit conferred, so long as the discounts are not subsidized by other properties

Substantive Requirements

60

- Court held services provided special benefits because they are over and above those already provided by the City within the PBID
- Services are particular and distinct, and are provided only to properties within the PBID, not to the public at large
- Report separated the special benefits from those already provided by the City

Beutz v. County of Riverside (2010)

61

- Assessments challenged because residential properties assessed for the entire cost of refurbishing and maintaining parks
- Costs attributable to general benefits were not deducted – i.e., general benefits were not separated from the special benefits

Background

62

- County acquired 3 parks from a park district that could not afford to maintain them
- Park district dissolved and the County took over its assets and liabilities
- County formed assessment district to maintain the parks



Background

63

- Assessment engineer's report apportioned the costs equally among all single-family residential properties
- Report concluded all other properties within the district did not receive special benefits
- Report recognized parks provided general benefits, but they were offset by the County's expenditures related to the parks

Proportionality

64

- Court exercised its independent judgment
- Report failed to separate the general benefits from the special benefits
- Report failed to quantify the special and the general benefits

Concerned Citizens for Responsible Gov't v. W. Point Fire Protection Dist. (2011)

65



- Special assessment adopted by a fire protection district did not provide special benefit to property

Substantive Requirements

66

- Court also identified public park maintenance and library upkeep as examples of other services and facilities which provide only general benefit



Golden Hill Neighborhood Ass'n v. City of San Diego (2011)

67

- Assessments were challenged on the basis that they did not meet the proportionality requirements of Article XIII D, § 4(a)
- Assessment challenged on the basis of the failing to comply with the procedural requirements of Article XIII D, § 4(b)



Background

68

- Assessment calculated on the basis of two components: (1) each parcel's linear square footage; and (2) a single family equivalent benefit factor (SFE).
- No formula was provided for calculating assessments imposed on City park and open space land



Proportionality

69

“The City’s failure to publicly disclose how the assessments for the City’s park and open space properties were calculated compromised the transparency and integrity of the ballot protest process by depriving other property owners of the opportunity to review and challenge the ballot weighting for those properties.”

Elimination of City Ballots

70



- The court could not conclude that the ballots cast by the City were properly weighted under article XIII D, section 4
- With elimination of City's ballots, ballots in opposition prevailed

STA v. Carmichael Rec. and Park Dist. (2014)

71

- Plaintiffs allege:
 - ▣ Amount of assessment determined by how much property owners were willing to pay
 - ▣ Engineer's report failed to identify costs of certain improvements
 - ▣ Benefits are general not special
 - ▣ No valid allocation of special v. general benefits

Rodeo-Hercules Fire Protection District (2014)

72

- Assessment to fund fire protection services challenged
- Plaintiff argues assessment funds general benefits

Conclusions and Recommendations

73

- Courts will exercise their independent judgment when reviewing the validity of assessments; burden is on the public agency to demonstrate compliance
- *Silicon Valley* decision calls into question validity of assessments imposed for broad, regional services and improvements which are determined to provide special benefit

Conclusions and Recommendations

74

- Public Agencies must separate and quantify the general benefits from the special benefits
- Public agencies must identify with sufficient specificity:
 - The services and/or improvements
 - The special benefits that parcels will receive
 - The cost of the services and/or improvements
 - The proportionate special benefits conferred on the identified assessed parcels

Conclusions and Recommendations

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- *Silicon Valley* court found that enhancement of property value is not a special benefit
- *Town of Tiburon* court recognized that almost every assessment enhances property value



Conclusions and Recommendations

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- Assessments should not be based on an amount the public is willing to pay
- Assessments should not be apportioned based on variances in the costs of the improvements
- Proposition 218 continues to evolve

QUESTIONS?



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**SESSION THREE
PART ONE AND TWO:**

**CURRENT PRACTICES FOR DETERMINING
GENERAL AND SPECIAL BENEFIT**

Assessment District Laws

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□ Municipal Improvement Act of 1913

(Streets & Highways Code 10000 et. seq.)

▣ Capital Projects

- Streets, drainage, sewer, water
- Electrical lines and conduits, street lights
- Seismic, fire safety and stations, transportation facilities and park improvements
- Land acquisition – easements

▣ Services

- Only what was funded by assessment
- Limited maintenance provision

▣ Issue bonds through Improvement Bond Act of 1915

Assessment District Laws

80

□ Landscaping and Lighting Act of 1972

(Streets & Highways Code 22500 et. seq.)

▣ Funds construction and maintenance of:

- Landscaped medians and parkways
- Parks
- Open Space
- Street lighting
- Traffic signals
- Graffiti removal on the above

Assessment District Laws

81

□ Benefit Assessment Act of 1982

(Government Code 54703 et. seq.)

▣ Funds construction and maintenance of:

- Street improvements
- Storm drain improvements
- Street lighting

Assessment District Laws

82

□ Fire Suppression Act of 1987

(Government Code 50078 et. seq.)

- Funds operation and maintenance of fire suppression activities, including:
 - Vehicle acquisition and maintenance
 - Weed abatement
 - Firefighting personnel
- Cannot fund activities related to paramedic and/or emergency response services
- Only activities related to protection of property

Assessment District Laws

83

- Property and Business Improvement District Law of 1994 (Streets & Highways Code 36600 et. seq.)
 - Funds construction and maintenance of:
 - Parking facilities and sidewalks
 - Benches, booths, kiosks, etc.
 - Trash receptacles and public restrooms
 - Parks
 - Security
 - Rehabilitation and removal of structures

Assessment District Laws

84

□ Transit Districts – Benefit Assessments

(Public Utilities Code 99000 et. seq.)

□ Transit Projects

■ Transit stations

- Rail station
- Ferry terminal
- Bus transfer station

■ Rail facilities

- Allows for maintenance, but excludes operations
- Allows issuance of bonds
- Automatically repealed on January 1, 2021

Assessments – Common Principles

85

- ❑ Charge on property for provision of public improvement or service
- ❑ Based on special benefit to affected properties
- ❑ Cannot fund general benefit
- ❑ Publicly-owned parcels that receive special benefit from the improvement or service must be assessed
- ❑ Identify improvements, identify benefits, identify benefitting parcels

Assessments – Common Principles

86

- Prepare and submit Engineer's Report to support benefit finding and rationale for assessments
 - ▣ Improvements/services provided
 - ▣ Cost of improvements/services
 - ▣ Define benefits
 - ▣ Methodology for allocating benefit
 - ▣ Tax roll, etc
- Conduct ballot proceeding – lack of majority protest required for approval (majority approval)

Assessments – Common Approach

87

- Identify improvements or services by:
 - Location
 - Type
- Determine entire cost for improvements or services
 - Which costs are eligible?
 - Cost related to improvements (right-of-way, design, permits, etc)
- Identify properties to be served by constructed improvements – proposed for inclusion
- Evaluate other properties (bordering, or otherwise benefitting)
- Evaluate properties with each improvement separately
- Define special benefits that improvements provide to affected properties
- Reminder: special benefit is over and above benefits conferred on to general public at large

