



**WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT**  
**MAINTENANCE AND RECREATION ASSESSMENT DISTRICT**

**ENGINEER'S REPORT**  
**FISCAL YEAR 2012-13**

MAY 2012

PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972 AND  
ARTICLE XIII D OF THE CALIFORNIA CONSTITUTION

ENGINEER OF WORK:  
SCI CONSULTING GROUP  
4745 MANGELS BOULEVARD  
FAIRFIELD, CALIFORNIA 94534  
PHONE 707.430.4300  
FAX 707.430.4319  
[www.sci-cg.com](http://www.sci-cg.com)

## **WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT**

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SCI Consulting Group  
Lead Assessment Engineer, John Bliss, M.Eng, P.E.

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## INTRODUCTION

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### OVERVIEW

In 1994, the West Contra Costa Unified School District, (the "District"), originally proposed the formation of an assessment district ("the West Contra Costa Unified School District Maintenance and Recreation Assessment District" or the "Assessment District") to finance the maintenance and improvement of school grounds, playing fields, and public recreational facilities of the District (the "Improvements"). This proposed assessment formation was conducted pursuant to the majority protest requirements of the Landscaping and Lighting Act of 1972 (the "Act"). Under the Act, each property owner within the District received a notice of the proposed assessment by mail and was provided with a 45 day time period in which to submit a written protest for the proposed assessment district. Since a majority protest was not received by the end of this period, the District board took action to approve the levy of the assessments.

In response to new balloting requirements proposed by Proposition 218, the District conducted an election in November 1996 on the question of the continuation of the assessment levies. In this election, the final tally was 67.7% of voters in support of continuing the assessments. As a result, the assessments for the West Contra Costa Unified School District Maintenance and Recreation Assessment District can continue to be levied at the rate of \$72.00 per single family home. Any increase in the assessment rate would require approval of property owners in an assessment ballot proceeding as proscribed by Proposition 218.

This Engineer's Report has been prepared to establish the basis for the continuation of the assessments for fiscal year 2012-13

### ASSESSMENT CONTINUATION

In each subsequent year for which the assessments will be levied, the Board must direct the preparation of an Engineer's Report, budgets and proposed assessments for the upcoming fiscal year. After the Engineer's Report is completed, the Board may preliminarily approve the Engineer's Report and proposed assessments and establish the date for a public hearing on the continuation of the assessments. This Report was prepared pursuant to the direction of the Board adopted on April 25, 2012.

The proposed total assessment budget for fiscal year 2012-13 is \$5,578,704. The majority of this levy amount would be used for maintenance of school grounds and public facilities.

Funding is also designated towards utilities, field preservation and maintenance, and graffiti and vandalism abatement. In addition, the proposed capital improvement budget amount is \$600,000. This capital improvement budget has historically been allocated to school sites based on the project priorities specified by school site councils and school staff. These priorities were also part of a Five Year Capital Improvement Plan ("CIP") for the Maintenance and Recreation Assessment District.

If the Board approves this Engineer's Report and the proposed assessments by resolution, a notice of assessment levies must be published in a local paper at least 10 days prior to the date of the public hearing. The resolution preliminarily approving the Engineer's Report and establishing the date for a public hearing is used for this notice.

Following the minimum 10 day time period after publishing the notice, a public hearing is held for the purpose of allowing public testimony about the proposed continuation of the assessments. This hearing is currently scheduled for June 27, 2012. At this hearing, the Board would consider approval of a resolution confirming the assessments for fiscal year 2012-13. If so confirmed and approved, the assessments would be submitted to the County Auditor/Controller for inclusion on the property tax roll for fiscal year 2012-13.

### **PROPOSITION 218**

This assessment was formed prior to the passage of Proposition 218, The Right to Vote on Taxes Act, which was approved by the voters of California on November 6, 1996, and is now Article XIII C and XIII D of the California Constitution. (Proposition 218 provides for benefit assessments to be levied to fund the cost of providing services, improvements, as well as maintenance and operation expenses to a public improvement which benefits the assessed property.) Although this assessment is consistent with Proposition 218, the California judiciary has generally referred to pre-Proposition 218 assessments as "grandfathered assessments" and held them to a lower standard than post Proposition 218 assessments. Moreover, the voter confirmation of the assessment also provides additional support for the historical and grandfathered basis of the assessment.

