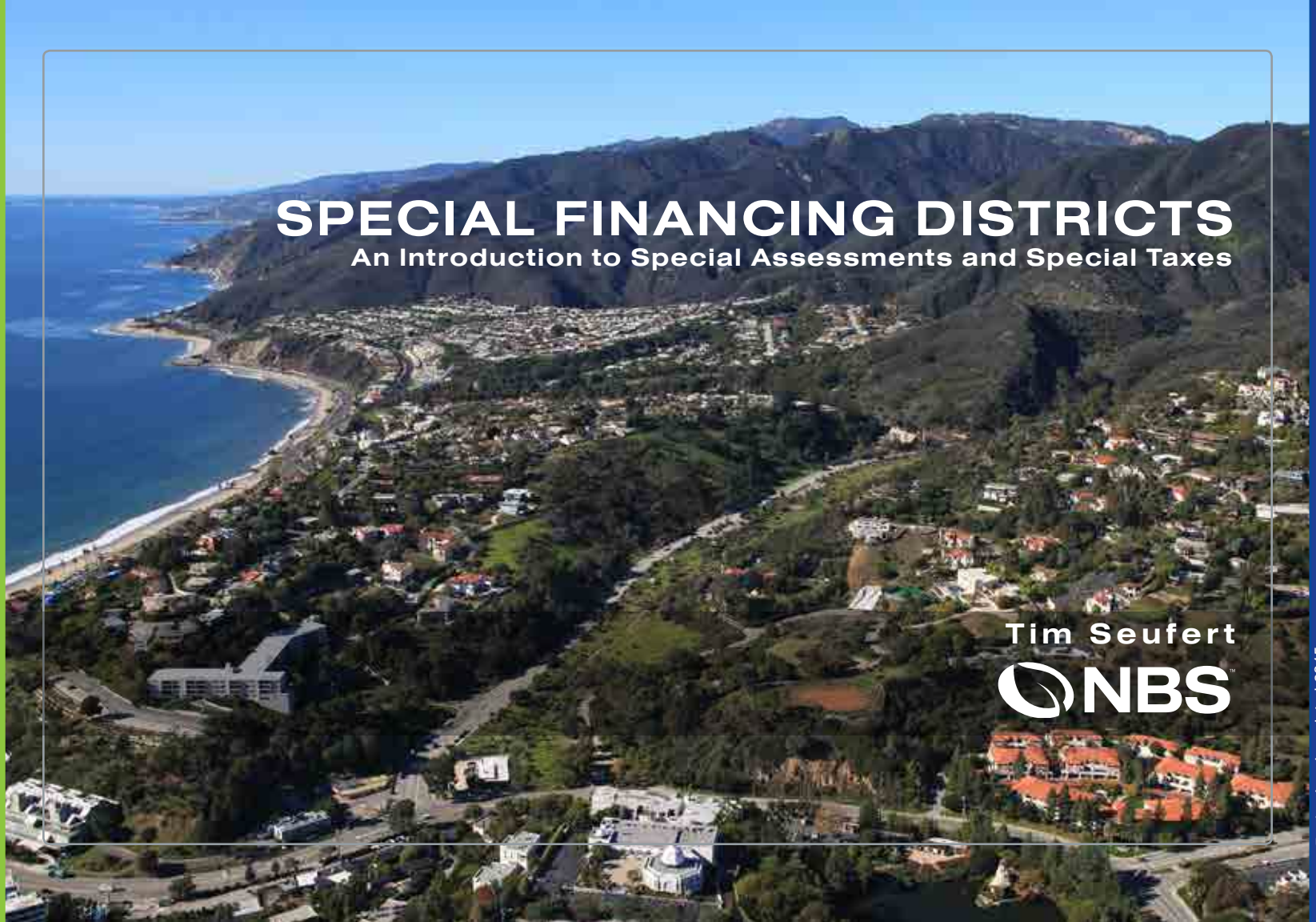


SPECIAL FINANCING DISTRICTS

An Introduction to Special Assessments and Special Taxes

Tim Seufert

NBS

Revised and reprinted 2015

"But in this world nothing can be said to be certain, except death and taxes."
- Benjamin Franklin (1789)

"The wages of sin are death, but by the time taxes are taken out, it's just sort of a tired feeling."
- Paula Poundstone (1990)

NBS (NBS Government Finance Group) is a registered municipal advisor with the Municipal Securities Rulemaking Board (MSRB) and the Securities Exchange Commission (SEC). Note that the information found within this publication is not meant to provide specific advice nor to solicit such business.

Published by NBS

All Rights Reserved
Copyright © 2006 by NBS
Revised and reprinted July 2015
No part of this book may be reproduced or transmitted in any form without the permission of the publisher.

WHAT IT IS

This book intends to serve as a primer on local property-based revenue mechanisms in the state of California. The intended audience is local public agency staff, community leaders, property owners, and other interested parties.

The book provides a general review and discussion of these revenue sources, which fall under the basic heading of "Special Taxes and Special Assessments" as provided by California statutes, and which are collectively termed "Special Financing Districts." (Note that this book was first published in 2006, updated in 2011, 2014 and 2015. The information contained herein is subject to change.)

Examples of property-based revenue mechanisms in California are: a Landscape & Lighting District assessment that finances the maintenance of parks and parkways within a specific area (Special Assessment), and a tax levied on all properties within a city to fund police services (Special Tax). Most other states in the U.S. maintain similar revenue systems, albeit through different processes (and employing different terminology).

WHAT IT IS NOT (the disclaimer)

This publication is not a technical how-to guide, and is not to be construed as legal or technical advice. This book is to be used for general informational purposes, and is not meant to replace the services of experienced attorneys, engineers, finance professionals, or consultants with expertise in this field. In particular, a number of legal challenges have been filed in recent years challenging assessments. One is advised to seek out good technical and legal advice.

Note that Proposition 26, known as the "Stop Hidden Taxes Initiative," was approved in the November 2010 election by the voters of California. Proposition 26 was aimed at a certain class of government "regulatory fees," but it contained broad local government revenue language. In summary, there are seven categories of exceptions, and it is the current understanding that Special Assessments and Special Taxes (and generally Property-related Fees) as covered under Proposition 218 constitute one category of these exceptions. Proposition 218 is discussed further within this book.

LIST OF DEFINITIONS

The following definitions must be understood within the world of local government public finance and the context of this book; they are not intended to serve as all-encompassing dictionary definitions. In fact, general definitions will only confuse the layperson. For example, Merriam-Webster defines a Special Assessment as "a special tax levied on private property…" However, the lexicon of California local public finance makes a distinction between a "Special Assessment" and a "Special Tax."

SPECIAL FINANCING DISTRICT

The term "Special Financing District" (SFD) was coined by NBS to refer to all Special Assessments and Special Taxes (see definitions). The term continues to be used more frequently in California local public finance.

KEY DEFINITIONS

Special Financing District (SFD) – This term, while not part of the legal lexicon or state statutes, refers to all Special Assessments and Special Taxes that are levied by local public agencies on parcels of land. An SFD is nearly always a dependent entity, tied to a city, county, school, or special district. An SFD is not to be confused with a Special District, as defined below.

Special Assessment – Also known as a "Special Benefit Assessment" (or simply "Benefit Assessment"), this is a financial charge levied on parcels of land or businesses, based on the special benefit received from the service or capital improvement. The benefit criteria and formula are typically called a "Method of Assessment."

Special Tax – This is a financial charge that is calculated via some type of special tax formula (or Rate and Method of Apportionment, in the case of a Community Facilities District), and is levied annually on property (or other basis in the case of a transient occupancy or utility tax) for a defined period of years.

Assessment – This is a charge levied against a parcel of land for the Benefit that is generated by the underlying public service or improvement project. The governing body of the entity levying the Assessment must make a finding of Special Benefit in order to validate this process.

Assessment Engineering – This is the process of defining and calculating an Assessment, managing it from initial conception to the final levy of an Assessment. The process originated in the world of civil engineering, but has become more financial in nature.

Ballot Process – Not to be confused with an actual election subject to the Elections Code, a Ballot Process is the process used in the formation of an Assessment District (and certain Fees) to validate a proposed Assessment. It usually consists of a mailed ballot sent to property owners with instructions for the course of action and return of the ballot.

Benefit – The notion of Benefit is extremely important in the case of a Special Assessment. There must be demonstrated Special Benefit to a parcel of land to validate a Special Assessment. Proposition 218 defines Special Benefit 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." The general benefit must be quantified as that benefit which is available to the public, and therefore cannot be charged to property owners.

Bond – A Bond is an interest-bearing certificate of indebtedness. A so-called Municipal Bond (or "Muni Bond") is issued by a local governmental agency, and the interest paid is typically tax-free to the individual bondholders. The offering statement for such a bond is called an Official Statement, referred to in abbreviated form as an "O/S." The O/S contains all of the bond information, as well as extensive background information including the description of any underlying SFD.

Brown Act – The Ralph M. Brown Act is part of California Government Code Section 54950 et seq. Its primary purposes are to encourage public participation in local government and to ensure free and open meetings of the governing bodies of local agencies. Some specific public noticing provisions also relate to the implementation of SFDs.

Capital Project Financing – This is an effort that involves a significant investment in infrastructure that must be paid back over a number of years, but no longer than the expected lifespan of the improvement. (See the "Pay-as-you-go Financing" definition for comparison.)

BENEFIT

The notion of Benefit is extremely important in the case of a Special Assessment.

Charter City – A Charter City has unique abilities over a general law city. In essence, a Charter City has its own constitution, and may tailor its organization and laws with regard to "municipal affairs" (although the specific definition of municipal affairs is legally complex). There are now 121 (as of 2015) charter cities in California, from Adelanto to Woodlake, which may promulgate their own unique assessment and tax laws, as long as they do not violate California state law and constitution.

Community Facilities District ("CFD") – This is a common and popular type of Special Tax district that can fund ongoing maintenance services, capital projects, or both. It is allowed under the Mello-Roos Community Facilities Act of 1982, and is found in California Government Code Section 53311 and following.

CHARTER CITIES

There are now 121 (in 2015) charter cities in California, from Adelanto to Woodlake.

Local Governmental Agency – This refers to any local political entity with typical local or regional governmental powers, including cities and towns, counties, school districts, community college districts, and special districts, and excluding any state or federal governmental agency. The governing body of an Agency is commonly the city or town council, board of supervisors, board of directors, or similar.

Mello-Roos District – Henry Mello and Mike Roos were the two California legislators who wrote the Community Facilities Act of 1982; thus, a Community Facilities District (see definition above) is often termed a "Mello-Roos District."

Official Statement – See "Bond."

Pay-as-you-go Financing – This type of effort involves raising revenues each year for commensurate annual costs, and is sometimes referred to as a "non-bonded financing" in that no initial outlay is paid back over time. An example is an annual Special Assessment levied under a Landscape and Lighting District to pay for annual maintenance costs of a park. (See "Capital Project Financing" description for comparison.)

Proposition 13 – The historic "property tax revolt" measure passed by California voters in 1978 added Article XIIIA to the California constitution, which rolled back property taxes to 1 percent of the "assessed value" of a parcel of land, and required any new Special Taxes to be approved by two-thirds of the voters. [Note: This Proposition reduced local governmental tax revenues, a chief component of all local revenue sources, by 57 percent, and ultimately spawned a renewed interest in SFDs, certain fees and general taxes, and other financing mechanisms.]

Proposition 218 – The so-called "Right to Vote on Taxes Act" was approved by California voters in 1996. It added Articles XIIIC and XIIID to the California state constitution, and thus affects the over 6,000 local governmental agencies across the state.[1] The primary results were stricter definitions of assessments, special taxes, fees (including the addition of the new and contested term "property related fees") and charges, and a general mandate for some type of voter approval for any new or increased tax, assessment, or property-related fee.

Proposition 26 – Following Proposition 218, Proposition 26, known as the "Stop Hidden Taxes Initiative," was approved in the November 2010 election by the voters of California. Proposition 26 was aimed at a certain class of government "regulatory fees," but it contained broad local government revenue language. It added a definition of "tax" to the constitution that basically defined all charges and exactions as taxes except for seven categories of exceptions.