Assessments – Common Approach

88

- Identify possible general benefits
 - Common example 1: road segment that also provides access to other property
 - Common example 2: storm drain retention basin that catches flow from other neighborhood
 - Discussion point: construction of that road may be condition for developing subject property. Does it benefit it solely, or some general benefit?
- Quantify general benefit
 - Example: use trip counts on road segment to determine the benefit to subject property, allocate cost accordingly
- General benefit must then be excluded from assessment
- Remaining special benefit can be allocated to affected properties

Assessments – Common Approach

89

- Develop equitable and reasonable methodology for allocating special benefit
- Strive for understandable methodology
- Account for future property subdivision – understanding of proposed development
- Apportion specific costs to properties that receive special benefit
 - Can be different for various improvements – i.e. roads, sewer, water, storm drain, etc.
- Assessments for parcels must be proportional to benefits received by that parcel
- Assessments may not exceed any parcels proportional benefit

Current Common Methods

Assessment Methodologies by Improvement Type

IMPROVEMENT TYPE	COMMON ENABLING ACT(S)	UNIT OF MEASURE	SPECIAL BENEFITS
Landscaping	1913 Act, 1972 Act, PBID	Equivalent Dwelling Units (EDUs), Frontage, Acreage	Specific Enhancement to Property Value, Aesthetics
Street Lighting	1913 Act, 1972 Act, 1982 Act, PBID	EDUs, Frontage, Acreage	Safety, Character & Vitality, Economic Enhancement, Enhanced Illumination, Proximity
Streets	1913 Act, 1982 Act, PBID	EDUs, Frontage	Access to Property, Safety
Storm Drain	1913 Act, 1982 Act, PBID	Impervious Area	Storm and Flood Protection
Parks	1972 Act, PBID	EDUs, Employee Density	Proximity, Access to Green Spaces, Extension of Open Area
Sewer	1913 Act, PBID	Connections, Peak Capacity	Occupancy, Health, Sanitation
Public Utilities	1913 Act, PBID	EDUs, Frontage	View, Aesthetics, Safety, Reliable Connection
Security, Marketing, etc.	PBID	Acreage, Frontage, Building Size	Economic Enhancement

Notes:

- 1) A Common Special Benefit was Condition of Development.
- 2) 1913 Act is limited to providing maintenance for improvements constructed by the district.

Shifting Landscape

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- More focus on addressing special and general benefit
- More scrutiny of general-type services: public safety (fire), park maintenance
- Difference in benefit vs. difference in cost
- Ensuring proportionality in assigning special benefit
- Impact on existing assessments – potential challenges
- Take extra care forming new assessments

Shifting Landscape

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- Certain situations not suited for assessments
- Where other types of districts work
- Different standard of review for courts
- Create thorough administrative record
- Industry efforts and education
- Must be a methodology or basis, i.e. trip count, census, radius, proximity, etc.

General and Special Benefit

93

- Only special benefits assessable, agency must separate general from special benefits
- Must ensure special benefits are truly particular and distinct
- Must quantify special and general benefit – Silicon Valley, Beutz, Golden Hill
- Must be a methodology or basis, i.e. trip count, census, radius, proximity, etc.
- Cost associated with general benefit cannot be included in assessment

More on Benefit

94

- Benefit to each parcel must be proportional to its share
- Benefit may not exceed parcel's proportionate share
- All benefitting parcels must be assessed (Bonander)
- Benefit zones permitted only where there are distinct differences in benefit, **not cost**
 - Variances in level of service
 - Variances in improvements provided,
 - Location, etc.

About the Engineer's Report

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- Key information document
- Important Content
 - ▣ Special Benefit clearly defined
 - ▣ General Benefit discussed and quantified
 - ▣ Assessment methodology explained in detail
 - ▣ Exceptions and exemptions explained
 - ▣ Cost estimates
 - ▣ Plans & Specifications

About the Engineer's Report

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- Important Content (continued)
 - ▣ Assessment diagram
 - ▣ Assessment roll
 - ▣ Description of services (Maintenance Districts)
 - ▣ Principal amount of assessments (Improvement Districts)
 - ▣ Total true value of parcels (Improvement Districts)
 - ▣ Value to Lien Ratio (Improvement Districts)

Consider Before Balloting

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- Ongoing financial challenges causing more agencies to look at assessments
- Carefully evaluate feasibility of increasing or imposing new assessments on existing properties
- Determine needs
 - Analyze extent, nature and location of improvements
 - Develop thorough budget
 - Identify long-term service requirements and needs
- Consider ALL properties who might receive benefit

Consider Before Balloting

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- Have a clear understanding of benefit
 - ▣ Clear nexus between properties and improvements/services
 - ▣ Account for general benefit, develop methodology accordingly
- Clear, concise, easy to understand materials
- Reasonable methodology
- Clear ballot
- Take into account: political factors, public perception, values, support
 - ▣ Polling may help – but be careful!!

Consider Before Balloting

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- Evaluate potential alternatives
 - Level of General Fund subsidy
 - Increase assessments (Including an inflationary formula?)
 - Reduce the current level of service
 - Out-source services (contract services)
 - When re-engineering – possible enhancements
 - Consider alternative revenue mechanisms
 - Special Tax, CFD
 - Consolidation, expansion or re-engineering

Consider Before Balloting

100

- Determine amount of total expenditures for the project
- Determine all existing available revenue sources
- Determine shortfall in funding
- Does existing revenue cover general benefit?

Special Benefit – Example

Downtown Pomona PBID

- Special Benefit
 - ▣ Analysis based on enhanced economic activities
 - ▣ Benefit specific to property types and uses; separate analysis needed for each
 - ▣ Services: security, streetscape maintenance, marketing & promotion
 - ▣ Assessments based upon street frontage, building size, lot size (40%, 40%, 20%)
- Special benefits were enhanced services providing for increased economic activity

Special Benefit – Example

Downtown Pomona PBID

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- Court found no fault with methodology – using several property characteristics, i.e. front footage, building size, parcel size
- Allowed discounting of assessments – as long as no other benefitted properties are assessed for more than proportionate special benefit
 - Discounts to non-profits
 - Discounts to residential
- Affirmed services provided by PBID afforded parcels a benefit that was particular and distinct