### **SILICON VALLEY TAXPAYERS ASSOCIATION, INC. v SANTA CLARA COUNTY OPEN SPACE AUTHORITY**

In July of 2008, the California Supreme Court issued its ruling on the Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority ("SVTA vs. SCCOSA"). This ruling is the most current legal guidance clarifying the requirements of

Proposition 218. Several of the most important elements of the ruling included further emphasis that:

- Benefit assessments are for special, not general, benefit
- The services and/or improvements funded by assessments must be clearly defined
- Special benefits are directly received by and provide a direct advantage to property in the assessment district

#### **DAHMS V. DOWNTOWN POMONA PROPERTY**

On June 8, 2009, the 4<sup>th</sup> Court of Appeal amended its original opinion upholding a benefit assessment for property in the downtown area of the City of Pomona. On July 22, 2009, the California Supreme Court denied review. On this date, Dahms became good law and binding precedent for assessments. In Dahms the Court upheld an assessment that was 100% special benefit (i.e. 0% general benefit) on the rationale that the services and improvements funded by the assessments were directly provided to property in the assessment district. The Court also upheld discounts and exemptions from the assessment for certain properties.

#### **BONANDER V. TOWN OF TIBURON**

On December 31, 2009, the 1<sup>st</sup> District Court of Appeal overturned a benefit assessment approved by property owners to pay for placing overhead utility lines underground in an area of the Town of Tiburon. The Court invalidated the assessments on the grounds that the assessments had been apportioned to assessed property based on in part on relative costs within sub-areas of the assessment district instead of proportional special benefits.

#### **BEUTZ V. COUNTY OF RIVERSIDE**

On May 26, 2010 the 4<sup>th</sup> District Court of Appeals issued a decision on the Steven Beutz v. County of Riverside ("Beutz") appeal. This decision overturned an assessment for park maintenance in Wildomar, California, primarily because the general benefits associated with improvements and services was not explicitly calculated, quantified and separated from the special benefits.

#### **COMPLIANCE WITH CURRENT LAW**

This Engineer's Report is consistent with the requirements of Article XIIC and XIID of the California Constitution and with the SVTA decision because the Improvements to be funded are clearly defined; the Improvements are directly available to and will directly

benefit property in the Assessment District; and the Improvements provide a direct advantage to property in the Assessment District that would not be received in absence of the Assessments.

This Engineer's Report is consistent with *Buetz* and *Dahms* because, similar the Improvements will directly benefit property in the Assessment District and the general benefits have been explicitly calculated and quantified and excluded from the Assessments. The Engineer's Report is consistent with *Bonander* because the Assessments have been apportioned based on the overall cost of the Improvements and proportional special benefit to each property.

## PLANS & SPECIFICATIONS

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The work and improvements to be undertaken by the West Contra Costa Unified School District Maintenance and Recreation Assessment District and the cost thereof paid from the levy of the annual assessment (the "Improvements") are generally described as follows:

Installation, maintenance and servicing of public recreational facilities and improvements, including but not limited to, turf and play areas, landscaping, irrigation systems, lighting, fencing, basketball courts, tennis courts, running tracks, security guards, graffiti removal and repainting, swimming pools, recreational facilities, and labor, materials, supplies, utilities and equipment, as applicable, at each of the locations owned, operated or maintained by the West Contra Costa Unified School District.

Any plans and specifications for these improvements will be filed with the Associate Superintendent, Business Services of the West Contra Costa Unified School District and are incorporated herein by reference.

"Maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation and servicing of any improvement, including repair, removal or replacement of all or any part of any improvement; providing for the life, growth, health, and beauty of landscaping, including, cultivation, irrigation, trimming, spraying, fertilization, or treating for disease or injury; the removal of trimmings, rubbish, debris, and other solid waste, and the cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

"Servicing" means the furnishing of electric current, or energy, gas or other source for illumination for any public lighting facilities or for the lighting or operation of any fountains, or the maintenance of any other improvements.

Incidental expenses include all of the following: (a) The costs of preparation of the Engineer's Report, including plans, specifications, estimates, diagram, and assessment; (b) the costs of printing, advertising, and the giving of published, posted, and mailed notices; (c) compensation payable to the County for collection of assessments; (d) compensation of any engineer or attorney employed to render services in proceedings pursuant to this part; (e) any other expenses incidental to the construction, installation, or maintenance and servicing of the Improvements; (f) any expenses incidental to the issuance of bonds or notes if any pursuant to Streets & Highways Code Section 22662.5;

and (g) costs associated with any balloting process held for the approval of a new or increased assessment. (Streets & Highways Code §22526).

