
Unlocking the Magic of Special Assessments

PART 1:

Proposition 218 and the Legal Framework of Assessment Districts in California

Proposition 13 Background

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



Proposition 13 Background

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



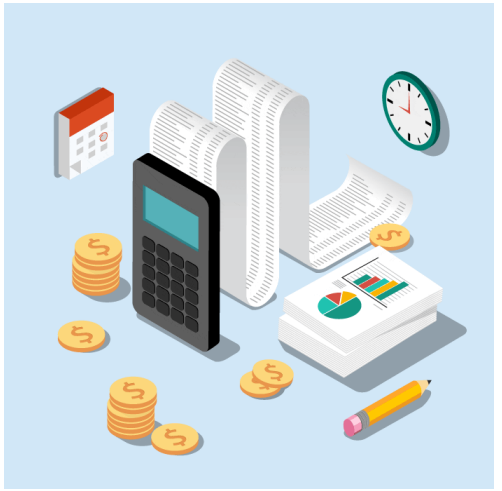
Proposition 13 (1978)

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



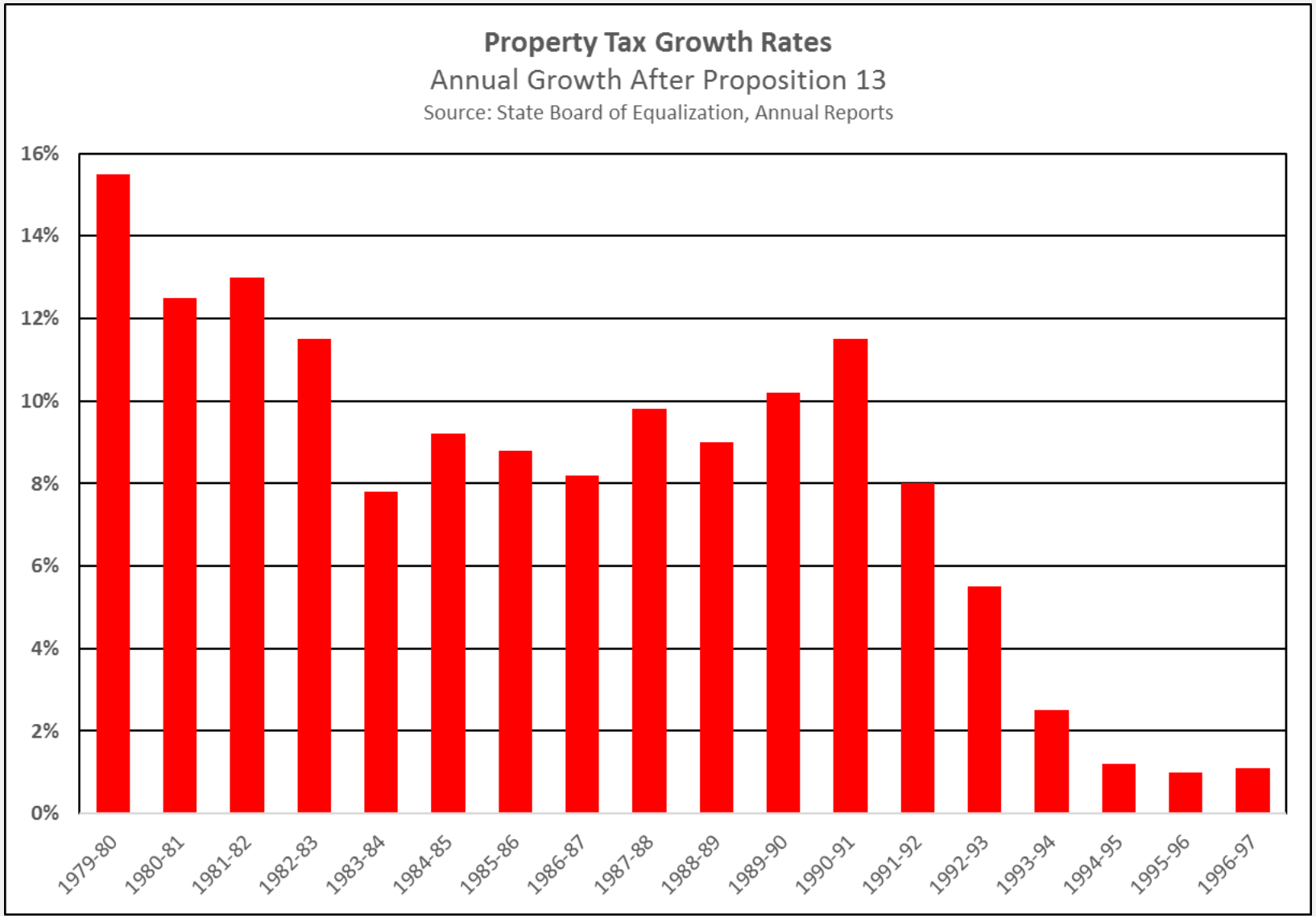
Proposition 13 Impact

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



Property Tax Growth Rates

Annual Growth After Proposition 13



Increase in Assessment Revenues

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



Knox v City of Orland (1992)
The straw that broke the camel's back

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



Proposition 218 (1996)

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



Proposition 218

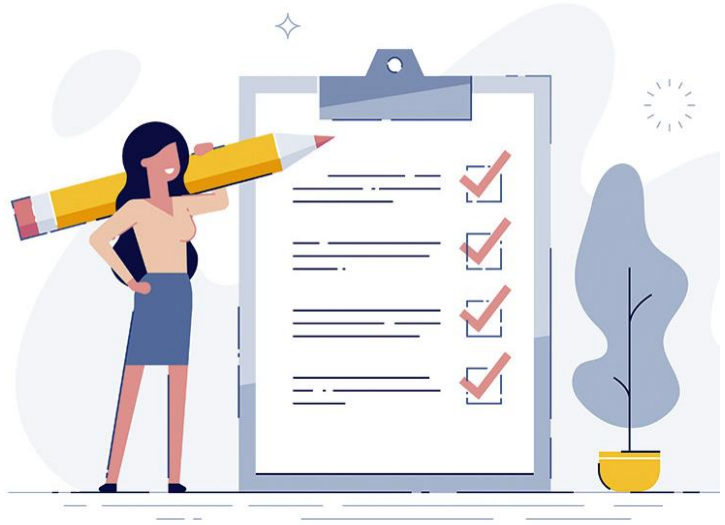
- **Article XIII D, § 4 (Assessments)**
  - Established new substantive requirements: special benefit and proportionality
  - Established new procedural requirements: majority ballot protest procedures



Substantive Requirements

- Only "special benefits" are assessable
- California Constitution article XIII D, § 2(i):

"Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."