General Benefit – Example

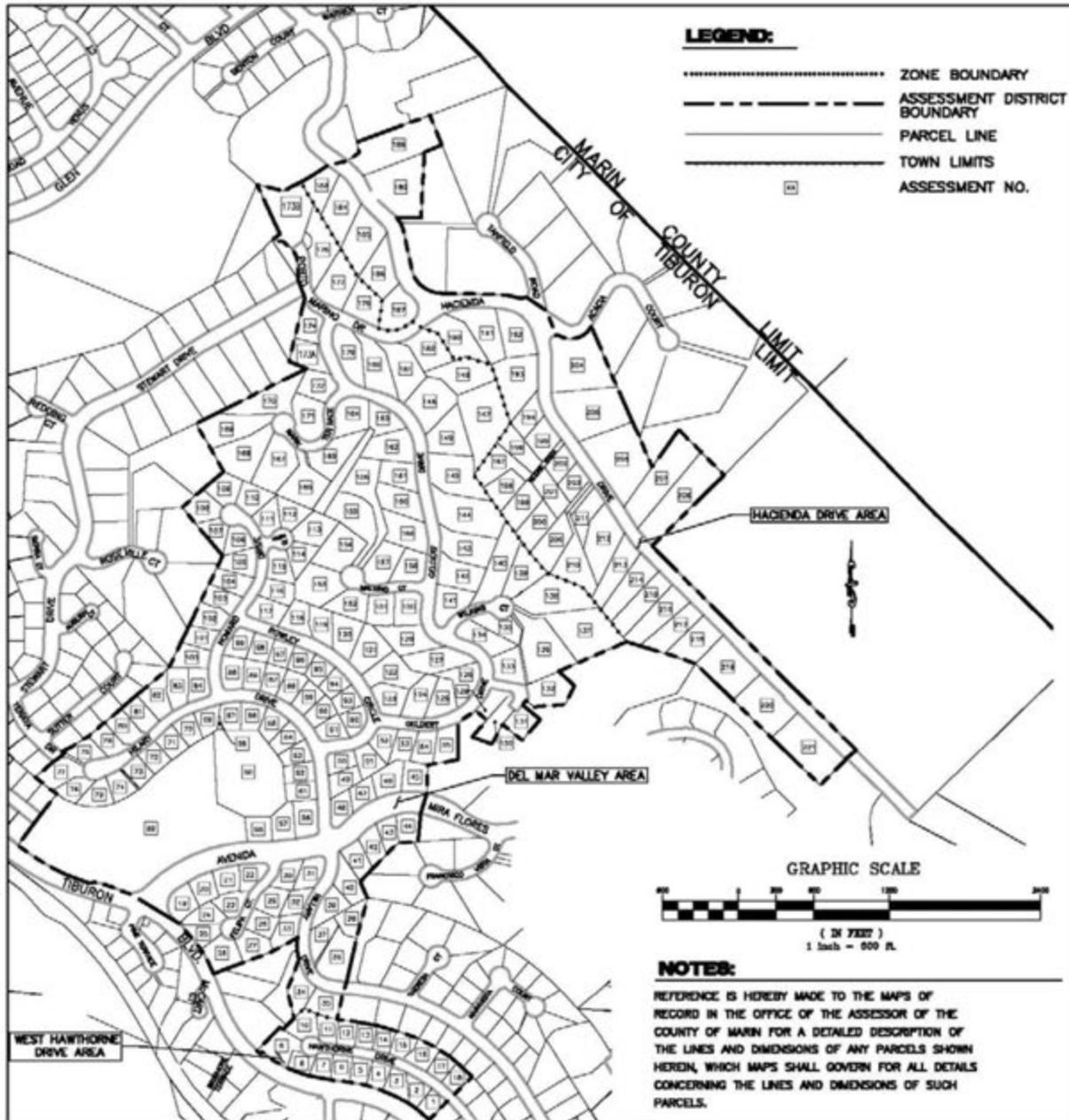
Downtown Pomona PBID

- **General Benefit**
 - ▣ **Must be quantified and separated**
 - ▣ **Significant analysis utilizing benefit factors, parcel analysis and public survey statistics**
 - ▣ **Benefit evaluated both inside and outside district**
 - ▣ **Results identified a 1.70% general benefit conferred by PBID activities**

Example - Tiburon AD

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- Issues:
 - ▣ Challenge to components of utility undergrounding district – esp. proportionality, cost
 - ▣ 3 zones of benefit, one for each electrical subsystem
 - ▣ Each zone had different assessment based on cost of that electrical subsystem
 - ▣ Method of assessment identified several benefit factors
- Outcomes:
 - ▣ Cost zones not allowed, zones must be based upon benefit only
 - ▣ All parcels benefitting must be included in district
 - ▣ Each parcel's proportionate special benefit must be based on cost of entire project
 - ▣ Court found no fault with methodology – special benefits identified in Engineer's Report were special, ok that special benefit was conferred equally
 - ▣ Court affirmed general enhancement of property value does not mean a benefit is general

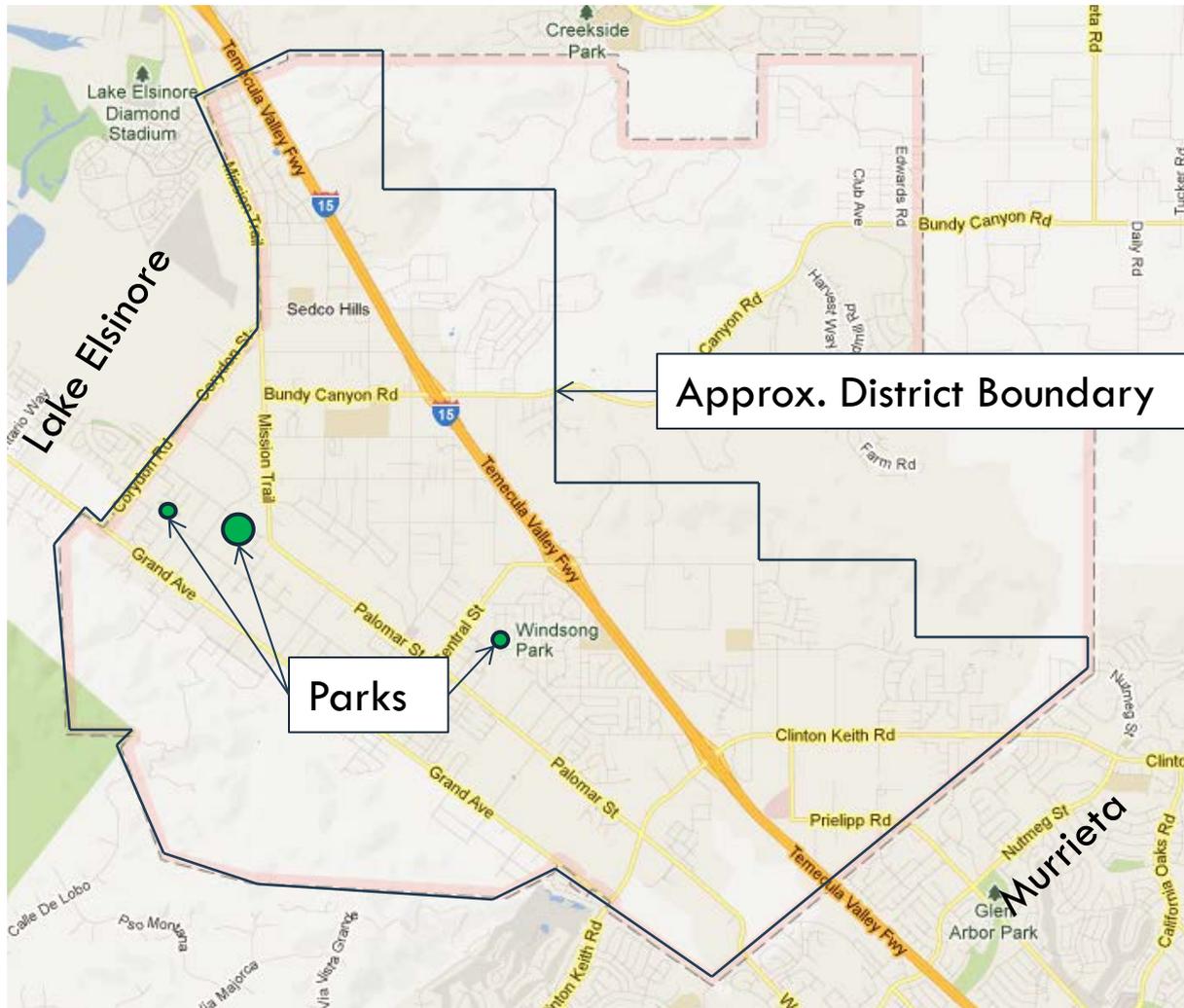


Example - Tiburon AD

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- Potential Solutions:
 - Create one uniform assessment
 - Identify varying benefits between the zones not related to the cost
 - Create 3 separate assessment districts