The assessment proceeds will be exclusively used for Improvements within the Assessment District plus incidental expenses. Reference is made to the list of school buildings, turf and play areas, public grounds, and/or other facilities listed in the previous page of this Report which specifically identifies the locations of the permanent public facilities to be funded by the assessment proceeds. For further detail, including specific expenditure and improvement plans by school site, refer to the plans and specifications on file with the District.

## ASSESSMENT

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WHEREAS, on April 25, 2012 the Board of Education of the West Contra Costa Unified School District, Richmond, California, pursuant to the provisions of the Landscaping and Lighting Act of 1972, Directing Preparation of Annual Report for the West Contra Costa Unified School District Maintenance and Recreation Assessment District for the proposed improvements and changes in existing public improvements, more particularly therein described;

WHEREAS, said Resolution directed the undersigned Engineer of Work to prepare and file a report presenting an estimate of costs, a diagram for the assessment district and an assessment of the estimated costs of the improvements upon all assessable parcels within the assessment district, to which said Resolution and the description of proposed improvements therein contained, reference is hereby made for further particulars;

NOW, THEREFORE, the undersigned, by virtue of the power vested in me under said Act and the order of the Board of Education of said West Contra Costa Unified School District, hereby make the following assessment to cover the portion of the estimated cost of said improvements, including the maintenance and servicing thereof and the costs and expenses incidental thereto to be paid by the assessment district.

The amount to be paid for said improvements, including the maintenance and servicing thereof and the expenses incidental thereto, to be paid by the assessment district for the fiscal year 2012-13 is generally as follows:

### SUMMARY COST ESTIMATES

| West Contra Costa Unified School District<br>Maintenance and Recreation Assessment District<br>Budget Summary - Fiscal Year 2012-13 |                    |
|-------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Capital Improvements and Maintenance Expenditures                                                                                   | \$5,480,204        |
| Incidentals                                                                                                                         | \$98,500           |
| <b>Total Maintenance and Recreation Assessment Budget</b>                                                                           | <b>\$5,578,704</b> |

As required by said Act, an Assessment Diagram is hereto attached showing the exterior boundaries of said Maintenance and Recreation Assessment District as the same existed at the time of the passage of said Resolution. The distinctive number of each parcel or lot of land in the said Maintenance and Recreation Assessment District is its Assessor Parcel Number appearing on the Assessment Roll.

And I do hereby assess and apportion said net amount of the cost and expenses of said improvements, including maintenance and servicing thereof, upon the parcels or lots of land within said Maintenance and Recreation Assessment District, in accordance with the special benefits to be received by each parcel or lot, from the maintenance of said improvements, and more particularly set forth in the Cost Estimate hereto attached and by reference made a part hereof.

Said assessment is made upon the parcels or lots of land within said Maintenance and Recreation Assessment District in proportion to the special benefits to be received by said parcels or lots of land, from said improvements.

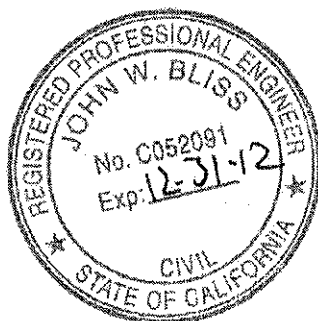
Each parcel or lot of land is described in the Assessment Roll by reference to its parcel number as shown on the Assessor's Maps of the County of Contra Costa for the fiscal year 2012-13. For a more particular description of said property, reference is hereby made to the deeds and maps on file and of record in the office of the County Recorder of said County.

I hereby place opposite the Assessor Parcel Number for each parcel within the Assessment Roll, the amount of the assessment for the fiscal year 2012-13 for each parcel or lot of land within the said Maintenance and Recreation Assessment District.