- Local agency, State and Federal Properties are not exempt from assessment

Substantive Requirements

- Assessments must be supported by a detailed engineer's report prepared by a registered engineer certified by the State
- Identify all properties that receive special benefit
- Separate the general benefits from the benefits
- *The amount associated with general benefits must be paid from a source other than the assessment*



Substantive Requirements

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



Burden of Proof

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



Summary

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



PART 2:

Court Decisions and What They Mean To Assessment Districts



The New Normal

HJTA v. City of Riverside (1999)

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



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

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

OPEN SPACE AUTHORITY
SANTA CLARA VALLEY

Background

- 2000 – OSA needed additional funding for open space acquisition and maintenance
- OSA initiated proceedings to form a new assessment district for open space
- Assessment for all single-family residences in county set at same rate – assessment revenues produce ~ $8 million
- No parcels are identified in the report for open space acquisition

Background

- Majority of property owners approve assessments
- Taxpayers Association challenges assessments, claims assessments:
  - Fail to satisfy special benefit requirements
  - Fail to meet proportionality requirements

Standard of Review – Pre-Prop 218

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



Standard of Review

Pre-Prop 218

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



Standard of Review – Post-Prop 218

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



Special benefit

Court refines the meaning of special benefit:

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



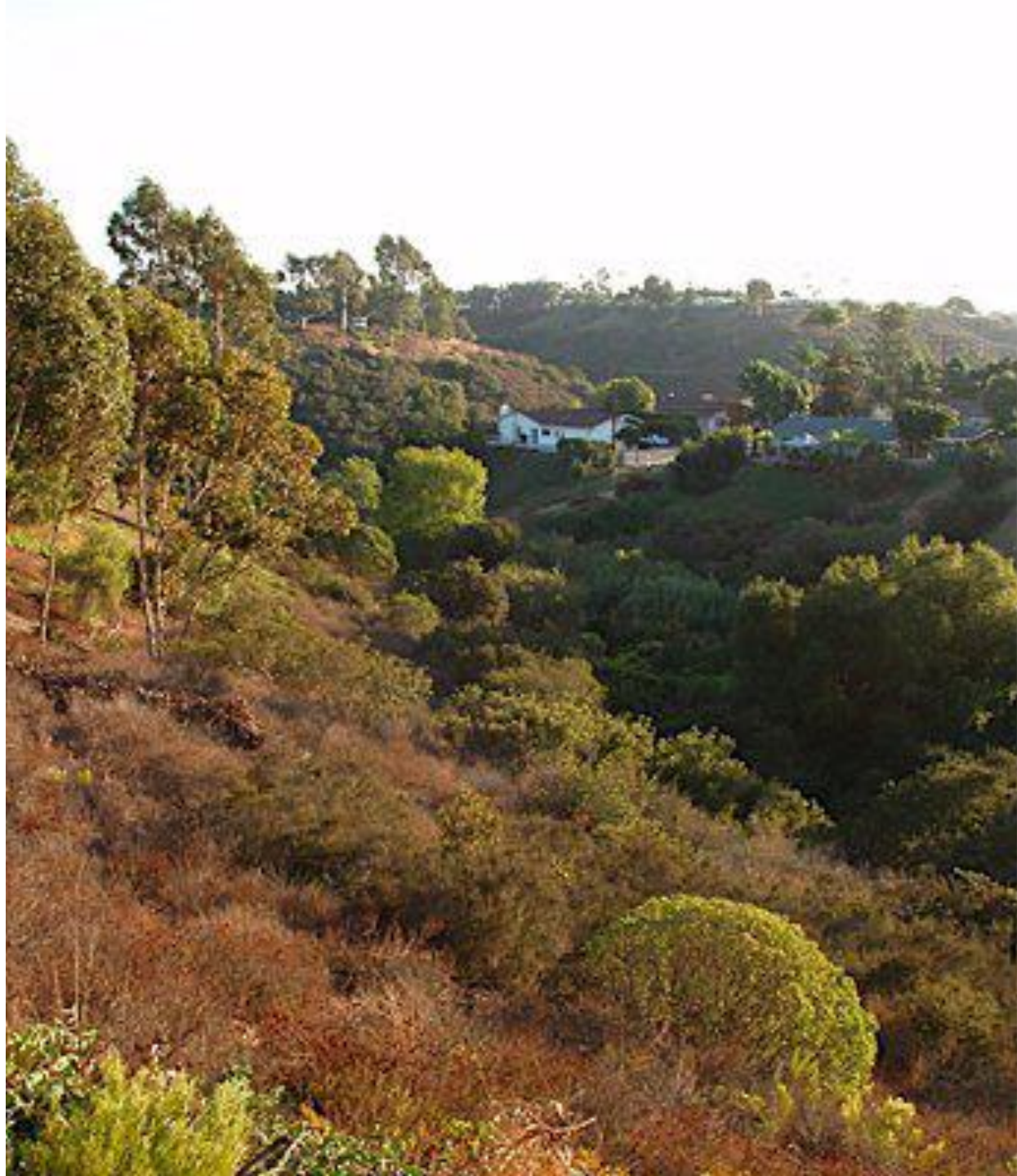
Special Benefit

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



Special Benefit

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



Proportionality

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

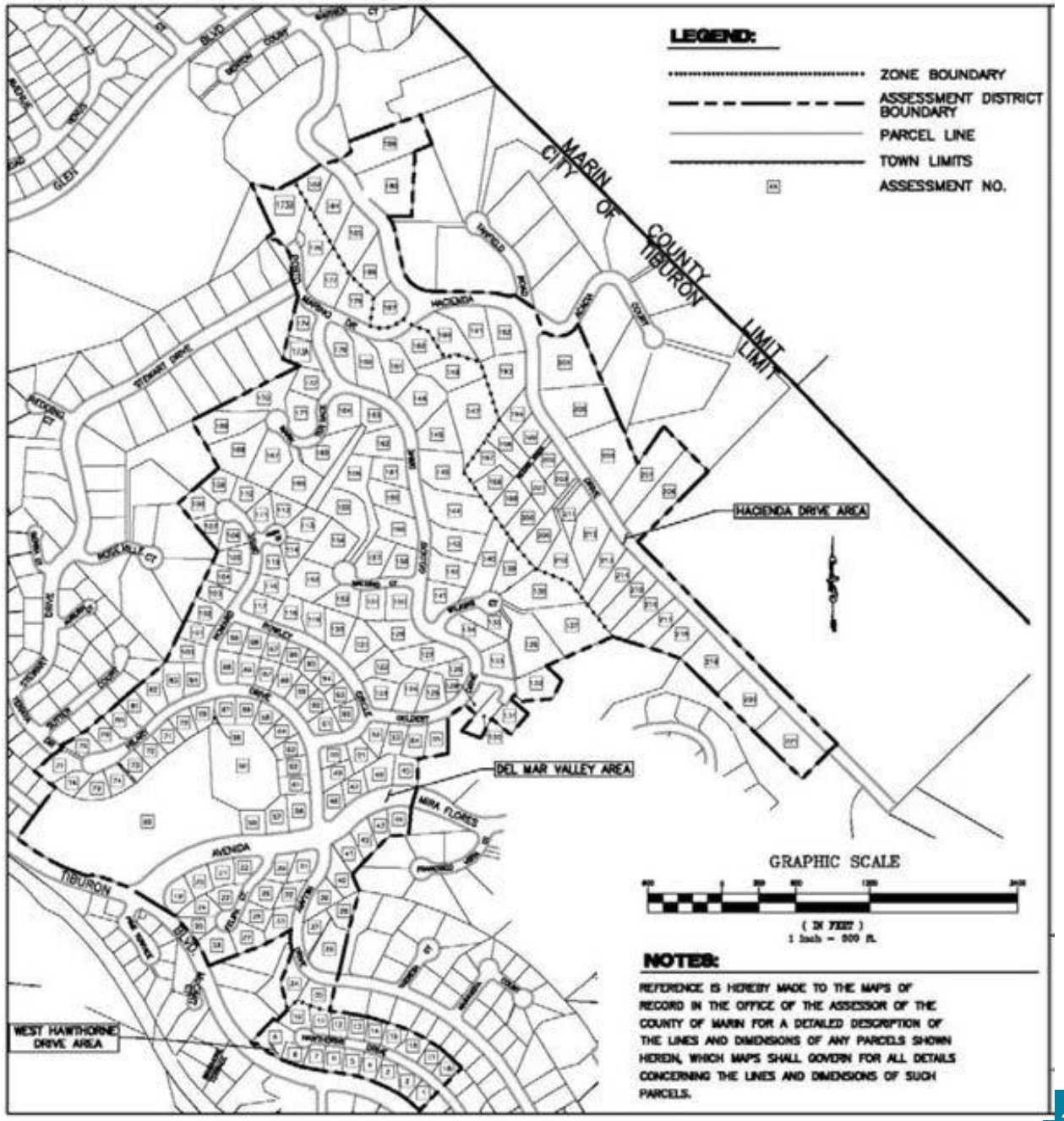


Proportionality

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



Example: Tiburon UUD



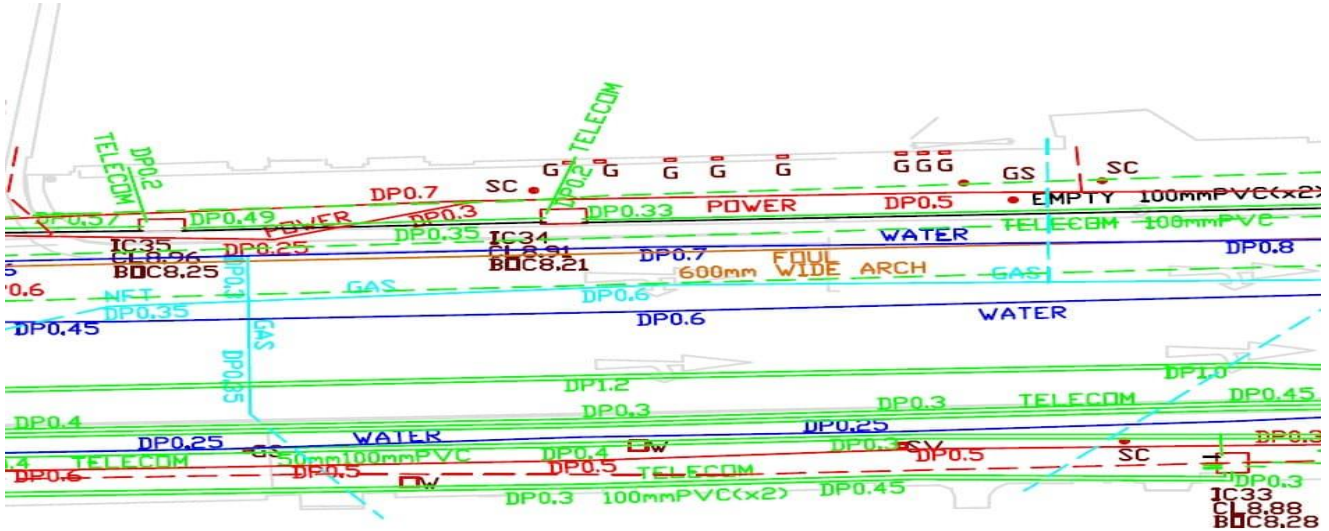
Town of Tiburon v. Bonander (2009)



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

Tiburon Utility Undergrounding District

- **Outcomes**
  - Cost zones not allowed, zones must be based upon benefit only
  - All parcels benefitting must be included in district
  - Each parcel's proportionate special benefit must be based on cost of entire project
  - Court found no fault with methodology – special benefits identified in Engineer's Report were special, ok that special benefit was conferred equally
  - Court affirmed general enhancement of property value does not mean a benefit is general



Example: Downtown Pomona PBID

Dahms v. Downtown Pomona PBID

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

Downtown Pomona PBID

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



Downtown Pomona PBID

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



Example: Wildomar LMD



Beutz v. County of Riverside (2010)