Public Meeting – This meeting is held by the Local Governmental Agency to discuss an SFD and receive public comments. Typically, no definitive actions are taken at such a meeting.

Public Hearing – A Public Hearing is held by the Local Governmental Agency for public input and comments, and typically marks the deadline for submission of Ballots.

Special Benefit – See "Benefit."

Special District – This is a local governmental body formed under the laws of the state. A Special District may be independent or dependent (upon another local governmental agency such as a County). Examples of a Special District are water districts, sewer districts, and community services districts (CSDs). Note that this is distinct from a Special Financing District, which is not a government entity but rather a financing mechanism.

Special Tax Consulting – This is the process of analyzing and defining the parameters of a proposed Special Tax, and of developing a formula for levying the charge.

PROPOSITION 218

Right to Vote on Taxes Act.

[1] This includes 482 cities and towns, 2,300 independent special districts, 2,200 dependent special districts, 58 counties, 1,059 school districts, 72 community college districts, and other similar local and regional entities.

THIS BOOK INTENDS TO SERVE AS A PRIMER

on local property-based revenue mechanisms in the state of California

Introduction 1
- A brief history 2
- The future 2
- Legal Landscape 3

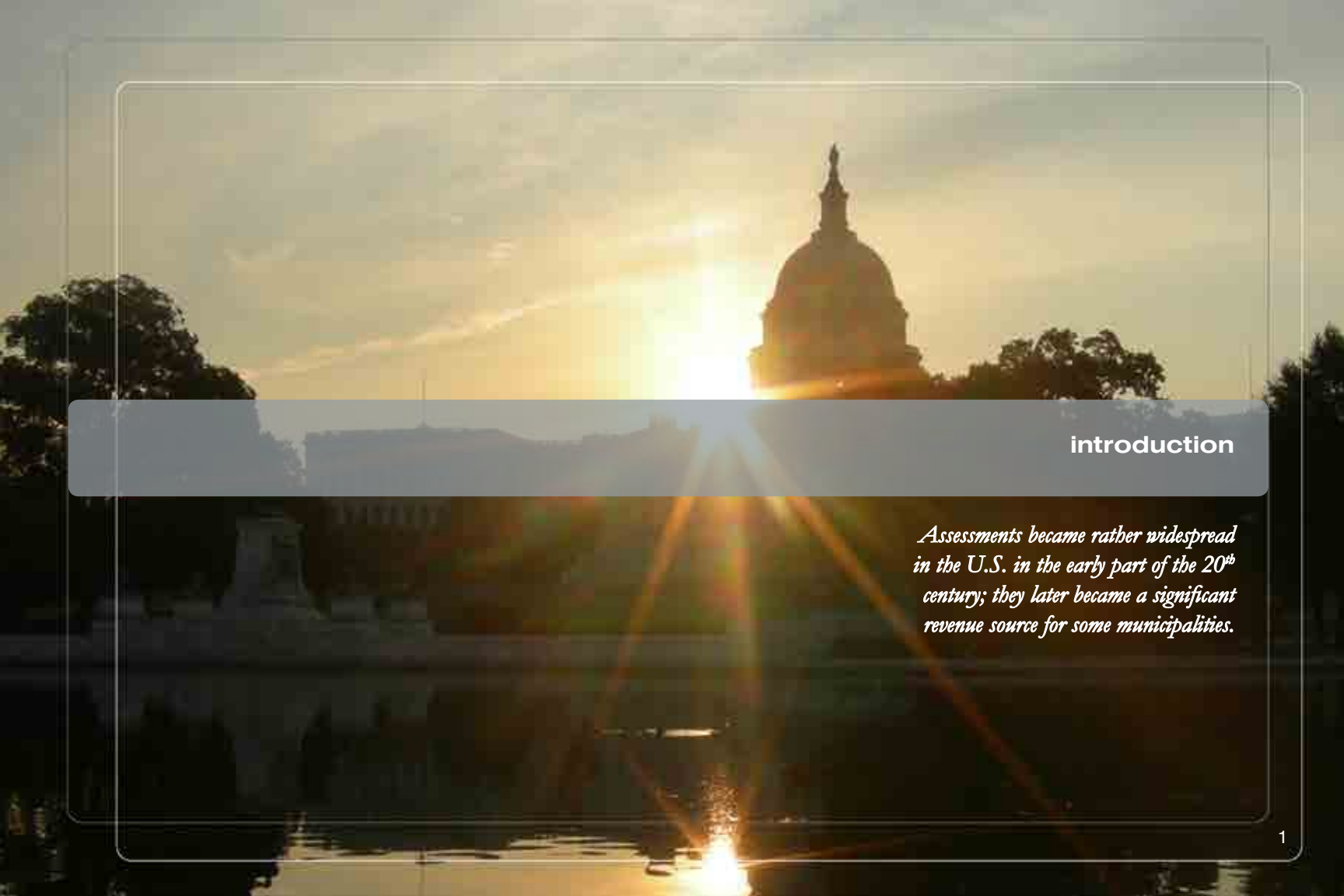
Why Form an SFD? 5
- NPDES 6

Forms of Local Government 9
General Concepts for the Selection of SFDs 13
- Fairness and equity 14
- Market sensitivity 15
- Potential for Approval 15
- Timing and predictability of revenues and expenses (and need for debt) 16
- The legal perspective 17
- Legal Considerations in Selecting a Special Financing District 17

Legal Considerations for Levying Special Assessments 20
Selecting the Team for an SFD 25
Timeline for Startup of an SFD 29
Bond or Debt Issuance 31
The Political Considerations 35
- 10 Key Elements of a Successful Revenue Measure 37
- Using Public Relations to Gain Support for Special Financing Districts 38

Conclusion 39
Additional Resources: Sources and Additional Reading 41
Case Studies 43
- Fact Sheet – Landscape & Lighting Districts 46
- Fact Sheet – Benefit Assessment Districts 47
- Fact Sheet – 1913/1915 Act Assessment Districts 48
- Fact Sheet – Open Space Maintenance Districts 49
- Fact Sheet – Community Facilities Districts 50
- Fact Sheet – Property and Business Improvement Districts 51
- Fact Sheet – Enhanced Infrastructure Financing Districts 52

Comparative Table of Taxes, Assessments, Fees, and Charges 53
About the Author 54
Credits 54



introduction

Assessments became rather widespread in the U.S. in the early part of the 20th century; they later became a significant revenue source for some municipalities.

A BRIEF HISTORY

The basic concept of an assessment purportedly dates back to "merry olde England," when the local powers assessed at will for funds to provide improvements or services. Assessments were first applied in the U.S. in New York City in 1691. Assessments became rather widespread in the U.S. in the early part of the 20th century; they later became a significant revenue source for some municipalities, including Los Angeles and Oakland, as well as for irrigation districts in the Central Valley. In burgeoning California, a number of assessment laws were established after 1910, and many more have been added since then. Assessments fell out of favor during the Great Depression, and were less commonly used until the passage of Proposition 13 in California in 1978.

In the California of today, significant assessment and tax activity exists.[2] The state maintains a lengthy list of statutes and Charter City ordinances that authorize SFDs, and an economic necessity for them to be utilized. The current system is complicated, and requires community leadership, public outreach, political will, a myriad of approval processes, many expert consultants and attorneys, and an ongoing administration process to ensure a smooth application.

THE FUTURE

Unless a drastic change occurs in either the financial or political landscape, the use of SFDs in California will likely increase, as the population (and the resultant desire for additional services and infrastructure) increases in many communities throughout the state. However, the funding for such services and projects is typically unavailable. Occasionally, statewide bond initiatives or one-time funding sources emerge; however, in most cases, these needs must be funded locally.

It is worthy to note that California's basic infrastructure is in serious jeopardy. Since the post-World War II building boom, in many cases, maintenance and replacement of infrastructure has been erratic and even non-existent. For example, the American Society of Civil Engineers (ASCE) released a report in 2013 that gave failing grades to the collective infrastructure in the United States, and a C grade to that of California. The report cited the following facts:

- Sixty-eight percent of California's major roads are in poor or mediocre condition.
- A $39 billion investment is required to maintain the drinking water infrastructure over the next 20 years, up from $17.5 billion as reported in 2005.
- The wastewater infrastructure currently requires $29.9 billion in improvements, up from $14.4 billion in 2005.
- California's schools have $25.4 billion in infrastructure funding needs.

[2] In the November 2004 state election, only 5 of 58 counties reported no local bond or tax measures. Those counties are Alpine, Amador, Glenn, Plumas, and Sierra. (Source: CDIAC election report.) In the November 2013 election, there were 75 local revenue measures (www.californiacityfinance.com).

- There is a strong need for more investment in parks and open spaces.
- California has 1.4 billion annual unlinked passenger trips via transit systems.

LEGAL LANDSCAPE

Attempting to understand the nuances behind the discussion of Special Assessments and Special Taxes involves an awareness of three major initiatives that affect the California landscape: Propositions 13, 218, and 26.

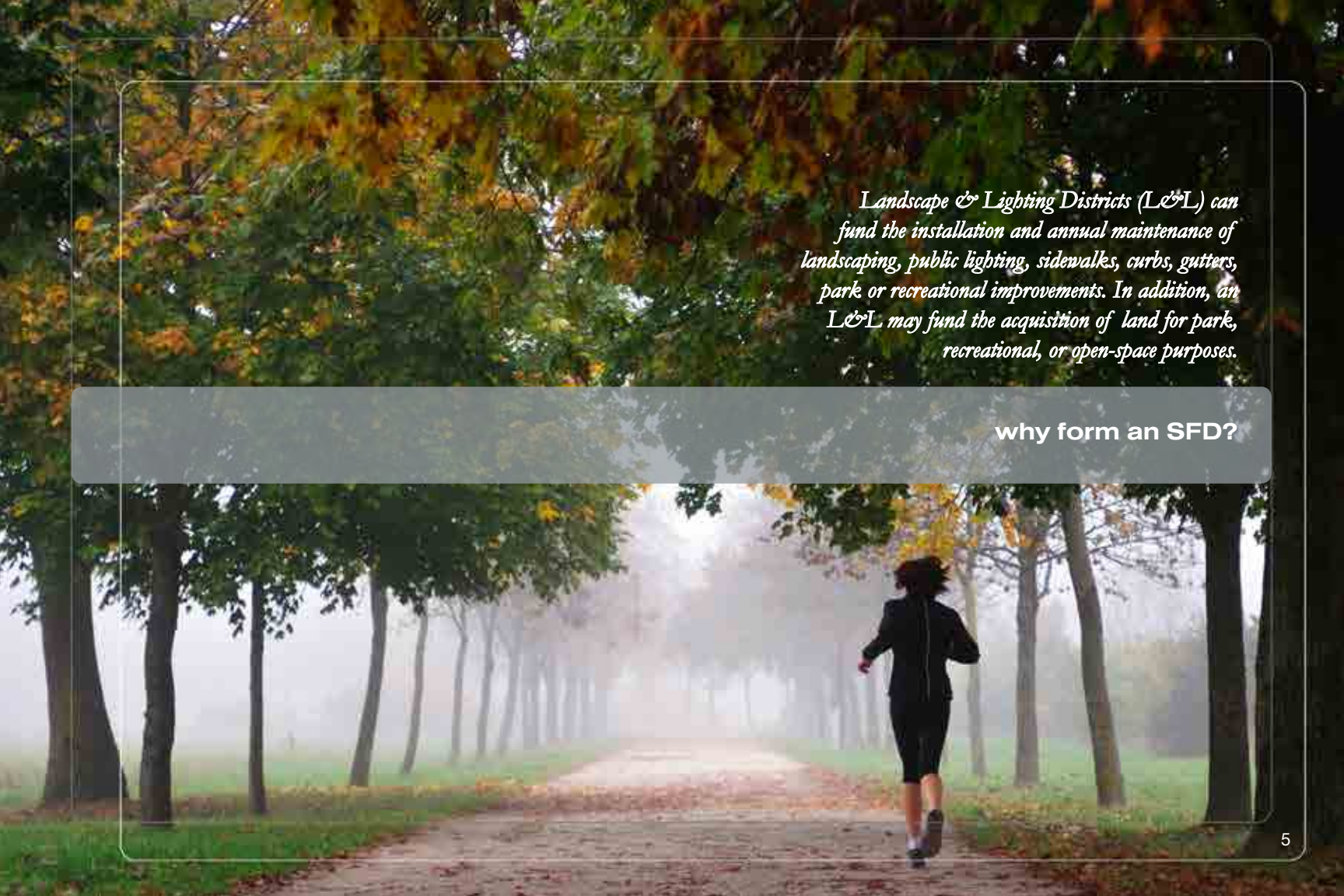
Proposition 13, known to many as the "property tax revolt of 1978," basically mandated a roll back to a 1 percent property tax rate at the commensurate assessed value (ad valorem) of the property. For this discussion, the important point is that local governments are now severely limited from raising additional revenues for various efforts by the basic property tax system. (Some states have ad valorem property tax rates that range from 3 percent to as high as 6 percent to fund local government services.)

