CITY OF CUPERTINO

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CITY COUNCIL INFORMATIONAL MEMORANDUM

Date: January 17, 2025

To: Cupertino City Council
From: Pamela Wu, City Manager

Re: Special Assessment Districts and the Automated License Plate Readers relating to the City of Saratoga Landscape and Lighting Assessment District

Reason for Recommendation

Background

Proposition 218, also known as the "Right to Vote on Taxes Act," was approved by California voters in 1996. This constitutional amendment establishes specific procedures and requirements for local governments seeking to impose taxes, assessments, and fees on property owners. Under Proposition 218, all new or increased assessments must directly benefit the properties being assessed, and property owners must approve the assessment through a ballot process. This framework ensures transparency, accountability, and equitable cost distribution among affected property owners, making it a cornerstone for implementing Special Assessment Districts (SADs).

SADs provide a mechanism for funding localized community projects in California. These districts finance initiatives that provide specific benefits to a defined area, with property owners within the district contributing through proportional assessments. This memo examines the Saratoga Lighting and Landscape Assessment District (LLAD) as an example and considers its potential applicability to Cupertino's Automated License Plate Reader (ALPR) program.

Case Study: The Saratoga LLAD

Established by the Saratoga City Council in 1980 under the State of California's Landscape and Lighting Act of 1972, the LLAD forms a single special district with eight zones that subdivide the city. Within the district, approximately 1,884 parcels are included. The LLAD funds the maintenance and operation of public lighting and landscaped areas. Its creation followed a structured process that began with identifying community needs and preparing an engineering report to outline the project's scope and

costs. Ultimately, the district's funding is approved through a ballot process, with property owners agreeing to finance initiatives via property tax assessments.

Procedurally, this means that assessment ballots are mailed to property owners within a designated area whose initial proposed assessments are either 1) higher than in any previous year and who have not previously voted on their assessments, 2) higher than what was authorized via balloting conducted in a previous year, or 3) annexation of new Zones. Ballots are separately tabulated at the close of the Protest Hearing for each Zone that may be voting. Only those ballots returned by the close of the Protest Hearing count towards determining whether a majority protest exists.

In September 2022, the Saratoga City Council adopted a change that allows neighborhoods to use the LLAD framework to fund the addition of Flock ALPR cameras in their neighborhood and place cameras in the public right-of-way at the entrance to a neighborhood. 51 LLAD devices are installed in Saratoga, while the City pays for seven general ALPR devices.

Relevance to Cupertino's ALPR Program
The ALPR initiative aims to enhance public safety by deterring crime and aiding investigations. By linking the costs of ALPR installation and maintenance to the benefits received, SADs could provide a structured approach to funding. However, the feasibility of applying this model to ALPR implementation requires careful consideration.

If Cupertino were to enact a Special Assessment District program for ALPR devices, the City may be able to increase the number of devices deployed significantly. SAD funding could provide the financial resources needed to expand the program to more neighborhoods or strategic locations, maximizing its effectiveness and impact on public safety. Establishing an ALPR-focused SAD in Cupertino would involve several steps. These include identifying neighborhoods or zones that stand to benefit most, conducting an engineering assessment to determine costs and expected outcomes, and engaging the community through public meetings and a formal ballot process. Each step represents a significant increase in administrative and programmatic requirements for implementation. The financial impacts need to be studied.

2019 Clean Water and Storm Protection Fee
On March 5, 2019, the City Council initiated a Proposition 218 proceeding to establish a new property-related fee to fund the stormwater program's clean water and operations and maintenance elements. The 2019 Clean Water and Storm Protection Fee raises revenue to pay for services provided by the City that are necessary to repair, operate, and maintain pipes and other infrastructure to prevent system failure and sinkholes, protect clean drinking water, comply with mandated clean water standards, and protect the City against future flooding. The City Council adopted property-related fee ballot proceedings through resolutions.

Advantages and Challenges of SADs

While SADs can offer advantages such as stable funding and equitable cost distribution, there are also potential challenges. Compliance with Proposition 218's legal requirements, including voter approval and public notification, introduces procedural complexity. Some property owners may object to assessments if they perceive limited direct benefits, and the administrative demands of managing the district can be substantial.

Sustainability Impact

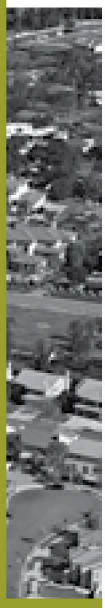
No sustainability impact.

Fiscal Impact

The primary fiscal implications of this initiative will stem from the costs related to the acquisition, installation, and ongoing maintenance of the ALPR devices. Significant administrative expenses will also be involved in establishing and managing the SAD. To effectively administer this program, staff anticipate that a dedicated team will be required to undertake various essential tasks. These tasks include identifying eligible zones, conducting comprehensive engineering assessments, organizing and facilitating community engagement initiatives, and managing the formal ballot process. Consequently, this will necessitate hiring additional personnel or reallocating current staff responsibilities, thereby incurring further costs.

Furthermore, the City must adhere to the legal requirements stipulated by Proposition 218, which necessitates voter approval and public notification. This procedural complexity will contribute to the program's administrative burden and associated costs.

Prepared by: Tom Chin, Emergency Manager
Reviewed by: Christopher D. Jensen, City Attorney
Tina Kapoor, Deputy City Manager
Approved for Submission by: Pamela Wu, City Manager
Attachments:
A – Opportunities to Use Assessment Districts to Finance Facilities and Services in California Today – A 2015 report by the California Debt and Investment Advisory Commission
B - A Resolution of the City Council of the City of Cupertino Adopting Ballot Procedures for the City's 2019 Clean Water and Storm Protection Fee



Opportunities to Use Assessment Districts to Finance Facilities and Services in California Today

Opportunities to Use Assessment Districts to Finance Facilities and Services in California Today

CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION | CDIAC No. 15.07

CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION

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Introduction

Assessment districts have been in use in California for the past 150 years. Local agencies, including cities, counties, and special districts, may establish assessment districts for the purposes of financing all or a portion of the cost of certain public improvements and services. Each property within an assessment district is assessed an amount sufficient to cover the proportional cost of the special benefit that it receives from the improvements or services that are paid for by the assessment.

The adoption of Proposition 218, the "Right to Vote on Taxes Act," added Article XIIID to the State Constitution, specifying both procedural and substantive requirements for the establishment of assessments and various limitations applicable to all assessments, irrespective of whether they are imposed pursuant to a general statutory scheme or procedures adopted by a charter city. Specifically, Article XIIID expressly recognizes the distinction between general and special benefits, specifies that a local agency shall separate the general benefits from the special benefits conferred on the benefitted properties, and specifies that the special benefits be allocated to the benefitted parcels in proportion to the special benefits conferred. Section 4 of Article XIIID states that "only special benefits are assessable and an agency shall separate the general benefits from the special benefits conferred on a parcel." Article XIIID also defined "special benefit" as a "particular and distinct benefit over and above general benefits conferred on real property located in the [assessment] district or to the public at large. General enhancement of property value does not constitute special benefit."

All assessments adopted by the local agency and imposed on properties within the assessment district must be supported by a detailed engineer's report signed by a registered professional engineer. The report must identify the total cost of the improvements or services, identify the special and general benefits received by properties, describe the method of apportioning the assessment among parcels within the district, and provide the amount of the proposed assessment levied against each parcel.