Example - Wildomar LMD



Example - Wildomar LMD

108

- Issues:
 - ▣ 100% of assessment to residential parcels
 - ▣ Senior, commercial and public deemed not to benefit
 - ▣ Boundary was defined by jurisdictional limits
 - ▣ Report did not provide differentiated levels of special benefit (proximity to park facilities)
 - ▣ No general benefit analysis
 - ▣ No proportionality analysis

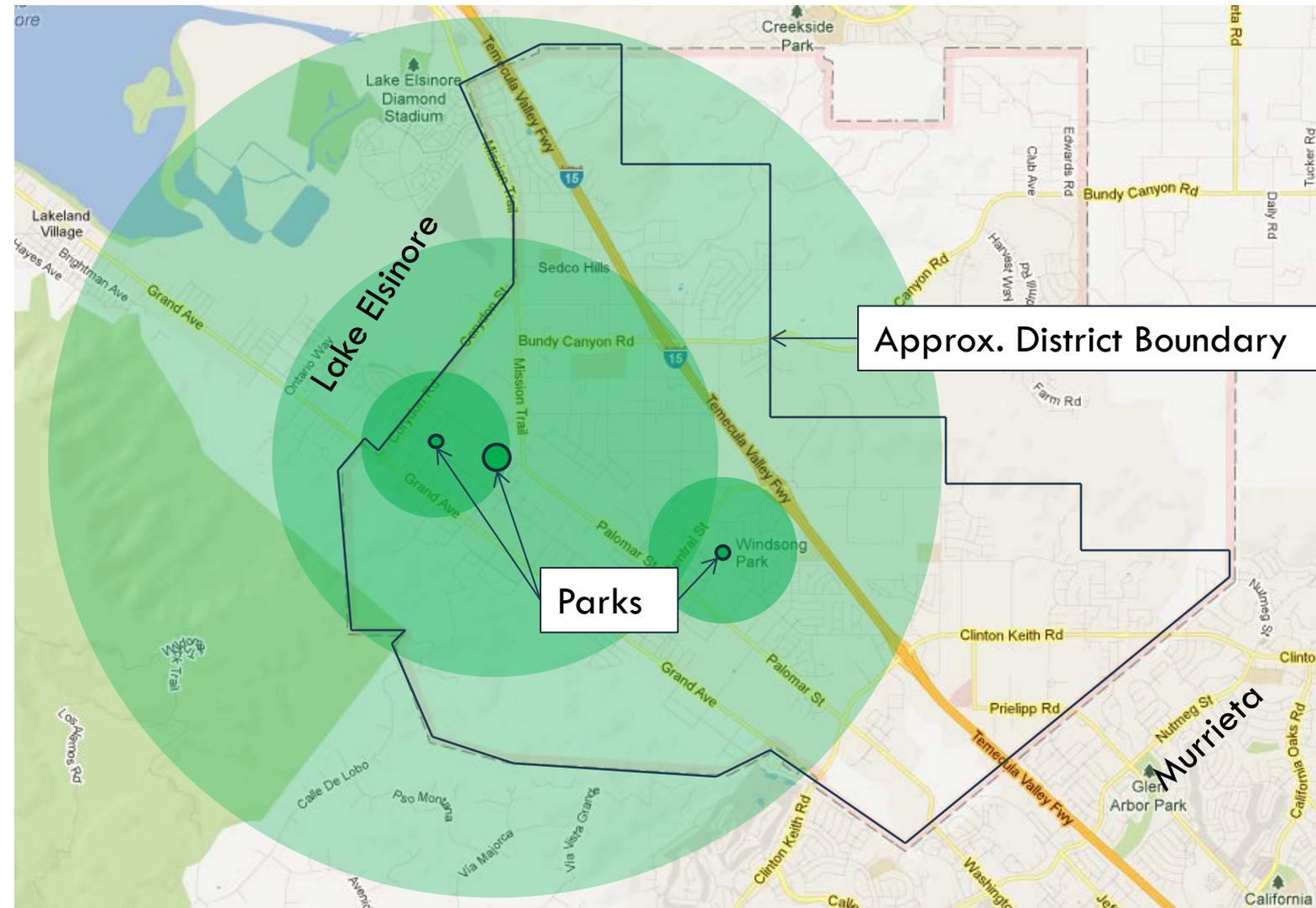
Example - Wildomar LMD

109

- Potential Solutions:
 - Analyze benefits to all land uses, show proportionality in Engineer's Report
 - Survey surrounding parks to determine non-resident use
 - Identify all benefitting parcels regardless of City limits
 - Use service areas as defined by Park Master Plan
 - Example:
 - Neighborhood Park – 1/2 mile services radius
 - Community Park – 1.5 to 3 mile service radius
 - Regional Park – 20 mile service radius

Example - Wildomar LMD

110



General Benefit Examples

111

- Roadway
 - ▣ Through traffic on arterial streets
- Street Lighting
 - ▣ Additional level of lighting required to light arterial street
- Parks
 - ▣ Recreational Programs
 - ▣ Events
 - ▣ Non-resident use

General Benefits

112

- Water and Sewer Treatment
 - ▣ Environmental Concerns
- Storm drainage
 - ▣ Reduced likelihood of flooding downstream of actual project
 - ▣ Improved water quality downstream (outfall)
- Fire Suppression
 - ▣ Air Quality
 - ▣ General Public Safety
- Landscaping
 - ▣ General Public

Existing Assessments

113

- Reports must account for latest case law – reports older than *Silicon Valley* should be thoroughly reviewed, maybe rewritten
- Special/general benefit requirements are more exacting
- Agencies should allow time for legal review of Engineer's Reports
- Important to track legal developments, (numerous for assessments over past five years)
- Critical in assessments for services; again, look at benefit zones
- Clear comprehensive administrative record – courts need to understand process, rationale
- Build entire administrative record to support cost of service analysis

Questions?





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BOND FINANCING OPTIONS USING ASSESSMENTS

Legal Basis for Issuance of Assessment Bonds

116

- Special Assessment Districts
 - ▣ Improvement Act of 1911
 - ▣ Municipal Improvement Act of 1913
 - ▣ Used in combination with the Improvement Bond Act of 1915
 - ▣ Improvement Act of 1972
 - ▣ Business Improvement District Law of 1994

Why Do Public Agencies Issue Assessment District Bonds?