Proposition 218, the "Right to Vote on Taxes," was approved by voters in 1996. This in effect created a complicated categorization of assessments, taxes, fees, and charges, with a commensurately complicated approval process for each category, many with conditions that affect the process itself. The implementation and understanding of Proposition 218 has been long and arduous, and continues today. For the purposes of this publication, the key point to consider is that Special Assessments and Special Taxes are two distinct groupings that require differing methods of approval and start-up, as well as ongoing administration. The terms "Special Assessment" and "Special Tax" are confusing to many, even to experts in the field (and are often mistakenly used interchangeably), but there is a difference.

Proposition 26 was approved by the voters in 2010. The emphasis for this measure was on "fees" and the assumption (at the time of the reprinting of this book) is that there will not be direct effects to SFDs.

An SFD can fund large capital improvements for infrastructure that has a long useful life, or ongoing "pay-as-you-go" services and maintenance, or both.

[2] Note that most assessment and fee protest ballots will never occur in a regular election.



Landscape & Lighting Districts (L&L) can fund the installation and annual maintenance of landscaping, public lighting, sidewalks, curbs, gutters, park or recreational improvements. In addition, an L&L may fund the acquisition of land for park, recreational, or open-space purposes.

why form an SFD?

SFDs can provide funding for a myriad of services and capital improvements. Although they have been in application for many years, the economic and political trends over the past few decades have bolstered their use and popularity.

In terms of newly developing areas, the trend has been toward a national consensus that "new development must pay its own way." This trend has been fostered by a number of factors, chiefly the downturn in federal and state spending. Such spending peaked in the 1960s and again in the 1980s, but has declined significantly since then. Exacerbating this trend has been the numerous efforts to limit taxes by the voters. The most notable milestones were Propositions 13, 218, and 26, as mentioned above. SFDs can provide the necessary funding for new development.

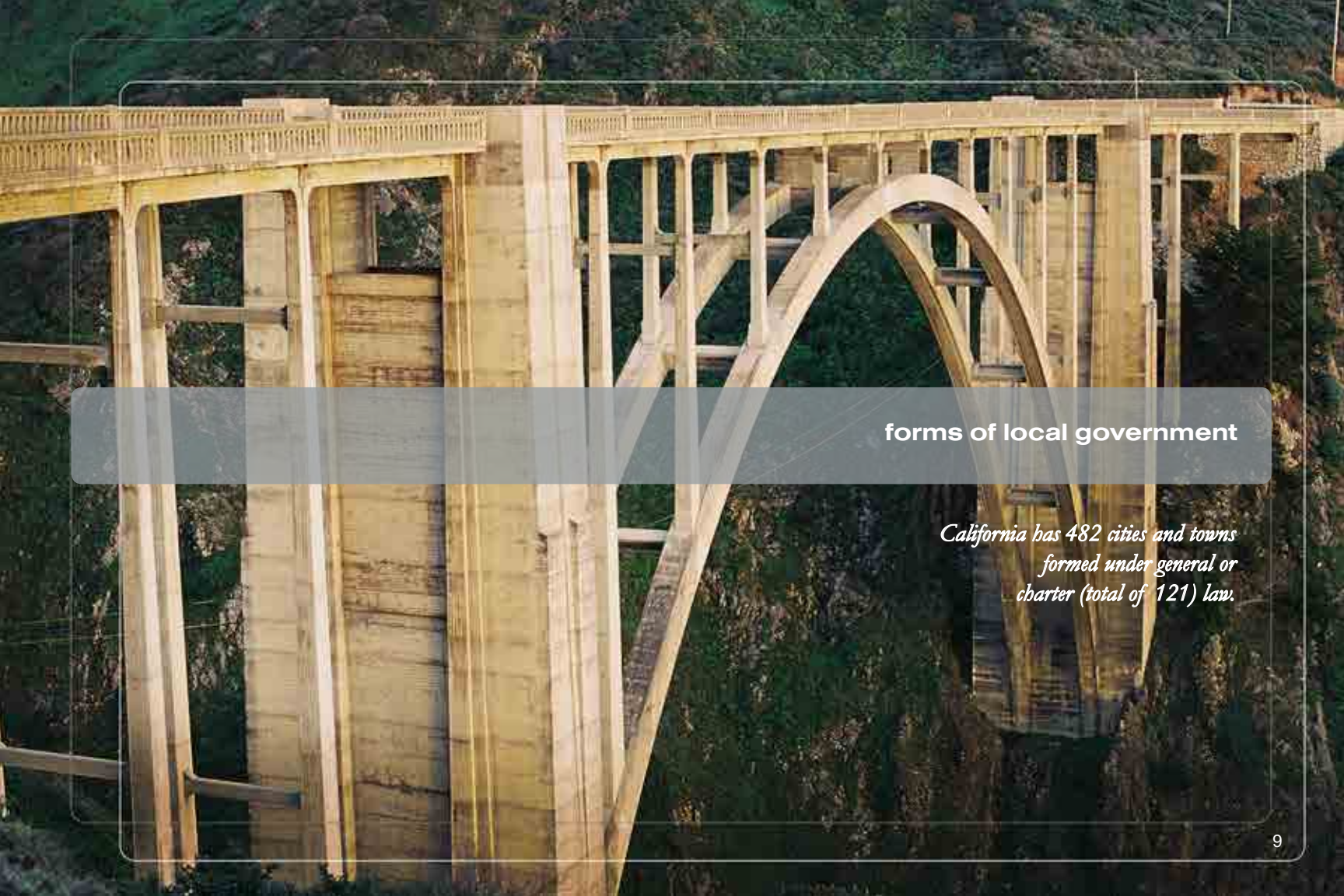
In developed areas, the requests for replacement and additional facilities, as well as increased and enhanced services, continue. Added to these demands are the additional requirements with which local governments must comply, such as the National Pollutant Discharge Elimination System (NPDES).

NPDES

The NPDES arose from the Federal Clean Water Act regulations originally promulgated in the 1970s. In the 1990s, the U.S. Environmental Protection Agency (EPA) adopted regulations that required a permitting system for stormwater discharges at certain industrial and construction sites. The California State Water Resources Control Board administers the state's stormwater management programs, which are broken down into nine regional Water Boards. The state's regulations are complex. In general, all construction sites disturbing more than one acre, many industrial sites, and all designated Municipal Separate Storm Sewer Systems (MS4s) are required to obtain and meet the requirements of NPDES permit coverage. There are costs involved with compliance.

As mentioned above, all of these demands come at a time of shrinking revenue sources and voter-backed tax limitations and reforms. That makes a strong case for the creative, but well crafted, use of SFDs.

Whether the need is in a developing area or a well-seasoned community, there is a trend for focused local sources of funding with direct accountability. Many recent initiatives have focused on dedicated revenues for various projects or concerns, often resulting in the unintended effect of limiting government's flexibility. In any case, an SFD can provide focused and accountable revenues for local projects and services of importance to the community.



forms of local government

California has 482 cities and towns formed under general or charter (total of 121) law.

FEDERAL GOVERNMENT

STATE GOVERNMENT

LOCAL GOVERNMENT

The focus of this book is on local governmental entities in the state of California. (Discussion of any state or federal entities is mostly irrelevant.) The primary local entities are:

- Cities and towns ("Municipalities").
- Counties.
- Special districts.
- School districts.
- County service areas (CSAs).
- Special-purpose agencies (joint powers authorities and others).

California has 482 cities and towns formed under general or charter (total of 121) law. These cities have broad purposes and powers, and may generally utilize all forms of SFDs. Charter cities can create new forms of SFDs under their charter powers, as long as they do not conflict with the state constitution.

California's 58 counties, including the City and County of San Francisco, and their numerous subdivisions also have broad powers and typically utilize all forms of SFDs.

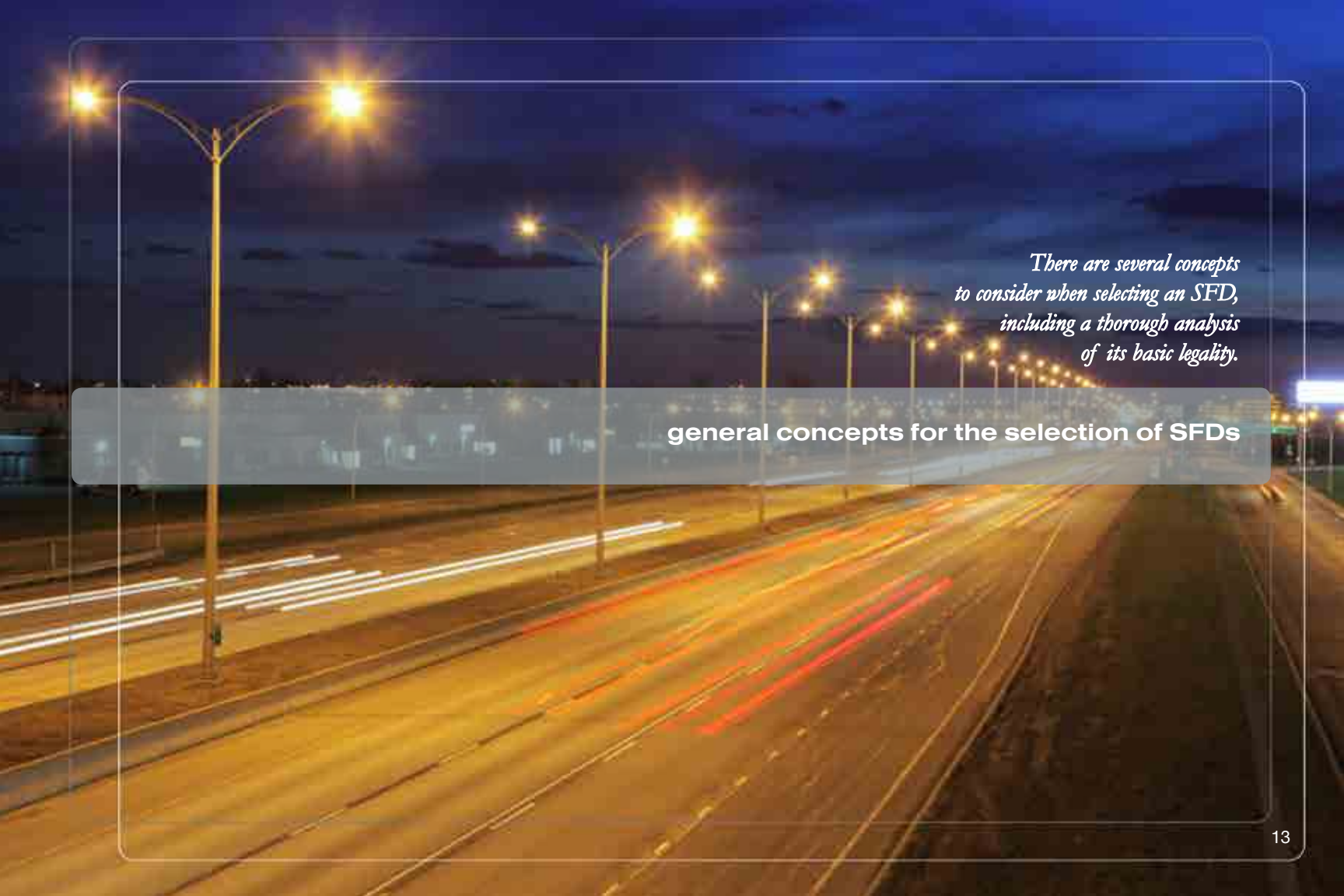
California contains an estimated 4,500 special districts, including over 2,300 independent special districts[3]. This is the largest number of special districts in any U.S. state[4] that provide a variety of services with varying levels of authority. Depending on the type of special district, virtually all types of SFDs can be used in one manner or another. For example, a community services district with police powers can levy a special tax for police

[3] Source: California Special Districts Association (Sacramento, California).
[4] The U.S. Bureau of the Census only tracks independent Special Districts. In 1987, it reported 29,427 independent Special Districts across the U.S., with many more dependent Special Districts.

services, and a water district may create an assessment district that funds infrastructure for water capital needs.