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

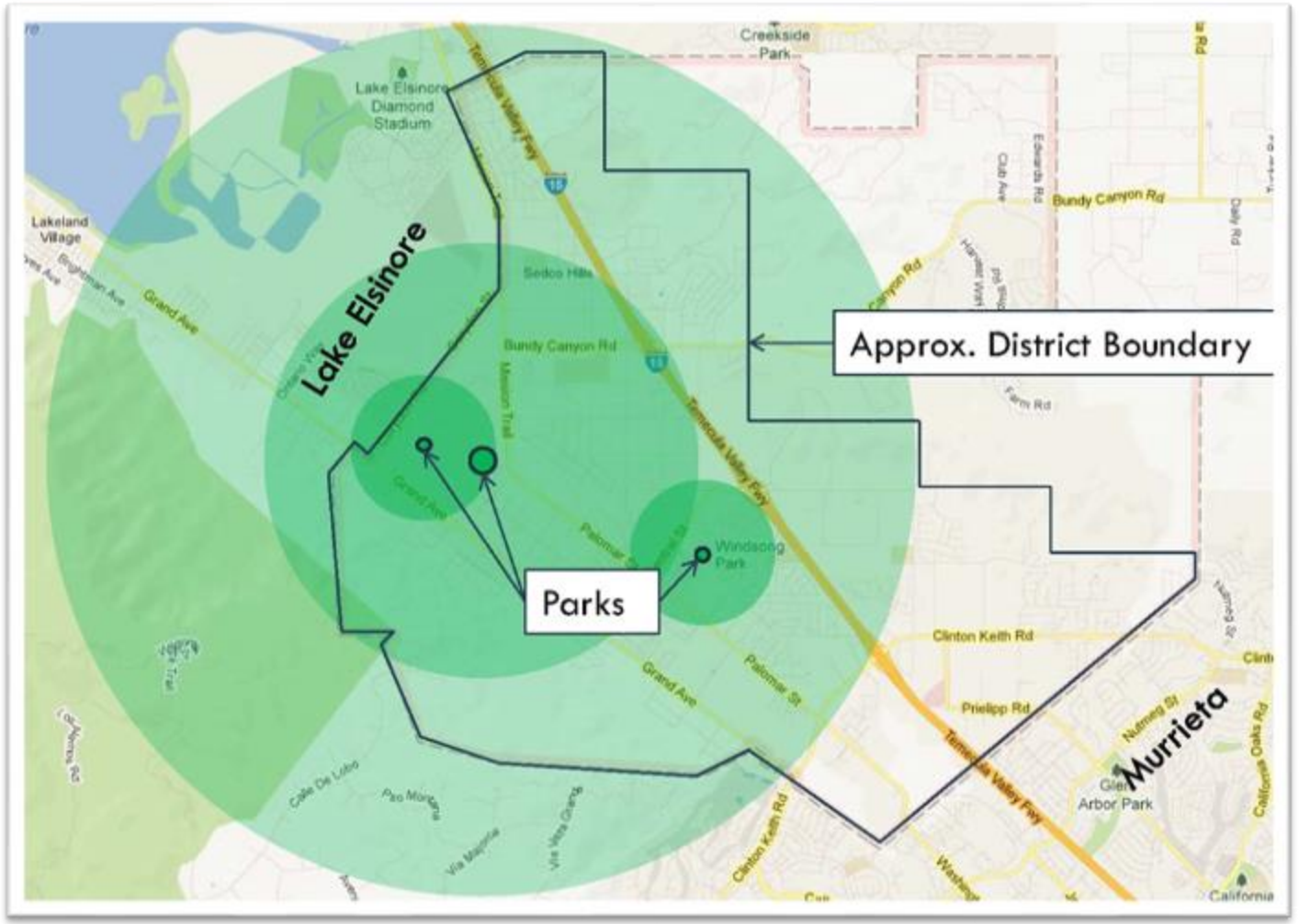


Wildomar LMD

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

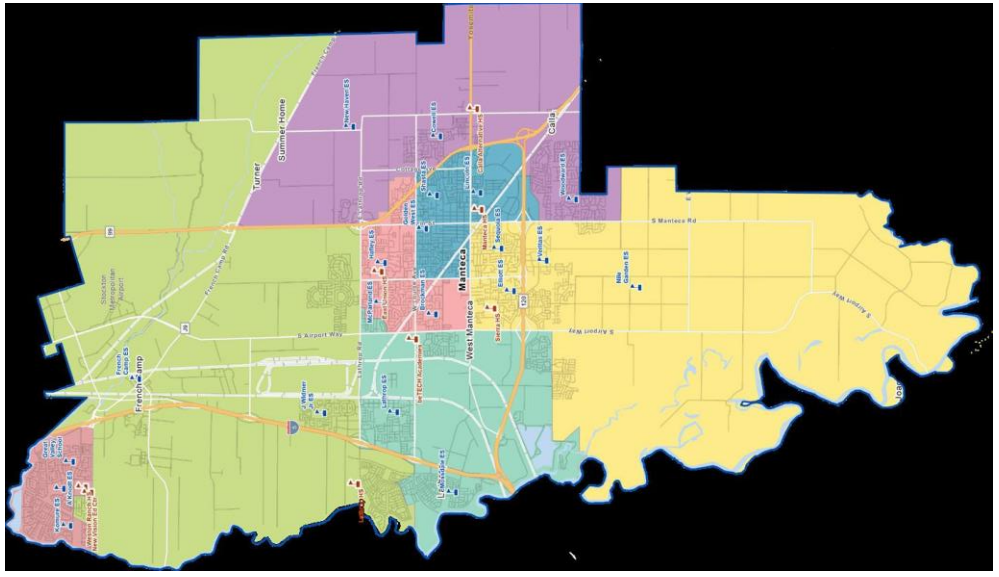


Example: Wildomar LMD



Manteca USD vs Reclamation District No. 17 (2017)

- **School District challenged assessment stating they were exempt per the Water Code**
- Court upheld assessment and stated:
  - Prop. 218 superseded the statutory exemption
  - Reclamation District could only provide exemption if there was clear and convincing evidence the School District did not receive special benefit



Conclusions and Recommendations

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

Conclusions and Recommendations

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

Conclusions and Recommendations

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



Conclusions and Recommendations

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

PART 3:

Current Practices

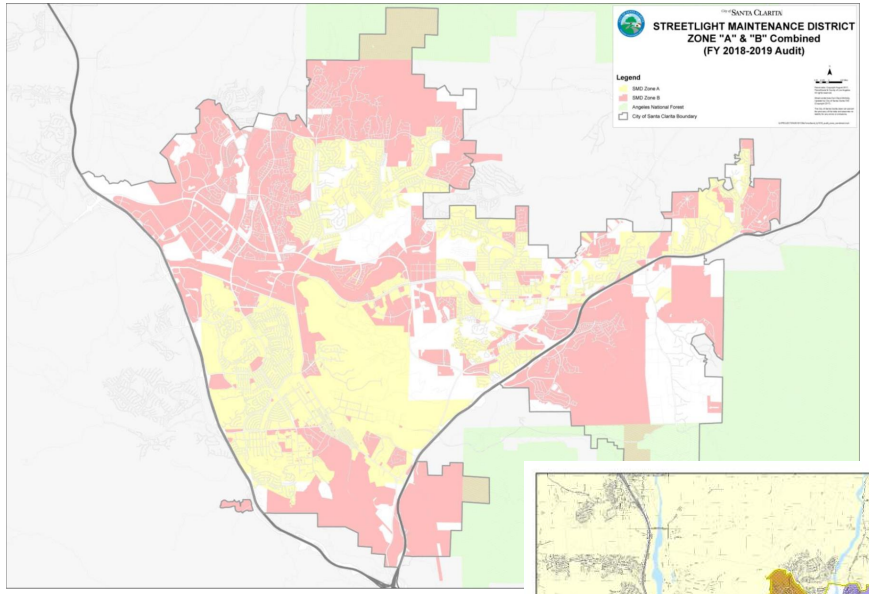
Shifting Landscape

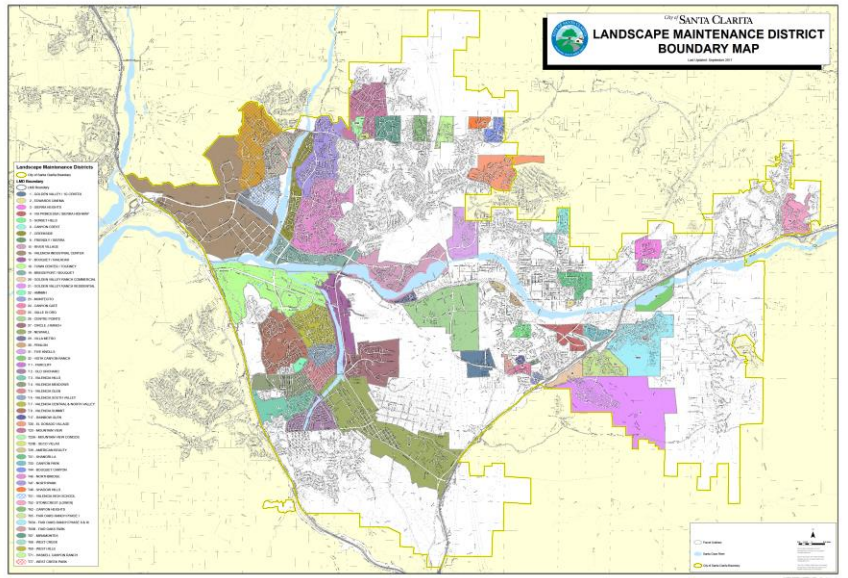
- More focus on describing the special benefits
- Must ***quantify*** the general benefits
- More scrutiny on general-type services: public safety (fire), park maintenance
- Difference in benefit vs. difference in cost (special benefit zones not cost zones)
- Ensuring proportionality in assigning special benefit
- Impact on existing assessments – potential challenges
- Certain situations not suited for assessments



