

CDIAC

**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

LAND-SECURED FINANCING CURRENT TOPICS AND PRACTICES

SESSION TWO: LEGISLATIVE AND LEGAL UPDATES

MAY 1, 2015

CONCORD, CA

Building Industry Association vs. City of San Ramon

- CFD levies tax for services on new development
- Gov. Code 53313 – allows landowner vote only for additional services that do not supplant services already available
- BIA asserts services must be brand new, qualitatively superior and completely different
- City asserts that additional services means increase in level of existing services (e.g., police, fire)
- BIA asserts tax is a general not special tax
 - Finances standard municipal services
 - Money commingled with General Fund

BIA vs. San Ramon (Con't)

- BIA asserts repeal feature unconstitutional
 - Ordinance provides, if special tax invalidated, City need only provide prior level of service
 - Upon invalidation, HOA, or if no HOA then landowners, responsible for facilities and services
- Court rules in favor of City on April 23, 2015
 - Services augment service level and do not supplant current services
 - Tax is a special tax approved in accordance with Mello-Roos Act
 - Ordinance not unconstitutional on its fact as violative of due process

CFD Cases

City of San Diego v. Shapiro

- CFD Established with boundaries coterminous with City
- Special tax levied only on hotels
- Landowner election – 92% approval
- Court ruled registered voters were qualified electors
- Practical effect
 - CFDs with no registered voters are proceeding (60-day statute)
 - Various approaches to CFDs with up to 12 registered voters
 - Not proceeding
 - Proceeding with registered voter vote

GOLDEN STATE WATER COMPANY v. CASITAS MUNICIPAL WATER DISTRICT

- Registered Voter CFD formed to finance acquisition of private water company in Ojai by eminent domain
- 87% yes vote
- Golden State (private water company) asserts that eminent domain included purchase of intangible property in violation of Mello-Roos Act
- Court held acquisition by eminent domain valid
- Litigation expenses related to eminent domain action are “incidental expenses” under the Act

Proposition 218 Cases

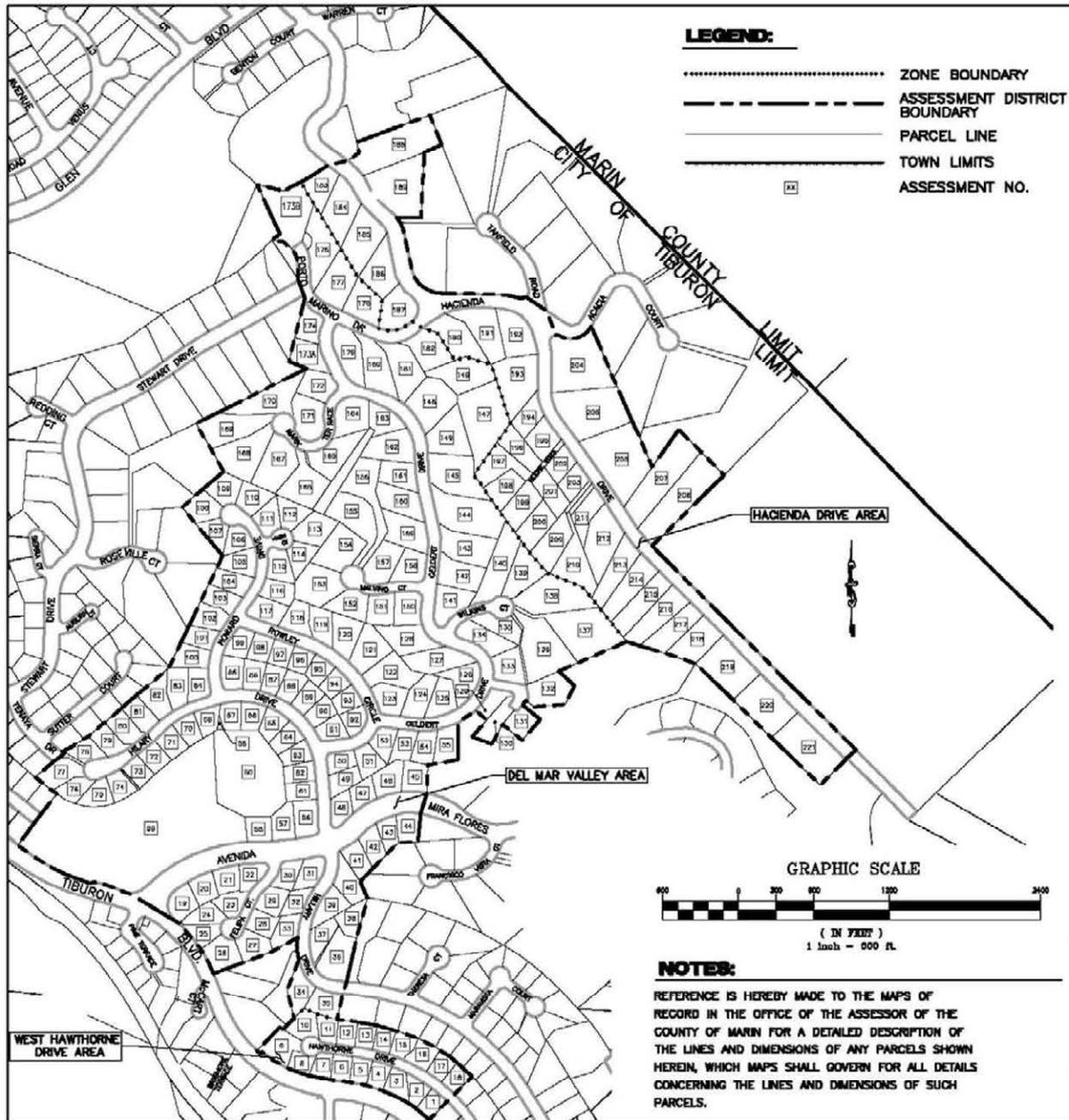
Tiburon v. Bonander

- Issues:
 - Challenge to components of utility undergrounding district – esp. proportionality, cost
 - 3 zones of benefit based on cost considerations
 - Each zone had different assessment based on cost of that electrical subsystem
 - Method of assessment identified several benefit factors