Dated: May 1, 2012

By: \_\_\_\_\_

John Bliss, License No. C052091



**ESTIMATE OF COST FISCAL YEAR 2012-13**

| West Contra Costa Unified School District<br>Maintenance and Recreation Assessment District<br>Estimate of Cost<br>Fiscal Year 2012-13 |                 |                         |
|----------------------------------------------------------------------------------------------------------------------------------------|-----------------|-------------------------|
|                                                                                                                                        |                 | <b>Total<br/>Budget</b> |
| <b>Capital Improvement and Maintenance Expenditures</b>                                                                                |                 |                         |
| Capital Improvements to School Facilities and Grounds                                                                                  |                 | \$600,000               |
| Field Preservation and Maintenance                                                                                                     |                 | \$75,000                |
| Utilities, Irrigation                                                                                                                  |                 | \$100,000               |
| Graffiti and Vandalism Abatement                                                                                                       |                 | \$300,000               |
| Maintenance and Operation                                                                                                              |                 | \$4,405,204             |
| <b>Total Capital Improvement and Maintenance Expenditures</b>                                                                          |                 | <b>\$5,480,204</b>      |
| <b>Incidental Costs</b>                                                                                                                |                 |                         |
| Legal Counsel and Administrative Services                                                                                              |                 | \$36,000                |
| Contra Costa County Data and Collection Fees                                                                                           |                 | \$55,000                |
| Notice and Contingency                                                                                                                 |                 | \$7,500                 |
| <b>Total Incidental Costs</b>                                                                                                          |                 | <b>\$98,500</b>         |
| <b>Total Maintenance and Recreation Assessment Budget</b>                                                                              |                 | <b>\$5,578,704</b>      |
| Assessment to SFE                                                                                                                      |                 |                         |
| Total Budget                                                                                                                           | Total SFE Units | Assessment<br>per SFE   |
| \$5,578,704                                                                                                                            | 77,482          | \$72.00                 |

## **METHOD OF APPORTIONMENT**

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This section of the Engineer's Report explains the special and general benefits to be derived from the Improvements and the methodology used to apportion the total assessment to properties within the Maintenance and Recreation Assessment District.

The Maintenance and Recreation Assessment District consists of all Assessor Parcels within the boundaries of the West Contra Costa Unified School District as defined by the County of Contra Costa tax code areas. The method used for apportioning the assessment is based upon the proportional special benefits conferred to the properties in the Assessment District over and above general benefits conferred to real property in the Assessment District or to the public at large. Special benefit is calculated for each parcel in the Assessment District using the following process:

1. Identification of all benefit factors derived from the Improvements
2. Calculation of the proportion of these benefits that are general
3. Determination of the relative special benefit within different areas within the Assessment District
4. Determination of the relative special benefit per property type
5. Calculation of the specific assessment for each individual parcel based upon special vs. general benefit; location, property type, property characteristics, and improvements on property

### **DISCUSSION OF BENEFIT**

In summary, the assessments can only be levied based on the special benefit to property. Any and all general benefit must be funded from another source. This special benefit is received by property over and above any general benefits from the Improvements. With reference to the requirements for assessment, Section 22573 of the Landscaping and Lighting Act of 1972 states:

*"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 benefits to be received by each such lot or parcel from the improvements."*

Proposition 218, as described in Article XIID of the California Constitution, has confirmed that assessments must be based on the special benefit to property and that the assessment cannot exceed the reasonable cost of the special benefits:

*"No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel."*

Since assessments are levied on the basis of special benefit, they are not a tax and are not governed by Article XIII A of the California Constitution.

The SVTA v. SCCOSA decision also clarifies that a special benefit is a service or improvement that provides a direct advantage to a parcel and that indirect or derivative benefits from a service or improvement are general benefits. The SVTA v. SCCOSA decision also provides specific guidance that park improvements can provide a direct advantage and special benefit to property that is proximate to a park or recreational facility:

*"the characterization of a benefit may depend on whether the parcel receives a 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)."*

Finally, Proposition 218 twice uses the phrase "over and above" general benefits in describing special benefit. (Art. XIID, sections 2(i) & 4(f).)

### **SPECIAL BENEFIT FACTORS**

In order to allocate the proposed assessments, the Engineer begins by identifying the types of special benefit arising from the Improvements that would be provided to property within the District. These categories of special benefit, which have been updated to reflect a recent analysis of special benefits from the Improvements, are summarized as follows:

- Extension of a property's usable outdoor areas for properties within the Assessment District
- Proximity and access to improved outdoor grounds and recreation facilities

The special benefits from the Improvements are further detailed below:

- **Extension of a property's outdoor areas for properties within the Assessment District**

The District's sites in the Assessment District provide larger outdoor areas that serve as an effective extension of the land area for proximate properties because the Improvements are accessible to property in close proximity to the Improvements. The Improvements, therefore, provide an important, valuable and desirable extension of usable land area for the direct advantage and special benefit of properties with good and close proximity to the Improvements.