A series of recent court decisions challenging the methods of apportioning general and special benefits used for certain assessments in California has led local agencies to question the viability of assessment financing, which in turn has limited the use of this important financing tool. These decisions both expand our understanding of Article XIIID and its application to assessments and confound it. In 2012, the California Debt and Investment Advisory Commission gathered a group of legal and finance professionals to identify ways to tackle this uncertainty. This report is a product of that effort. It seeks to inform local agencies as well as others in the public finance community about the opportunities for using assessments within the constraints imposed by these decisions. It does so by addressing in a general manner the steps public entities must take to form assessment districts and impose assessments. It then broadly considers the steps and methods of analysis employed by assessment engineers to: (a) separate general benefits from special benefits and (b) identify and apportion special benefits. The report necessarily takes into account the court decisions that have changed the way public entities must determine and impose assessments.

Background

Prior to 1978, public infrastructure and governmental services in California were often largely financed with property taxes. As demand for facilities and services grew, municipalities generally chose to increase property taxes to pay for them. In 1966, the State Legislature pegged property tax rates to the assessed value of property as a means to limit the unrestrained rise in tax rates across California. AB 80 (Chapter 147, Statutes of 1966) subjected real property to periodic reassessment at current market value. Through the 1970s, the value of real property in California real estate escalated appreciably and with it the

tax liability of owners. By the mid-1970s the property tax burdens of many homeowners had become unbearable.

On June 6, 1978, California voters overwhelmingly approved Proposition 13, officially named the "People's Initiative to Limit Property Taxation." Proposition 13 is embodied as Article XIIIA of the California State Constitution – the most significant portion of which is the first paragraph, which limited the amount of property taxes for real property:

> "Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties."

The proposition decreased property taxes by assessing property values at their 1975 value and restricted annual increases of assessed value of real property to an inflation factor, not to exceed 2 percent per year. It also prohibited reassessment of a new base year value except in cases of (a) change in ownership or (b) completion of new construction. Because Proposition 13 severed the relationship between the local government and property tax, it forced local agencies to seek other forms of revenues, including sales and use taxes, general taxes, special taxes, and assessments.

Section 4 of Article XIIIA, however, instituted a two-thirds voter approval requirement for any special tax. The effect of Article XIIIA, section 4 and other limits on tax generation, including the Bradley-Burns limits on sales taxes, caused municipalities to focus on assessments as a strategy to finance both facilities and services. The court provided support for this option when it ruled in *County of Fresno v Malstrom* (1979)[1] that Article XIIIA, section 1 applied to ad valorem property taxes and not to special assessments intended to finance improvements benefiting only certain parcels. Therefore, the one percent limit imposed by Article XIIIA on ad valorem property taxes did not apply to special assessments and bonds supported by these assessments. Furthermore, the court ruled that special assessments were not special taxes.[2] "A special assessment is distinguishable from a property-related special tax," according to the ruling, "being a charge for benefits conferred upon the property, cannot exceed the benefits the assessed property receives from the improvement; a special tax on real property need not so specifically benefit the taxed property."

The limits placed on special taxes by Article XIIIA, section 4 were challenged in *City and County of San Francisco v Farrell* in 1982.[3] The California Supreme Court ruled in that case that special taxes were taxes that were levied for a special purpose rather than a levy placed in the general fund to be utilized for general governmental purposes. The cause of action resulted from the imposition of a payroll tax by the City and County, the proceeds of which were deposited into the general fund and used for general governmental purposes. As a consequence of this ruling, municipalities found ways to skirt the limits of Article XIIIA, section 4 and impose various taxes and fees without the vote of the qualified electorate. Voters responded in November 1986 by approving Proposition 62, restating the two-thirds voter approval requirement for special taxes, but allowing that general taxes require only a majority vote to be enacted.

Municipalities then intensified the use of special assessments as a source of revenue for improvements and services. The rate of increase in the use of assessment financing between 1978 and 1992

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[1] *Fresno v. Malstrom* (1979) 94 Cal. App. 3d 375.

[2] The court narrowed its use of special assessments to those enacted under California Streets and Highway Code sections 5000 et seq. and 10000 *et seq*.

[3] *City and County of San Francisco v. Farrell* (1982) 32 Cal. 3d 47.

was substantial. In 1992 when the California Supreme Court ruled in *Knox v City of Orland*[4] that an assessment for the maintenance of five existing city parks was valid as assessed and rejected the claim that it was a special tax, Joel Fox, then President of Howard Jarvis Tax Association, responded:

> "After Prop 13's success, bureaucrats looked for ways to raise revenues while avoiding Prop 13's restrictions. They hit upon assessment districts which were historically used to fund capital improvements that directly benefited properties.
>
> Overtime, bureaucrats molded assessments into property taxes that avoid Proposition 13's restrictions. The courts supported this artistry by ignoring historical precedent demanding a link between assessments with a direct benefit to property. They held that assessments could be used for operation 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."[5]

In response to these and other concerns, voters approved Proposition 218 in November 1996. Proposition 218 expanded restrictions on governmental spending, allowed voters to use the initiative process to repeal or reduce taxes, special assessments, fees, or charges, and reiterated voter requirements for special taxes (two-thirds approval) and general taxes (majority approval).

Proposition 218 added Article XIIID to the California Constitution to, among other things, establish both new substantive requirements with respect to special assessments and new procedural requirements, including ballot protest procedures. With regard to the substantive changes, Proposition 218 affirmed that only special benefits are assessable. Article XIIID, section 2(i) defined "special benefits" to mean "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.'" Furthermore, local, state and federal properties are not exempt from assessment.

Pursuant to Article XIIID, all parcels that receive a special benefit conferred upon them as a result of the specified improvements or services shall be identified and the proportionate special benefit derived by each identified parcel shall be determined in relation to the entire cost of the improvements. The Landscape and Lighting Act of 1972 describes this task accordingly:[6]

> "The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefit to be received by each such lot or parcel from the improvements."

The work of apportioning special benefit is done by a registered professional engineer. In the Improvement Act of 1911 the specific requirements for those acting as engineers for the purposes of determining special benefit and apportioning the benefit to affected properties appears in Article 2, Chapter 25 of the Streets and Highway Code (commencing with section 5700). Irrespective of the statutory scheme, the assessment engineer may perform the following basic tasks:

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[4] *Knox v. City of Orland* (1992) 4 Cal.4th 132.

[5] Reference found at www.hjta.org/propositions/proposition-218/closing-assessment-loophole-proposition-13/

[6] Streets and Highway Code section 22573.

- Provide the legislative body with plans and specifications for the improvements.
    - Provide the legislative body with an estimate of the costs and expenses of the improvements.
    - Create a diagram or map describing the boundaries of the proposed district and identify the affected properties.
- Identify the benefits resulting from an improvement.
    - Separate the general from special benefits.
    - Apportion the special benefits to each parcel within the district.

Prior to imposing special assessments on properties receiving special benefit, the local agency must conduct a number of procedural steps. These include holding a public hearing to notify property owners of the intent to establish an assessment district, mailing notice of the public hearing to each affected property owner, which notice must include a ballot for each property owner to indicate his or her support for or opposition to the proposed assessment. If a majority of the ballots submitted are in opposition to the proposed assessment, then the assessment may not be imposed. A majority protest exists if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. The ballots are weighted by the proportional financial obligation (i.e., the dollar amount of the proposed assessment) of each affected parcel. In the absence of a majority protest, the local agency may assess properties for the proportionate special benefit they receive from the planned improvements or services.