Proposition 218 Cases

Tiburon v. Bonander

- 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



Proposition 218 Cases

Beutz v. County of Riverside

- 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



Proposition 218 Cases

Beutz v. County of Riverside

- 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

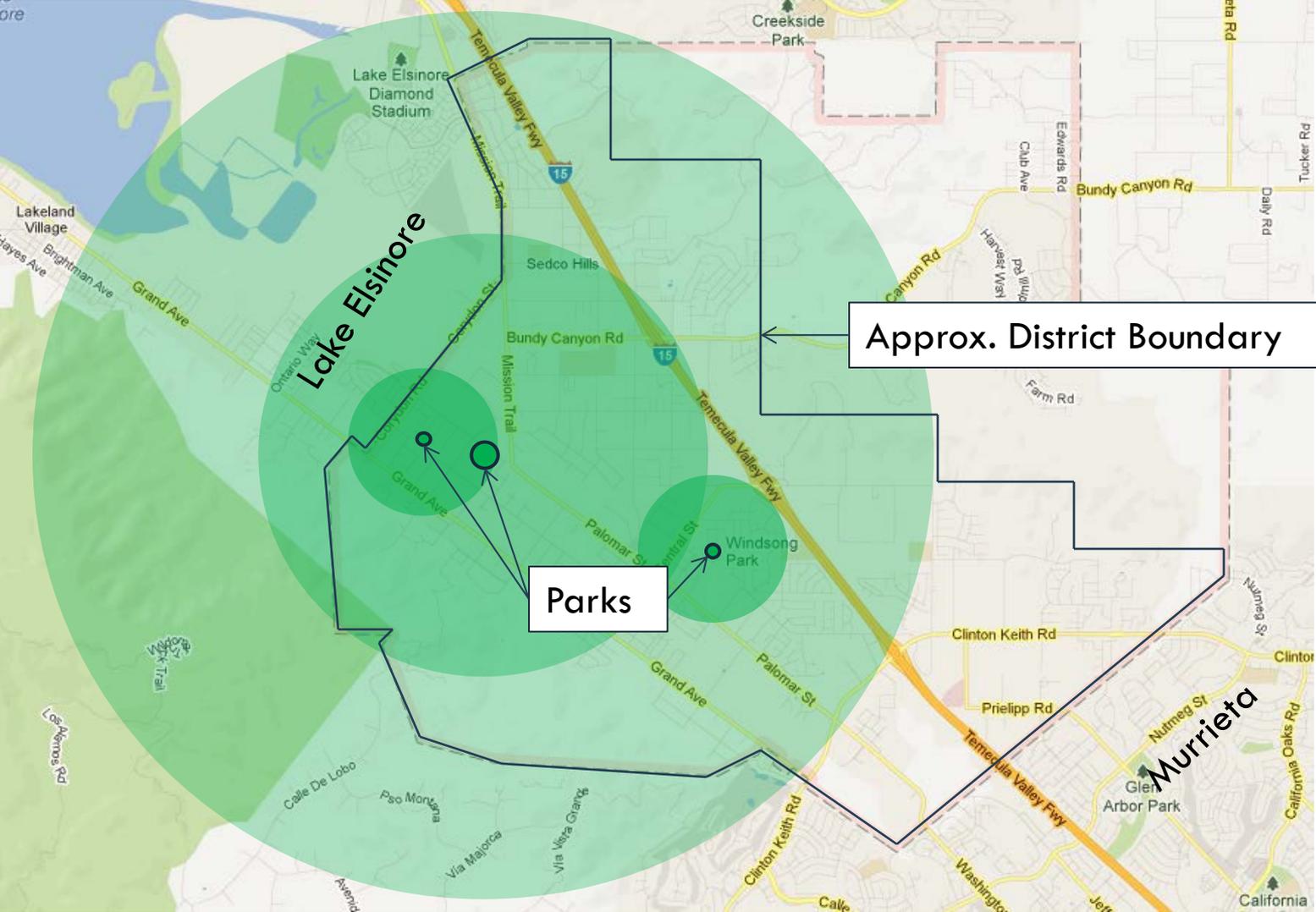
Proposition 218 Cases

Beutz v. County of Riverside

□ 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

Proposition 218 Cases



Approx. District Boundary

Parks

Murrieta

Proposition 218 Cases

Manteca USD v. Reclamation Dist. No. 17

□ Issues:

- Water Code section 51200 provides that assessments imposed by reclamation districts “shall include all lands . . . within a district . . . other than roads, highways and school districts.
- Reclamation District assessed schools per Prop. 218

Proposition 218 Cases

Manteca USD vs. Reclamation Dist. No. 17

- Outcome:
 - The trial court noted that Proposition 218 provides that “[n]othing in this Article or Art. XIII C shall be construed to . . . (a) provide any new authority to any agency to impose a tax, assessment, fee or charge.”
 - The court concluded that Proposition 218 did not violate the provisions of Water Code section 51200 by providing some kind of new authority to reclamation districts to impose assessments on school districts.

Proposition 218 Cases

Pending Cases

- Sacramento Taxpayers Association vs. Carmichael Recreation & Park District
- City of San Diego Maintenance Assessment District Cases
- Hercules-Rodeo Fire Protection District – Fire Suppression Assessment Case