City of Santa Clarita – Special Districts

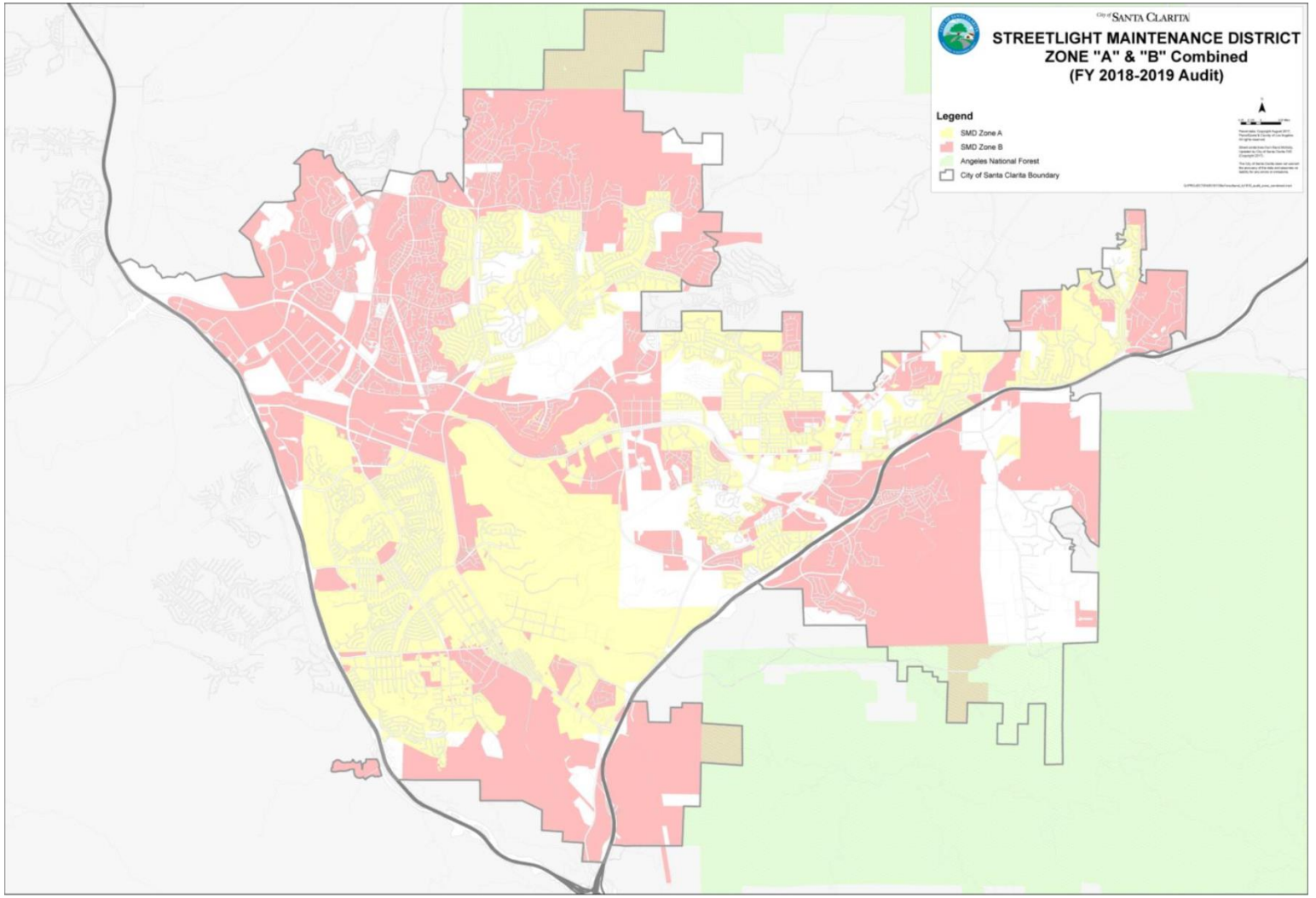






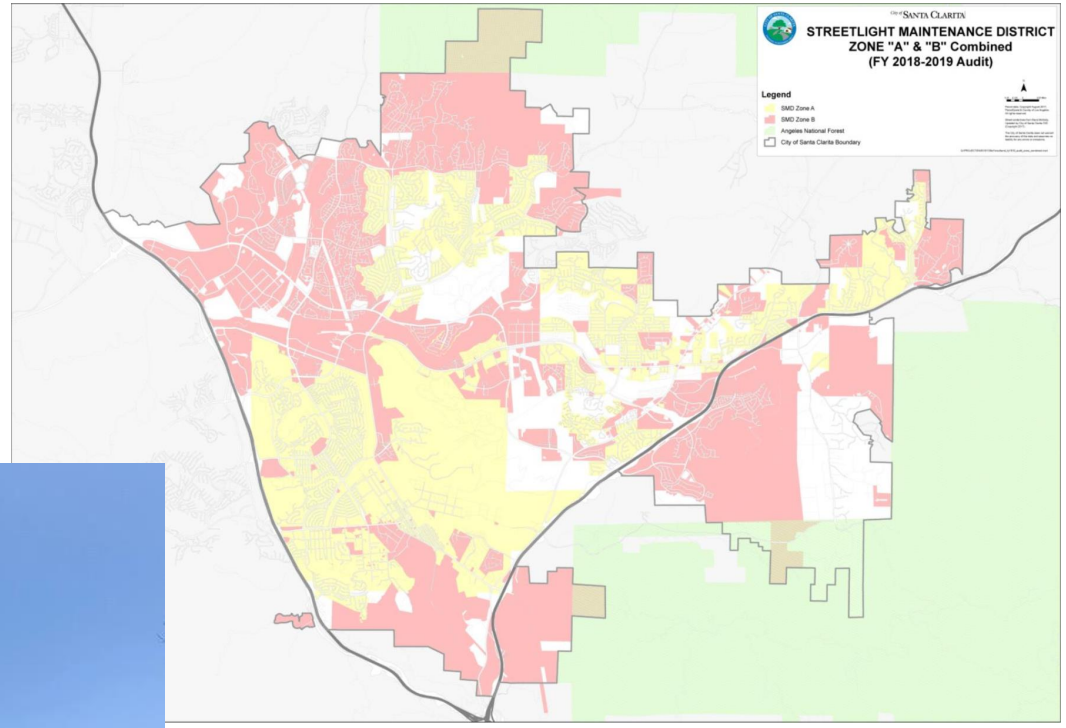
- Streetlight Maintenance District (SMD)
  - Single District – 2 Zones
- Landscape Maintenance District (LMD)
  - Single District – 62 Independent Zones
- Drainage Benefit Assessment Area (DBAA)
- Open Space Preservation District (OSPD)
- Golden Valley Ranch Open Space (GVROS)

Streetlight Maintenance District - SMD



Streetlight Maintenance District - SMD

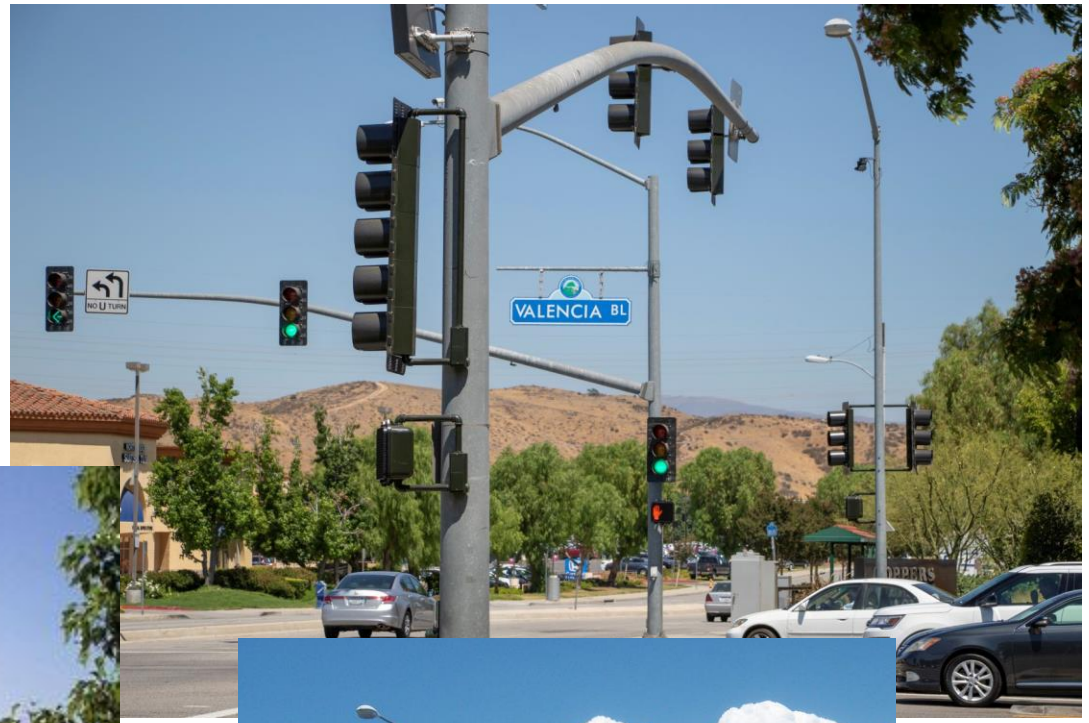
- Funds Operation of City-wide Streetlights
  - Zone A & Zone B Assessment Rates (Prop 218)
- Purchased from Edison
  - Converted to L.E.D.