Assessment District Laws

Special assessments have a long history of use in the U.S. They can be traced back to a 1691 levy for street and drainage construction in New York. In California, early use of assessment financing for facilities corresponds to three commonly used statutory schemes: the Improvement Act of 1911 (Streets and Highway Code section 5000 *et seq.*) ("1911 Act"), the Municipal Improvement Act of 1913 (Streets and Highway Code section 10000 *et seq.*) ("1913 Act"), and the Improvement Bond Act of 1915 (Streets and Highway Code section 8500 *et seq.*) ("1915 Act").[7] The 1911 Act combines the provisions governing the issuance of bonds with the provisions for establishing an assessment district.[8] The 1913 Act specifies only the procedures necessary to establish the assessment district and incorporates by reference another Act for the issuance of assessment bonds. The 1915 Act provides only for the issuance of bonds. In addition to these three general statutory schemes, charter cities may enact their own procedures for assessment district formation and the issuance of assessment bonds.

The public improvements that are authorized to be financed by assessments levied under the 1911 Act include:

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[7] Other important California assessment acts include Park and Playground Act of 1909 (Government Code section 38000 *et seq.*), Tree Planting Act of 1931 (Streets and Highways Code section 22000 *et seq.*), Landscape and Lighting Act of 1972 (Streets and Highways Code section 22500 *et seq.*), Benefit Assessment Act of 1982 (Government Code section 54703 *et seq.*), Street Lighting Act of 1919 (Streets and Highways Code section 18000 *et seq.*), Municipal Lighting Maintenance District Act of 1927 (Streets and Highways Code section 18600 *et seq.*), Street Lighting Act of 1931 (Streets and Highways Code section 18300 *et seq.*), Parking District Law of 1943 (Streets and Highways Code section 31500 *et seq.*), Parking and Business Improvement Area Law of 1989 (Streets and Highways Code section 36500 *et seq.*), Property Business Improvement District Law of 1994 (Streets and Highways Code section 36600 *et seq.*), Pedestrian Mall Law of 1960 (Streets and Highways Code section 11000 *et seq.*).

[8] Although bonds supported by special assessments may be issued to finance public improvements, they may not be issued to finance public services. Special assessments to finance public services are most commonly levied pursuant to the Landscape and Lighting Act of 1972 (Streets & Highways Code section 22500 *et seq.*).

- Grading and paving of streets and roads;
- Construction of sidewalks, parks, bridges, tunnels, subways, or viaducts;
- Sanitary sewers and related facilities;
- Storm drains and related facilities;
- Street lighting facilities and electrical and telephone service facilities, including the underground placement of existing overhead facilities;
- Pipes and hydrants for fire protection;
- Breakwaters, levies, and other flood or erosion protection;
- Wells, pumps, dams, reservoirs, pipes, and other domestic water supply facilities;
- Tanks, mains, pipes, and other domestic or industrial gas supply facilities;
- Bomb or fallout shelters;
- Wharves, piers, docks, and other navigation facilities;
- Retaining walls, ornamental vegetation, land stabilization, and all other work auxiliary to any of the above;
- Repair, prevention, mitigation or control of geological hazards; and
- Energy and water conservation through contractual assessments.

Public improvements that are authorized under the 1913 Act include any of the work and improvements under the 1911 Act as well as:

- Water supply;
- Electric power supply facilities;
- Gas Supply facilities;
- Lighting facilities;
- Transportation facilities designed to serve an area not to exceed three square miles and designed to operate on rails or similar devices; and
- Any "other works and improvements of a local nature."

With limited exceptions, the public work and improvements financed by assessments bonds issued on the security of assessments imposed under either the 1911 Act or the 1913 Act must be performed and constructed on public property, defined to include easements and rights-of-way that have been dedicated to and accepted by the local agency. Exceptions to this rule that result in projects on private property might include work undertaken for the purpose of grade adjustment or to remedy a geological hazard, including retaining walls or seismic safety work and improvements. This work, while conducted on private property, produces some determinable public benefit and thus supports the use of public financing.

Both the 1911 Act and the 1913 Act allow the acquisition of previously constructed improvements under certain conditions.

Recent Court Decisions Addressing Assessment Districts in California

Pursuant to Article XIIID, section 4(f), in the event of any challenge to an assessment, the burden is on the local agency to demonstrate compliance with Article XIIID, section 4. Recent court decisions have provided significant guidance to public agencies on the actions they must take to comply with the procedural and substantive requirements of Article XIIID, section 4. For purposes of this report, the most significant of these cases and their impacts are described below.

Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority (2008) 44 Cal. 4th 431 – Supreme Court exercises independent judgment and clarifies special benefit and proportionality requirements of Proposition 218.

In *Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority*, 44 Cal. 4th 431 (2008) ("Silicon Valley"), the case concerned the levy of a supplemental assessment

for the acquisition and maintenance of open space. This case is important for three reasons. First, the California Supreme Court abandoned the long-held deferential abuse of discretion standard of review for the formation of assessment districts established in cases decided prior to the adoption of Article XIIID, and determined that courts must exercise their independent judgment in reviewing the validity of any assessment. Second, the court refined the definition of "special benefit" and questioned the validity of assessments imposed for broad, regional services and improvements which are determined to provide special benefit to all parcels within an assessment district. Third, the decision is the first to analyze Proposition 218's requirement that assessment amounts be "proportional" to the special benefit each parcel receives.

The court refined the definition of "special benefit" by determining that "under the plain language of Article XIIID, 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." By way of example, the court recognized that if an assessment district "is narrowly drawn, the fact that a benefit is conferred throughout the district does not make it general rather than special. In that circumstance, the characterization of a benefit may depend on whether the parcel receives direct advantage from the improvement (e.g., proximity to a park) or receives an indirect, derivative advantage resulting from the overall public benefits of the improvement (e.g., general enhancement of the district's property values)."

In this instance, however, all of the listed benefits in the assessment engineer's report were general benefits shared by everyone within the assessment district. The assessment engineer's report failed to measure the benefits that accrue to particular parcels. The report failed to recognize that the "public at large" means all members of the public and not just transient visitors. Further, the report assumed that all people and property in the district receive no general benefit and only special benefits. "But under these circumstances, '[i]f everything is special, then nothing is special.'"

The court also found that the report did not show any distinct benefits to particular parcels of property above those received by the general public using and enjoying the open space. "The special benefits, if any, that may arise would likely result from factors such as proximity, expanded or improved access to the open space, or views of the open space." Here, however, the report did not identify any specific open space land to be acquired with the proposed assessment and thus the report did not demonstrate any specific special benefits that assessed parcels would receive from their direct relationship to the "locality of the improvement." Hence, the report failed to demonstrate that the assessed properties received a particular and distinct special benefit over and above that shared by the public at large.

The court found that the report failed the proportionality requirements of Proposition 218 "largely because the special assessment is based on the local agency's projected annual budget of $8 million for its open space program rather than on a calculation or estimation of the cost of the particular public improvement to be financed with the assessment." Assessments are imposed in order to require that properties which receive special benefit from public improvements pay for such public improvements, not to fund an agency's ongoing budget. Ultimately, the court found that the assessment engineer's report failed to identify with sufficient specificity the "permanent public improvement" that the assessment will finance, failed to estimate or calculate the cost of any such improvement, and failed to directly connect any proportionate costs of the benefits received from the "permanent public improvement" to the specific assessed properties. "[A]n assessment calculation that works backward by starting with an amount taxpayers are likely to pay, and then determines an annual budget based thereon, does not comply with the law governing assessments, either before or after Proposition 218."