117

- It is a tool to finance infrastructure and to have the costs paid by those who benefit from the improvements
- In other words, infrastructure provided without City general tax dollars or existing resident's tax dollars
- And in most cases it allows the City to get more infrastructure sooner and at a lower cost than if it was built under the City's typically Capital Improvement Program and available funding sources

Usual Sequence of Events

118

1. Local Agency / Property Owner Petition Initiated
2. Actions Taken by Legislative Body
3. Legislative Body Commences Assessment Proceedings
4. Public Hearing
5. Assessment Balloting and “Majority Protest” (**Proposition 218**)
6. Final Actions Taken by Legislative Body
7. End of Cash Collection / Statue of Limitations
8. Bonds Issued
9. Annual Assessments levied to pay debt service on the Bonds
10. Project Costs Funded/Reimbursed
11. Public Agency administers the District until Bonds mature



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Assessment District Bond Issuance

Bond Issuance Steps

120

□ How do we do it?

1. Financing team drafts financing, legal and financing documents including:
 - Resolutions
 - Bond Indenture
 - Preliminary Official Statement / Official Statement (includes appraisal / Market Analysis / CFD Report)
 - Continuing Disclosure Agreement
 - Bond Purchase Agreement
2. Issuer approves financing documents and present reports to the policy makers
3. Issuer sells bonds to underwriter
4. Underwriter sells bonds to investors

Bond Issuance Steps - *continued*

121

- How do we do it? (*continued*)
 5. Issuer receives \$'s from investors in exchange for bonds
 6. Net proceeds used to pay for capital projects
 7. Annual Special Taxes levied and collected to pay debt service on the Bonds per Rate and Method of Apportionment

Financing Team Members

122

- **Public Agency** – presents report, documents and recommendations to the policy-makers for their deliberation
- **Bond Counsel** – prepares all required bond documents and provides legal opinion
- **Financial Advisor** – fiduciary responsibility to issuer to protect their financial interests and provide independent financial advice related to the issuance of bonds
- **District Administrator** – assists Issuer in preparing tables for the disclosure documents and administering the Assessment District

Financing Team Members *continued*

123

- **Appraiser** – estimates value of assessed property subject to the assessment lien
- **Underwriter** – buys the bonds from the issuer and then sells them to investors
- **Disclosure Counsel** – prepares bond sale financing documents (Official Statement, Bond Purchase Agreement, Continuing Disclosure Agreement)
- **Fiscal Agent** – holds, invests and disburses funds at direction of Issuer

Initial Bond Disclosure

124

- Preliminary Official Statement
 - ▣ *Tell the truth, the whole truth and nothing but the truth*

- Requirements continue to evolve and are becoming more stringent

Administering the Assessment District Bonds

125

- It is important to know your Assessment District
- Make sure you ask a lot of questions and get good answers from your Financing Team
- In most cases, the Public Agency is the only one there for the full term of the Assessment District Bonds

Basic Steps of Assessment District Bond Administration

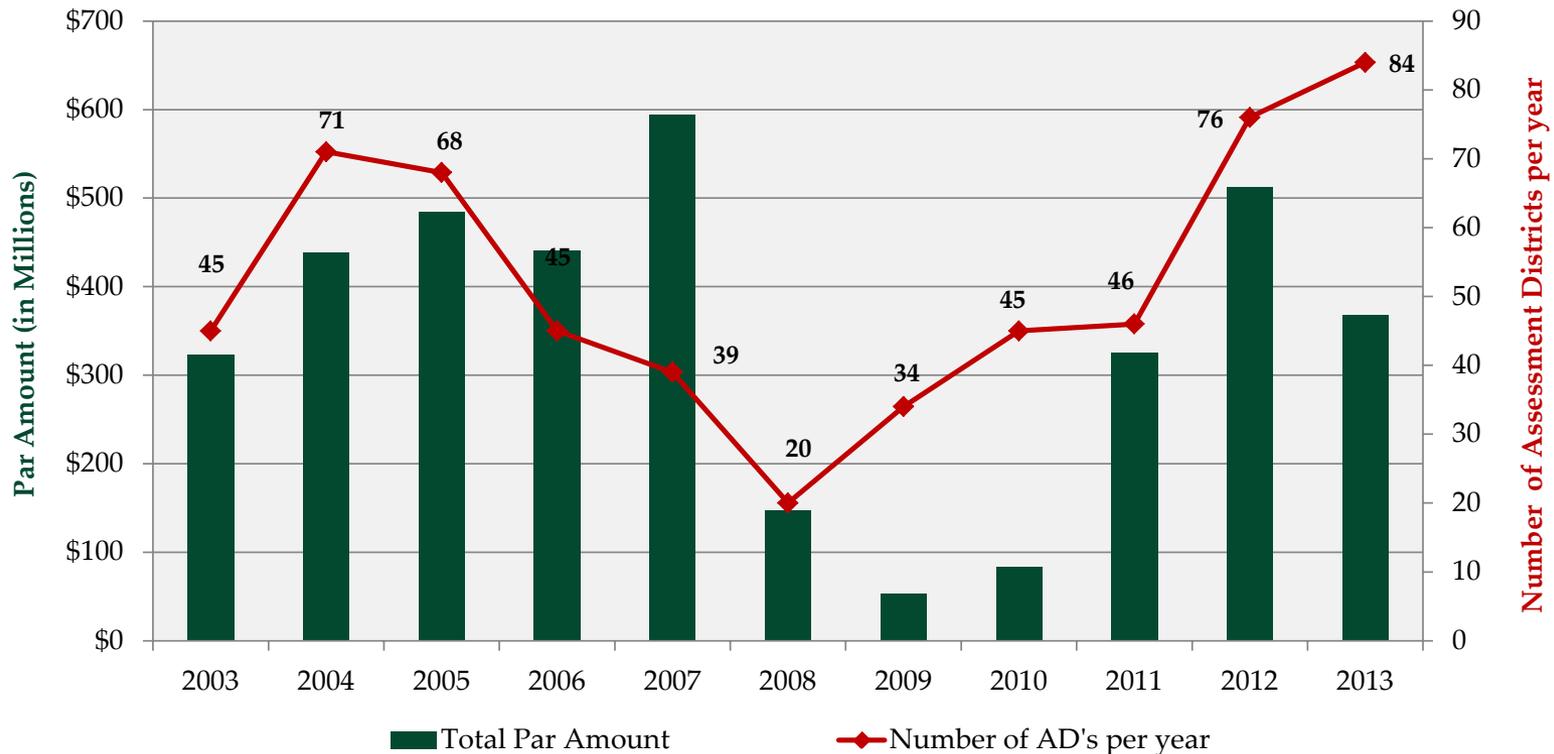
- Manage the Bond Funds
- Meet the annual administrative requirements
- Customer Service with impacted property owners and others
- Delinquency Management
- Continuing Disclosure
- Investment of Bond Proceeds
- Arbitrage Rebate Calculations

Are Governmental Agencies Issuing Assessment District Bonds?