Streetlight Maintenance District - SMD

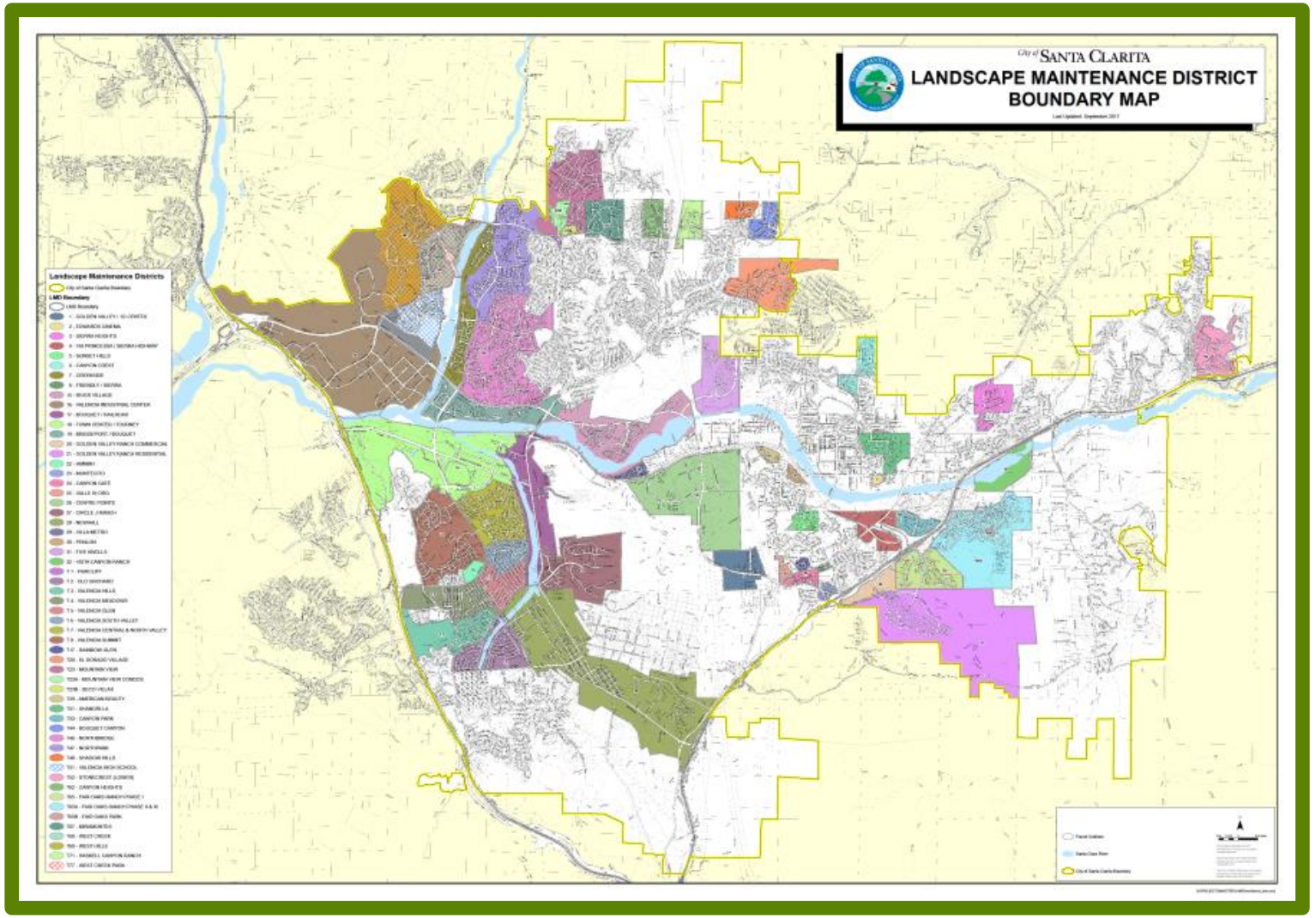
- Highway Safety Lights
- Major Thoroughfare Streetlights
- Residential Streetlights







Landscape Maintenance District – LMD



LMD Funded Pocket Parks

- Picnic Areas
- Restrooms
- Shaded Areas
- Children's Play Equipment
- Walking Paths
- Sport Programming
  - Pickle Ball/Tennis
  - Baseball/Softfall
  - Soccer, Etc.





LMD Funded Paseos

- Concrete Walks
- Pedestrian Bridges
- Fencing
  - Crete-Rail
  - Wrought Iron
- Paseo Lighting
  - Pathway
  - Decorative



LMD Vegetated Slopes

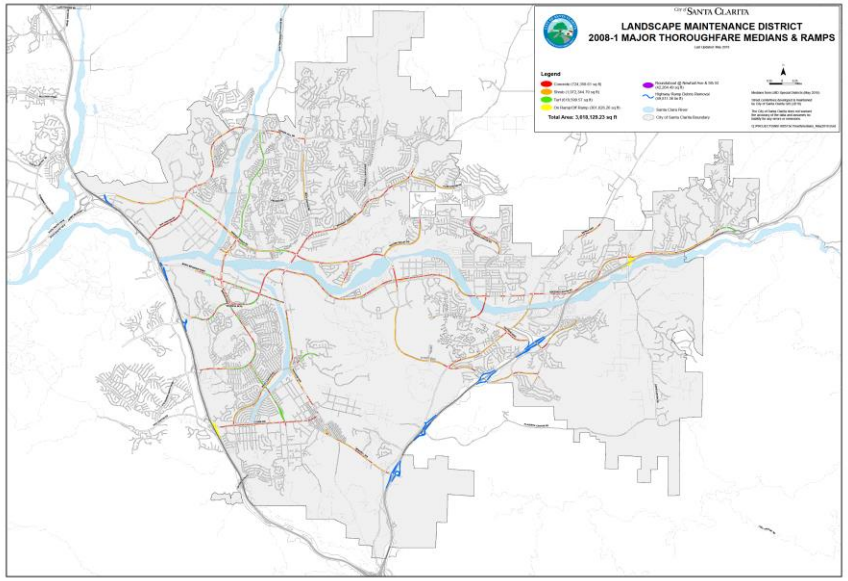
- Slope Stabilization
- Erosion Control
- Fire Suppression
- Beautification
- Wildlife Cooridors