An analysis of the service radii for the Improvements finds that properties enjoy the distinct and direct advantage of being proximate to Improvements within the Assessment District. Other properties in outside the Assessment District do not enjoy this proximity that provides the effective extension of usable land area and, therefore do not receive this special benefit. The properties in the Assessment District therefore uniquely and specially benefit from the extension of usable and improved outdoor and recreational areas provided by the Improvements.

- **Proximity and access to Improvements**

Only the specific properties within close proximity to the Improvements are specially benefited and assessed in the Assessment District. Therefore, property in the Assessment District enjoys unique and valuable proximity and access to the Improvements that the public at large and other properties do not share.

In absence of the assessments, the Improvements would not be provided, because alternative funding sources are not available. Therefore, the assessments provide Improvements that are over and above what otherwise would be provided. Improvements that are over and above what otherwise would be provided do not by themselves translate into special benefits but when combined with the unique proximity and access enjoyed by certain parcels in the Assessment District, they provide a direct advantage and special benefit to assessed property in the Assessment District.

#### **GENERAL VERSUS SPECIAL BENEFIT**

The District's grounds and facilities provide a general benefit to the community and to the general public in the form of educational and recreational opportunities for students. The measure of this general benefit is the periods during which the District's grounds and facilities are used for such educational purposes and are, therefore, not available to be

used as a public recreation resource. This general benefit cannot be and is not funded by the Maintenance and Recreation Assessment District.

Alternatively, the cost of improving and maintaining grounds and facilities for use and enjoyment by property owners and residents in the District is a special benefit to property in the District because the improvements and maintenance confer the special benefit factors described above. This special benefit can be measured by the proportionate amount of time the District's grounds and facilities are available for use and enjoyment by property owners and other residents in the District.

The percentage of time that the District's facilities are available for public use is approximately 67%.<sup>1</sup> The remaining 33% of time the grounds and public facilities are used for general educational purposes. Therefore, approximately 33% of the cost of maintenance and improvements of grounds and facilities is for the educational purposes of the District, which is a general benefit to the community. As noted, the cost of these general benefits cannot be funded by the assessments.

The District's total budget for maintenance and improvement of its grounds and facilities exceeds \$16,800,000 and the District's contribution to the maintenance and improvement of its grounds and facilities from sources other than assessments is approximately \$9,800,000 of this total. This contribution by the District equates to approximately 56% of the total budget for maintenance and improvement of grounds and facilities, which more than offsets the cost of the general benefits resulting from the Improvements, including any additional general benefits to the public at large or property in the Assessment District. The remaining portion of the budget that is funded by the assessment covers the special benefits conferred on property in the District.

#### **METHOD OF ASSESSMENT**

The assessments are apportioned among all lots and parcels within the Maintenance and Recreation Assessment District on the basis of Single Family Equivalents (SFE). This SFE

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<sup>1</sup> The percentage of time that the grounds and facilities are available for public use is calculated based on the number of daylight hours in a year that the facilities are available for public use divided by the total number of daylight hours in a year. This calculation is as follows:

Total hours available = 365 days x 12 hours/day = 4,380 hours.

Hours for educational use (general benefit) = 182 days x 8 hours/day = 1,456 hours.

Hours available for public use = 4,380 total hours – 1,456 hours = 2,924 hours.

Percentage of time for public use = 2,924 hours / 4,380 total hours = 67 %

methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments. For the purposes of this Engineer's Report, all properties are designated a SFE value, which is each property's relative benefit in relation to a single family home on one parcel. The "benchmark" property is the single family detached dwelling which is one Single Family Equivalent or one SFE.

#### PROXIMITY BENEFITS

The West Contra Costa Unified School District's recreational facilities and grounds, as identified in the Plans and Specifications, are open to the community and are used extensively throughout the year. The District's facilities are relatively uniformly distributed throughout the District and are easily accessible by anyone within the District. The benefits from the proposed improvements do not vary based on proximity of the parcels to the improvements because the increased benefits resulting from proximity to the improvements are generally offset by increased negative factors such as increased traffic, noise, etc. that derives to parcels from increased proximity to the improvements. As a result, any increase in benefit that comes from being closer to a District facility is generally offset by an increase in negative factors that cause a relational decrease in benefit.