As a consequence of this decision, public agencies considering the formation of an assessment district must carefully identify with sufficient specificity: (1) the specific services or improvements to be funded by the assessment; (2) the special benefit that properties within the proposed assessment district will receive from the services or improvements; (3) an estimate or calculation of the cost of any such services or improvements; and (4) the direct connection of any proportionate costs of and special benefits received from the services or improvements to the specific assessed properties. The special benefit must affect the identified assessed parcels 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. The assessment engineer's report must measure and reflect the special benefits that accrue to each particular parcel within the assessment district. Consequently, an assessment that is levied at the same rate for all parcels of property within an assessment district may not meet the proportionality requirements of Article XIIID, section 4.

Dahms v. Downtown Pomona Property and Business Improvement District (2009) 174 Cal. App. 4th 708 – Court determines period for 45-day mailing, upholds assessment district formation and special benefit analysis, and allows discounted assessments.

In *Dahms v. Downtown Pomona Property and Business Improvement District* ("Dahms"), the court of appeal found that a city did not violate either the procedural or substantive provisions of Article XIIID, section 4 in the formation of a proposed Property and Business Improvement District ("PBID"). This case is important for its analysis of when the 45-day period runs on a ballot protest hearing and its analysis of proportional special benefit.

Dahms argued that the hearing approving the assessments violated the procedural requirements of Article XIIID because it took place on the 45th day after the City mailed the notices of the proposed assessments to the affected property owners. The court found that Article XIIID permits a public agency to hold the hearing on the 45th day after the mailing of the notices. The day of mailing is excluded from computation of the 45-day mailing period. Hence, the notice did not violate Article XIIID.

The engineer's report based the amount of the assessment for each assessed property within the district on three factors: street frontage, building size, and lot size. Those factors accounted for 40 percent, 40 percent, and 20 percent, respectively, of the amount assessed for each property. The City determined the amount of the assessment by first identifying the special benefits as the enhanced services, separating the special benefits from general benefits, and identifying the estimated costs of the special benefits. The City then calculated the assessment for each assessed property as a portion of the total cost of the services by applying the three factors. The City heavily discounted the assessment for various nonprofit entities ("religious organizations, clubs, lodges and fraternal organizations") and certain commercial properties within the boundaries of the district, and exempted from assessment properties zoned solely for residential use and certain commercial property.

Dahms challenged the assessments as violating the substantive provisions of Article XIIID, because of discounted assessments or the failure to impose the assessment on the nonprofit entities and certain commercial properties. The court concluded that Article XIIID leaves local governments free to impose assessments that are less than the proportional special benefit conferred. The court reasoned that if the assessments imposed on some parcels are less than the reasonable cost of the proportional special benefit conferred on those parcels, then the discounted assessments do not violate Article XIIID *so long as* those discounts do not cause the assessments imposed on the remaining parcels to exceed the reasonable cost of the proportional special benefit conferred

on those parcels. The same logic applied to those properties that were not assessed.

Dahms further argued that the assessments were not proportional because they were based only in part on street front footage in the PBID. *Dahms* argued that the assessments exceeded the reasonable cost of the proportional special benefit because the assessments should have been based entirely on the total street length on which a property borders rather than, in part, on front footage. The court exercised its independent judgment and found that the assessment formula did not cause the assessments to exceed the reasonable cost of the proportional special benefit.

The final argument concerned whether the city adequately distinguished special benefits from general benefits. The court found that the services proposed to be funded by the assessments (security, streetscape maintenance, marketing, promotion, and special events) are over and above those already provided by the city within the boundaries of the PBID. They are particular and distinct benefits to be provided only to the properties within the PBID, not the public at large, i.e., they "affect the assessed property in a way that is particular and distinct from [their] effect on other parcels and that real property in general and the public at large do not share." The services, therefore, are special benefits and the engineer's report separated those special benefits from the general benefits.

Town of Tiburon v. Bonander (2009) 180 Cal. App. 4th 1057 – Court strikes down utility undergrounding district proportionality analysis.

In *Town of Tiburon v. Bonander* ("Tiburon") an appellate court determined that although properties in an assessment district formed for the purpose of financing the undergrounding of overhead utilities (the "Project") would receive special benefits from the Project, the proposed assessments were invalid because: (1) they were allocated among three zones based on cost considerations rather than on proportional special benefits; and (2) the properties in the district were required to pay for special benefits conferred upon parcels excluded from the district. This case is important for its analysis of what public improvements and services constitute special benefit, how enhancement of property value arising from public improvements that provide a direct benefit to property does not convert a special benefit into a general benefit, and how to proportionately allocate those special benefits among properties.

After forming an assessment district to pay for the undergrounding of overhead utility lines, the Town of Tiburon determined that the Project would cost more than originally projected and a supplemental special assessment was necessary to cover the shortfall. The engineer's report identified three special benefits that properties would receive from the Project, improved aesthetics, increased safety, and improved service reliability. The appellants claimed that: (1) the Project improvements did not provide special benefits to the properties assessed; (2) the assessments did not tie special benefit to specific properties; (3) enhanced property values are not special benefit; and (4) the assessments were not proportionately allocated.

The court found that each of the special benefits identified in the engineer's report were tied to individual properties based upon their proximity to the existing overhead utility lines and that such benefits are neither indirect nor derivative, i.e., general benefits. The engineer's report equally assigned improved aesthetics as special benefit to all such properties. The court noted that "the mere fact that a particular benefit is conferred equally on most properties in an assessment district does not compel the conclusion the benefit is not tied to particular properties." The court also recognized that almost every assessment that confers a particular and distinct advantage on a specific parcel will also enhance the overall value of that property in some respect. Such an effect, does not transform a special benefit into a general benefit.

The engineer's report created three benefit zones for which the construction costs were determined and separately apportioned. The court found that the benefit zones were not based on differential benefits enjoyed within each zone but were largely based on variances in the costs of placing the utilities underground in the zones. This apportionment methodology resulted in properties that receive identical special benefits paying vastly different assessments and, therefore, did not proportionately allocate the assessments within the district according to relative special benefit. The court reasoned that "proportionate special benefit is a function of the total cost of the project, not costs determined on a property-by-property or neighborhood-by-neighborhood basis."

Finally, the Town excluded certain properties from the supplemental district even though they were determined to receive special benefits. By excluding these properties from the district, the assessments on properties included in the district necessarily exceeded the proportional special benefit conferred on them. In effect, the assessed properties were subsidizing the special benefit enjoyed by the non-assessed properties.

Beutz v. County of Riverside (2010) 184 Cal. App. 4th 1516 – Court strikes down park assessment for failing to separate and quantify special benefits from general benefits.

In *Beutz v. County of Riverside*, a court of appeal struck down an assessment imposed by the County of Riverside to fund the maintenance of landscaping within four public parks. The court held the assessments were invalid because the assessment engineer's report failed to *separate and quantify* the general benefits and the special benefits that would accrue to members of the general public and to properties proposed to be subject to the assessments. This case is important to public agencies for its analysis of how public agencies must separate and quantify general and special benefits and how to proportionately allocate those special benefits among properties.