Landscape Maintenance District – LMD Areawide

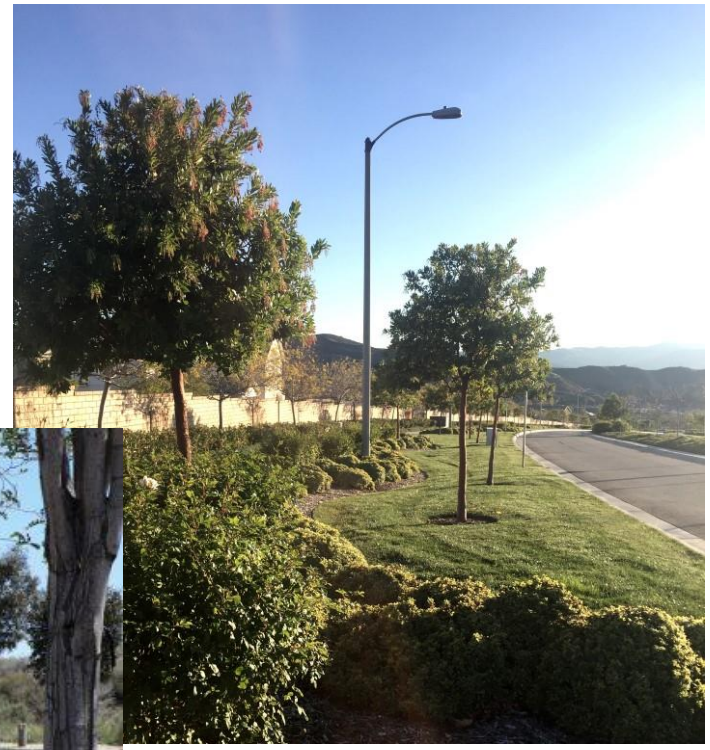
- City-wide Major Thoroughfares Medians
  - Trees, shrubs, groundcover, etc.
  - Irrigation Infrastructure
- Side panel "medians"
- Improvements
  - Beautification
  - Circulation





Landscape Maintenance District – LMD Areawide

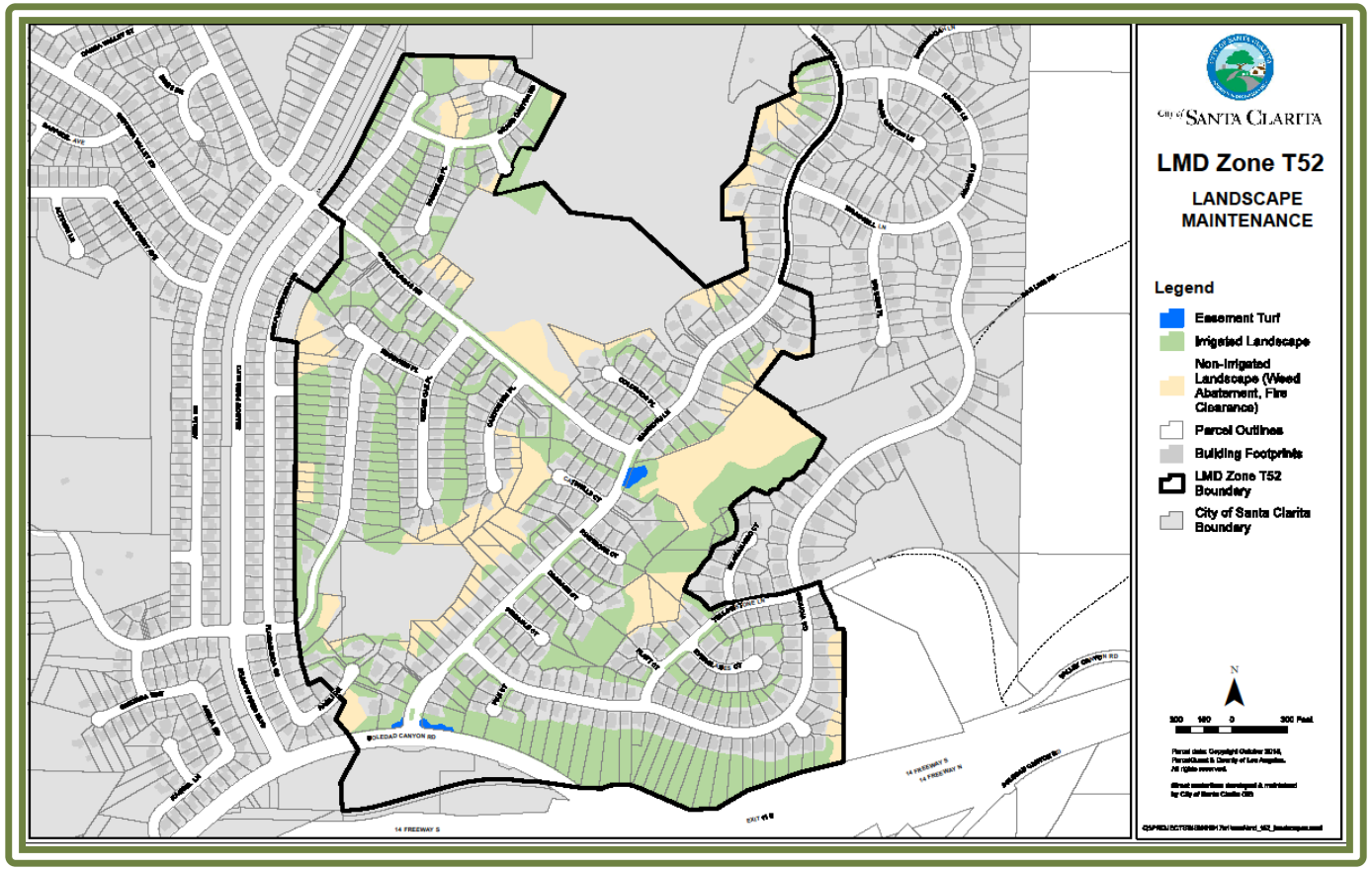
- City-wide Major Thoroughfares Medians & Right-of-Way
  - Trees
  - Shrubs
  - Irrigation Infrastructure
- Right-of-Way
  - Parkways
  - Side panel "medians"





Landscape Maintenance District – Stonecrest

- **Slope Landscaping (Primarily)**
  - Trees, Shrubs, etc.
  - Irrigation System
  - Bench Drainage
- **Pocket Park**
  - Tree Shaded Seating Areas
- **Community Entry Monument/Signage**
  - Lighting
  - Planted Median



Landscape Maintenance District – Stonecrest

- **Slope Landscaping (Primarily)**
  - Trees, Shrubs, etc.
  - Irrigation System
  - Bench Drainage
- **Pocket Park**
  - Tree Shaded Seating Areas
- **Community Entry Monument/Signage**
  - Lighting
  - Planted Median

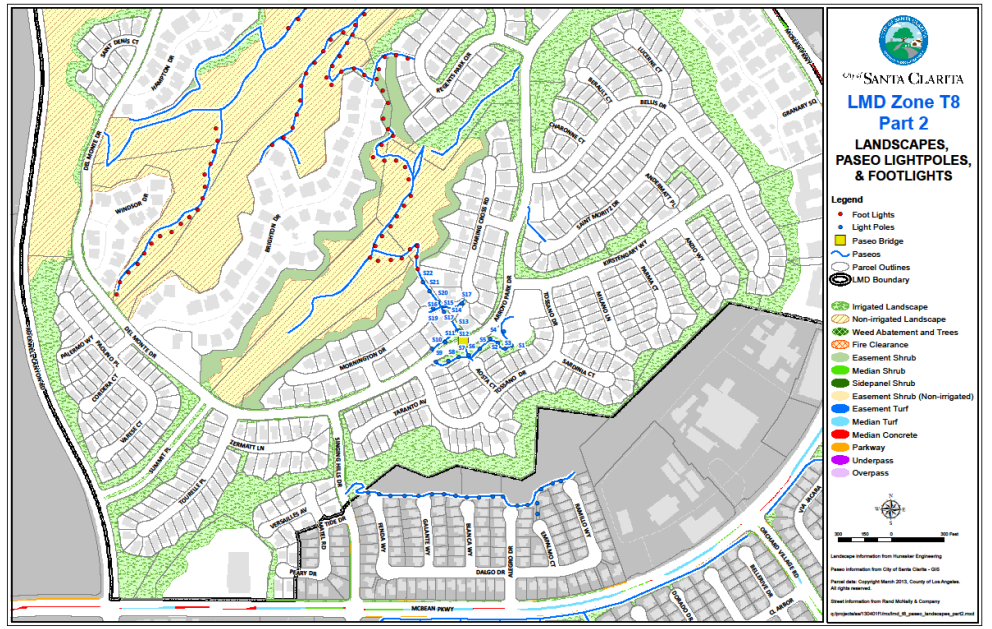




LMD Example #3 – The Summit

- Paseo/Trail System
- Pathway Lighting & Fencing
- Park – Play Equipment, Tennis Courts, Shade
- Open Space – Natural Habitat/Oak Preserve
- Pedestrian Bridges
- Right-of-Way Landscaping
- Slope Landscaping & Drainage Systems
- Community Entry Monuments