School districts are somewhat restricted in the use of SFDs. Nevertheless, many possibilities exist for schools to issue an SFD. For example, a school may form a parcel tax district to enhance the curriculum offered or establish a landscape and lighting assessment district.

Other types of related entities and non-profit groups are also interested in SFDs. These organizations do not have the power to actually form a district and levy a tax or assessment. However, they may derive benefit from the existence of an SFD. An example of this is a Chamber of Commerce or business group that obtains funding from a Business Improvement District (BID).



There are several concepts to consider when selecting an SFD, including a thorough analysis of its basic legality.

general concepts for the selection of SFDs

Many perspectives must be taken into consideration when selecting an SFD. Most of them can be categorized into the following groupings (discussed in further detail below):

1. Fairness and equity.
2. Market sensitivity.
3. Potential for approval.
4. Timing and predictability of revenues and expenses (and need for debt).
5. Legal perspective.

All of these must be considered against the backdrop of basic political will to use an SFD and follow through with the inevitable trials and tribulations associated with the process. The proponents and, in particular, the local governing body must be prepared for an onslaught of opposition, including basic ignorance of SFDs and resistance to change.

CALIFORNIA

contains an estimated 4,500 special districts.

FAIRNESS AND EQUITY

Most would agree that local government is the level of government most immediate and responsive to the needs of "common folk." In addition to proximity and responsiveness, in the interest of good public policy, it is incumbent upon local governments to be as fair as possible. This must extend to the formation and use of SFDs. For the imposition of a Special Assessment in particular, this concept of fairness is codified in the requirement of actual special benefit above that of general benefit and in the relationship of assessment amount to the special benefits received. In general, most agree that the "user" or beneficiary of any improvements or services should pay in proportion to his or her benefit.

Merriam-Webster describes equity as a "freedom of bias or favoritism." Most SFD practitioners attempt to develop a mechanism that is equitable in this manner, whether or not it is legally required. This first requires a factual analysis of the costs and commensurate benefits to determine appropriate ways of levying a charge. Each project contains many variables, including the improvements and services to be provided, local environmental and geographic conditions, history and customs of the area, etc. Therefore, the second step in the process of SFD development requires some level of creativity or "art" in devising unique solutions to account for the many variables in place.

MARKET SENSITIVITY

To choose the appropriate SFD, the potential market effects of the revenue requirement must be taken into account. Can the land or current property owner accept the burden of the proposed financial liability? What are the current market and economic conditions of the area and interested parties? How will the value of the benefits be perceived?

In the case of new development, there is a balance between shifting the burden of certain infrastructure forward to future property owners via an SFD, moving it backward to the original landowners in terms of price paid, or leaving it in the present by immediate payment by the developer. In the case of burdening the future property owners, the "unwritten rule" in the greater development and public finance community is that residential property should not have a total property tax burden of greater than two percent of the assessed value. This amounts to a doubling of the basic 1 percent ad valorem property tax rate. However, given the substantial rise in retail home prices in California starting in 1996, and then leading up to the downturn in 2008, this "rule" may require updating.

For any type of SFD usage, consideration must be given to the economics of the local area, employment, property values, and other conditions before the most appropriate strategy is devised.

POTENTIAL FOR APPROVAL

Since the passage of Proposition 218, all SFDs require an approval mechanism. Thus, even with all of the required analyses prepared, the local economic conditions and customs understood, and the "best" type of SFD selected, the process would be for naught without consideration of the potential for approval.

In general, there is either a majority (so-called "50 percent plus 1") or two-thirds supermajority requirement, as follows:

- Special Assessments: Special Assessments are subject to a protest ballot process. A protest exists, which stops the district formation, if a majority of those ballots returned are against the assessment. The ballots returned are weighted based upon the financial obligation placed on each property.

- Special Taxes: Special Taxes require a two-thirds supermajority of the voters voting in the election. (There is a discussion of reducing this two-thirds supermajority to either 55% or 50%, but no changes have been made to date with regard to such special taxes.)

- Property-related Fee: This special category of Fees can be related to the provision of water, wastewater, or trash, in which case they require a notification process but are not subject to approval per se. For other uses, such as a storm drain fee, either a 2/3 registered voter vote or a majority property owner ballot is required for approval.

It is critical to understand the audience to gauge the potential for approval. Detailed polls, community meetings, public outreach, discussions with local leaders, and other vehicles are recommended.

TIMING AND PREDICTABILITY OF REVENUES AND EXPENSES (and need for debt)

The patterns, timing, and predictability of expenses will affect the choice of revenue mechanism(s). Initial considerations should include whether a one-time expenditure is required, or pay-as-you-go costs are preferable. Will bonds or some other form of debt be needed? Although deviations from the predicted outlays and revenues are likely, the harmony of this timing equation is of great importance.

For example, at one end of this continuum is a large infrastructure outlay for streets and sewer systems. This is clearly a one-time expenditure that likely will require bonds and a longer-term payback period. At the other end of the continuum is maintenance of a park and provision of street lighting. These activities require ongoing pay-as-you-go revenues. In the middle of the spectrum could be a project that requires some maintenance and significant outlays for replacement costs during the life of the facilities.

SPECIAL ASSESSMENTS

Subject to a protest ballot process.

SPECIAL TAXES

Require a two-thirds supermajority of the voters voting in the election.

THE LEGAL PERSPECTIVE

Any discussion of an SFD must include an analysis of its basic legality, the methods of implementation, and Proposition 218 and 26 issues. This includes every step of the process, and experienced professionals and legal counsel are required. Should an assessment or tax be used? Can the local government use the desired SFD statutes? Will charter city ordinances need to be developed or revised? What are the benefit issues if an assessment mechanism will be used? What are the legal issues with any potential bond issuances? These issues are not to be taken lightly.

Michael Colantuono is an experienced attorney in the local government arena. He has been involved with many SFD-related legal cases, and he was the Chair of the working group who authored the *League of California Cities Proposition 218 Implementation Guide*. He offers his perspective on the selection process:

Legal Considerations in Selecting a Special Financing District
By Michael Colantuono, Colantuono & Levin, PC

A number of issues must be considered to determine whether a particular SFD can be legally used to accomplish a specific purpose. While an exhaustive analysis of these issues is beyond the scope of this book, the major issues follow.

As to Assessment Districts, these are the key questions:

- Does the assessing agency have the legal power to make use of the assessment district statute in issue? There are at least 44 assessment statutes of general application and most local governments have the power to use assessment financing for the services they are authorized to provide.

- Does the assessment district statute allow assessment proceeds to be used for the facilities or services the agency wishes to provide? Each assessment statute has a specified scope of improvements and services that may be funded via that statute. For example, a Fire Suppression Benefit Assessment may be used to fund equipment, facilities and services for fire fighting, but not for emergency medical services.

- Can the assessing agency demonstrate that the program of facilities and services to be provided conveys sufficient special benefit to private property to justify assessment financing? Property owners can only be compelled to pay for the portion of the benefit of an assessment program that benefits their property and cannot be asked to pay for the portion that benefits society generally or government property.

- If a program has a large general benefit component, are other funds available to the assessing agency to fund that portion of the program?

- Can you obtain approval of the assessment by a majority of property owners voting in a mailed ballot proceeding, with each ballot weighted by the amount each property owner is to pay?

As to Special Taxes, these are the key questions:

- Does the agency have the power to tax? Cities and counties all have taxing power, but the taxing power of most special districts is limited.

- What property or economic activity is within the boundaries of the agency that it is politically feasible to tax?

Common tax bases are property (special parcel taxes), utility consumption, hotel stays, retail sales, and business activity.

- Is the tax to be bonded, or pledged to serve debt, so that a large capital sum can be raised to build capital facilities or is the tax a "pay as you go" measure to raise funds for the maintenance and operation of existing facilities and services? If bonds are sought, it is best to use a financing mechanism with which the financial markets are familiar to obtain a favorable interest rate on the debt. A Mello-Roos Community Facilities District special tax is often a favored approach when bonding is necessary as these taxes are commonly bonded and the financial markets are familiar with this revenue stream and willing to lend against it.

- How do you wish to spread the tax burden among those who will pay it? While there is considerable freedom in choosing a tax formula, some considerations to ponder are these:

  • a parcel tax cannot be based on the assessed value of property;
  • a tax formula must be administrable. If the County property tax roll is to be used, the tax formula must turn only on factors (such as size, value of improvements, zoning district, etc.) that are readily available as it is rarely feasible to gather accurate data to support a tax formula which the

Assessor or other entity does not provide;

- a tax formula must comply with the Equal Protection Clause by having at least a minimum rationality and by not being discriminatory on the basis of protected classifications (race, gender, etc.);
- a tax formula must be politically acceptable. Charging apartments 10 times as much as houses is likely legally defensible, but it likely to generate opposition to the tax.

- Special taxes differ from general taxes in that their proceeds may be used only for the purposes stated in the tax. Telling voters what their taxes will be used for facilitates approval of the tax, but triggers a 2/3-voter approval requirement. General taxes require approval of only 50% of voters. Proposition 218 requires 2/3 approval of all parcel taxes, so general parcel taxes are no longer pursued.

- Special tax measures require mandatory accountability measures to be stated in the tax ordinance presented to voters, providing for accounting and audits and the like.

- Some additional accountability measures may be advisable to enhance the likelihood voters will approve a tax, such as a citizens' oversight committee, or a date by which the tax expires (a "sunset clause").

SPECIAL TAXES DIFFER FROM GENERAL TAXES

in that their proceeds may be used only for the purposes stated in the tax.

Kelly Salt is a well-experienced attorney in the local government arena. She worked for the San Diego City Attorney's Office for 16 years before going into private practice, largely devoted to public agency finance. She was a contributor to the *League of California Cities Proposition 218 Implementation Guide* as well to both the California Special Districts Association's and Association of California Water Agencies' *Proposition 26 Implementation Guide*.

PROPOSITION 218

defines "assessment" as any levy or charge upon real property by an agency for a "special benefit" conferred upon the real property.

Legal Considerations for Levying Special Assessments
By Kelly J. Salt, Best Best & Krieger LLP

Special assessments are levied pursuant to statutory authority or, in some instances, charter city authority. Proposition 218, however, established new procedural requirements for levying special assessments and placed substantive limitations on the use of the revenues collected from special assessments, as well as on the amount of the special assessment that may be imposed on a parcel. Public agencies considering imposing any new or increasing any existing special assessments to fund public improvements and services should become familiar with the legal framework and current legal environment governing them.

Proposition 218 defines "assessment" as any levy or charge upon real property by an agency for a "special benefit" conferred upon the real property. "Special benefit" is defined as a particular and distinct benefit over and above "general benefits" conferred on real property located in the special assessment district or to the public at large. General enhancement of property value does not constitute "special benefit." Of significance is the requirement that a property must be specially benefitted by the improvements or services for which the special assessment is imposed and that a property may not be assessed for general benefits provided to the public at large.

Before imposing a special assessment, Proposition 218 requires that a public agency first identify all parcels that will receive a special benefit from the proposed improvements or services for which the special assessment is proposed to be levied. Second, the special assessments must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the state of California. The assessment engineer's report must:

- quantify the proportionate special benefit derived by each identified parcel subject to the proposed special assessment in relationship to the entirety of the capital cost of the public improvements or services being provided;
- calculate the amount of the special assessment to be imposed on each identified parcel; and
- separate and quantify the special and general benefits conferred on each parcel.