Since all parcels in the District have good access and proximity to the District's grounds and recreational facilities and the benefits to relatively closer proximity are offset by other factors, proximity is not considered to be a factor in determining benefit and all properties in the Maintenance and Recreation Assessment District are determined to be within a single zone of benefit.

#### ASSESSMENT APPORTIONMENT

1. For developed Assessor parcels with one, two, three or four living units, the SFE Units is the number of living units per parcel.
2. For Assessor parcels with five to twelve living units, the SFE Units is 5. For Assessor parcels with thirteen to twenty-four living units, the SFE Units is 8. For Assessor parcels with twenty-five to fifty-nine living units, the SFE Units is 10. For Assessor parcels with sixty or more living units, the SFE Units is 15.
3. For developed mobile home park parcels, the SFE Units is 5.
4. For developed commercial and/or industrial parcels with no living units, the SFE Units is 0.
5. For publicly owned parcels, vacant or undeveloped land or parcels with no assessed value, the SFE Units is 0.

6. For agricultural parcels with no living units, the SFE Units is 0.
7. For institutional, recreational, common area, parking lot, natural resource, other or miscellaneous parcels with no residential living units, the SFE Units is 0.

The assessment for each parcel is listed on the Assessment Roll in the following section. The assessments are based on the method of assessment summarized above.

#### **APPEALS AND INTERPRETATION**

Any property owner who feels that the assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the Associate Superintendent, Business Services of the West Contra Costa Unified School District or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Associate Superintendent, Business Services or his or her designee will promptly review the appeal and any information provided by the property owner. If the Associate Superintendent, Business Services or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County of Contra Costa for collection, the Associate Superintendent, Business Services or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any dispute over the decision of the Associate Superintendent, Business Services or his or her designee, shall be referred to the Board of Education of the West Contra Costa Unified School District and the decision of the Board of Education of the West Contra Costa Unified School District shall be final.



**ASSESSMENT ROLL (FISCAL YEAR 2012-13)**

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Reference is hereby made to the Assessment Roll in and for said assessment proceedings on file in the office of the Clerk of the Board of Education, as said Assessment Roll is too voluminous to be bound with this Engineer's Report.

## **APPENDIX A – 1972 ACT APPLICATION**

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The Maintenance and Recreation Assessment District, through the Act, will collect special benefit assessments and provide funding for the installation, maintenance and servicing of park and recreational facilities in the District. The assessments are levied on the basis of benefit and are considered an assessment, not a tax. Pertinent excerpts from the Act are included below.

### **§22500 Short Title**

This part shall be known and may be cited as the "Landscaping and Lighting Act of 1972."

### **§22503 Assessment district; benefited territory**

An assessment district shall consist of all territory, which, as determined by the legislative body, will be benefited by the improvements and is to be assessed to pay the costs thereof.

### **§22504 Assessment District; territory within local agency**

An assessment district may consist of all or any part of the territory within the local agency and, in the case of a county, may consist of all or any part of the unincorporated territory of the county.

### **§22505 Assessment district; contiguous or non-contiguous territory**

An assessment district may consist of contiguous or non-contiguous areas. The improvement in one area need not be of benefit to other areas.

### **§22523 Engineer**

"Engineer" means the Park District engineer, county engineer, engineer of the district, or any person designated by the legislative body as the engineer for the purposes of this part, including officer, board, or employee of the local agency or any private person or firm specially employed by the Local agency as engineer for the purposes of this part.  
(Revised by Article XIID of the California Constitution)

### §22525 Improvement

"Improvement" means one or any combination of the following:

- (a) The installation of planting or landscaping.
- (b) The installation or construction of statuary, fountains, or other ornamental structures and facilities.
- (c) The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
- (d) The installation or construction of any facilities which are appurtenant to and of the foregoing or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
- (e) The installation of park or recreational improvements, including but not limited to all of the following:
  - (f) Land preparation, such as grading, leveling, cutting and filling sod landscaping, irrigation systems, sidewalks, and drainage.
  - (g) Lights, playground equipment, play courts, and public restrooms.
  - (h) The maintenance or servicing or both, of any of the foregoing.
  - (i) The acquisition of land for park, recreational or open-space purposes.
  - (j) The acquisition of any existing improvement otherwise authorized pursuant to this section.