The County of Riverside acquired three parks from a park district that could no longer afford to fund their maintenance. Shortly thereafter, the park district dissolved and the County took over its assets and liabilities. The County adopted a park and recreation master plan (the "Master Plan") and imposed a fee on new development in the unincorporated community of Wildomar, where the parks were located, to fund the acquisition and rehabilitation of park facilities. The County later initiated proceedings to form a landscape maintenance district to levy assessments on parcels within the Wildomar community to fund the cost of maintaining the three parks and a new ten-acre park. The assessment was part of the master plan to acquire and develop the parks.

An assessment engineer's report was prepared which apportioned the costs of the proposed assessment equally among all single-family residential properties within the boundaries of the proposed assessment district. All commercial and industrial properties, vacant land, a senior citizens' retirement community, and all publicly owned properties were excluded from the assessment on the grounds that none of them would specially benefit from the maintenance of the park improvements. The special benefits identified in the report included: promotion of walking and other physical activity; group picnic shelters for large gatherings; restroom and concession facilities; playground and tot lot areas; and sports fields and courts for active recreation. The report recognized that the general public may benefit from these parks; however, the report concluded that the benefits to the general public would be offset by the County's payoff of the debt it assumed from the park district and other park-related expenditures.

The plaintiff challenged the assessment, alleging that the County violated Article XIIID, section 4 by assessing the entire cost of refurbishing and maintaining the parks on residential properties, without deducting any portion of the costs attributable to the general benefits the parks would

confer on nonresidential properties. The appellate court agreed, noting that the County failed its burden of demonstrating that the assessment satisfied the special benefit and proportionality requirements of Article XIIID. The Court found that the report failed to separate the general and special benefits to be realized from the entire Master Plan. Rather, the report assumed, without supporting evidence or analysis, that the general benefits of the Master Plan will be "offset" by the County's expenditure of moneys to acquire and refurbish the three parks, retire the park district's debt, and annually fund park recreational programs.

Of particular significance, the court also found that the report failed to quantify the special and general benefits. The court noted: "Separating the general from the special benefits of a public improvement and estimating the quantity of each in relation to the other is essential if an assessment is to be limited to the special benefits." Thus, if special benefits represent 50 percent of the total benefits, a local agency may only levy an assessment for that half of the cost of the project or services.

Concerned Citizens for Responsible Government v. West Point Fire Protection District, 196 Cal. App. 4th 1427 (2011) – Court strikes down special assessment for fire services, finds assessment would provide general, not special benefit. (De-published; case dismissed for review by California Supreme Court as being moot.)

In *Concerned Citizens for Responsible Government v. West Point Fire Protection District*, the court agreed with the citizens' group claim that a special assessment adopted by a fire protection district did not provide special benefit to property. The court further agreed that by earmarking the revenues for additional fire protection services the district had, in effect, created a special tax. This case calls into question the ability of local governments to impose assessments to fund services or facilities for fire protection, police protection, and, in some instances, park maintenance. In order to levy assessments for these purposes, a local government must be able to clearly demonstrate that the services provide a special benefit to property separate from the general benefits.

In this case, the court found that the proposed fire protection assessment failed to comply with the substantive provisions of article XIIID, section 4(a) addressed in the *Silicon Valley* case. The court noted that:

> "the goal of the assessment is plain: double the District's existing budget for fire protection service. Such an objective, however lofty, does not contemplate the conferring of special benefits on specific parcels sufficient to qualify as a special assessment... Fire suppression, like bus transportation or police protection, is a classic example of a service that confers general benefits on the community as a whole. A fire endangers everyone in the region... Such protection cannot be quantifiably pegged to a particular property, nor can one reasonably calculate proportionate "special benefits" accruing to any given parcel.

It is important to emphasize that the opinion in this case has been de-published and may not be used as authority in any subsequent litigation. It is, however, instructive of how a court may analyze assessments imposed for similar services.

Golden Hill Neighborhood Ass'n, Inc. v. City of San Diego, 199 Cal. App. 4th 416 (2011) – Court holds special assessments against public property do not meet proportionality requirements and assessment engineer's report failed to separate and quantify special and general benefits.

In *Golden Hill Neighborhood Association, Inc. v. City of San Diego*, the court found that the city did not meet its burden of showing how the assessment amounts charged against certain public property were proportional to the special ben-

efits conferred on them. In addition, the court held that the assessment engineer's report failed to separate and quantify the general and special benefits received from the proposed services and improvements, thereby making the formation of the assessment district constitutionally infirm.

The City of San Diego formed an assessment district for the purpose of providing services and improvements for the benefit of properties in the Golden Hill neighborhood. The report provided a methodology for apportioning the special benefit to each parcel but did not specify how it was apportioned to city park and open space land located within the assessment district. Additionally, it did not explain how the assessment amount and corresponding ballot weighting for such public properties were calculated.

The court held that it was not able to determine from the administrative record, including the report, how the assessments against the city's open space and park property were calculated or whether they were proportionate to the special benefits, if any, to be conferred on them. The court therefore concluded that the city's failure to publicly disclose how the assessment amounts 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. The court noted that "notice of the amount of an assessment is not notice of the basis for an assessment."

The Golden Hill Neighborhood Association, Inc. repeatedly argued that the city's failure to explain the assessment amounts for the open space and park properties should result in nullification of the city's entire vote for those properties which would reduce the weighted vote in favor of forming the District to a minority. Because the city did not meet its burden of showing that the assessment amounts charged against its park and open space land were proportional to the special benefits conferred on them, the court could not conclude that the ballots cast by the city for those parcels was properly weighted under Article XIIID, section 4. The court therefore held that it was appropriate to eliminate the City properties from the weighted balloting. With the elimination of the city's ballot, the ballots opposing formation of the district prevailed. The court therefore vacated the resolution establishing the district.

The court also held that the report failed to separate the general benefits from the special benefits conferred on property, finding no basis for the report's conclusion that the services are exclusively of distinct and special benefit to properties in the district. Moreover, the report acknowledged that the services and improvements conferred some general benefit, but concluded they would be minimal and offset by the significant other contributions the city provides to property in the district. Because Article XIIID, section 4 allows only special benefits to be assessed, the court determined that even minimal general benefits must be separated from the special benefits and quantified so that the costs of such general benefits can be deducted from the cost assessed against the properties.

Impact of Court Decisions

The proposed assessment must be supported by a detailed engineer's report prepared by a registered professional engineer, which would, under Proposition 218 and these recent court decisions, include identifying the parcels that will receive a special benefit from the improvements or services to be funded by the assessment, determining the proportionality of the special benefit among the parcels, and making certain the assessment levied upon a parcel is not greater than its proportionate share of the costs of the special benefit received. In addition, there must be an analysis to determine if there are any general benefits associated with the improvements to be constructed or maintained.

Recent judicial findings help to clarify the role of the assessment engineer in preparing the report

which addresses the requirements of Proposition 218. The following practical considerations are provided to guide assessment engineers and public agencies.