No special assessment may be imposed that exceeds the reasonable cost of the proportional special benefit that is conferred on a parcel.

The special benefit and proportionality requirements are perhaps best understood as being interrelated, not separate, requirements. The proportionality requirement ensures that the aggregate special assessment imposed on all parcels is distributed among all assessed parcels in proportion to the special benefits conferred on each parcel. The special benefit requirement is thus part and parcel of the proportionality requirement.

Prior to the adoption of Proposition 218, the courts gave great deference to the legislative bodies of public agencies in determining what lands are benefited by proposed improvements and services funded with special assessments. The standard of review was that

> *[a] special assessment finally confirmed by a local legislative body in accordance with applicable law will not be set aside by the courts 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 as finally confirmed is not proportional to the benefits to be bestowed on the properties to be assessed or that no benefits will accrue to such properties.*

Under this standard of review, the special assessments were presumed to be valid and the burden was on the person challenging the special assessment to demonstrate that the record before the legislative body clearly did not demonstrate special benefit or proportionality.

In Silicon Valley Taxpayers Association v. Santa Clara Open Space Authority, the Supreme Court acknowledged that Proposition 218 targeted this deferential standard of review. Because special assessment law prior to Proposition 218 was primarily statutory, the court reasoned that the constitutional separation of powers doctrine served as the foundation for a more deferential standard of review by the courts. With the adoption of Proposition 218, the validity of a special assessment became a constitutional question. A local agency acting in a legislative capacity is prohibited from exercising its discretion in a way that violates the constitution or undermines its effect, and a court is charged with the obligation of enforcing the provisions of the constitution in order to carry out its purposes.

More specifically, Proposition 218 shifted the burden of demonstrating special benefit and proportionality in any legal action contesting the validity of a special assessment to the agency establishing the special assessment. The court recognized, however, that the provisions of Proposition 218 do not specify the scope of the burden now placed on public agencies.

Consequently, the court reasoned that

> *because Proposition 218's underlying purpose was to limit government's power to exact revenue and to curtail the deference that had been traditionally accorded legislative enactments on fees, assessments, and charges, a more rigorous standard of review is warranted. We construe article XIII D, section 4, subdivision (f) — the "burden . . . to demonstrate" provision — liberally in light of the proposition's other provisions, and conclude that courts should exercise their independent judgment in reviewing local agency decisions that have determined whether benefits are special and whether assessments are proportional to special benefits within the meaning of Proposition 218.*

Accordingly, the court concluded that courts must exercise their independent judgment in reviewing whether special assessments violate Proposition 218. Numerous cases challenging public agencies' special assessments followed after the Silicon Valley decision. In each case the court applied its independent judgment and found that the public agency failed to meet its burden of demonstrating compliance with the special benefit and proportionality requirements of Proposition 218.

As a consequence of these court decisions, a public agency that is considering the formation of a special assessment district must carefully identify with sufficient specificity: (1) the specific services or improvements to be funded by the special assessment; (2) the special benefits that properties within the proposed special assessment district will receive from the

services or improvements; (3) an estimate or calculation of the cost of the 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 in relation to the entirety of the cost of the improvements or services. The special benefits must affect the parcels to be assessed 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 assessment engineer's report is the key to measuring and reflecting the special benefits that will accrue to each particular parcel within the special assessment district and ensuring that the proposed special assessments comply with the special benefit and proportionality requirements of Proposition 218.

Given the evolving legal landscape impacting special assessments, a public agency should consult its legal counsel or special counsel for further clarification and compliance with these constitutional provisions and specific statutory provisions governing the agency that may be implicated by the adoption of a special assessment. Additionally, a public agency should work closely with its assessment engineer to provide the most up to date parcel information, and budget and accurate cost information to further ensure compliance.

Please refer to the table entitled "Comparative Table of Taxes, Assessments, Fees, and Charges" at the end of this primer.

NO SPECIAL ASSESSMENT MAY BE IMPOSED

that exceeds the reasonable cost of the proportional special benefit that is conferred on a parcel.

selecting the team for an SFD

A number of parties may be involved in the formation of any new SFD.

As mentioned in the preface, this book is not intended to serve as legal advice nor as a "cookbook" with the recipe for the formation of new SFDs. It is intended solely to provide an introduction and background information for parties interested in the SFD process.

A number of parties may be involved in the formation of any new SFD. The most important individuals in this process are the initiators—typically, community leaders and local agency staff in the city manager or district manager's office, community planning and development, engineering, public works, finance, etc.

External consultants and other professionals may also be needed for the startup of a new SFD, such as:

- *Special Tax Consultant or Assessment Engineer* – This individual or firm may perform an initial feasibility study to help determine the most appropriate mechanism. Depending on the type of SFD, the consultant will then perform the analysis on the many variables and develop a rationale for spreading costs and forming the district as required by law. A Special Tax typically requires a written report that includes background, rationale, and a special tax formula tax formula, or Rate and Method of Apportionment. A Special Assessment typically requires an Engineers Report with benefit descriptions and a logical and defensible Method of Assessment. Generally, a BID consultant fits within this designation.

- *Public Relations Professionals* – Depending on the numerous variables and existing conditions, specialists may be needed to do polling, develop communication materials, orchestrate the outreach and informational meetings, etc. Note that government may only fund research and unbiased informational activities. Any advocacy must be financed by community or business-based groups.

- *Financial Advisor* – A Financial Advisor (FA) may provide expertise on the overall financial plan. An FA will be very involved with the details of performing a bond sale.

- *Underwriter* – If bonds or similar debt instruments will be utilized, an Underwriter may manage the process of the bond sale. An Underwriter, or syndicate of Underwriters, may be selected by a "competitive bid" or "negotiated sale." There are good reasons to select an Underwriter via either one of these processes, depending on the details of the transaction.

- *Underwriter's Counsel* – The Underwriter's Counsel works for the Underwriter to handle any legal issues that may arise in the course of issuing bonds.

- *Attorney or Bond Counsel* – The local agency Attorney, whether a contracted specialist or staff person, is typically involved with the legal structure of forming a new SFD. Should debt be issued, the Bond Counsel manages the legal aspects of the bonds and ultimately writes an opinion on the taxability of

the bonds sold (most such bonds are sold on a tax-exempt basis, resulting in a lower borrowing cost for the local agency and tax free income to the bond purchaser).

Note that the bond process alone requires a plethora of consultants and professionals, including some or all of the following:

- Real estate and land appraisers.
- Trustees and bankers.
- Absorption and economic consultants.
- Disclosure consultants and attorneys.
- Credit rating agency.
- Credit enhancement provider.

Further details may be found in many other materials. See the Additional Resources list for recommended references.

EXTERNAL CONSULTANTS

needed for the start-up of an SFD include:

- Special Tax Consultant or Assessment Engineer.
- Public Relations Professionals.
- Financial Advisor.
- Underwriter.
- Underwriter's Counsel.
- Attorney or Bond Counsel.

A well-managed and orderly process involves various meetings, forms of analysis, and concensus building.

timeline for startup of an sfd

timeline for startup of an SFD

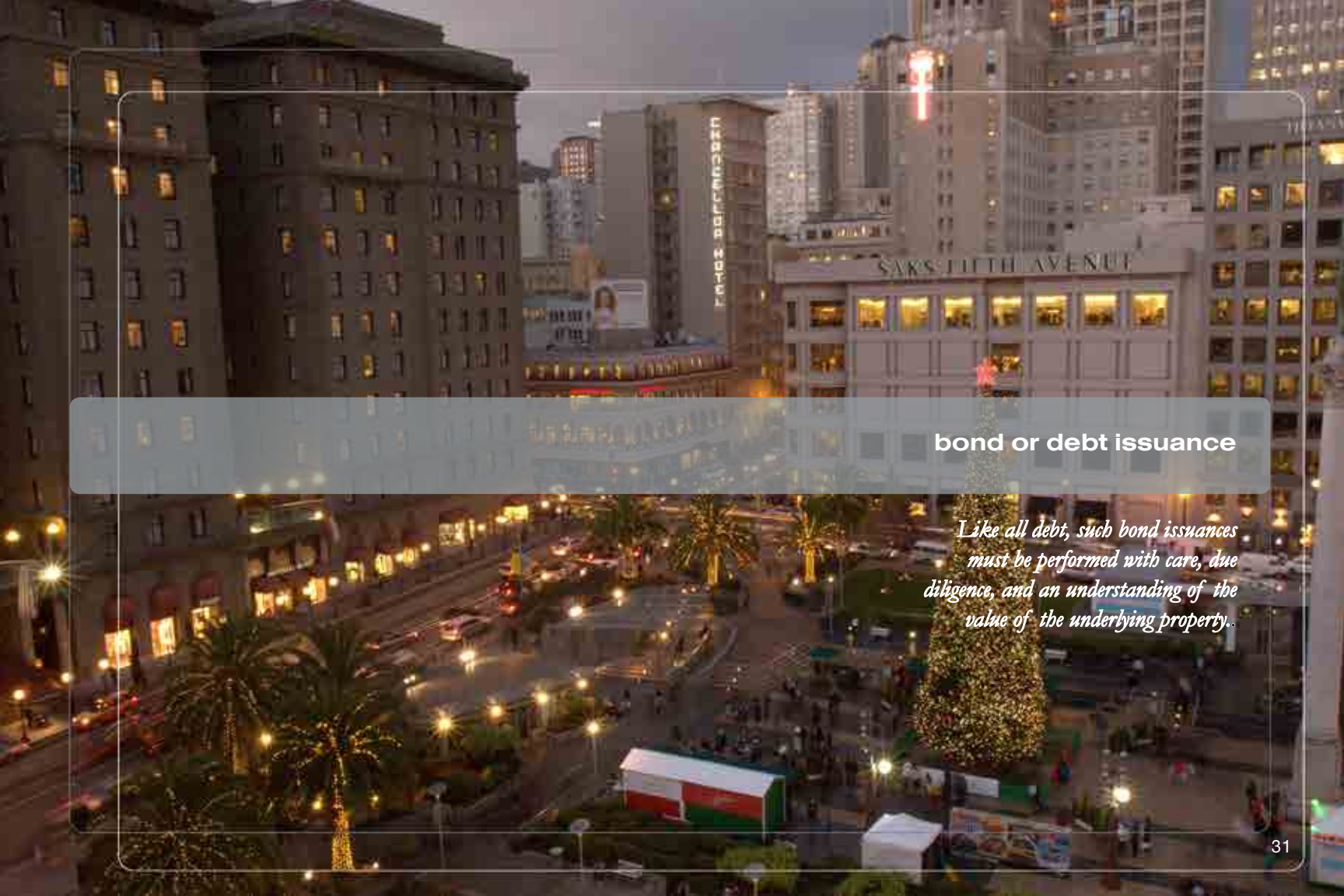
The general timeline for the successful implementation of a new SFD is six to 12 months, but often the process can take more than a year. Bringing all the interested parties into accord can take a very long time, and this part of the process must be taken into consideration. A well-managed and orderly process involves various meetings, forms of analysis, and consensus building.

The steps in the formation process typically include:

1. Feasibility Analysis - Answers the questions regarding the type of SFD mechanism to use, and the financial and political viability of the measure.
2. Initiation by Government Resolution or Landowner or Voter Petition – The "official" start of the process.
3. Initial Report – The official document that will be adopted by the governing board (often known as the Special Tax or Engineers Report).
4. Resolutions and Ordinances – The governing board official documents passed in public forums.
5. Notice of Public Meetings and Hearings – Informs the public of the official process.
6. Ballot Process – The official process of approval by the affected parties (may take many forms).
7. Recordation – If the measure is approved, a legal notice, lien, map, or diagram will be recorded.
8. Issuance of Bonds (if applicable) – If debt is required, funds are raised through the process of selling bonds or similar instruments.
9. Initial Levy of Charges - The charges that finance the SFD are typically placed on and collected by the county property tax billing system, but this may vary.
10. Annual Administration Process – Once an SFD is in place, administrative process is required to address a multitude of duties and to ensure that charges are appropriately calculated, levied, and collected on an annual basis.