### §22569 Estimates of costs; content

The estimate of the costs of the improvements for the fiscal year shall contain estimates for all of the following:

- (a) The total costs for improvements to be made that year, being the total costs of constructing or installing all proposed improvements and of maintaining and servicing all existing and proposed improvements, including all incidental expenses. This may include a reserve, which shall not exceed the estimated costs of maintenance and servicing to December 10 of the fiscal year, or whenever the Park District expects to receive its apportionment of special assessments and tax collections from the county, whichever is later.

- (b) The amount of any surplus or deficit in the improvement fund to be carried over from a previous fiscal year.
- (c) The amount of any contributions to be made from sources other than assessments levied pursuant to this chapter.
- (d) The amount, if any, of the annual installment for the fiscal year where the legislative body has ordered an assessment for the estimated cost of any improvements to be levied and collected in annual installments.
- (e) The net amount to be assessed upon assessable lands within the assessment district, being the total improvement costs, as referred to in subdivision (a), increased or decreased, as the case may be, by any of the amounts referred to in subdivision (b), (c), or (d).

#### §22573 Net amount; apportionment

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 benefits to be received by each such lot or parcel from the improvements.

The determination of whether or not a lot or parcel will benefit from the improvements shall be made pursuant to the Improvement Act of 1911 Division 7 (commencing with Section 5000).

#### §22574 Classification into zones

The diagram and assessment may classify various areas within an assessment district into different zones where, by reason of variations in the nature, location, and extent of the improvements, the various areas will receive differing degrees of benefit from the improvements. A zone shall consist of all territory that will receive substantially the same degree of benefit from the improvements.

#### §22605 Authority of Legislative Bodies

The Legislative body, either in a single proceeding or by separate proceedings, may order one or any combination of the following changes of organization:

- (a) The annexation of territory to an existing assessment district formed under this part.
- (b) The detachment of territory from an existing assessment district formed under this part.
- (c) The dissolution of an existing assessment district formed under this part.

- (d) The consolidation into a single assessment district formed under this part any combination of two or more of any of the following:
  - (1) An existing assessment district formed pursuant to this part.
  - (2) An existing lighting, street lighting, maintenance, or tree planting district formed pursuant to Chapter 26 (commencing with Section 5820) of Part 3 of Division 14, or Part 1 (commencing with Section 18000), Part 2 (commencing with Section 18300), Part 3 (commencing with Section 18600), or Part 4 (commencing with Section 19000) of Division 14, or Part 1 (commencing with Section 22000) of this division, or pursuant to any procedural ordinance adopted by a charter Park District.
- (e) The legislative body shall not, by annexation, detachment, dissolution, or consolidation, alter the obligation of property owners to pay the principal of, and interest on, bonded debt or notes issued pursuant to Section 22662.5. This section does not prevent the lawful refunding of the bonded debt or notes or the apportionment of assessments upon the division of properties assessed.

## **APPENDIX B – CALIFORNIA CONSTITUTION ARTICLE 13D**

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Proposition 218 was approved by voters as a Constitutional Amendment on November 6, 1996. It became Article XIIC and Article XIID of the California State Constitution and has imposed additional requirements for assessment districts. Following is a summary of the Article.

### **SECTION 1. Application.**

Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIIC shall be construed to:

- (a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.
- (b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.
- (c) Affect existing laws relating to the imposition of timber yield taxes.

### **SEC. 2. Definitions.**

As used in this article:

- (a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIIC.
- (b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."
- (c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.
- (d) "District" means an area determined by an agency to contain all parcels, which will receive a special benefit from a proposed public improvement or property-related service.
- (e) "Fee" or "charge" means 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 fee or charge for a property related service.
- (f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

- (g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.
- (h) "Property-related service" means a public service having a direct relationship to property ownership.
- (i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

### SEC. 3. Property Taxes, Assessments, Fees and Charges Limited.

- (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except: (1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A. (2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A. (3) Assessments as provided by this article. (4) Fees or charges for property related services as provided by this article.
  - (b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.
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### SEC. 4. Procedures and Requirements for All Assessments.

- (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel, which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.
- (b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

- (c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.
- (d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.
- (e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.
- (f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.
- (g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

#### SEC. 5. Effective Date.

Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

- (a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.
- (b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.
- (c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.
- (d) Any assessment, which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

#### SEC. 6. Property Related Fees and Charges.

- (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following: (1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge. (2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel

upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

- (b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements: (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service. (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed. (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel. (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4. (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.
- (c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.
- (d) Beginning July 1, 1997, all fees or charges shall comply with this section.