- As general benefits are not restricted to benefits conferred on persons and properties outside the assessment district but may include benefits conferred on real property in the district or the public at large, the assessment engineer's report must separate and quantify general and special benefits.
- An assessment represents an amount not in excess of a particular property's proportionate share of the special benefit that will be conferred on it by a public improvement or service.
- The engineer's report must recommend an apportionment of the cost of the particular public improvements or services to be financed, which may include the cost of administering the assessment district.
- The method of apportioning the cost of the improvements may take into account, when appropriate, proximity of properties to the improvements or services financed with assessments.
- The method of apportionment may provide discounted assessments to certain properties as long as those discounts do not cause the assessments imposed on the remaining parcels to increase above the proportional special benefits conferred on those parcels.
- The apportionment method may and should, when appropriate, use multiple property characteristics to determine the proportional special benefits for each parcel within the district. Different characteristics may be used to represent different special benefits.
- If the apportionment methodology includes establishing different zones of benefit, the zones may not be based on the cost of the improvements serving that zone but must be based on the special benefits accruing to those properties from the improvements or services. For there to be different zones of benefit, there have to be different special benefits or different levels of special benefit attributable to the zones.
- "Flat rate" assessments are extremely vulnerable to challenge. This is especially true if: (a) the assessments are levied "district wide," involving thousands of parcels; and (b) the assessments on different parcels are the same irrespective of the parcels' location in relation to the improvement or services provided by the assessment.

Common Principles and Approaches used in Assessment District Finance

The combined weight of Article XIIID, the various assessment district acts, and the rulings of the courts have provided a "set of standards" that might be used by local agencies to guide their actions.

A special assessment is a charge on a real property imposed by the local agency to finance all or a portion of the cost of providing public improvements or services. The assessment is based upon the special benefits received by the property. Assessments may not be used to fund general benefits. General benefit is not defined by Article XIIID, but it is understood to be a benefit available to and received by the general public and independent of ownership of property. Proposition 218 provided a definition of special benefit, defining it as 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.'"

Article XIIID provides that publicly-owned properties that receive special benefit from the improvements or services must be assessed. Whether they will pay the assessment or not should not be considered by the local agency. The assessment engineer must identify the improvements provided by the project, distinguish special and general benefit derived from the improvements, and identify all parcels benefit-

ing from the improvements. This information must be conveyed in an engineer's report that supports the benefit determination and the rationale for the assessments. For the most part, engineer's reports contain the same basic information, including sections addressing the improvements or services provided, the cost and location of the improvements or services, a description of the general and special benefits provided by the improvements or services, the methodology by which special benefits were allocated to each parcel, and a listing of the proposed amount to be imposed on each benefitted parcel and an assessment diagram showing the location of benefitting properties.

The administrative and procedural processes for establishing an assessment district encompass a set of recognized steps. The public agency, often with the support of the assessment engineer, identifies the improvements or services to be provided by their location and type and the cost of these improvements or services. The costs must be directly related to the improvements or services provided. The engineer then must identify the parcels specially benefitted by the constructed improvements or services provided as well as those bordering the improvements that may potentially benefit from them. The engineer must next evaluate each parcel independently to determine the benefit provided to it by the improvements or services and, in so doing, provide an analysis of what the special benefit is and why the improvements or services confer a special benefit on properties proposed to be assessed.

To apportion the cost of the special benefit provided, the engineer must identify and quantify the general benefit. Examples of general benefit include a road segment that provides access to other properties, a storm drain retention basin that holds drainage from other neighborhoods, or construction of an arterial road as a condition of developing adjacent properties. Quantifying general benefit requires the engineer to establish a methodology that in the end differentiates between general and special benefit. So for example, the benefit of a road to different parcels may be apportioned according to trips taken by residents on the road.

General benefit must be excluded from the assessment. Once the assessment engineer has quantified the general benefit it may proportionately be subtracted from the cost of the improvement so that only the remaining special benefit is assessed.

How does the assessment engineer allocate the remaining special benefit to benefited properties? Because there are a plethora of combinations that unfold from the type, cost, and distribution of special benefits among different types of districts providing different types of facilities or services, it is impossible to dictate a single method or approach. However, it is possible to recognize the elements of a common approach that each assessment engineer should seek to apply.

The assessment engineer must develop a valid and reliable methodology for allocating special benefit. This requires the engineer to determine how properties are benefited and what measurement or indicator best represents this benefit. For example, the special benefit to properties from improvements to a sewer line may be measured by the size of the sewer connector line, the size or type of property use (i.e., zoning or land use), or the size and number of improvements on the property. The methodology used must link the benefits of the improvement provided by the financed facilities or services to the property in a measurable and quantifiable way. Furthermore, the methodology must be intuitively sound and explainable. The methodology should take into account future development in order to apportion the special benefit to new or newly improved properties as they begin to receive benefits from the improvement or service or are able to take greater advantage of the benefits as a consequence of development. The assessments assigned to any parcel must be proportional to the benefits received by the im-

provements or services. If six properties receive equal special benefit from the project, then they would each be apportioned one-sixth of the cost of the special benefits provided by the improvements or services. The total assessment must not exceed the proportional special benefit received by each parcel.

The following table provides various assessment methodologies that may be applied to different types of improvements and services. A common special benefit resulting from many of the improvements and services identified in the table is the ability to develop the parcel. Stated another way, the project is intended to meet the necessary conditions of development. Another common special benefit relates to unique or enhanced improvements and services that otherwise are not provided by the local agency (e.g., installation of decorative lighting, installation and maintenance of landscaped medians; more frequent trash collection, or power washing of sidewalks).

Summary

Since 2008 assessment engineers have had to remain agile in response to the various decisions rendered by the courts, resulting in an increasing level of rigor and detail in their analyses of special benefit. The changes in approach used by assessment engineers since 2008 have helped to define a set of improved practices that will continue to be modified as new decisions are rendered by the courts. These changes are and must continue to include:

A. MORE FOCUS ON IDENTIFYING SPECIAL AND GENERAL BENEFITS. Since only special benefits may be assessed, the assessment engineer must commit to defining, characterizing, or otherwise differentiating the special and general benefits derived from an improvement or service. The *Silicon Valley* court decision refined the definition of special benefit and questioned whether benefits attributed to

IMPROVEMENT TYPE	COMMON ENABLING ACT(S)[10]	UNIT OF MEASURE	SPECIAL BENEFIT
LANDSCAPING	1913 Act, 1972 Act, PBID	Equivalent Dwelling Units (EDUs),[11] 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 Areas
SEWER	1913 Act	Connection, Peak Capacity	Occupancy, Health, Sanitation
PUBLIC UTILITIES	1913 Act	EDUs, Frontage	View, Aesthetics, Safety, Reliable Connection
SECURITY, MARKETING, ETC.	PBID	Acreage, Frontage, Building Size, Use	Economic Enhancements

[9] The Municipal Improvement Act of 1913 (Streets and Highway Code section 10000 *et seq.*) ("1913 Act"), Landscape and Lighting Act of 1972 (Streets and Highway Code section 22500 *et seq.*) ("1972 Act") Benefit Assessment Act of 1982 (Government Code section 54703 *et seq.*) ("1982 Act") Property and Business Improvement District Law of 1994 (Streets and Highway Code section 36600 *et seq.*) ("PBID)

[10] An Equivalent Dwelling Unit is any "service unit." A standard service unit is defined typically as one single-family dwelling unit or its equivalent. A standard service unit is assumed to discharge wastewater at a flow and strength equal to that of an average single-family dwelling unit. www.casaweb.org/definition-of-terms/e

broad, regional improvements and services may also be particular and distinct. However, the mere fact that a benefit is conferred to all parcels within the district does not necessarily make it general. Similarly, the Beutz and *Golden Hills* court decisions affirm the need to separate and quantify both general and special benefits to members of the general public and to the parcels to be assessed. It is worth repeating the court's finding: "separating the general from the special benefits of a public improvement and estimating the quantity of each in relation to the other is essential if an assessment is to be limited to the special benefits." By inference, if the special benefit represents 50 percent of the total benefit, a local agency may only levy an assessment for half of the cost of the improvement or services. The *Tiburon* court ruling clarified the fact that an enhancement of property value arising from a public improvement that provides a direct benefit to property does not convert a special benefit into a general benefit.