FORMATION STEPS

1. *Feasibility Analysis*
2. *Initiation by Government Resolution or Landowner/Voter Petition*
3. *Initial Report*
4. *Resolutions and Ordinances*
5. *Notice of Public Meetings and Hearings*
6. *Ballot Process*
7. *Recordation*
8. *Issuance of Bonds (if applicable)*
9. *Initial Levy of Charges*
10. *Annual Administration Process*



bond or debt issuance

Like all debt, such bond issuances must be performed with care, due diligence, and an understanding of the value of the underlying property..

An inherent timing mismatch may occur between the expenditures and the sources of revenue for SFDs. For example, an SFD that is funding general infrastructure requires a large infusion of capital at the outset to pay for streets, water, and sewer systems. The cash needed in the early years of the SFD exceed the amount of initial revenues. The bond market can provide these types of long-term funds, typically with the added benefit of tax-free (i.e., lower) interest costs. Alternatively, some banks or state agencies (such as the iBank or state revolving fund) can also provide such financing at comparable terms.

The concept of issuing such type of bonded indebtedness is simple. The local agency sells bonds to raise the needed capital, and it pledges all or a portion of the SFD revenue to pay the interest and principal payments. An underwriter or syndicate of underwriters will buy the bonds from the agency and then resell them to investors. These investors might be mutual funds or individual investors who appreciate the tax-exempt (usually) interest paid.

The time period for payback is typically 30 years, but can range from 10 to 40 years. To be cost effective, bond issues should be at least $2 million; often, they are in the tens of millions.

Like all debt, such bond issuances must be performed with care, due diligence, and an understanding of the value of the underlying property. Realistic projections and analysis of the revenue streams must be undertaken to ensure the viability of the overall funding scheme. Although these bonds are issued by the local agency, they are typically "non-recourse," and therefore not an obligation of the agency or its general fund should a default occur. This does not, however, release the agency from appropriate diligence and oversight in the process.

California state law generally prohibits local governments from entering into any indebtedness or liability exceeding the revenues of any one year. However, indebtedness may be allowed by an appropriate vote of the people or by certain exceptions to the general prohibition. One of these exceptions, the so-called Special Fund exception, includes special taxes, fees, and assessments. Therefore, no additional public approval process is needed to issue bonds if the SFD is appropriately formed.

NEW ISSUE – FULL BOOK- ENTRY **NOT RATED**

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Series A Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although for the purpose of computing the alternative minimum tax imposed on certain corporations, such interest is taken into account in determining certain income and earnings. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. Interest on the Series A-T Bonds is included in gross income for federal income tax purposes. See "TAX MATTERS" herein.

$6,055,000 CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY 2013 Revenue Bonds, Series A (Pleasant Hill Downtown Community Facilities District No. 1)	$65,000 CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY 2013 Taxable Revenue Bonds, Series A-T (Pleasant Hill Downtown Community Facilities District No. 1)
Dated: Date of Delivery Due:	September 1, as shown below

The $6,055,000 2013 Revenue Bonds, Series A (Pleasant Hill Downtown Community Facilities District No. 1) (the "Series A Bonds") and the $65,000 2013 Taxable Revenue Bonds, Series A-T (Pleasant Hill Downtown Community Facilities District No. 1) (the "Series A-T Bonds" and together with the Series A Bonds, the "Bonds") are being issued by the California Statewide Communities Development Authority (the "Authority") primarily to assist the City of Pleasant Hill, California (the "City") in the refinancing of certain improvements of benefit to property within its Downtown Community Facilities District No. 1 (the "District"). All of the proceedings of the City to form the District and to levy the special taxes (described herein) for the construction and acquisition of the authoried improvements have been undertaken pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, being California Government Code Section 53311, et seq. (the "Act").

The City has previously issued for the District its Refunding Special Tax Bonds, Subordinated Series 2002 (the "2002 City Bonds", as described herein) to refinance notes issued in 1998 for the construction and acquisition of certain public improvements of benefit to property in the District. The City desires to refinance the 2002 City Bonds in order to achieve debt service savings and has called the 2002 City Bonds for payment prior to their scheduled maturity. In lieu of retiring and cancelling the 2002 City Bonds on the call date, the City will concurrently with the issuance of the Bonds purchase the 2002 City Bonds in lieu of redemption, and proceeds of the Bonds will be used by the Authority to purchase the 2002 City Bonds. The City also has a series of special tax bonds issued for the District outstanding (the "Senior 1998A Bonds", as described herein), which are not being refunded and are secured on a senior basis to the 2002 City Bonds, as described herein.

The Bonds are special obligations of the Authority. The Bonds are payable solely from Revenues of the Authority pledged under the Indenture of Trust dated February 1, 2013 (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), consisting primarily of payments received by the Authority from the City as payment on the 2002 City Bonds, which payments are secured by liens of unpaid special taxes authorized under the Act as well as certain redevelopment tax increment, as more fully described herein. Installments of principal and interest sufficient to meet annual Senior 1998A Bonds and 2002 City Bonds debt service are eligible to be included on the regular county tax bills sent to owners of property against which there are unpaid special taxes. These annual special taxes, after payment of the Senior 1998A Bonds, are to be transferred to the Trustee to be used to pay debt service on the Bonds as it becomes due, provided however the 2002 City Bonds are also secured by a pledge of Net Tax Increments (described herein) received by the successor to the Pleasant Hill Redevelopment Agency and derived from real property taxes from property within the Former Agency's "Downtown Project" (of which the District is a component, all as described herein) as described herein and Special Taxes will only be levied to the extent Net Tax Increment is insufficient to meet 2002 City Bonds debt service. See "SECURITY FOR THE BONDS." Scheduled payments under the 2002 City Bonds are calculated to be sufficient to permit the Authority to pay the principal of, premium, if any and interest on the Bonds when due.

The Bonds are being issued as fully registered bonds, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"), and will be available to ultimate purchasers in the denomination of $5,000 or any integral multiple thereof, under the book-entry system maintained by DTC. Interest is payable on September 1, 2013, and semiannually thereafter on March 1 and September 1 each year. See "APPENDIX F - The Book-Entry System" herein.

The Bonds are subject to redemption prior to maturity as described herein. See "THE BONDS - Redemption" herein.

Unpaid special taxes do not constitute a personal indebtedness of the owners of the parcels within the District and the owners have made no commitment to pay the principal of or interest on the Bonds. In the event of delinquency, proceedings may be conducted only against the real property securing the delinquent special tax. Thus, the value of the real property within the District is a critical factor in determining the investment quality of the Bonds. The unpaid special taxes are not required to be paid upon sale of property within the District. There is no assurance the owners shall be able to pay the special taxes or that they shall pay such installments even though financially able to do so.

A Reserve Account has been established for the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Reserve Account."

This cover page contains certain information for general reference only. It is not a summary of this issue. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE AUTHORITY, THE CITY, THE COUNTY OF CONTRA COSTA, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF

OFFICIAL STATEMENT or "O/S"

An O/S contains all of the bond information, as well as extensive background information including the description of any underlying SFD.

Attempting to understand the nuances behind the discussion of special assessments and special taxes involves an awareness of three major initiatives that affect the California landscape: Propositions 13, 218, and 26.

the political considerations

the political considerations

"Victorious warriors win first and then go to war, while defeated warriors go to war first and then seek to win." – Sun Tzu (400 BC)

With the passage of Proposition 218, public outreach, community input, and a subsequent campaign have become absolutely necessary to ensure the passage of any measure; in fact, an approval process is required for any new or increased special assessment or special tax. Thus, the development of any SFD calls for a vibrant public policy component, one that involves affected property owners and local voters.

Planning for an SFD often requires a long lead time to ensure success. Ultimately, a timeline with important milestones and clear responsibility for achieving the tasks is required. As well, strong leadership is needed throughout the process.

This monumental topic is the subject of other books and resources, so only a summary of the concepts is provided here. In general, however, the following questions must be asked:

- How strong is the desire or need for the project or service?
- What is the overall ability and desire to pay the proposed assessment or tax?
- Which is more appropriate - an assessment or tax?
- What are the commensurate approval thresholds and processes required?
- How long will the process take, and how will other events affect the timeline?
- How much outreach is required?
- What is the chance of success?

These key elements represent the essence of the proposed SFD and must be addressed to achieve success.

It is important to note that local governments may not advocate for a new measure; however, they should offer clear information about the measure, its commensurate costs and benefits, and the overall process. If any advocacy is needed, and it usually is, private individuals or non-profit groups should be involved.

Included below is a list of 10 general key elements (provided by the League of California Cities) applicable for any successful revenue measure, which should be considered when approaching an SFD. Note that some of the language about a "ballot measure" is synonymous with a "proposed SFD initiative."

10 KEY ELEMENTS OF A SUCCESSFUL REVENUE MEASURE *

1. Develop a ballot measure responsive to public concerns; gather information about the public's concerns through polling.

2. Develop a strong expenditure plan for the money that will be generated by the proposed measure. Keep the proposal simple and include accountability measures such as sunset clauses and yearly audits reported to the public [Author's note – these are often required].

3. Draft factual ballot language and persuasive ballot arguments signed by community "white hat" organizations.

4. Gain unanimous support for the measure on the council – if the governing body is not united, the public will wonder if the measure is really a good proposal.

5. Pursue a strong grass roots campaign to gain every endorsement that can be mustered from the community and, in turn, educate the community about the importance of the measure.

6. Visit the editorial board of the local newspaper(s) to explain the need for the measure and to seek coverage.

7. Create a coalition of wide, diverse interests that represent the entire community.

8. Contact and speak to as many businesses and organizations as possible.

9. Engage in a strong letters-to-the-editor program and solicit placement of editorial (op-ed) features authorized by high-profile members of your coalition.

10. Create interesting and concise informational materials that emphasize key messages, address community concerns and clearly outline the benefits to the community.

Note: Because of restrictions on the use of public resources for advocacy efforts, achieving a number of these elements requires leadership and involvement from the private sector.

* Source: League of California Cities. Securing Voter Approval of Local Revenue Measures. 1999 Edition.

For additional perspective, Evette Davis of Berg Davis Public Affairs offers this advice:

Using Public Relations to Gain Support for Special Financing Districts
By Evette Davis, Berg Davis Public Affairs