127

- Yes, on average over the last 11 years there have been approximately 52 Assessments Bonds issued in California each year
- The average dollar amount of Assessment District Bonds sold in California over the last 11 years is approximately \$342 Million per year

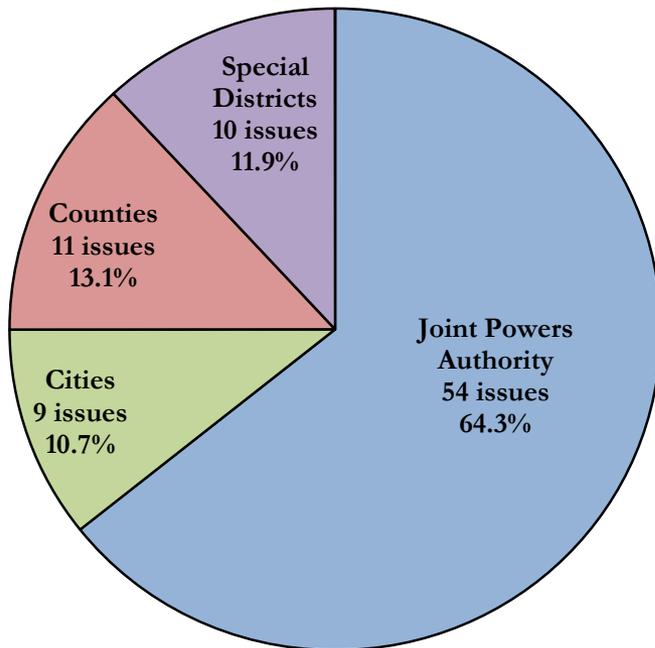
Assessment District Issuance History for Last 11 Years



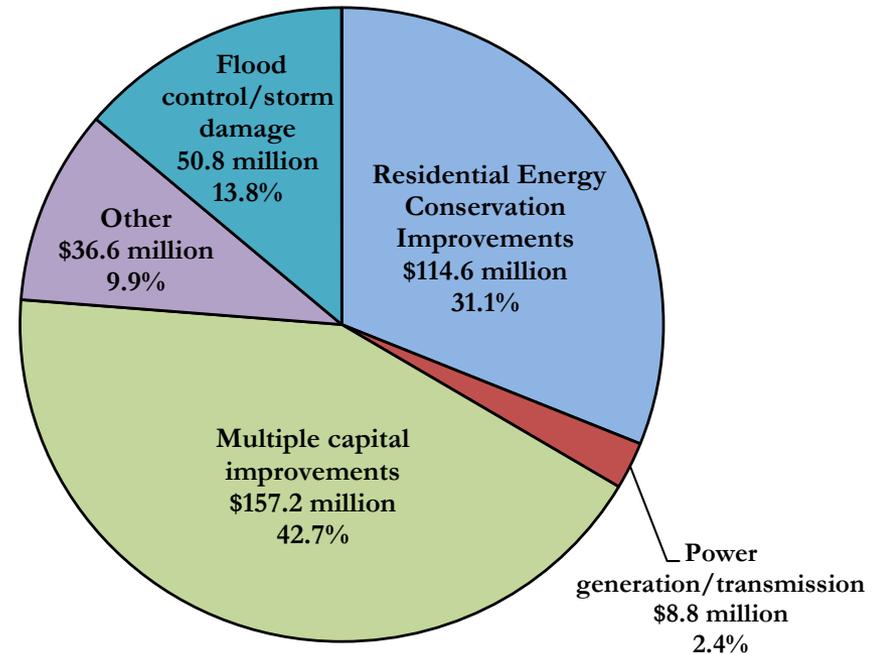
In 2013, the Western Riverside Council of Governments (“WRCG”) issued 43 series of Residential Energy Conservation Bonds across 43 sale dates. These 43 dates are shown as separate issuances and represent all series of bonds issued by WRCG.

Breakdown of CY 2013 Assessment District Bonds

CY 2013 Assessment District Bonds by Issuers



CY 2013 Assessment District Bonds by Purpose



Total par: \$367.9 million

Source: California Debt and Investment Advisory Commission

Questions?



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SESSION FOUR:

**WHEN IS USING A CFD
A BETTER CHOICE?**

Community Facilities Districts

132

□ Mello-Roos Community Facilities Act of 1982

(Government Code 53311 et. seq.)

□ Funds construction of:

- Street improvements
- Water, Sewer, Storm Drain improvements
- Parks
- Libraries, Schools and Public buildings
- Development Impact Fees for any of the above

□ Not affected by Proposition 218



CFD Special Tax

133

- Funds the following services:
 - ▣ Police protection services
 - ▣ Fire protection and suppression services
 - ▣ Ambulance and paramedic services
 - ▣ Recreation programs, Libraries, Schools *
 - ▣ Parks, parkways and open space maintenance
 - ▣ Flood and storm protection services
 - ▣ Street maintenance

* Requires 2/3 registered voter approval

CFD Special Tax

134

- Formation Timeframe
 - Depends on voter pool (landowner or reg. voter)
 - Landowner vote if less than 12 registered voters
 - Preparing Required Documents: 3-6 months
 - Special Election: 90-180 days from public hearing
- Requires Special Election (which can be held at a regularly scheduled Council or Board meeting)
- Some legal timeframes may be waived if 100% unanimous consent by land owners

In Addition – The Parcel Tax

135

- General Parcel Taxes
 - ▣ Cities, Counties, Districts - Government Code Section 50075
 - ▣ School Districts - Government Code Section 50079

- Requires Election

- Pros and cons
 - ▣ School district parcel taxes must be uniform

AD vs. CFD

136

- Assessment District
 - ▣ Annual renewal process required
 - ▣ Special vs. general benefit analysis
 - ▣ Cannot assess for general benefit
 - ▣ Very difficult to fund 100% of cost

- Community Facilities District
 - ▣ Sets a Maximum Annual Special Tax Rate
 - ▣ Rate may run in perpetuity
 - ▣ Agency sets rate annually, no lengthy renewal process
 - ▣ May fund 100% of cost, with exceptions for landowner approved CFDs
 - ▣ Allows for expedited future annexations



Case Studies

137

- Library facilities and services
 - ▣ City of Belmont
 - ▣ Belvedere-Tiburon Library District

- Parks and open space
 - ▣ East Bay Regional Park District
 - ▣ City of Santa Clarita

- School facilities and services
 - ▣ Empire Union School District



Case Studies continued

138

- City of Burlingame - Downtown Burlingame Avenue
 - ▣ Assessment District
 - ▣ BID
 - ▣ CFD or parcel tax



Suncreek

139



1,265 Gross Acres

- 82 Acres of Public Right of Way
- 390 Acres of Parks and Open Space
- 91 Acres of Commercial
- 534 Acres of Residential