B. THE ASSESSMENT METHODOLOGY MUST BE CLEAR, VALID, AND RELIABLE. Because of the Supreme Court's ruling in *Silicon Valley*, courts will now exercise their independent judgment in reviewing the validity of an assessment. Given the fact that many courts may not fully understand the nuances of assessment district financing, providing a defensible model for calculating the special benefit and proportionally distributing this benefit to properties is in the best interest of the local agency. Assessment methodologies that employ quantifiable measures, such as trip counts, census, radius, diameter, are less susceptible to challenge if they are reasonably valid and reliable measures of benefit.

C. THE ASSESSMENT METHODOLOGY MUST CLEARLY RELATE THE ASSESSMENT TO THE SPECIAL BENEFIT RECEIVED BY EACH BENEFITTED PARCEL. The methodology used by the assessment engineer in Tiburon ignored the relationship between the special benefit provided by the project and the benefitted parcel. As a result, parcels which may have been similarly benefitted were assessed differently. This provides a caution to assessment engineers who adopt categories of benefit based upon EDUs or zones that the assessment methodology must, in the end, reflect the individual differences between parcels. The assessment engineer may conclude that different parcels are identically benefitted but only after analyzing each parcel individually.

D. ASSESSMENTS FOR GENERAL SERVICES, SUCH AS REGIONAL PARK MAINTENANCE AND FIRE PROTECTION SHOULD BE APPROACHED WITH CARE. Because it is often difficult to distinguish the general benefit from special benefit derived from general services, it is difficult to develop and articulate a methodology for proportionally distributing the cost of the special benefit. As a result, these types of assessments are susceptible to challenge and adverse court rulings.

E. THE ASSESSMENT ENGINEER MUST DISTINGUISH BETWEEN BENEFIT AND COST. The cost of the special benefits derived from an improvement or service may not be fully recoverable. Some of the special benefit may be passed on to parcels outside of the district. As a result, the assessment engineer must acknowledge the difference in benefit vis-a-vis the difference in the cost of the improvement or service. As the *Silicon Valley* court ruling affirms, the cost of the improvements or services to be assessed upon benefited parcels must be based upon the cost of providing the benefit not on the actual or projected cost of providing the improvements or services. The *Tiburon* court decision further recognizes the limits of developing an assessment methodology based upon cost rather than benefit. However, the "proportionate special benefit" to be assessed is a function of the total cost of the project. Benefit zones may exist within a district, but only where there are distinct

differences in benefit, not cost. These differences may present themselves as differences in the level of services, in improvements, differences in proximity or in location.

F. ONLY THE PROPORTIONAL COST OF PROVIDING THE SPECIAL BENEFIT MAY BE LEVIED AGAINST BENEFITED PARCELS. As the *Silicon Valley* court ruling indicates, the assessment engineer's report must carefully identify: (1) the specific improvements or services to be funded by the assessment; (2) the special benefit that properties within the district will receive from the improvements or services; (3) an estimate or calculation of the cost of any improvements or services; and (4) the direct connection of any proportionate cost of any special benefit received from the improvement or services to the specific assessed parcels. All benefiting parcels must be assessed according to the *Tiburon* court ruling. The *Dahms* court ruling recognized, however, that the district was free to impose assessments that are *less* than the proportional special benefit conferred, so long as the discounts offered do not cause the assessments imposed on the remaining assessed parcels to exceed the reasonable cost of the proportional special benefit conferred on those parcels.

G. THE ASSESSMENT METHODOLOGY SHOULD BE SUPPORTED BY THE ADMINISTRATIVE RECORD OF THE PUBLIC AGENCY. The *Golden Hill* court was unable to determine from either the engineer's report or the administrative record how the assessments were calculated. In exercising its independent judgment on the validity of an assessment, a court will generally only review the administrative record of the local agency responsible for adopting a proposed assessment. The most important document in that administrative record is the engineer's report, which must include the methodology employed by the assessment engineer to allocate the cost of the proportional special benefit accruing to each parcel.

The challenges facing local agencies seeking to utilize assessment financing for improvements or services suggest they take a few precautionary steps. To this end, it is recommended that local agencies take extra care when using assessment financing, including an evaluation of the proposed improvements or services, and the suitability of assessment financing versus other alternative tools, including Community Facilities Districts, other special taxes, or general taxes. Local agencies considering projects should weigh the experiences of other agencies that have used assessments to finance the same or similar benefits. However, local agencies should understand that courts are now charged with a different standard of review when determining whether an assessment methodology complies with Article XIIID. As a result, the engineer's report must clearly distinguish special and general benefits and quantify these in a valid and reliable manner. The local agency's administrative record may be used to support its action both during the district formation process and when and if challenges arise subsequent to the levy of assessments.

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RESOLUTION NO. 19-023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ADOPTING BALLOT PROCEDURES FOR THE CITY'S 2019 CLEAN WATER AND STORM PROTECTION FEE

WHEREAS, Proposition 218 was adopted on November 6, 1996, adding Articles XIII C and XIII D to the California Constitution; and

WHEREAS, Article XIII D of the California Constitution imposes certain procedural and substantive requirements relating to property-related fees; and

WHEREAS, barring a protest by a majority of affected property owners, the City of Cupertino ("City") intends to conduct a ballot proceeding to obtain approval of a proposed property-related fee, called the "2019 Clean Water and Storm Protection Fee" consistent with the procedures established in Article XIII D of the California Constitution. If approved, the 2019 Clean Water and Storm Protection Fee would raise revenue to pay for services provided by the City that are necessary to repair, operate and maintain pipes and other infrastructure to prevent system failure and sinkholes, protect clean drinking water, comply with mandated clean water standards, and protect the City against future flooding; and

WHEREAS, the City is initiating the process necessary to adopt the 2019 Clean Water and Storm Protection Fee.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cupertino as follows:

SECTION 1. **Statement of Legislative Intent.** In adopting this resolution, it is the Council's intent to adopt property-related fee ballot proceedings for adoption of a proposed 2019 Clean Water and Storm Protection Fee that are consistent and in compliance with Article XIII D of the California Constitution.

SECTION 2. **Definition of Property-Related Fee.** Article XIII D, section 2(e), of the California Constitution defines "fee" as "any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user, or charge for a property related service."

SECTION 3. **Property-Related Fee Ballot Proceeding.** Article XIII D, section 6(c), of the California Constitution states "[a]n agency may adopt procedures similar to those for increases in assessments in the conduct of elections" for a property-related fee. The following procedures shall be used to conduct a ballot proceeding to seek property owner approval of the proposed 2019 Clean Water and Storm Protection Fee:

A. **Property-Related Fee Ballots:** The following guidelines shall apply to the property-related fee ballots:

1. The record owner(s) of each parcel to be subject to the 2019 Clean Water and Storm Protection Fee shall be determined from the last equalized property tax roll.