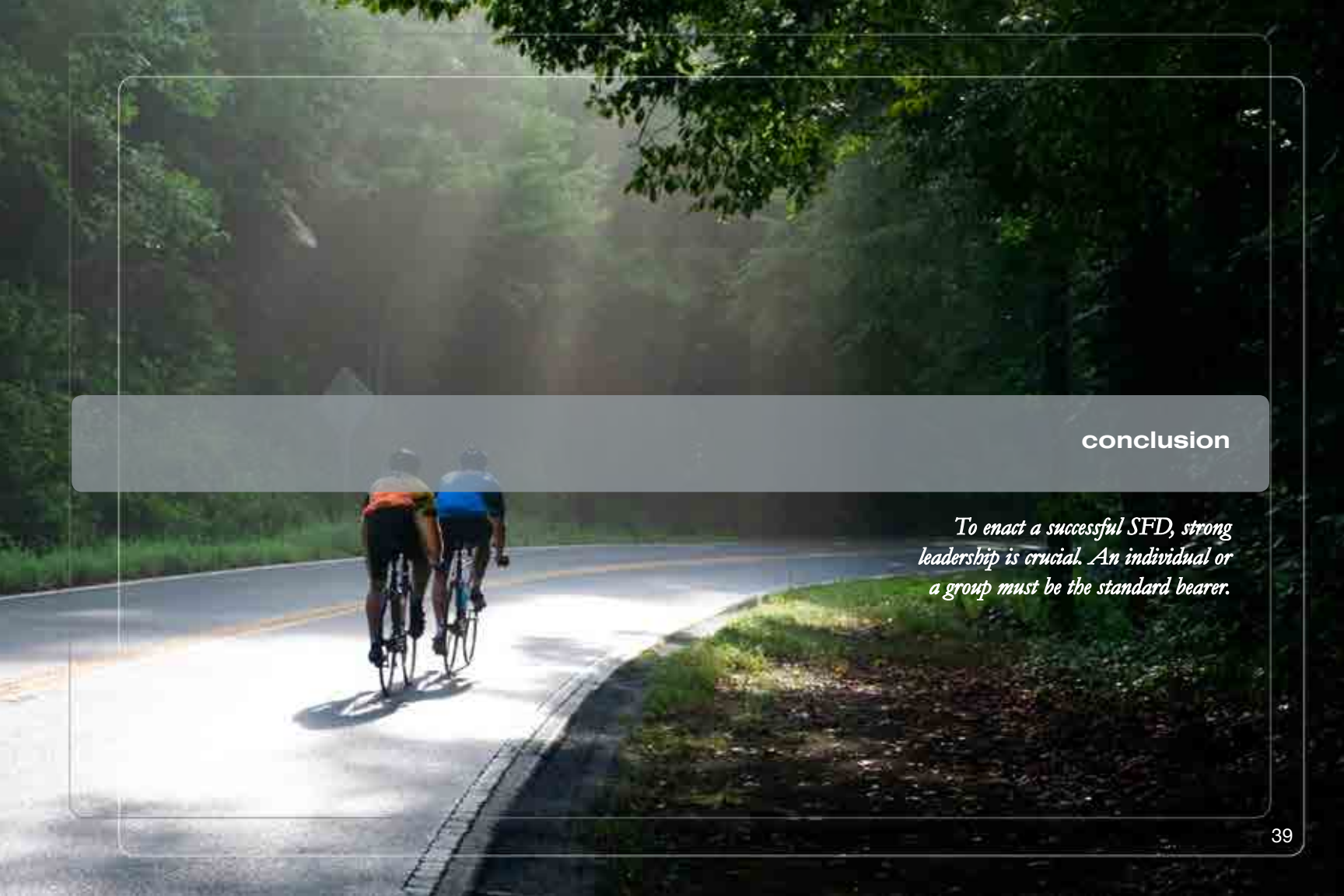
In today's political climate, the use of Public Relations professionals in conjunction with the formation of Special Tax Assessment or Special Tax Financing Districts should be strongly considered by public officials. The subject of new "taxes" can be a hot button issue in many communities. Additionally, there are often well-established local anti-tax groups that act as self-appointed fiscal watchdogs, monitoring city and county budgets. If these kinds of groups and situations are not planned for in advance, officials can quickly find themselves in a defensive position moments after a new district has been proposed.

The key to the success of a new financing district is to treat the project as if it were a campaign – whether the measure is headed for the ballot box or not. While it may seem overtly political to be so calculating, the fact is that many agencies have quickly found themselves in retreat over new financing schemes simply because they did not anticipate any opposition. It is important for agencies to know whether a measure can even survive politically before they go to the trouble and expense to introduce it; being prepared for negative comments or even full-blown opposition in advance of introducing a measure to the public is the key to success.

Public Relations allows cities to use time-tested tools such as polling and focus groups to learn in advance about what kinds of districts communities will accept, what kinds of messages sway the public to be supportive and what kinds of messages can turn a voter off. These key messages can be used later to develop a comprehensive communications campaign to support a Special Financing District. Most successful opposition campaigns work because they sow the seeds of misinformation and doubt about the costs and benefits of a new tax or assessment. The key to succeeding in this kind of climate is to mount a very aggressive information campaign in advance of introducing a measure. Key opinion leaders should be engaged ahead of time to give their feedback and approval. Once cities have gained the acceptance of the most important decision makers, then the measure can be introduced with confidence.

It may be necessary to educate the public in advance of introducing a new Financing District. Public relations professionals can help public officials to develop education campaigns that draw on the key messages to help educate members of the community and voters in advance of introducing a measure. Once a measure has been proposed, cities can continue to support the initiative through the use of community relations to build partnerships with community groups to endorse the District and other tools such as direct mail.

Should a measure require the approval of voters, a public relations firm in conjunction with a good campaign consultant can help develop the strategy and messages necessary to win the ballot or voting process.



conclusion

To enact a successful SFD, strong leadership is crucial. An individual or a group must be the standard bearer.

conclusion

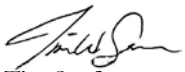
Over the years, many SFDs have come to fruition, and some have failed. A level of uncertainty exists throughout the process. The political winds blow in many directions, unpredictable events occur, and timelines can be extended. If there is a common thread of success, it revolves around leadership of the initiative, good planning, and the strength of the need or desire.

To enact a successful SFD, strong leadership is crucial. An individual or a group must be the standard bearer. From there, the essential steps are as follows:

- Gather input.
- Define the need.
- Select the appropriate SFD mechanism.
- Craft a simple message.
- Execute the tasks over an appropriate timeline.

This book has attempted to describe the types of SFDs available in California, and to illuminate the facets of these mechanisms. The goal is to provide the basics for each type of tool, so that the reader is better informed to take the essential steps forward.

I hope that this book has achieved the goal, and I invite your input and questions.



Tim Seufert
San Francisco

Contact information:

Tim Seufert
Email: tseufert@nbsgov.com
Phone: 800.434.8349

NBS corporate office mailing address:

32605 Temecula Parkway
Suite 100
Temecula, CA 92592

NBS San Francisco office mailing address:

870 Market Street
Suite 1223
San Francisco, CA 94102

American Society of Civil Engineers. *Report Card for America's Infrastructure.* 2013 Report Date.

Bland, Robert L. *A Revenue Guide for Local Government. International City/County Management Association.* 2005 (second edition).

California Debt and Investment Advisory Commission. *Guidelines for Mello-Roos Financing.* October 1991.

California Debt and Investment Advisory Commission. *California Debt Issuance Primer.* April 1998.

California Debt and Investment Advisory Commission. State and Local Bond and Tax Ballot Measures – *Results of the November 2004 General Election. February 2005.*

California State Legislature – Senate Local Government Committee. *Parks, Progress and Public Policy.* October 2001.

California State Legislature – Senate Local Government Committee. *What's So Special about Special Districts? A Citizen's Guide to Special Districts in California.* February 2002 (third edition).

California State Legislature – Senate Local Government Committee. *It's Time to Draw the Line: A Citizen's Guide to LAFCO's (California's Local Agency Formation Commissions).* May 2003 (second edition).

California State Legislature – Senate Local Government Committee. *Assessing the Benefits of Benefit Assessments: A Citizen's Guide to Benefit Assessments in California.* December 2004 (second edition).

Field, Donald, Greg Harrington, and John Hartenstein. *The XYZ's of California School District Debt Financing (Third Edition).* Orrick Herrington & Sutcliffe, 2005.

Horler, Virginia L. *Guide to Public Debt Financing in California (Revised Edition).* Packard Press, September 1987.

Institute for Local Government. *Funding Open Space Acquisition Programs: A Guide for Local Agencies in California.* 2005 Edition.

International City/County Management Association. *Introduction to Infrastructure Financing.* March 1999.

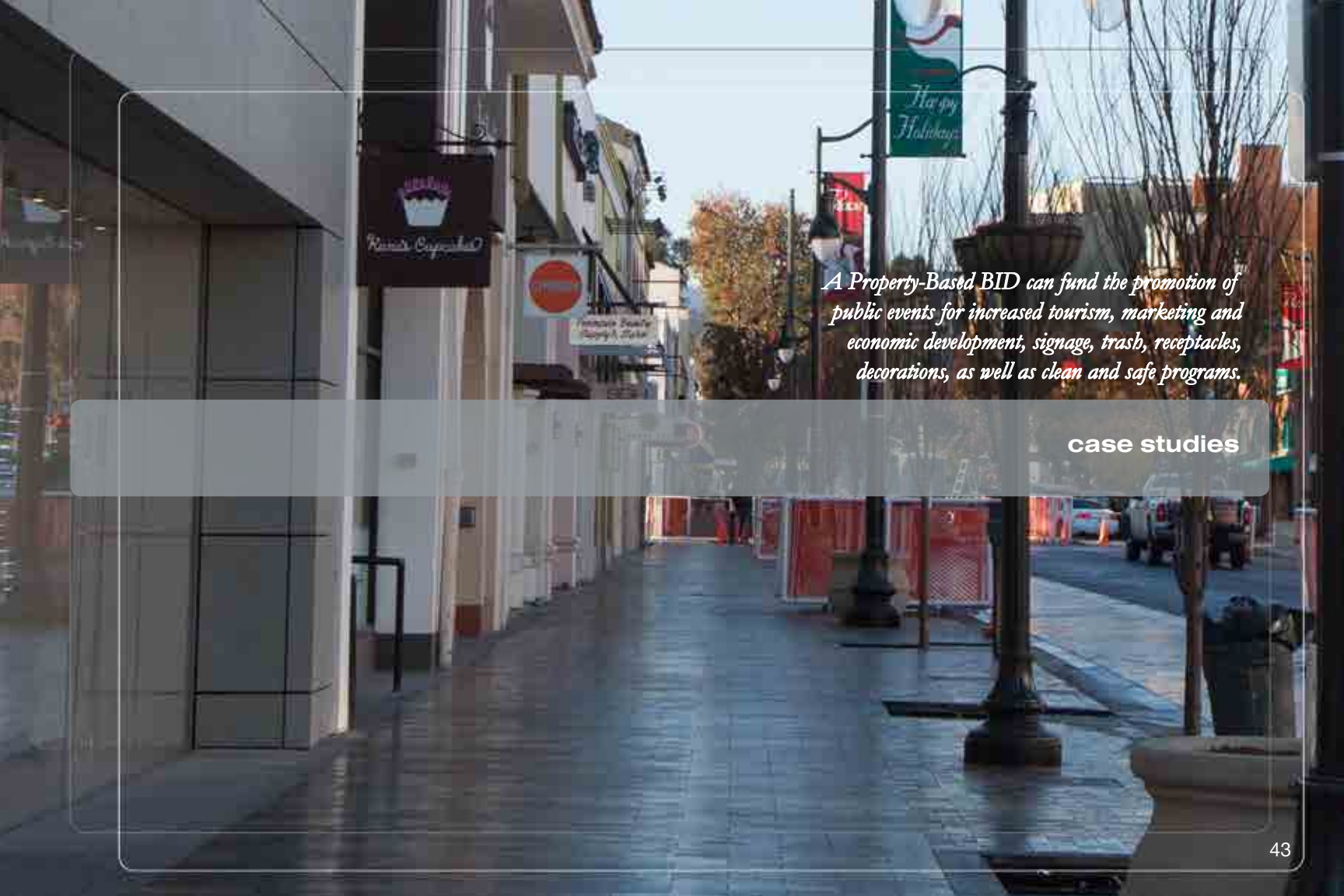
League of California Cities. *Securing Voter Approval of Local Revenue Measures.* 1999 Edition.

League of California Cities. *Proposition 218 Guide.* 2007 Edition.

League of California Cities. *Municipal Revenue Sources Handbook.* 2008 Edition.

Porter, Douglas et al. Special Districts – *A Useful Technique for Financing Infrastructure.* The Urban Land Institute, 1992 (second edition).

Tramutola, Larry. Sidewalk Strategies – *Seven Winning Steps for Candidates, Causes and Communities.* TurnKey Press, 2004 (second edition).



A Property-Based BID can fund the promotion of public events for increased tourism, marketing and economic development, signage, trash, receptacles, decorations, as well as clean and safe programs.

case studies

The following are three mini-case studies involving actual situations; these are used to demonstrate some of the nuances required when reviewing Special Financing District options:

1. Need – additional parking in downtown area

The installation of additional parking spaces was needed in a compact and lively downtown area of a city to accommodate the robust business environment. We were called upon by the City to investigate a number of SFD options, none of which would have been viable without the involvement and buy-in of the business and property owners.

Some of the more obvious choices were:
• Parking Districts Laws of 1943 and 1951.
• Property and Business Improvement District Law of 1994 (PBID).
• Community Facilities District (Mello-Roos) special tax.

The Special Tax would require a two-thirds majority of voters, but would be the most flexible in achieving many goals. The Parking District Laws have positive attributes, but have somewhat fallen out of favor. The PBID assessment can fund both capital (in 2004, capital funding was added to the statute) and services, and has a mechanism for private involvement in district management.