LMD Funded Open Space

- Pathways/Trail
- Pedestrian Bridges
- Fuel Modification Management
- Brush Clearance





Challenges - Encroachments

- **Private Parcel Ownership**
  - Landscape Maintenance Easement
- **Vacation or Modification of Easement**
  - Continuous Infrastructure
    - Irrigation, Drainage



- **Prop 218 Empowers Cities to make decisions pertaining to the activities within easements.**

Funding Challenges/Benefits

- **Reduced Burden on General Fund**
- **Beautification**
  - Increased Property Values
- **No CPI (Consumer Price Index) Escalator**
  - Flat Revenues vs. Increased Costs
  - No Additional Revenue
  - Pursue Prop 218?



Assessments – Common Principles

- **Prepare and submit Engineer's Report to support benefit finding and rationale for assessments**
  - Detail improvements/services to be funded
  - Provide cost estimates for the improvements/services
  - Define the benefits, both general and special
  - Define the method for allocating special benefit
  - Define zones of special benefit, if any
  - Include assessment roll, boundary map, etc



- **Conduct assessment ballot proceeding – lack of majority protest required for approval (majority approval)**

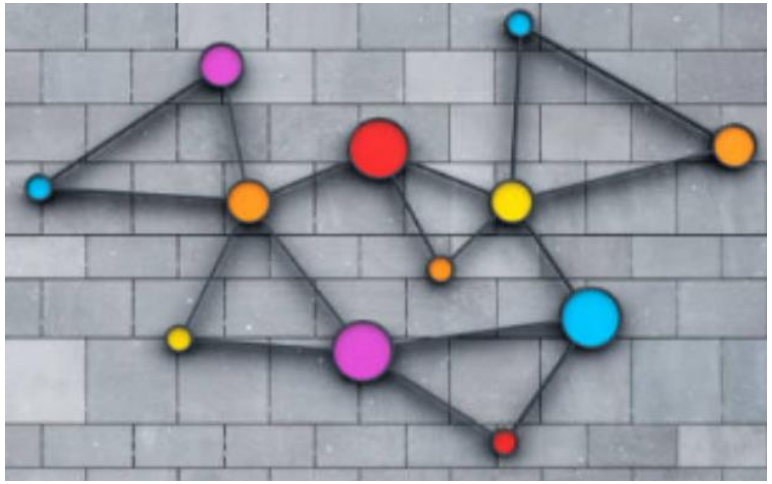
Consider Before Balloting

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



Consider Before Balloting

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



Consider Before Balloting

- **Evaluate potential alternatives**
  - Level of General Fund subsidy for general benefits and public agency assessments
  - Annual increase to assessments (Include an inflationary formula?)
  - Reduce the current level of service
  - Out-source services (contract services)
  - Consider alternative revenue mechanisms
    - Special Tax, CFD
    - Consolidation, expansion or re-engineering



Consider Before Balloting

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



Assessment District Laws

- **Municipal Improvement Act of 1913**

  (Streets & Highways Code 10000 et. Seq.)



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



- **Services**
  - Only what was funded by assessment
  - Limited maintenance provision
- **Issue bonds through Improvement Bond Act of 1915**

Assessment District Laws

- **Landscaping and Lighting Act of 1972**

  (Streets & Highways Code 22500 et. Seq.)

- Funds construction and maintenance of:
  - Landscaped medians and parkways
  - Parks
  - Open Space
  - Street lighting
  - Traffic signals
  - Graffiti removal on the above



Assessment District Laws

- **Benefit Assessment Act of 1982**

  (Government Code 54703 et. Seq.)

- Funds construction and maintenance of:
  - Street improvements
  - Storm drain improvements
  - Street lighting



Assessment District Laws

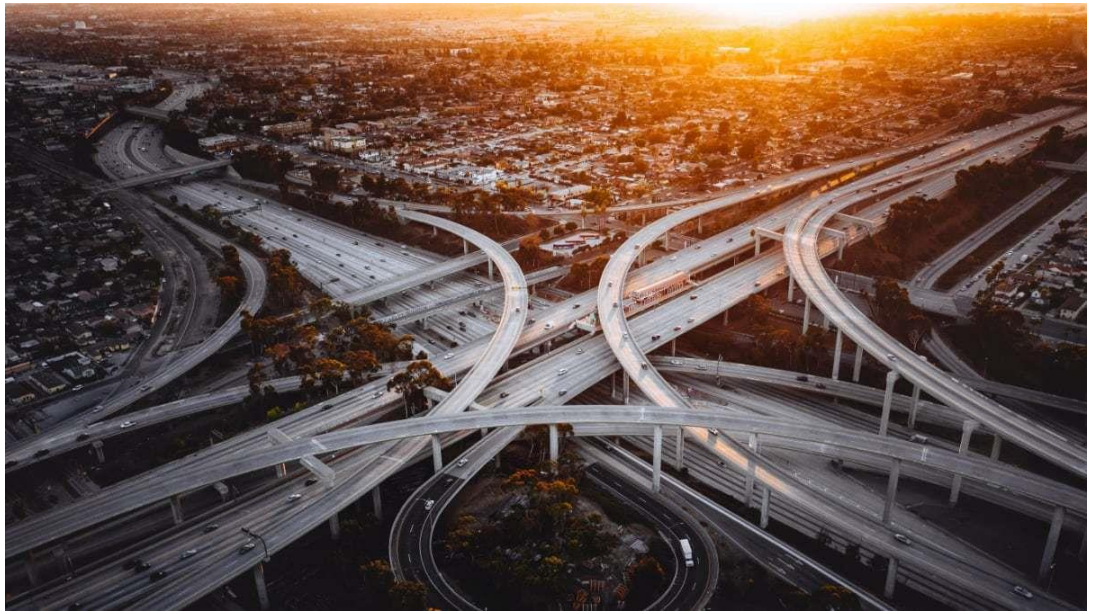
- **Fire Suppression Act of 1987**

  (Government Code 50078 et. Seq.)

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



Assessment District Laws



- **Property and Business Improvement Law of 1994**

  (Streets and Highways Code 36600 et. Seq.)

- **Funds the following services:**
  - Promotion of public events.
  - Furnishing of music in any public place.
  - Promotion of tourism within the district.
  - Marketing and economic development, including retail retention and recruitment.
  - Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
  - Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district. Cannot fund activities related to paramedic and/or emergency response services

Assessment District Laws

- **Property and Business Improvement Law of 1994**
- Funds the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more, including, but not limited to:
  - Parking facilities, benches, booths, kiosks, display cases, pedestrian shelters and signs.
  - Trash receptacles, public restrooms, ramps, sidewalks, plazas, and pedestrian malls
  - Lighting and heating facilities.
  - Parks, fountains, planting areas, decorations.
  - Closing, opening, widening, or narrowing of existing streets.
  - Facilities or equipment, or both, to enhance security of persons and property within the district.
  - Rehabilitation or removal of existing structures.




QUESTIONS

THANK YOU FOR PARTICIPATING!