2. The ballot shall be designed in such a way that, once sealed, its contents are concealed.

3. The ballot and/or ballot guide provided by this section shall contain the following information:

   a. The total amount to be charged to parcels City-wide;

   b. The amount to be charged to the owner's particular parcel(s);

   c. The duration of Fee payments;

   d. The reason for the proposed Fee;

   e. The basis upon which the amount of the proposed Fee was calculated;

   f. A summary of the procedures for the completion, return and tabulation of the ballots;

   g. A statement that the failure to receive a majority of ballots in support of the proposed Fee will result in the Fee not being imposed;

   h. On the face of the envelope in which the notice of election and ballot are mailed, there shall appear in substantially the following form in no smaller than 16-point bold type: "OFFICIAL BALLOT ENCLOSED"; and

i. The ballot shall include the City's address for return of the ballot, the date and location where the ballots will be tabulated, and a place where the person returning it may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed Fee.

4. Failure of any person to receive a ballot(s) shall not invalidate the proceedings.

5. All ballots must be returned either by mail or by hand delivery and received by the City not later than the date and time for return of ballots stated on the ballot described in this section. Mailed ballots must be returned to the City Clerk at the address shown on the ballot and pre-printed on the ballot return envelope. Hand delivered ballots must be returned to the City Clerk at 10300 Torre Avenue, Cupertino, California 95014.

6. Each ballot must be signed under penalty of perjury.

7. Only one vote will be counted per parcel. If more than one vote per parcel is submitted, then only the ballot with the most recent date will be counted and any previous votes submitted for the same parcel will not be accepted or counted. If more than one vote per parcel is submitted and the ballots for that parcel are not dated, the replacement ballot will be counted and any other votes for the same parcel will not be accepted or counted.

8. The City will only accept official ballots issued by the City.

9. If a 2019 Clean Water and Storm Protection Fee ballot is lost, withdrawn, destroyed or never received, the City will mail or otherwise provide a replacement ballot to the owner upon receipt of a request delivered to the City. The replacement ballot will be marked to identify it as a replacement ballot. Any request for a replacement ballot to be mailed to another location must include evidence, satisfactory to the City, of the identity of the person requesting the ballot. The same procedure applies to replacement ballots which are lost, withdrawn, destroyed, or never received.

10. If a 2019 Clean Water and Storm Protection Fee ballot is returned by the United States Post Office as undeliverable, the City may mail a redelivered ballot to the current property owner, if updated ownership and/or owner mailing address can be determined. The redelivered ballot will be marked to identify it as a replacement ballot.

11. A property-related fee ballot is a disclosable "public record" as that phrase is defined by Government Code section 6252 during and after tabulation of the ballots.

12. To complete a 2019 Clean Water and Storm Protection Fee ballot, the owner of the parcel or his or her authorized representative must (1) mark the appropriate box supporting or opposing the proposed 2019 Clean Water and Storm Protection Fee, and (2) sign, under penalty of perjury, the statement on the ballot that the person completing the ballot is the owner of the parcel or the owner's authorized representative. Only one box may be stamped or marked on each ballot. All substantially incomplete or improperly marked ballots shall be disqualified from the tabulation. The Tabulator will retain all such invalid ballots.

13. After returning a 2019 Clean Water and Storm Protection Fee ballot to the City Clerk, the person who signed the ballot may withdraw the ballot by submitting a written statement to the City directing the City to withdraw the ballot. Such statement must be received by the City prior to the close of the balloting period. When ballots for the 2019 Clean Water and Storm Protection Fee are tabulated, the City Clerk will segregate withdrawn ballots from all other returned ballots. The City will retain all withdrawn ballots and will indicate on the face of such withdrawn ballots that they have been withdrawn.

14. In order to change the contents of a ballot that has been submitted, the person who has signed that ballot may (1) request that such ballot be withdrawn, (2) request that a replacement ballot be issued, and (3) return the replacement ballot fully completed. Each of these steps must be completed according to the procedures set forth above.

B. **Tabulating Ballots.** The following guidelines shall apply to tabulating 2019 Clean Water and Storm Protection Fee ballots:

1. 2019 Clean Water and Storm Protection Fee ballots shall remain sealed until tabulation commences after the conclusion of the balloting period.

2. The ballots shall be tabulated in a location accessible to the public.

3. The City Clerk shall oversee the tabulation of the 2019 Clean Water and Storm Protection Fee ballots, and may be assisted by technical staff from a third party. The City Clerk shall follow the rules and procedures of the laws of the State of California, this resolution and any other rules and procedures of the Council or the City. All ballots shall be accepted as valid and shall be counted except those in the following categories:

    a. A photocopy of a ballot, a letter or other form of a ballot that is not an official ballot issued by the City or on behalf of the City;

    b. An unsigned ballot, or ballot signed by an unauthorized individual;

    c. A ballot which lacks an identifiable mark in the box for a "yes" or "no" vote or with more than one box marked;

    d. A ballot which appears tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;

    e. A ballot for which the parcel number is damaged or obstructed, unless the parcel number or property ownership information is legible and allows the Tabulator to clearly determine the property(s) identified on the ballot;

    f. A ballot received by the City Clerk after the close of the balloting time period; and

    g. A ballot which has been withdrawn, or a ballot for a parcel for which a later (or replacement) ballot has been counted.

4. The City Clerk's decision shall be final and may not be appealed to the City.

5. In the event of a dispute regarding whether the signer of a ballot is the owner of the parcel to which the ballot applies, the City will make such determination from the official County Assessor records and any evidence of ownership submitted to the City prior to the conclusion of the balloting period. The City will be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership will be final and conclusive.

6. In the event of a dispute regarding whether the signer of a ballot is an authorized representative of the owner of the parcel, the City may rely on the statement on the ballot signed under penalty of perjury that the person completing the ballot is the owner's authorized representative, and any evidence submitted to the City prior to the conclusion of the balloting period. The City will be under no duty to obtain or consider any other evidence as to whether the signer of the ballot is an authorized representative of the owner and its determination will be final and conclusive.

7. A property owner who has submitted a 2019 Clean Water and Storm Protection Fee ballot may withdraw the ballot and submit a new or changed ballot up until the conclusion of the balloting period.

8. A property owner's failure to receive a 2019 Clean Water and Storm Protection Fee ballot shall not invalidate the proceedings conducted under this section and Article XIII D, Section 6 of the California Constitution.

9. The City shall retain all 2019 Clean Water and Storm Protection Fee ballots for a period of two (2) years from the date of the close of the balloting period.

10. The period of time in which ballots may be submitted (balloting period) shall end at 5:00 p.m. on the closing date of the balloting. All 2019 Clean Water and Storm Protection Fee ballots must be received by this date and time to be tabulated.

11. After the conclusion of the balloting period, the Tabulator shall tabulate the ballots at the direction of the City Council.

12. The ballot tabulation may be continued to a different time or different location accessible to the public, provided that the time and location are announced at the location at which the tabulation commenced and posted by the City in a location accessible to the public. The City Clerk may use technological methods to tabulate the ballots, including, but not limited to, punch card or optically readable (bar-coded) ballots.

13. Each ballot shall count for as many votes as there are parcels with a fee greater than zero listed on that ballot. If, according to the final tabulation of the ballots, votes submitted against the 2019 Clean Water and Storm Protection Fee exceed the votes submitted in favor of the 2019 Clean Water and Storm Protection Fee, the City Council shall not impose the 2019 Clean Water and Storm Protection Fee.

PASSED AND ADOPTED at a Regular Meeting of the City Council of the City of Cupertino the 5th day of March 2019, by the following vote:

Vote	Members of the City Council
AYES:	Scharf, Chao, Paul, Sinks, Willey
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

Grace Schmidt 3-14-19
Grace Schmidt, City Clerk

APPROVED:

Steven Scharf, Mayor,
City of Cupertino