The usual political pressures and differing goals from various constituencies were evident. It was important to gather input from the property owners, and we discovered some additional interests beyond parking. Ultimately, the PBID mechanism was favored over the others.

2. Need – funding for street trees

In many communities, we have seen the desire to increase the planting and maintenance for community trees. In many cases, a group will approach the City Manager with the idea of planting more trees throughout the City area. Such a project involves a large initial expenditure, followed by an ongoing level stream of maintenance and replacement costs. This has varying levels of impact throughout the City. The City can implement either a special assessment or tax, but each has pros and cons.

The options include:
• Landscape & Lighting District assessment.
• Community Facilities District special tax.
• Parcel tax.

The Tax measures require a two-thirds majority of voters, but have the most flexibility. An assessment would work, but it could be difficult to demonstrate the special benefit to justify an assessment. The assessment would require a mailed protest ballot process, and majority approval of affected property owners based on the ballots returned weighted by assessment amounts.

For each community, an assessment is needed of the baseline level of tree planting and maintenance, the community's unique environment and customs, before determining the best mechanism.

3. Need – sewer infrastructure

We worked with a Community Services District with a large geographic area that was supported by a failing septic system. The District General Manager was required to develop options for funding the collection system and an expansion of the sewer system that serves the rest of the area. The project involved a very large initial capital expenditure, followed by ongoing normal operating costs.

The options for acquiring the capital included:
- 1913/1915/1911 Act Assessment Districts.
- Community Facilities District special tax.
- Loan program for property owners.

The maintenance costs should be covered by the sewer rates, or a rate increase or other charge must be considered. Once again, the Special Tax option would require a two-thirds majority of voters, but has some flexibility. The assessment process would be expected to work well, but the special benefit for any public parcels must be taken into consideration as private property owners cannot be asked to pay for the portion of the program that would benefit public property. We determined, due to many of these conditions, that the Special Tax was the best route in one case, and an Assessment District was best in another case, but both cases were within the same Special District's service area.

Category
Special Assessment

Overview
Landscape & Lighting Districts (L&L) can fund the installation and annual maintenance of:

- Landscaping.
- Public lighting.
- Sidewalks, curbs and gutters.
- Park or recreational improvements.

In addition, an L&L may fund the acquisition of land for park, recreational, or open-space purposes. Bonds may be used for capital financing, but this is not common.

Who Can Use Them
Any public agency with the authority to provide such services can start an L&L. Cities are the most frequent user.

Requirements
A formation process is required, including appropriate planning and Assessment Engineering, an Assessment Engineer's Report, a public hearing, and a protest ballot process for affected landowners. A finding of benefit is required.

Underlying Legislation
California Streets and Highways Code, Section 22500 and following, entitled the Landscape and Lighting Act of 1972.

Category
Special Assessment

Overview
Benefit Assessment Districts (BAD) can fund the maintenance and operation costs of:

- Drainage.
- Flood control.
- Street lighting.
- Street maintenance.

In addition, a BAD may fund the costs of installation and improvement of such facilities.

Who Can Use Them
Any public agency with the authority to provide such services can start a BAD. Cities are the most frequent user.

Requirements
A formation process is required, including appropriate planning and Assessment Engineering, an Assessment Engineer's Report, a public hearing, and a protest ballot process for affected landowners. A finding of benefit is required.

Underlying Legislation
California Government Code, Section 54703 et seq., entitled the Benefit Assessment Act of 1982.

Category
Special Assessment

Overview
1913/1915 Act Assessment Districts (1915 Act) can fund items that include the following:

- Public works and infrastructure.
- Utility infrastructure.
- Real property acquisition.
- Payment of existing special assessment liens.

In addition, a 1915 Act may fund certain maintenance and repair costs for installed facilities.

Who Can Use Them
Any public agency with the authority to provide such services can start a 1915 Act.

Requirements
A formation process is required, including appropriate planning and Assessment Engineering, an Assessment Engineer's Report, a public hearing, and a protest ballot process for affected landowners. A finding of benefit is required.

Underlying Legislation
California Streets & Highways Code, Section 10000 et seq., entitled the Municipal Improvement Act of 1913 and Section 8500 et seq., entitled the Improvement Bond Act of 1915.

Category
Special Assessment

Overview
Open Space Maintenance Districts (OSMD) can fund the costs of improving and maintaining open space areas, including:

- Improving and protecting open spaces.
- Planting and maintaining trees and vegetation.
- Removal of aggressive and noxious plants.
- Regulation as necessary for preservation.

Who Can Use Them
Any public agency with the authority to provide such services can start an OSMD.

Requirements
A formation process is required, including appropriate planning and Assessment Engineering, a Report, a public hearing, and a protest ballot process for affected landowners. A finding of benefit is required.

Underlying Legislation
California Government Code, Section 50575 et seq., entitled the Open Space Maintenance Act.

fact sheet - community facilities districts

Category
Special Tax

Overview
Community Facilities Districts (CFD), sometimes known as "Mello-Roos Districts" (Senator Henry Mello and Assemblyman Mike Roos were the original authors of the legislation), can fund certain public services on an annual basis as well as large infrastructure capital needs.

The services that may be funded include:

- Police protection services.
- Fire protection and suppression services, and ambulance and paramedic services.
- Recreation program services, library services, and maintenance services for elementary and secondary schoolsites and structures, and the operation and maintenance of museums and cultural facilities.
- Maintenance and lighting of parks, parkways, streets, roads and open space.
- Flood and storm protection services.
- Services with respect to removal or remedial action for the cleanup of any hazardous substance.
- Maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the local agency or by another local agency.

Capital projects with a useful life of at least five years that may be funded include:

- Park, recreation, and open space facilities.
- School facilities.
- Libraries.
- Child care facilities.
- Infrastructure needs.

Who Can Use Them
Any public agency with the authority to provide the types of services and facilities may form a CFD. Cities, counties, school districts, and special districts are common users of this tool.

Requirements
A formation process is required, including appropriate financial analysis and planning. A Special Tax Consultant will develop a Special Tax Formula and Report. There will be public hearings and either a mailed ballot process to property owners or a regular election if there are 12 or more voters in the district.

Underlying Legislation
California Government Code, Section 53311 et seq., entitled the Mello-Roos Community Facilities Act of 1982.

Category
Special Assessment

Overview
Property and Business Improvement Districts, known as PBIDs, can fund improvement items, including:
• Parking facilities.
• Benches, kiosks, shelters, and signs.
• Public restrooms, decorations, parks, and fountains.
• Street, sidewalk, and plaza improvements.

In addition, a PBID may fund activities that include:
• Promotion of public events and tourism.
• Furnishing of music.
• Security, graffiti removal and other cleaning services.
• Other services that benefit businesses and real property.

Who Can Use Them
A city or county may form a PBID.

Requirements
A formation process is required, including appropriate planning and financial analysis, a Management Plan, and a public hearing, as well as a petition and a protest ballot process. A finding of benefit is required.

Underlying Legislation
California Streets & Highways Code, Section 36000 et seq., entitled the Property and Business Improvement District Law of 1994.

Note that many charter cities have created their own legislation that mirrors the PBID in most aspects. The City and County of San Francisco utilizes the friendly-sounding Community Benefits District (CBD) mechanism.

Category
N/A

Overview
SB 628 (enacted in 2014) created essentially a new governmental entity which can finance a wide range of improvements, locally and regionally. This includes roads, water/sewer treatment, flood control, transit facilities, libraries and parks. Unlike the old Redevelopment Agencies (RDA), there are no Housing Set–Aside or affordable housing obligations but the option to fund low and moderate income housing remains. An EIFD may not use eminent domain to acquire property, nor may it buy and sell property.

An EIFD has the power to issue bonds via the use of Tax Increment Financing (TIF), as well as enact fees, special assessments or taxes, as allowed or by approval of the voters or property owners. The primary revenue tools, and the required approval thresholds, are summarized below:

- TIF/Bonds: 55% voter approval (or landowner if less than 12 registered voters)
- Community Facilities District/CFD: 2/3 approval required by voters (or possibly landowners if no registered voters)
- Assessment Districts: By majority protest ballot procedure, per Proposition 218
- User Fees and Development Impact Fees: By administrative approval

A number of general fees can be enacted in the same manner as currently provided by any local agency, under guidelines from Proposition 218 and 26.

Who Can Use Them
An EIFD can be formed by a city or county, and other special districts may voluntarily join the EIFD, with the notable exception of school districts who may never participate in an EIFD.

Requirements
No vote is required to initially form the EIFD, but as mentioned above, a 55% vote is required for bond issuance.

Underlying Legislation
California Government Code, Section 53398.50 and following, entitled Enhanced Infrastructure Financing District.

comparative table of taxes, assessments, fees, and charges

Category	Examples		Benefit Criteria	Approval Threshold	Act of Payment
Special Tax (including Special Property Tax)	Parcel Tax for Fire Suppression	Special Purpose Tax for Transportation	Not Required	Two-thirds (Voters[2])	Involuntary [1]
Special Assessment	Landscape & Lighting District for Park maintenance	1913/1915 Act Assessment District for Streets, Sewer, Water Infrastructure	Special [3]	Majority	Involuntary
General Tax	Basic Property Tax	Sales Tax	Not Required	Majority (Voters)	Involuntary [1]
Fees and Charges	Development Fee	Park Entrance Fee	Not Required [5]	Governing Body (or Voters)	Voluntary
Property-related Fees and Charges[4]	Fire Flow Charge	Unmetered Water Charge	Not Required [5]	Majority or two-thirds	Involuntary

Notes:
(1) Most general and special taxes typically must be paid as part of regular financial transactions, and are therefore categorized as "involuntary." However, it should be noted that a Sales Tax might be considered "voluntary" in that purchase of non-food items is not mandatory.
(2) Community Facilities Districts have a unique approval process involving property owners in situations of an "uninhabited" area, defined as less than 12 registered voters.
(3) Any general benefit associated with a Benefit Assessment must be paid for by other funding sources, as only special benefit may be assessed to properties.
(4) Fees and Charges are listed here for the purposes of illustration and comparison, but are not a subject matter of this book. Note that Proposition 218 categorically does not restrict fees for electricity, gas, and those imposed as a condition of development. Furthermore, the discussion of Property Related Fees and Charges and their relationship to Proposition 218 is lengthy, and continues to be debated in the public finance "court of opinion" as well as by the legal court system.
(5) Fees may not exceed the cost of the program or service provided, and there are legal limits on the distribution of fee obligations among those who pay them as well. Note passage of Proposition 26 in November 2010 causes some fees or charges to be labeled as "taxes" subject to voter approval. This is not the focus of this book, and left to other publications.

The focus of this book is on SFDs, which are represented by the first two categories in the table; the categories in gray are for comparative purposes.

Note that a General Obligation bond, which increases the ad valorem property tax rate, must be approved by a two-thirds majority of the registered voters voting in the election.

ABOUT THE AUTHOR

Tim Seufert is Managing Director of NBS, and works with many local public agencies in California. NBS is a private and independent firm that provides consulting and services to local government agencies across California, as well as outside the Golden State. Tim has been in the world of finance for well over 25 years. He spent a decade in the corporate Fortune 1000 private sector world, and over 15 years in the local government public finance arena prior to writing this book. He has addressed various groups on financing topics including the League of California Cities, the California Special District Association, the California Municipal Treasurers Association, and the California Society of Municipal Finance Officers. He has a Bachelor of Science degree in Finance from the University of Southern California and a Master of Public Administration from San Francisco State University. When he is not working, Tim can be found roaming in San Francisco with his wife, chasing around their two young sons or perhaps skiing and hiking in the mountains.

CREDITS

This book would not have been possible without the advice, insight, and counsel of many knowledgeable people. I would like to note the following individuals for their contributions:

Geralin Reyes, NBS
Mike Rentner, NBS
Dave Ketcham, NBS
Pablo Perez, NBS
Michael Coleman, Coleman Advisory Services
Michael Colantuono, Colantuono & Levin, PC
Evette Davis, Berg Davis Public Affairs
Thomas Fil, City of Belmont
Pauline Marx, City and County of San Francisco
Kelly Salt, Best, Best & Krieger

Revised and reprinted 2015