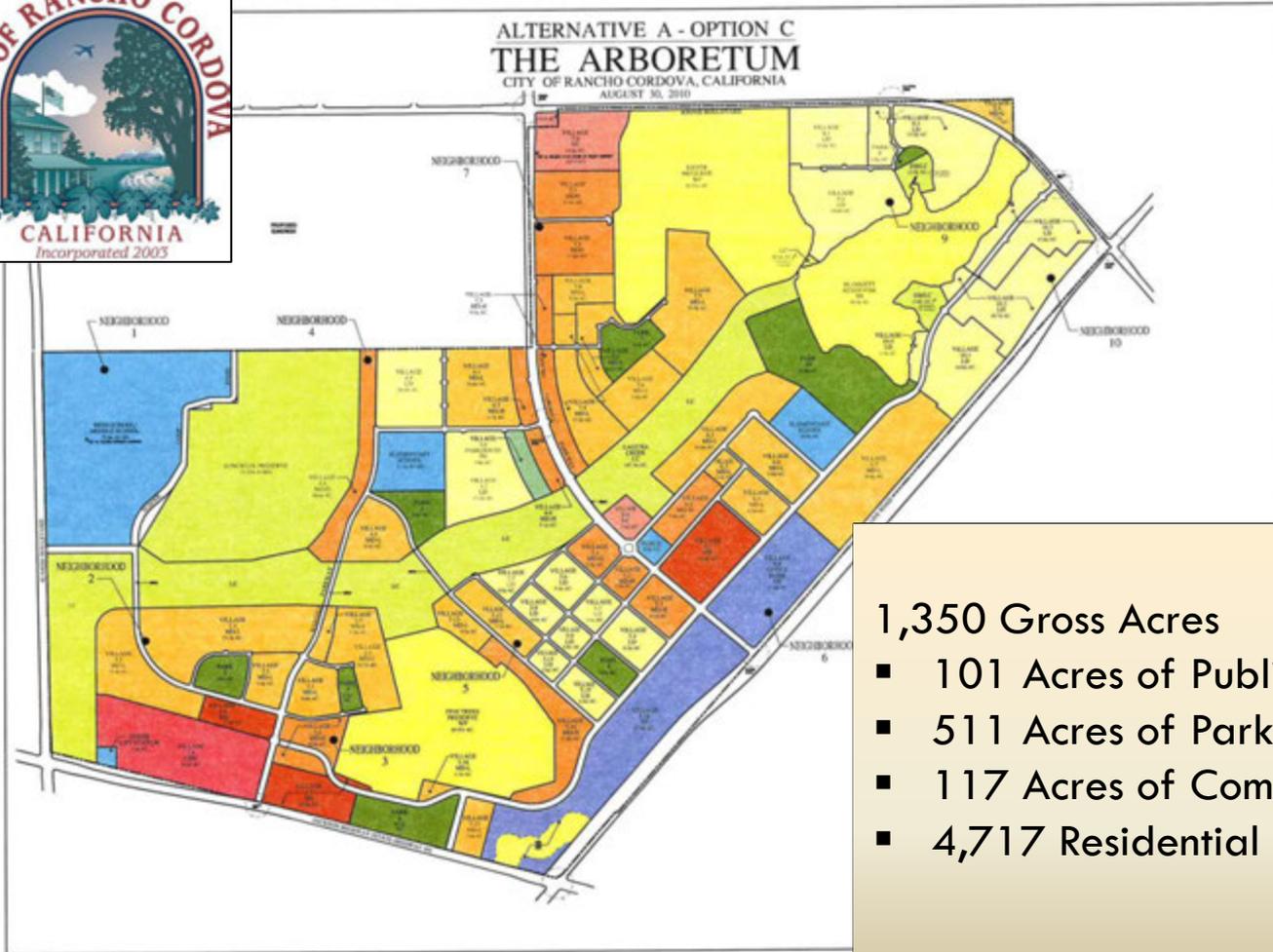
Updated SunCreek PFFP Land Use Area Summary (February, 2013)

The Arboretum

140



ALTERNATIVE A - OPTION C
THE ARBORETUM
CITY OF RANCHO CORDOVA, CALIFORNIA
AUGUST 30, 2010



- 1,350 Gross Acres
- 101 Acres of Public Right of Way
 - 511 Acres of Parks and Open Space
 - 117 Acres of Commercial
 - 4,717 Residential Units

Rio Del Oro

141

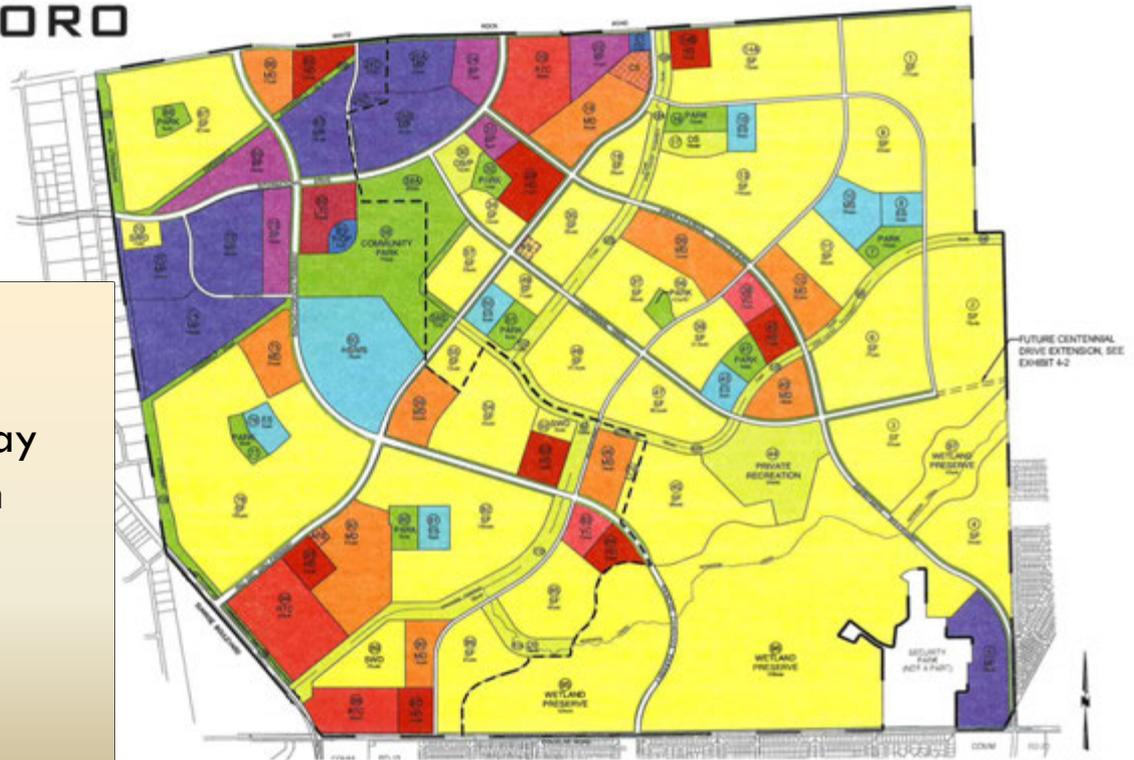


LAND USE PLAN RIO DEL ORO

Section 3: Land Use Element

3,828 Gross Acres

- 192 Acres of Public Right of Way
- 1,090 Acres of Parks and Open Space
- 522 Acres of Commercial
- 11,600 Residential Units



FUTURE CENTENNIAL
DRIVE EXTENSION SEE
EXHIBIT 42

Exhibit 3-2
Land Use Plan

Rio Del Oro Specific Plan

Rancho Cordova CFD 2008-1

142

- **CFD No. 2008-1 (Road Maintenance)**
 - Established for the existing developed area of the City
 - Developing parcels and redeveloped responsible for maintenance of new streets
 - Rate for road maintenance, residential alleys, excessive load and decorative lighting

Rancho Cordova CFD 2014-1

143

- **CFD No. 2014-1 (Police Services)**
 - ▣ Provide funding for the increased cost of police protection services from new development
 - ▣ All new developments required to participate

Rancho Cordova CFD 2014-2

144

- **CFD No. 2014-2 (Street, Lighting and Landscaping Maintenance)**
 - Established for the new development areas
 - New developments responsible for maintenance of new public improvements
 - Rate for road, street lighting and landscaping maintenance with additional factors for residential alleys, excessive load, and decorative lighting

Rancho Cordova Storm Water Fee

145

- **Property-Related Fee for Storm and Flood Protection Maintenance**
 - ▣ Provides funding for storm drain maintenance, NPDES compliance and water quality monitoring
 - ▣ All new developments required to participate



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BOND FINANCING OPTIONS USING SPECIAL TAXES

Legal Basis for Issuance of Special Tax Bonds

147

- **Community Facilities Districts**
 - Mello-Roos Community Facilities Act of 1982
 - Articles XIII A & XIII C of CA Constitution
 - Charter Cities can use legislative powers

Why Do Public Agencies Issue Community Facilities District Bonds?

148

- It is a tool to finance infrastructure and to have the costs paid by those who benefit from the improvements
- In other words, infrastructure provided without City general tax dollars or existing resident's tax dollars
- And in most cases it allows the City to get more infrastructure sooner and at a lower cost than if it was built under the City's typically Capital Improvement Program and available funding sources

Usual Sequence of Events

149

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2. Local Goals & Policies Adopted
3. Legislative Body Commences CFD Proceedings
4. Public Hearing
5. Election
6. Final Actions Taken by Legislative Body
7. Bonds Issued
8. Annual Special Taxes Levied to Pay Debt Service on the Bonds
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Community Facilities District Bond Issuance

Bond Issuance Steps

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Bond Issuance Steps - *continued*

152

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 5. Issuer receives \$'s from investors in exchange for bonds
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Financing Team Members

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Financing Team Members *continued*

154

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- Requirements continue to evolve and are becoming more stringent

Administering the Community Facilities District Bonds

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- Make sure you ask a lot of questions and get good answers from your Financing Team
- In most cases, the Public Agency is the only one there for the full term of the Community Facilities District Bonds

Basic Steps of Community Facilities District Bond Administration

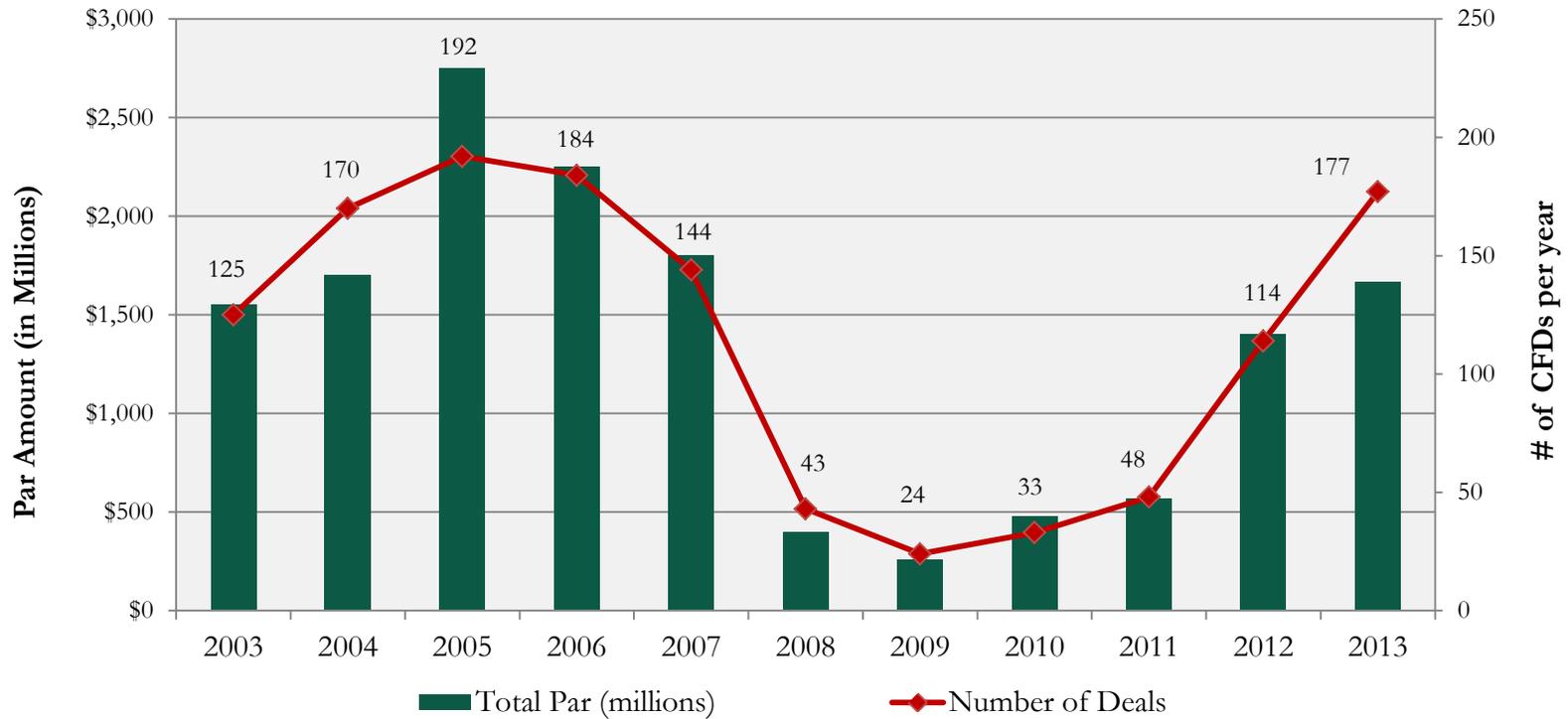
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- Meet the Annual Administrative Requirements
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- Delinquency Management
- Continuing Disclosure
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- Arbitrage Rebate Calculations

Are Governmental Agencies Issuing Community Facilities District Bonds?

158

- Yes, on average over the last 11 years there have been approximately 114 Community Facilities District Bonds issued in California each year
- The average dollar amount of Community Facilities District Bonds sold in California over the last 11 years is approximately \$1.348 Billion per year

Community Facilities District Issuance History for last 11 Years



Breakdown of CY 2013

Community Facilities District Bonds

160

ISSUANCE BREAKDOWN

52 New Issues	\$515,750,736 in Par
125 Transactions were refundings	\$1,149,404,995 In Par
Average issue size	\$9,407,660

LOCATION

27	Northern California
150	Southern California

ISSUERS

72	School Districts
49	Cities
45	Special Districts
8	Counties
3	Misc.

RATING

35	Standard & Poors
0	Moody's
0	Fitch
142	Non-Rated

Source: California Debt and Investment Advisory Commission

Questions?



PLEASE COMPLETE THE SEMINAR EVALUATION PRIOR TO DEPARTING
THANK YOU FOR PARTICIPATING TODAY